

BOARD OF ZONING APPEAL  
FOR THE  
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, SEPTEMBER 29, 2016

7:00 p.m.

in

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

Constantine Alexander, Chair

Brendan Sullivan, Vice Chair

Thomas Scott, Member

Janet Green, Member

Andrea A. Hickey, Member

Patrick Tedesco, Member

George S. Best, Associate Member

Sean O'Grady, Zoning Specialist

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**P R O C E E D I N G S****\* \* \* \* \***

(7:00 p.m.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Board of Appeals to order. And as is our custom, we're going to start with the continued cases. These are cases that started on an earlier night and for one reason or another have been continued to tonight. But at the outset let me say that after notifying the Chair, any person may make a video or audio recording of our open sessions, which this is, 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 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 would report that a recording is being made.

Our stenographer records as well as types, records to assist her in preparing the transcript of the hearing.

And wouldn't surprise me before the night is over another gentleman will show up and record as well. He's not here so far. Anyway, the meeting is being recorded so be aware.

\* \* \* \* \*

(7:00 p.m.)

(Sitting Members Case BZA-010106-2016: Constantine Alexander, Brendan Sullivan, Thomas Scott, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: With that I will case No. 010106, 18 Whitney Avenue.

Is there anyone here wishing to be heard on this matter? Before you start, not too many other people here. Anyone else here for this case besides I assume you are? But anyone else? You are, okay. I just wanted to know who

is going to being talking.

Go ahead.

GRAHAM McVICKER: So my name is Graham McVicker and I'm a trustee and owner of a unit at the 18 Whitney condo association --

CONSTANTINE ALEXANDER: Can you hear, sir?  
Because if you can't --

JANET GREEN: Come forward. The microphone, if you put it closer to your mouth.

GRAHAM McVICKER: Is that better?

CONSTANTINE ALEXANDER: No, no. Maybe it's not turned on.

GRAHAM McVICKER: Okay. So my name is Graham McVicker. I'm a trustee and an owner of a unit at the 18 Whitney condo association. So I'm speaking on behalf of the condo association.

So as you may recall, we're petitioning for a Special Permit to allow a reduction in the required number

of parking spaces for our building as described in the Zoning Ordinance Article 6, Section 35.1. And so the purpose of this permit that we're requesting is to reduce the minimum number of required off-street parking spaces for our building from seven to six. Currently one unit in our building is unable to be occupied because it doesn't have an assigned off-street parking permit.

CONSTANTINE ALEXANDER: Is it owned, though, that unit?

GRAHAM McVICKER: It is owned.

CONSTANTINE ALEXANDER: Someone who owns that unit is not occupying it because of the parking situation?

GRAHAM McVICKER: That is correct.

CONSTANTINE ALEXANDER: Okay.

Just out of curiosity, how was that unit chosen as the one that can't be occupied?

GRAHAM McVICKER: So they were never conveyed a parking spot with their deed.

CONSTANTINE ALEXANDER: Oh, they were never conveyed a parking spot?

GRAHAM McVICKER: Yeah.

So they obtained their deed through a settlement and so it never became a parking spot.

ANDREA HICKEY: A settlement relating to the parking spot?

GRAHAM McVICKER: Relating to the bankruptcy of the developer of the property.

CONSTANTINE ALEXANDER: Wait a minute, is this is the unit that Mr. Norris has?

GRAHAM McVICKER: Yes, that's correct.

CONSTANTINE ALEXANDER: He was the former owner of the building?

GRAHAM McVICKER: Yes.

CONSTANTINE ALEXANDER: And he sold it to a group of developers?

GRAHAM McVICKER: Yes.

CONSTANTINE ALEXANDER: And then, but he was not a part of -- as far as you know, part of the development team --

GRAHAM McVICKER: To my knowledge he wasn't part of the development team.

CONSTANTINE ALEXANDER: Okay. I think it's important to know this.

So when he conveyed the building, which he owned, to the developers --

GRAHAM McVICKER: Yes.

CONSTANTINE ALEXANDER: -- did he, as part of that deal get a unit?

GRAHAM McVICKER: Not as part of that deal. But I do think that he was owed money by the developer and the developer went bankrupt and I think the head of the development team actually died, and then so the unit came back to him as part of a loan that was not repaid through a bankruptcy settlement is my understanding.

CONSTANTINE ALEXANDER: Okay. So it sounds like he foreclosed on an interest he had.

GRAHAM McVICKER: I don't think it was technically a foreclosure.

CONSTANTINE ALEXANDER: Maybe not technically, but he basically in payment of money owed to him he took the unit.

GRAHAM McVICKER: That's my understanding.

CONSTANTINE ALEXANDER: When did this -- when did he take control of the unit?

GRAHAM McVICKER: I think -- I think it was the end of 2013.

CONSTANTINE ALEXANDER: Okay.

ANDREA HICKEY: And his deed doesn't reference parking in any respect?

GRAHAM McVICKER: It does not.

ANDREA HICKEY: Okay.

CONSTANTINE ALEXANDER: Even though the Master

Deed requires that there be parking spaces?

GRAHAM McVICKER: So the Master Deed describes there being six parking spaces on the north side of the building.

CONSTANTINE ALEXANDER: Yes.

GRAHAM McVICKER: And says that each unit would be assigned a parking space. The issue is there isn't actually sufficient room to park that many cars there.

CONSTANTINE ALEXANDER: Okay.

And does he still own the unit?

GRAHAM McVICKER: He does.

CONSTANTINE ALEXANDER: He does not occupy it right now?

GRAHAM McVICKER: That's correct.

So that's the reason we're applying for the Special Permit. So, I want to emphasize that, you know, the reduction in the required parking spaces by one won't cause additional congestion in the neighborhood or substantially

reduce the amount of available parking in the neighborhood. We don't think the number of cars parking on the street will change. There's currently four, actually assigned parking spaces that are used by occupants of the building. So we also consulted with Traffic, Parking and Transportation. And they provided us a letter indicating that they support the granting of this permit.

CONSTANTINE ALEXANDER: And it was at the last hearing or maybe it's in the written materials that was submitted, it was suggested that the, unit No. 7 is owned by someone who had an interest or a relationship with the developer?

GRAHAM McVICKER: Unit No. 7 is owned by an LLC. To my knowledge that owner of the LLC was not a developer, but I think it acted as a lawyer or something.

CONSTANTINE ALEXANDER: It's occupied. The LLC doesn't occupy it, there's an individual.

GRAHAM McVICKER: Yes, there is a tenant.

CONSTANTINE ALEXANDER: I'm sorry?

GRAHAM McVICKER: There is a tenant.

CONSTANTINE ALEXANDER: So it's rented?

GRAHAM McVICKER: Unit 7 is rented. Unit 1 is the unit that's unoccupied.

JANET GREEN: And you're a resident of?

GRAHAM McVICKER: Unit 6.

THOMAS SCOTT: And the owner of unit 1 does he intend to occupy the unit or to rent the unit?

GRAHAM McVICKER: I don't think he intends to occupy it. He will either rent it or sell it is my understanding. He has another residence so I don't see why he would occupy it.

CONSTANTINE ALEXANDER: He would have an important interest, an abiding interest in the case tonight. Has he spoken with you? Has he appeared here before.

GRAHAM McVICKER: He communicated to us that he would attend tonight to answer questions.

CONSTANTINE ALEXANDER: Say that again?

GRAHAM McVICKER: He said he would attend tonight.

I don't see him here.

CONSTANTINE ALEXANDER: That's not you, sir.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Not at all.

CONSTANTINE ALEXANDER: Okay, thank you.

So there we are.

GRAHAM McVICKER: Yeah.

CONSTANTINE ALEXANDER: Now as you know, the problem here and the Board now knows, is there was an agreement signed back in --

GRAHAM McVICKER: Yeah.

CONSTANTINE ALEXANDER: -- well, I don't know when -- after a year and a half of negotiation starting back in 2007 where the abutters, a number of abutters challenged the granting of a Building Permit to the developer on the grounds that there weren't seven parking spaces which is

required by our Zoning Ordinance. And I guess the Building Permit had been issued by Inspectional Services, the abutters objected and then Mr. Singanayagam said I'm not going to issue an occupancy permit to allow the building to be occupied unless you guys straighten this thing out. And then there was a negotiation. This is all -- you weren't part of that. This is before your time. And there was a negotiation and then an agreement signed that put restrictions to the Master Deed. One of which was there was going to be seven parking spaces. And the other was that all sorts of landscaping and --

GRAHAM McVICKER: Right. So the Master Deed has restrictions that specify certain dimensions of planters in the front by the street and at the rear of the parking lot and those can't be removed. And so it -- with those restrictions in place, you know it -- the Master Deed does show that there's six spots, but it's not possible to fit them. If you were to alter the planters, it might be but

because we want to honor the deed restrictions, it's impossible to remove them.

CONSTANTINE ALEXANDER: And the plan that was submitted to Traffic and Parking did show seven spaces unfortunately.

GRAHAM McVICKER: No, I believe that the plan with Traffic and Parking shows fewer spaces. Sorry, it doesn't show fewer, it shows a different arrangement. Which the arrangement, which was the plan to be built I think the original arrangement which was planned to be built, but it's inconsistent with the deed restrictions and it doesn't show the planters and it shows a car parked out in the lane which also is a deed restriction which the car can't park in the lane.

THOMAS SCOTT: But it shows seven spaces?

GRAHAM McVICKER: It shows a total of seven including a tandem spot on the south side of the building. It shows six on the north side but not in the arrangement,

but they are drawn on the Master Deed.

CONSTANTINE ALEXANDER: Now, if, if we were to deny the relief you're seeking tonight, that you would have -- thank you, and that individual also has put a recording device here as I predicted he would show up and do. So just further notice that this meeting is being recorded now twice.

Anyway, the question I was going to ask you is if we were to deny relief tonight --

GRAHAM McVICKER: Yes.

CONSTANTINE ALEXANDER: -- there would only be six units, occupiable units in the building?

GRAHAM McVICKER: That's true.

CONSTANTINE ALEXANDER: Which means the financial burden to the -- today when you bought your condo, you expected to have seven units owners and the expenses of maintaining it were divided seven ways.

GRAHAM McVICKER: Yes.

CONSTANTINE ALEXANDER: If we deny relief, you're only going to have six which means you're going to pay more money for condo fees?

GRAHAM McVICKER: So that's -- yes, that's currently an issue. Mr. Norris, the owner of unit 1, is also withholding his condo fees because he says he won't pay them unless he's able to --

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I am sorry for being late.

CONSTANTINE ALEXANDER: That's no problem at all. Go ahead.

ANDREA HICKEY: I want to step in there and say that whether the unit can be occupied or not doesn't relieve a unit owner from the responsibility of paying their condo fee. So I disagree that having a unit that can't be occupied is a burden on the other unit owners. Contractually it's not. The Master Deed and the law in Massachusetts does require a unit owner to pay, not

withstanding anything about the habitability of the unit.

That's a separate matter.

GRAHAM McVICKER: Sorry, I should also say that I think that mortgage lenders don't like it when the building contains an unoccupied unit, so that's also a problem when it comes to buying and selling units in the building.

CONSTANTINE ALEXANDER: Mr. Norris, is here.

ATTORNEY JOHN COLLIER: I'm not Mr. Norris. He's not here. I'm John Collier. I represented him over the years.

CONSTANTINE ALEXANDER: I'm sorry.

ATTORNEY JOHN COLLIER: And I have being delivered -- I have a conflict in my schedule, but I have a statement from him which I'd like to read, and then I have copies for all of you that it will be delivered hopefully within the next or 10 or 15 minutes.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JOHN COLLIER: And whenever you would

like me to read it, I would be more than happy to do so.

CONSTANTINE ALEXANDER: Can you read it now?

ATTORNEY JOHN COLLIER: Yes, I do.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JOHN COLLIER: But for the record my name is John Collier. I've represented Peter Norris over the years. In fact, I represented him many years ago before the Cambridge Rent Control Board.

CONSTANTINE ALEXANDER: Did you represent him in his negotiations or dealings with the developers?

ATTORNEY JOHN COLLIER: I did. I did. I did. He was not part of the development team.

CONSTANTINE ALEXANDER: That's the question I was going to ask you next.

ATTORNEY JOHN COLLIER: Mr. Norris is a MIT person. He's -- the only property he ever owned all of the years was the property at Whitney Ave. And if I may read -- he calls it an Affidavit. It's really not, it's a

statement.

It says: My name is Peter Norris and I currently live at 1010 Memorial Drive in Cambridge. I am very disappointed not to be able to be testifying in person as so many innuendos and inaccuracies appear in the transcript of the previous meeting which I would dearly like to correct. However, I assume that since previous meetings were on the 28th of the month, that this one would be also.

Unfortunately I have a family commitment which I must attend. And so we are left with so much less desirable situation of trying to correct these many misrepresentations in my Affidavit. However, I hope to be available by phone. Which he will be if you need any clarification.

By way of introduction, let me restate the obvious. This situation is a mess. If the ZBA is looking for someone to hold responsible, you are too late. The developer has already paid the ultimate price. He died in 2010. As for me, you will see soon see that I have paid a

higher price in terms of wasted time and expense incurred than any of the other parties to this action.

I purchased 18 Whitney Avenue in 1979 while I was a graduate student at MIT. I had been an owner/occupier there for 28 years. I am not, underlined, a real estate developer. This was the only property in Cambridge that I owned in the past 28 years. I bought this house jointly with Amy Rugel and we occupied two units on the second floor. I was divorced with a young daughter. In the early 80s we became engaged, and as my daughter was spending time with me as part of my custody arrangement, we needed more room. 18 Whitney Ave. was then converted from a four-family residence to a three-family owner/occupied residence. We married in 1982. Attorney John Collier who represents me and is present at this meeting represented us before the Cambridge Rent Control Board in this process. Mr. Van Buzekom is in error when he asserts that the three-family conversion was done illegally. Earlier transcript page 199.

We decided to sell the house in 2006 and move into a condo. At that time I was 64-years-old. The house is a very large one, requiring significant maintenance and lots of snow shovelling in the winter. It was too much for me to handle. 18 Whitney Ave. was sold to the Whitney Street, LLC in 2007. One half of the purchase price was paid at closing and the balance was to be paid in two years, a two-year note guaranteed by an officer of the LLC Raymond Bandar.

I expected closer in the process of two years after which I was done with it. Never in my wildest dreams did I think that the nine years after the sale we would still be bickering over the final resolution. I have spent innumerable hours in hearings, courtrooms, bankruptcy proceedings trying only to get paid for the balance for the purchase price. No more. About one month before the note was due in 2009 I contacted the LLC -- excuse me, that's the person delivering.

Jody, yeah, I don't know if you can just come in

and just leave the packet with me. Okay, thank you.

Sorry for that.

CONSTANTINE ALEXANDER: No problem.

ATTORNEY JOHN COLLIER: I expected closure of the process in two years after which it was done. Never in my wildest dreams did I think that nine years after the sale we would still be bickering over the final resolution. I have spent innumerable hours -- I already told you this. At hearings. All right, no more.

About one month before the note was due in 2009 I contacted the LLC about payment, I was told that the project had been delayed due to the construction problem and issue with the neighbors. If I called the note, the project would collapse and I would get nothing. I agreed to delay. The development died in October of 2010. This resulted in a chaotic situation with no one in charge of the project. As a consequence of this, we filed a lien on the LLC's remaining holdings at 18 Whitney consisting of two units.

We also sued the LLC and Raymond Bandar for payments of the note. This was a time consuming process and I incurred substantial legal fees. During the lawsuit the LLC declared bankruptcy, resulting in my having to retain a bankruptcy attorney to represent me in the bankruptcy proceedings.

More costs and delays. It was never my desire and intent to become a landlord at 18 Whitney Avenue. However, as part of the complex and drawn out 18 Whitney, LLC bankruptcy proceedings, I was awarded unit 1. We were obligated to pay 7500 to the LLC for their cooperation in obtaining title to the unit. At that point I was required to pay \$13,956 in back taxes for the previous four years in addition to incurring monthly condo fees, assessments totaling \$8,116, which I believe he's escrowed. In total, I estimate that I have lost between \$100,000 and \$150,000. It was only then that we discovered the parking problem. We sought to put the unit up for sale and soon after obtaining title and paying back taxes. We approached the condo board to see

which of the six marked units was assigned to unit 1.

Can I just interject, that at that site there are red markers indicating six spots. So we went there and -- okay.

We approached the Board to see which of the six marked spaces was assigned to unit 1. Much to our chagrin, the response came back none of them. We were told several people had SUVs and cars were too big to allow six to park comfortably. Yet there were six spaces marked out in the parking area. The condo board refused our request to designate a parking space for unit 1 as required by the City Ordinance and the Master Deed. We visited the city Inspectional Services Department numerous times, however, they refused to compel the condo board to comply with the Ordinance. We began another costly \$750 application fee and time consuming process of filing an arbitration as required by the Master Deed. Claim against the condo board. I was left in the unenviable position of possessing a unit that I

could not sell, occupy, or rent yet had monthly condo fees approximately \$4,000. Utilities --

CONSTANTINE ALEXANDER: Monthly condos fees are \$4,000?

ATTORNEY JOHN COLLIER: No, no, just for the year.

CONSTANTINE ALEXANDER: Oh, okay.

ATTORNEY JOHN COLLIER: Utilities approximately \$2600 for gas and electric. Assessments, as well as the city real estate tax totalling \$6,536 for the years 2015 and '16.

As you know, there are multiple conflicting narratives in this point, from the condo board and the abutters about which parking plan was approved and when and why the approved plan conflicts with the Master Deed and developer/abutter agreement.

The overreaching facts indicate that the Whitney Street, LLC developer was responsible for this confusion in the desperate process of trying to complete the project,

sell units, and maximize the profit.

In response to the irresponsible and entirely speculative allegations made by abutters, condo board members, and ZBA members in the June 28, 2016, let me say the following: Only the abutters -- only the abutters were present when the transgressions were happening. Yet even they had only a relatively vague notion of what was occurring and who was involved.

My role in the process had been questioned and assumed to be part of some half-cocked conspiracy to deceive the city and the neighborhood. The reality is much simpler. I was the seller, the LLC was the buyer. My interest was seeing that, when the project was completed, I was paid the balance of the purchase price. I have never been a member of the 18 Whitney Street, LLC. Perhaps some of our well-meaning investigators were confusing me with Raymond Bandar who was associated with the LLC and has an interest in one of the 18 Whitney units.

CONSTANTINE ALEXANDER: Can you stop right there?

Is this the unit No. 7?

ATTORNEY JOHN COLLIER: I believe so, yeah.

CONSTANTINE ALEXANDER: And I thought --

JANET GREEN: You're in unit -- no, no.

GRAHAM McVICKER: I'm in unit 6.

ATTORNEY JOHN COLLIER: Raymond Bandar was --

CONSTANTINE ALEXANDER: Bandar was the principal  
of the LLC.

ATTORNEY JOHN COLLIER: He -- what happened and I  
go back in time. What happened was when he was dealing with  
William Walsh, and we all know, I said to Raymond -- to  
Peter Norris, I said, Peter, you must get a mortgage, a  
second mortgage. All you're getting is a promissory note.  
So after much struggling back and forth, I said at least  
have someone guarantee it personally. So Raymond Bandar  
guaranteed it personally. And my client was told that they  
couldn't bank financing for construction if they put a

second mortgage on the property despite the fact that three or four months later, a David Ion (phonetic) loaned money and he got a higher interest rate and a mortgage. So my client, who is a sort of an egghead MIT guy who was naive and he bought into this whole thing.

(Continuing to read from statement) After the closing, I had no role -- let's see -- in project design. I was told the LLC that a well-known architect would be retained for this purpose. As I stated earlier, my ownership of unit 1 was not only by choice but as part of the LLC bankruptcy proceedings. Perhaps Margaret Carver, with whom I had many gardening discussions over the chain link fence that separated our houses, thinks that there was something wrong with the bankruptcy settlement. Transcript page 202. Margaret, you must understand that the settlement was made because I was never paid for the purchase price in the sale contract, not from some shady or nefarious purpose.

And I apologize for the statement that he's saying

it out of anger, but he wanted to say this.

He says: However, it is Mr. Sullivan, whom I have never had the pleasure of meeting, who has driven home the most uncomfortable and undemocratic feelings of a trial in abesntia, when a response to Mr. McVicker's comment that he doesn't have a positive view of Mr. Norris.

Mr. Sullivan commented "and right now so don't we." Wait until the facts are known before jumping to conclusions, Mr. Sullivan, through this massively tangled web lies in abandoning the search for perpetrators long gone and dealing directly with the situation at hand. Grant Mr. McVicker's request allowing to sell unit 1 and provide the condo association with an owner/occupant to share the burdens and pleasures of residency in a neighborhood that I still consider one of the best locations in Cambridge.

Thank you for the opportunity to present this information.

CONSTANTINE ALEXANDER: And that's it?

ATTORNEY JOHN COLLIER: This is it in writing.

And I apologize for not having it earlier.

CONSTANTINE ALEXANDER: That's okay.

ATTORNEY JOHN COLLIER: Also, I can answer a lot of questions because I know a lot of what went on. But he's available. If someone wants to speak to him and hear him speak to you directly, I can call him and put him on the speaker.

ANDREA HICKEY: So your client did not prevail in the arbitration, am I correct?

ATTORNEY JOHN COLLIER: No, we stopped the arbitration because we wanted to reach a settlement. And the lawyer for the association contacted me and we said of course we'll try to settle this if we can.

ANDREA HICKEY: So did it get settled between the association and --

ATTORNEY JOHN COLLIER: No, it's still, it's still remaining. It depends on what the outcome of this.

GRAHAM McVICKER: Can I add something? So

Mr. Norris wanted to take arbitrating against the association to compel us to get a parking spot, but we refused because we maintained that there's no physical space for the parking spot and it would be irresponsible to grant one when there isn't one. So we reached a settlement agreement with Mr. Norris that involves getting the Special Permit, it's contingent on the Special Permit. It would transfer our spot to Mr. Norris and then the association would compensate our unit for the monetary unit for the parking spot.

ANDREA HICKEY: Understood. Thank you.

ATTORNEY JOHN COLLIER: And let's, I'm sure that you -- maybe I can't assume this, but it was very clear from the get-go in looking at the development plans for the project that the Certificate of Occupancy was contingent upon each unit having a parking space. What happened to it, where it went, I have no idea.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JOHN COLLIER: Do you have questions for Mr. Norris? If you do, I would more than happy --

CONSTANTINE ALEXANDER: I don't have questions for Mr. Norris.

ATTORNEY JOHN COLLIER: Maybe I can answer whatever --

CONSTANTINE ALEXANDER: Maybe others do. I don't.

Questions at this point from members of the Board?

(No Response.)

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

Is there anyone wants to be heard in this matter?

FRANK EDWARDS: My name is Frank Edwards, 411 Putnam Avenue. I happen to be the husband of Margaret Carver.

ATTORNEY JOHN COLLIER: Okay.

FRANK EDWARDS: I was probably much more involved

with the agreements between the abutters than my wife was, and you'll find my signature on the agreements. You know, this is a very hard one for us. We were led to believe that there would be the required number of spaces. There was a contingency for allowing the project, for us signing off on the project, not that we have a legal right to say go ahead and have seven units, but we know it was defunct beginning from the representations. And I think you have an e-mail with Mr. Norris's name on it saying that there were a certain number of spaces on the original property sold to the LLC.

There was a lot of negotiations. We all agreed six spaces on one side and a tandem space. Five on one side and a tandem on the other. What happened in the interim, we don't know. I mean it took a year and a half two years, abutters --

CONSTANTINE ALEXANDER: A year and a half according to a letter we got from Mr. Van Buzekom.

FRANK EDWARDS: It's been a while ago. We come down to the fact of what are we going to do about parking? I sympathize with the Bakers and the condo board. This is a real estate deal that you got into, you bought something, you bought it with certain caveats, dimensions, etcetera. And the question comes down to for the abutters whether or not we would be in agreement with letting go of any of the conditions that we agreed to, including the rear yard could be used for parking, etcetera. So the deal was cast a long time ago. We do believe there is a parking problem in the neighborhood, and I think some of the abutters here will testify to that. Both Whitney and a section of Chestnut are substandard streets where it has parking on the one side. On Chestnut, which is a two way street, now maybe you guys have been down it, you better pull over if there's another car coming. So I don't know if Traffic and Parking came out with that rendition.

I also sit every Sunday morning, now that I'm

retired, I set out on Putnam Ave. so I know what that traffic is like. And I just have to look out my apartment and look at all the cars that park there. It's a major commuter rail. So I want to say that I'm not going to supply with the condo Board on the parking issue. If it's an issue of finding a permitted parking elsewhere for the unit to be occupied, that's a possibility. If it's a matter of everybody getting small SmartCars, then they all fit, that's fine, too. But I think we made an agreement.

CONSTANTINE ALEXANDER: That's the crux of the position of the abutters. You made a deal and we expect it to be enforced.

FRANK EDWARDS: And you know it will bring up -- if a Variance is granted, it's going to bring up a lot of other --

CONSTANTINE ALEXANDER: Let me comment at this point. You did make a -- I mean, you -- the abutters made a deal. But the deal had two parts to it really: One was,

there's going to be seven parking spaces on the lot. And that's the issue tonight.

FRANK EDWARDS: Right.

CONSTANTINE ALEXANDER: The other, and I -- it seems to me reading the materials and looking at the documents, the other was more important to the abutters, and that was landscaping, planters, buffers, making sure that the impact of now seven dwelling units appearing on the street --

FRANK EDWARDS: Right.

CONSTANTINE ALEXANDER: -- when before there was only four, had to be -- the effect had to be mitigated through all of this. That's not an issue before us. For everything I've heard, that part of the agreement has always been upheld. That there are the planters and the plantings and the like.

FRANK EDWARDS: There are. And if I may explain?

CONSTANTINE ALEXANDER: Yes.

FRANK EDWARDS: A lot of those mitigating factors was to help mitigate the fact that it was a tight parking space. The code requires a buffer between the street and the parking, is it over three cars I think? You need a green space. Your driveway is not supposed to be within five feet of abutters' property. It happens to be, I mean, we asked for a fence and a one-foot buffer there. The green space in the back also was against another abutter's line, so preserved that.

The pavement we asked for and we got the actual pavement, that got done. Proper drainage, etcetera. But that was it. Whitney Ave. is not a very beautiful street when it comes to the public passing back and forth, so all of this green space was intended to do that. And it's too intense to (inaudible).

CONSTANTINE ALEXANDER: Mr. McVicker testified at the initial hearing that although it's now six or however many parking spaces, only four are only used because a

number of the owners of the condominium units don't have cars.

FRANK EDWARDS: Right.

CONSTANTINE ALEXANDER: So the impact, there is no street impact because it's still enough space --

FRANK EDWARDS: What is being asked is something that is in perpetuity and there's no guarantee of that.

CONSTANTINE ALEXANDER: That's absolutely right. No question about it, there's no guarantee. Although the sentiment of the City and where the City's going today is to minimize the requirements of off-street parking so as to discourage people from having cars and encourage them to use alternative means of transportation.

FRANK EDWARDS: I'm well behind the City on that. You won't find somebody who is more into that. I was speaking about an arrangement here that was made between the abutters for something that shouldn't have been done, shouldn't have been allowed.

CONSTANTINE ALEXANDER: Where I'm going with some of these questions is on the one hand if we were to -- if we were to grant relief to the petitioner, all that the abutters would lose is that one parking space if they negotiated for. But as a parking space it may not be crucial to the neighborhood because there is, there is -- all the parking spaces today at least on the lot are not being used, and one more typically in Cambridge, one more car in the street is not going to cause the end of the world.

The other side of the coin is if we deny relief, Mr. Norris is really in bad -- I mean he's also -- I'm going to take it on faith, an innocent party. He is going to be stuck with a unit he can't sell. And the condominium association is going to be stuck with a unit that can't be occupied because they don't have the parking for it. I put those two things -- to me, I put those two things in the balance and I come down on the side of let's give the

relief. And I'm only one person. And I may be persuaded otherwise as it goes on, but that's how I'm seeing it right now.

FRANK EDWARDS: Well, I know Mr. Norris for a fact --

THE STENOGRAPHER: I'm sorry, what?

FRANK EDWARDS: I know Mr. Norris and Amy also. I've had dinner at their place and they've had dinner over at our place. It's -- don't have any personal issue with them. In this case it's just a matter of a real estate development that got entered into for profit-making purposes went bad. Some condominium owners came in and they bought at the wrong time. Others didn't. The unit, you know, once you grant this is going to be probably a very fallible unit. It's -- you may have paid 7500 unit for it. If you grant (inaudible). It's gonna go up there. This is Cambridge. Any basement unit is considered a luxury unit these days.

CONSTANTINE ALEXANDER: You have something to say?

ANDREA HICKEY: I didn't really have a question, just really a comment. You know, the way I see this you're sort of weighing the harms here because it's not a great outcome for anyone. But I really am leaning toward the fact that it's not really fair to the neighborhood to make them bear the bad outcome of the contract that your client made with Bandar to not get all of his money at closing. Why did they bear the burden of that contract going bad? If we're weighing what's equitable here, that's not their problem, it shouldn't be. Could you speak to that a little bit?

ATTORNEY JOHN COLLIER: I can't speak terribly about Mr. Bandar. Mr. Bandar was sued. They got a judgment against Mr. Bandar. Mr. Bandar has had a history of filing bankruptcy. There was a small settlement. I would say that given the interest on the note the time it took that Mr. Norris underestimated his loss by probably \$700,000. He has lost tremendously on this and he was not, you know, and I think it -- but excuse me, maybe I'm wrong, but sort of

characterizing him as a developer. He was a seller. He was not a developer. You know, he had his own business. He wasn't -- he had nothing to say once it was sold.

FRANK EDWARDS: And it was problematic for us because Peter and Amy were acquaintances. I mean, neighbors of ours. This is going now, we spent a year and a half working with the developers and we didn't -- I didn't know Walsh until he was willing. I suffered under rent control at the time, it was a long time. But putting all of that aside, we made an agreement and he never came over to help mitigate or negotiate between us. And the developer, I spent forever with them. We -- they ended up hiring an attorney for us as a lawyer to look over the agreements. And come to some agreement at least, because it wasn't -- the agreement was made. And, you know, if this is a condition where you want to grant the Variance and well, that unit could have a garage and car in the City of Cambridge, then maybe the abutters (inaudible).

ANDREA HICKEY: Yeah, I don't know that we have the authority to even do something like that. Unfortunately, that's a creative solution but not one that's on the table.

FRANK EDWARDS: Yeah, yeah, Cambridge -- it's a problem.

ANDREA HICKEY: I understand.

FRANK EDWARDS: Believe me, I've also worked for developers. We fight for zoning and all of that stuff. I understand, I understand that some of the contract owners and -- I don't have sympathy for Mr. Norris.

JANET GREEN: Well, my question, yeah, I have -- what I don't understand is if the reduction in parking spaces is connected just to the going six instead of seven or if it's actually connected with the unit. I mean so --

CONSTANTINE ALEXANDER: The Master Deed, if I'm, I think I'm correct, requires that every unit be given a

deeded parking space.

JANET GREEN: Right, right.

CONSTANTINE ALEXANDER: And --

GRAHAM McVICKER: We would amend --

CONSTANTINE ALEXANDER: I'm sorry?

GRAHAM McVICKER: We would amend the Master Deed after, so we would hope that the Special Permit would apply to the association as a whole and would allow us to take essentially a parking spot away from a unit and still allow that unit to be occupied. And I would also like to --

FRANK EDWARDS: I don't mean to interrupt, but I believe the agreement was the deed not be amended without the abutters' permission, right?

CONSTANTINE ALEXANDER: That's right.

FRANK EDWARDS: Is there not an architect and engineer stamp on the plans that were submitted? Do the condo owners want to go after those folks? That's Chapter 93A or whatever it's called has expired.

ATTORNEY JOHN COLLIER: My question is how did it ever get reduced from seven to six? Who is behind it and how, why, and when?

CONSTANTINE ALEXANDER: It would appear to be the developer just playing fast and loose.

ATTORNEY JOHN COLLIER: But the, you know --

CONSTANTINE ALEXANDER: He agreed to one thing with the neighbors and abutters and he told the city something else.

ATTORNEY JOHN COLLIER: And the City conditioned giving the occupancy permit on each unit having a parking space.

CONSTANTINE ALEXANDER: He did. That's the Zoning Ordinance.

JANET GREEN: Couldn't they park originally on the, you know, the pathway in? I mean wasn't there, that was where the additional parking space that was decided that

wasn't acceptable.

CONSTANTINE ALEXANDER: Right. If I understand it, when they -- the agreement was made with the neighbors about the landscaping and location of planters, that prevented there from being seven parking spaces. And that didn't stop the developer.

FRANK EDWARDS: There are seven units tandem on one side of the building that satisfies. So we're talking about five.

CONSTANTINE ALEXANDER: Five on one side and a tandem on the other side.

FRANK EDWARDS: Right. The original development started at -- were six parking spaces on that side, that's why they could have seven units. The neighbors can attest to that. We Googled everything. You can see exactly what was there. There never was. So that's how they were able to get around it. There were threats about trying to park in the backyard. They couldn't do that without tearing down

a piece of building and have access to it. You need the five-foot buffer.

JANET GREEN: But wouldn't the neighbors prefer to have the Master Deed changed and only have six parking spaces there?

CONSTANTINE ALEXANDER: Well, but then the problem would be for the neighbors is that there will be seven units in the building so somebody's going to park --

JANET GREEN: So one wouldn't have -- but even now only four of them have parking spaces.

FRANK EDWARDS: That's why I suggest no garage and car for that unit.

JANET GREEN: So that would be unacceptable to the neighbors to have only six parking spaces available?

FRANK EDWARDS: Correct.

ANDREA HICKEY: It's not what they negotiated.

JANET GREEN: Well, right. I understand that. But we're talking about now.

GRAHAM McVICKER: And I want to emphasize if you don't grant the relief, you're not punishing the developer, the developer is dead. You're punishing, you know, the people who live there.

CONSTANTINE ALEXANDER: As I see it, innocent parties all around here.

ANDREA HICKEY: Right, I don't think it's about punishing really.

FRANK EDWARDS: Martha who spearheaded this is also dead. And she's probably rolling in her grave right now.

CONSTANTINE ALEXANDER: As I said, I'm trying to balance who's hurt least if we grant -- by our decision. And on one hand, the neighborhood is hurt by the fact that there's going to be another car theoretically on the street.

FRANK EDWARDS: Right.

CONSTANTINE ALEXANDER: And the other further hurt would be Mr. Norris who is going to have a unit that he

bought that he can't occupy.

FRANK EDWARDS: It comes down --

JANET GREEN: And the condo owners.

CONSTANTINE ALEXANDER: Yeah, and condo owners,  
too.

FRANK EDWARDS: It comes down to the conundrum  
that there are five spaces there rather than six.

CONSTANTINE ALEXANDER: I come back to the fact  
that --

JANET GREEN: Six rather than seven, right?

FRANK EDWARDS: Again, I divorced the -- divorced  
unit's tandem space in the far side. Don't mean to do that  
to you.

GRAHAM McVICKER: There's six on the north side  
and one tandem on the south side. But six on the north  
side.

CONSTANTINE ALEXANDER: And I continue to believe  
that the abutters accomplished most of what they wanted to

accomplish when they got the agreement and still have today; namely, the landscaping and the buffering and the like.

That seems to me, that's what started the whole thing.

Reading the letter from Mr. Van Buzekom, I'm not sure I'm pronouncing it right. They were upset because they had a three or four unit build -- three or four-family house, three-family actually, house. All of a sudden it was going to seven units and that was going to -- and in this neighborhood is going to have a big impact. And so they fought it, and so they got -- the deal they made was we're going to get -- minimize the impact in terms of visual and the like for the landscaping.

FRANK EDWARDS: Right. What the abutters really want is not have the seventh unit.

CONSTANTINE ALEXANDER: Well, I know, but they couldn't accomplish that.

FRANK EDWARDS: I wouldn't go there that the abutters got everything they wanted.

GRAHAM McVICKER: But you did sign off on a seventh unit ultimately.

FRANK EDWARDS: Would you accept the signature then for all the things that are in there?

CONSTANTINE ALEXANDER: Anyway. Anything further you want to add at this point?

FRANK EDWARDS: No. I mean my empathy is with the condo group and I want to say all of us are. We have abutters, other abutters that are part of the agreement and they know what the traffic problems are in the neighborhood and will be agreed upon allowing. Let's say it's potential, no matter which way you cut it basically the unit's going to have a car. It's going to go park in the street.

CONSTANTINE ALEXANDER: One thing that struck me, too, was that in looking at the file, often we have this kind of case -- not these kind of facts, where someone comes in seeking a Special Permit to have a reduction in parking to what our Ordinance requires, and I think most oftentimes

we grant relief because the neighborhood is not upset by it.

This time I didn't see any letters in the file other than -- the letters that were complaining about a deal is a deal and they're not honoring the deal for seven parking spaces. I didn't see letters that said, my goodness, if we had even one more car on the street, it's really going to impact our neighborhood. You testified to that tonight. That's the first time I heard that. I hadn't seen that. And that's just also what surprised me about.

FRANK EDWARDS: It's surprising to my friend Martha who is --

THE STENOGRAPHER: I'm sorry, could you come over this way? I'm really having trouble hearing you. Thanks.

FRANK EDWARDS: That was one of her biggest concerns because many of the properties in the neighborhood do not have driveways and off-street parking so there's a greater competition for off-street parking. And --

UNIDENTIFIED MEMBER THE AUDIENCE: (Inaudible).

CONSTANTINE ALEXANDER: Yes, give your name and address.

ABAN DHONDY: My name is Aban Dhondy. I live across the building.

THE STENOGRAPHER: Can you spell your name, please.

ABAN DHONDY: A-B-A-N. Last name D-H-O-N-D-Y.

And every time when we come back, because we come back particularly late in the evenings, we have a big problem parking. We either lined up and very often our car gets towed away because of the parking problems just in case if you have sort of a little over the sign board saying that no parking from here on.

CONSTANTINE ALEXANDER: But is the parking problem caused by the fact that the people who own the unit in the building are parking on the street? Because they seem to have part of their own parking space on the lot.

ABAN DHONDY: Sir, that's not the problem. I

think the major problem has developed recently and that is because we have a lot of students, and every student actually has a car. And every building that is there, which is like I would say 11 and 12. So that would be 7 and 9, they have three students staying upstairs and three students staying downstairs. They each have a car. So that equals six cars. We have two cars and we have two units so that equals the two cars there. And our other neighbors have like three cars because they, again, have split the unit. So in that case the parking really becomes pretty tight for us on the street. We end up sometimes parking in the parking lot and have to pay money at Main Street.

FRANK EDWARDS: And I will drive to Central Square and pick up my guests and that's --

ABAN DHONDY: That's if you get parking.

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

Anyone else wishes to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: I see no one else wishes to be heard. There were, the letter -- we have received letters, all of which I read at the original hearing. I have a letter from Traffic and Parking supporting the proposal, which I find is a bit significant since they are cognizant of parking issues throughout the city. And we have letters of objection that have been summarized by you, sir, basically to the point of the history of the negotiations. And as I would characterize, is the bottom line is a deal is a deal and it shouldn't be changed. Even though not even though -- it shouldn't be changed, period.

So, unless any final comments, Mr. McVicker or Mr. Collier?

ATTORNEY JOHN COLLIER: No final comments. Thank you.

CONSTANTINE ALEXANDER: I will close public testimony and time for us to deliberate and decide.

As I expressed myself, I mean, I don't need to go first. I've already spouted off. Go ahead if anyone wishes to spout off. If not, I will say that, again, I think that this is a dilemma. Someone -- well meaning persons are going to get hurt, not going to get what they want in this case. The villain is not in the room. As I balance the hurts, I think the neighborhood is not, is not going to be hurt significantly by having one more car on the street, particularly when it would appear, at least today, that there are more than enough off-street parking in the lot for the condominium association inasmuch as not every condo unit owner has a car.

On the other side, I think there is a real financial impact both for the condominium association should we deny relief and to Mr. Norris. I put the two together and I come out on the favor of the petitioner.

JANET GREEN: I have to say I agree with the Chair. I feel in favor of granting this Special Permit. I

feel it is that what you said, you know, there are a lot of parties that can be hurt in this, but I do feel that, that the reduction in parking and the granting of the Special Permit would hurt the neighbors less than it would hurt the people in the condo association.

CONSTANTINE ALEXANDER: Anyone else wish to respond? Brendan.

BRENDAN SULLIVAN: If we had this Affidavit at the earlier hearing, it would have been a lot easier for us to try to decipher exactly what was going on. We did not have this. If I had had it, I would have probably formed a different overview of the situation, and you can take that back to Mr. Norris.

ATTORNEY JOHN COLLIER: You got to understand his level of frustration --

BRENDAN SULLIVAN: But you can understand our level of frustration when we don't know all of the facts.

JANET GREEN: The facts.

BRENDAN SULLIVAN: That we're really getting sort of like one side, we're getting conflicting stories and we're sitting here and we have to make a decision. This would have been very helpful to him and to us back then. So if you can take that back to him.

And not trying to be Solomon here, but I think what is the most equitable solution to this mess. And in another part of my life I do have an association with a bank and it really would impact these people, I believe, and that the most equitable thing to do would be to grant the relief sought. That would have the most positive impact. And any impact, a deal is a deal is a deal, would actually pale in comparison to the benefit of granting this relief.

CONSTANTINE ALEXANDER: That's exactly how I come out.

Andrea? You don't have to speak. It's up to you.

ANDREA HICKEY: Well, I disagree with my colleagues. I really, as I said before, think that the

burden of this bad deal should not fall on the neighborhood who negotiated in good faith for the parking as was agreed to. I think it's terrible. I feel bad for the unit owners who unwittingly sort of bought into this situation, and for Mr. Norris as well. And I agree with Mr. Sullivan that having the Affidavit is really helpful, but it really doesn't sway me. I think the neighbors negotiated in good faith and they're entitled to the benefit of the deal that they negotiated. And sort of the financial ramifications of that to the condo unit owners really, I think, is not what's before us tonight. I think what's before us, is before us, is the impact to the neighborhood relative to parking and I think that's really the only thing before us. And the testimony is important to me, and that really is all I have to say.

THOMAS SCOTT: So of the six spaces that are available, and there are six, correct?

GRAHAM McVICKER: There's a tandem spot on the

south side.

THOMAS SCOTT: And then five additional spaces?

GRAHAM McVICKER: Yes.

THOMAS SCOTT: Only four of them are being used currently?

GRAHAM McVICKER: Yes.

THOMAS SCOTT: So granting the relief, if another person were to buy the unit and move in with an automobile, they would have a place to park on the lot?

GRAHAM McVICKER: That is correct.

THOMAS SCOTT: Okay.

ATTORNEY JOHN COLLIER: I know you've closed it, but I just want to say one thing. I believe most of the units on that complex are owner/occupied; is that correct?

GRAHAM McVICKER: Yes, that's correct.

CONSTANTINE ALEXANDER: That's today. All of this can change.

ATTORNEY JOHN COLLIER: But it's not like it's

rental units where in two months from now new people will be coming in.

ANDREA HICKEY: Unit seven is rented, though, yeah?

ATTORNEY JOHN COLLIER: Yeah. That's Raymond Bandar's unit who is the developer.

THOMAS SCOTT: I'm ready.

ANDREA HICKEY: I just had one final question.

Theoretically would it be possible to combine the two units so that the number of units is less and perhaps negotiate that the number of parking spaces, just theoretically, I'm not saying it would be financially practical. I'm sure it probably would not.

-ATTORNEY JOHN COLLIER: It's a good idea, but I can't see it happening.

CONSTANTINE ALEXANDER: You'd have to combine unit No. 1, which is Mr. Norris' --

ANDREA HICKEY: Right.

CONSTANTINE ALEXANDER: -- with an abutting unit.

ATTORNEY JOHN COLLIER: There is no abutting unit.  
It's in the basement.

CONSTANTINE ALEXANDER: Oh. You can put a  
staircase up.

ATTORNEY JOHN COLLIER: It's where the boilers are  
and hot water heaters. And it's been damaged. There's a  
lot of work. There's a lot of damage with water and so  
forth. The floors are all rippled. He needs to put money  
into this unit.

CONSTANTINE ALEXANDER: I think we're ready for a  
vote. Let me just explain. I'm sorry, did you want to say  
something?

JANET GREEN: No, I'm good.

CONSTANTINE ALEXANDER: Before I take the vote,  
Mr. Collier may be aware of this, but just to be sure.  
Under our Zoning Ordinance to grant relief, you need four  
votes. It's a supermajority, not a simple majority. So if

three of us were to vote and two were not, I'm not going to suggest it's going to happen, relief would be denied. Just so you understand that.

I'm going to make a motion. The chair moves that we make the following findings with regard to the relief being sought:

That pursuant to the findings we have to make under Section 6.35.1 that for the lesser amount of parking, i.e., six parking spaces will not cause excessive congestion, endanger public safety, substantially, reduce parking availability for other uses, or otherwise adversely affect impact the neighborhood. And in doing so we've considered the availability of the proximity of this property to MBTA transit station, that there is the availability of public or commercial parking facilities in the vicinity of this neighborhood. So that's one finding.

Then we have to make further findings with regard to a Special Permit which is the relief that is technically

being sought. That the traffic generated or patterns of access or egress if we go to six parking spaces, will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation or development of adjacent uses will not be adversely affected by reducing the spaces from seven to six.

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 that what is being -- and that the 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 to reduce the required parking for 18 Whitney Avenue to six parking spaces.

All those in favor of granting the relief please

say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Sullivan, Scott, Green.)

CONSTANTINE ALEXANDER: Opposed?

ANDREA HICKEY: Yes.

CONSTANTINE ALEXANDER: One opposed.

ATTORNEY JOHN COLLIER: Thank you.

CONSTANTINE ALEXANDER: Special Permit has been  
granted.

\* \* \* \* \*

(8:00 p.m.)

(Sitting Members Case BZA-01112-2016: Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco, George S. Best.)

BRENDAN SULLIVAN: The Board will hear case No. 011102-2016, One Memorial Drive.

Is counsel present? Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chair. For the record, my name is James Rafferty and I'm appearing this evening on behalf of the applicant. The applicant Oxford Properties, they are the owners of One Memorial Drive, a signature building on Memorial Drive I expect most are familiar with. Architectural team at CBT actually took the time to prepare a little package that I think might assist the Board because admittedly there are some unique aspects to this application. As I'm sure the Board is aware this is an application -- this is an application that seeks

a Variance to allow for the conversion of portions of an unused garage at the building to usable space. The garage is in a building constructed in 1980 and according to the definitions of gross floor area, those structures were exempt from GFA back at the time the building was constructed whether they were below grade or above grade. Currently under the revisions to the Ordinance in 2000, portions of structured parking above grade are included within the GFA. Well, the Oxford Properties has owned the building for a year or two now. And there are two tenants in the building. It's occupied by Microsoft and IntraSystems. Both of them are technical office users and the reality is that the demand for the parking in the garage is well below what the supply is. So for sometime now caused the ownership to consider a more productive use of that space. So we began this exercise several months ago when we met with the Traffic Department to -- we thought it would be critical to get their assessment of the proposal.

And their involvement in my estimation was important because this Board, as well as the Planning Board, recognizes their work in the area of trip reduction and the implementation of the City's traffic policies. So we retained a traffic engineering firm, VHB that has a long reputation of working with the city to first of all establish the question and to remove any uncertainty as to whether or not the parking supply in the building would be -- is adequate to support not only the reduction but also the addition. The conversion of this floor to gross floor area will represent an increase of about 36,000 square feet. It's the full floor of the garage. But the garage, I wanted to walk you through the -- walk you through the elevations, but you'll see the garage is somewhat unique.

The garage is two stories below grade and one story above grade. And the visuals here I think tell -- are the easiest way to explain the story. On the first page you'll see the location of the building certainly known to

all, at the prominent location of Main Street and Memorial Drive. And a quick example of what's involved in the conversion is visually appearing on the second page where you can see where we've -- you can see glass where there's currently a blank wall. And that glazing will allow for the creation of occupied space. And in the interesting thing about the garage, too, and it shows up on the next elevation, is that the garage is between the first occupied floor and the fourth occupied floor. So you go in and there's a lobby. I'm trying guesstimate the ages of some members, but some people may remember for many years there was a popular restaurant right in the location. Right there, the Sail Loft.

BRENDAN SULLIVAN: Sail Loft.

ATTORNEY JAMES RAFFERTY: The Sail Loft. And a loss to the community no doubt. Now we have to go all the way to Boston, but it was a popular venue. So you'll see that area on the right. It's now an amenity for residents,

occupants of the building, kind of a food or cafeteria space. But then the floor above it, which you'll see here, is actually part of the garage. And then when you get above the garage floor, you're back into the occupied floors of the office building.

So we spent months frankly in providing analysis to the City's Traffic Department going through a fair bit of data about who's in the building? What are the commuting patterns of the building? How many employees are in the building? What's the employee per square foot ratio? We conducted surveys. We provided an extensive report. And I have a copy of the report, which I would be happy to share with the Board, but what the Traffic Department issued was a one-page memo that's in the file that summarizes the report and affirms our conclusions and our contentions that this building, thanks to the transportation policies of the City. The changing demographics of the workforce in this building that this, these spaces are not needed. There was a similar

case before the Board about two years ago over at 15 First Street, and there was a recognition that there is a unique hardship related to this building, because unless this building, unless this floor is parking vehicles it's gross floor area. It can't be used for storage. They asked, well can we put dead storage in there? Could we put files in there? Under the definition there's no exemption for storage. It's either parking automobiles or it's not GFA. So an empty garage is not GFA. A garage that is same space even used for storage or some other function in the building. So we, it's necessary to get a Variance.

The Traffic Department's memo, which I'm sure the Board has read, contains conditions that we've talked about for several months now and the Traffic Department suggests in its memo that those conditions should be considered by the Board if you were to grant the Variance. And they are significant and they principally have the effect of bringing this building built in the 1980s and exempted from our PTDM

Ordinance, which was adopted only a few years ago, the bicycle parking requirements and many of the other transit demand management measures that have been since are now regularly employees. So the irony, too, is and it was readily agreed by both CDD and the Traffic Department, if the proponent were to build a building of this size today in Kendall Square, they would not allow this much parking. The parking ratios have changed. The Kendall Square parking is significantly reduced. So it became a case of what to do with this space?

So, the recognition was that the Variance would have to certainly be consistent with the intent of the Ordinance, and we would have to identify ways in which the granting of the Variance would bring the building into greater compliance with the Ordinance.

So in addition to the requirements associated with PTDM and the bicycle and parking Ordinance, the proponent has met with the City and has agreed to fund, locate, and

provide annual maintenance for a Hubway bicycle facility.

And I'm sure you've all seen Hubway facilities, it's a joint venture between the City of Cambridge, Boston, and Somerville. Those stations cost approximately 100,000 square feet, and the City finds two challenges in locating them:

One is location. In many cases, as you'll see out front, they're in the public way on sidewalks. And oftentimes the sidewalk widths and the result make it a challenge locate them.

And the second thing is the cost of them. They cost about \$100,000. They're operated by solar systems. And in addition to that, there's now an understanding of ongoing maintenance associated with that.

So when a developer of a sizable project in the eastern Cambridge area comes in to Community Development, one of the key mitigation measures that is suggested, and it's a strong suggestion, and wise developers take the

suggestion, one of the mitigation measures is we need a Hubway station in this location. So this Hubway station and the proposed location is on the last page, is particularly exciting to the people we've been talking with at Hubway because it's right at the foot of the Longfellow Bridge. And if you haven't yet had an opportunity to see it, the first half of the Longfellow restoration is now complete. So the inbound lane, what is historically the outbound lane, is now serving as the inbound lane, but you can see the width of the new sidewalks, the dedicated bike lane, and you begin to appreciate the pedestrian and bicycle improvements that will accompany that project. It's two years away, but it really has created a sense of excitement in the pedestrian and bicycle community.

The other thing that's slightly off the map here, but it's at the end of Main Street, and this became a source of focus in our meetings with the Community Development Department, is the Cambridge Redevelopment Authority is

completing work or about to start work, completing planning on what is used -- it's called Point Park. It's that location where the steam comes out the globe, if you recall, it's been there for years. Well, it's been really re-imagined. It has this wonderful green space. It's got all new pedestrian orientation. And that is the first step. So the space between where that new park is going to be located and the Longfellow Bridge is shown in the second to last photo. And it was, the Community Development Department's suggestion, now I would urge the Board to take a look at it, because it just doesn't show in the application, was to enhance the sidewalk, the streetscape in this location, in addition to the glazing that will replace the blank wall, the landscape planting and all that you see here are going to be under the direction of the design staff.

When we met with the design staff at CDD, we had two meetings, and -- did I introduce everyone? I gave you

the list. I apologize.

So seated -- so these are the people that pay my fee, so I should have said it ahead of time.

This is Sam Johnson and Chad Remis. Chad is managing director and Sam is with Oxford. But at the far end of the table is Haril Pandya, P-A-N-D-Y-A. And Haril is the architect. But when we met with Ms. Bigolin and Jeff Roberts to go over this, they were enthusiastic to put it mildly, and we left the meeting with great suggestions about how to treat the glazing, the two-story elements. And the only comment we left with is why can't you take up two floors of this garage? And I said, well, you don't spend much time at the BZA. Let me tell you, I got my work cut out for me with 30,000 square feet. You think I can do two floors, even I can't get that done.

But all kidding aside, there was a recognition there that there are so many elements to this project that make sense. That I advised my client I thought it was a

project that they could bring before the Board and that the public support for it, the way in which the building would be made more conforming, was apparent. I was pleased when the Planning Board reviewed the case and recommended it favorably for most of the reasons that we've been talking about. Their recommendation is in the file, and it also makes reference to the design improvements in addition to the overall pedestrian and transit improvements.

And then finally an issue that frankly wasn't part of our application but is highlighted in a letter from the Mayor that I saw today that is in the file, because of changes in the incentive zoning provisions in the Zoning Ordinance this project of this size will be subject to the incentive zoning formula of \$12 per square foot. So this project alone were this Variance to be granted and construction to commence, would result in over a \$450,000 payment to the Affordable Housing Trust. That isn't a contribution, that's a requirement. The Ordinance requires

that. But it does represent another element of this project that I suggest meets the test for whether or not this is consistent with the intent of the Ordinance, whether or not there's any adverse effects.

The hardship, of course, being the critical issue, and the hardship is real and it's unique and it has everything to do with the manner in which the building was constructed. As I said, the building now has an empty floor of the garage. Frankly there are other tenants, not tenants, there are other nearby buildings that would like to have space there, and they have -- they're not leasing space in the garage. They are not using the space, but there is an empty floor in this garage and it is -- it cannot be occupied for anything other than parking. So the reduction of parking alone, however, wouldn't, wouldn't have any ancillary benefits to the City. The ability to convert this space will provide the design benefits that are set forth in the submissions as well the commentary from the Planning

Board. It will also actually improve traffic issues that the City deals with through the implementation of existing traffic policies that are currently not applicable to the building and then is noted by the Mayor as an added benefit associated with a required payment that can go towards affordable housing.

So it's for those reasons that we're before the Board tonight asking that the unique aspects of this hardship, the construction of the building, the manner in which the garage was created -- obviously if this was a below grade garage that was unoccupied, this opportunity wouldn't exist. We couldn't be putting habitable space, and someone might come here with the same Variance looking to put storage in the basement of the garage. This will be a productive use of the space and it, I would suggest, I thought the Mayor's comment that it represents a rational use of the building was really quite precise and frankly consistent with the intent of the Ordinance as set forth in

Article 1.

So our architectural team and ownership team are happy to answer any questions.

BRENDAN SULLIVAN: Does this space which is now underutilized, does it generate any revenue at all?

ATTORNEY JAMES RAFFERTY: Well, tenants in the building have a --

BRENDAN SULLIVAN: Assigned spaces?

ATTORNEY JAMES RAFFERTY: -- parking associated with their leases.

BRENDAN SULLIVAN: So their lease, they have certain number of spaces.

ATTORNEY JAMES RAFFERTY: That's correct.

BRENDAN SULLIVAN: Even though they're not using it.

ATTORNEY JAMES RAFFERTY: That's right.

BRENDAN SULLIVAN: And probably never will in a sense.

ATTORNEY JAMES RAFFERTY: They're not. And in fact, and the City's saying to us --

BRENDAN SULLIVAN: So consequentially the owners could take back that proviso that, you know, that you are given so many spaces and what have you, possibly reflect that the lease or something like that but then better utilize and generate possibly more revenue, if you will, for the building.

ATTORNEY JAMES RAFFERTY: That's correct.

BRENDAN SULLIVAN: Okay.

ATTORNEY JAMES RAFFERTY: And they've chosen not to do that. And that's consistent with what the City would prefer, not to create an economic incentive for added parking because the demand isn't there currently. The way to fix the demand is perhaps to lower the supply, to lower the access.

BRENDAN SULLIVAN: Well, the incentive would -- I mean it would kind of generate more revenue by having an

occupied space then it would be to park the car. I mean in the real world in a sense, you know. I mean IBM would pay more per square foot for office space than they would for a parking space.

ATTORNEY JAMES RAFFERTY: Oh, oh, yes. I'm sorry, I was misunderstanding. No, I wasn't suggesting otherwise.

BRENDAN SULLIVAN: So that there's not really an incentive to provide more parking other than a tenant comes in and says I need 300 spaces or something like that. You know, so -- and can you provide it? Yeah, you can but yet if only 250 of those are really utilized. Well, anyhow. I think that the space can generate more revenue as office space than as parking space.

ATTORNEY JAMES RAFFERTY: Yes, I don't think there's any question.

ANDREA HICKEY: I think that's why we're here probably.

ATTORNEY JAMES RAFFERTY: Right. And that's what

allows for the capital to do the other type of improvements.

BRENDAN SULLIVAN: Yeah, right.

JANET GREEN: It also assumes, doesn't it, that the new office space that's generated doesn't have any additional need for parking.

ATTORNEY JAMES RAFFERTY: No, the analysis contemplated that. So the supply is -- the oversupply is such now that the existing, the capacity once reduced will support, and it's in the analysis that we've --

JANET GREEN: I saw that.

ATTORNEY JAMES RAFFERTY: Will -- two things of note:

One is the parking rate -- at all times the parking would be compliant with the requirements of minimum zoning requirements. So this is not a case seeking Special Permit relief to reduce parking. But the parking analysis in the building shows that both from a zoning requirement perspective as well as a market perspective that the -- even

the reduced parking supply can accommodate the existing building plus the additional 35,000 square feet, and that's why we were required to do monthly surveys over a period of four months. They didn't, we had to make seasonal adjustments, and I have the report, because they didn't allow any one snapshot to say well, you know, it's just low this particular month. So the analysis was quite extensive and extended over a period of months.

ANDREA HICKEY: So how much parking then would still be free under that analysis? How much parking would still be unused and unavailable?

ATTORNEY JAMES RAFFERTY: Okay, you said the word free and you scared them. They don't use that word.

ANDREA HICKEY: I wanted to wake them up.

BRENDAN SULLIVAN: Nothing is free.

ANDREA HICKEY: Yeah. How much parking would be underutilized even with the occupancy of this new space should it be allowed?

ATTORNEY JAMES RAFFERTY: So the analysis we provide showed that only 299 spaces are being used out of the 396 that are there. So it's, it's nearly oversupplied by 200 spaces. So we're going to -- the proposal is to remove -- by removing a single floor, we'll be removing....

SAM JOHNSON: 77.

ATTORNEY JAMES RAFFERTY: We'll remove 77, and then we will then add back 35,000 square feet. But the ratio that the building is parking at now is, it's only occupying it at 0.87 a thousand.

ANDREA HICKEY: What's the ratio under the new proposed configuration?

SAM JOHNSON: 0.85 per thousand square feet.

ATTORNEY JAMES RAFFERTY: 0.85.

ANDREA HICKEY: All right.

PATRICK TEDESCO: Could I -- you mentioned the provisions in the Traffic Department memo?

ATTORNEY JAMES RAFFERTY: Yes.

PATRICK TEDESCO: Besides the Hubway what are the other --

ATTORNEY JAMES RAFFERTY: Oh, I'm sorry, I thought board members --

PATRICK TEDESCO: No, that's all right.

ATTORNEY JAMES RAFFERTY: They're bulleted -- I'm sorry, they're bulleted at the bottom of the memo, but they are what are considered the fairly conventional TMA measures, requirements for T passes joining the TMA system to provide EZ Ride shuttle. A gold membership to -- employees will be entitled to a gold membership to Hubway which means they get to access the Hubway. But all four of those bullets are conditions that are typically assigned to Planning Board Special Permits related to developments of this size.

PATRICK TEDESCO: And currently the owner doesn't --

ATTORNEY JAMES RAFFERTY: None of this goes on

today. I mean, only because -- I mean there is some bicycle parking there today, but it's not -- there is not -- this building predated bicycle parking ordinance, it predated TDM, and it was really built at a time when there was a suburban office mentality around the parking supply for that building. It's significantly oversupplied for the demand. And the nature of the building is with there only be two tenants and with there being technical office tenants, the demographics attract a younger workforce, that is, as we see tend not to have as many motor vehicles that commute by a variety of modes including bicycle, transit, Uber, and the like. And so, you know, this building was built with the likes of an insurance company in mind with everyone driving -- executives driving Cadillacs and big cars and the workforce has changed.

JANET GREEN: I have a question for you. In the discussion with the Hubway people, I mean kind of knowing this area, does the discussion of helmets come up?

ATTORNEY JAMES RAFFERTY: You know, I --

JANET GREEN: I mean all these people -- bicycles are there, there's no helmets, everybody is saying they need helmets and yet --

ATTORNEY JAMES RAFFERTY: Yeah.

PATRICK TEDESCO: You sign a waiver when you join.

JANET GREEN: But this is far away from a place where you can acquire -- even now sometimes they say, well, you can't get one at the drugstore. Well, I don't think those are what we're really looking for in the helmet department. But this is kind of far away from getting a helmet.

ATTORNEY JAMES RAFFERTY: I have heard suggestions about -- I've been told and maybe that in some jurisdictions in New York, for instance, that there is an option to rent a helmet when you rent the bicycle. But I don't believe under the model that Hubway operates under now --

JANET GREEN: I don't think so either. I mean can

you demand that for your employees?

ATTORNEY JAMES RAFFERTY: I noticed -- I don't know if you saw the photo the other day of the Hubway cyclist in the O'Neill Tunnel.

ANDREA HICKEY: I saw that.

ATTORNEY JAMES RAFFERTY: He did not have a helmet on, but it would appear that he doesn't follow a variety of the restrictions.

PATRICK TEDESCO: The helmet safety notwithstanding, I think it's a great location for a Hubway. Forget about the commuters, just on the river.

ATTORNEY JAMES RAFFERTY: Right. The potential river rider. And to be candid that's what proved to be most exciting. There are Hubways in Kendall Square. This would be right on the river. And if you -- and we actually in the last page here we've shown, and we've been out and Hubway has measured the location, it's private property but it's a perfect location. Fits in very nicely up against the

planter and it's right at the --

JANET GREEN: They're talking a lot in the city about how to make it safer for bicyclists and everything. But there's very little discussion about the responsibility of the bicyclist to not just follow the regulations, but also at night we see people in completely dark outfits with no lights on or anything like that. And it seems to me they don't have helmets either. And by the City encouraging Hubway and not putting any kind of restriction or force on it, and you know what I mean, you could actually do something about this, and make Hubway have a model of having helmets for rent or something like that. I mean, it's really a problem.

ATTORNEY JAMES RAFFERTY: I agree.

JANET GREEN: And just adding all these Hubway places isn't the whole solution. That's all. I really just kind of off the topic. Sorry, Mr. Chair.

BRENDAN SULLIVAN: Okay.

GEORGE BEST: I just have a question. When you have spots for EV?

ATTORNEY JAMES RAFFERTY: Yes, electrical vehicles in the garage. High occupancy vehicles. It's following all of the City's protocols for laying out parking garages.

GEORGE BEST: Okay.

ATTORNEY JAMES RAFFERTY: So charging stations.

GEORGE BEST: Okay.

BRENDAN SULLIVAN: Patrick, anything?

PATRICK TEDESCO: Nothing.

BRENDAN SULLIVAN: Anything else, George?

GEORGE BEST: No.

BRENDAN SULLIVAN: No? Andrea?

ANDREA HICKEY: No.

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

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

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance.

There is correspondence from the Traffic, Parking and Transportation from Joseph E. Barr. (Reading) The Cambridge Traffic, Parking, and Transportation Department has been working with the Oxford Property Group on their proposal to convert the top floor of a pre-existing above grade parking facility located at One Memorial Drive from automobile parking to technical office use. Based on information from the Oxford Property Group, approximately 299 out of 396 parking spaces are used, 76 percent occupancy. The building has a parking supply of 1.16 spaces per 1,000 GFA. But the actual use is approximately 0.87 per 1,000 gross floor area. Oxford Property Group retained VHB to provide a parking analysis, make sure that even with the conversion of parking and to additional office space, the property will be able to meet its parking needs. Based on VHB's analysis, we agree that the property will be able to

meet its parking needs, especially with various proposed transportation demand management measures.

TP&T, Traffic, Parking, and Transportation, supports converting unused parking spaces into more productive uses and therefore supports this BZA application to convert portions of the underused parking to usable commercial floor area.

In addition, due to the physical location of this building, we don't anticipate any spillover parking impacts. If approved by the BZA, TP&T recommends that the project should re-register the parking facility with the TP&T Department, meet the City's bicycle zoning requirements for the building, and implement TDM measures, including becoming a member of the Charles River Transportation Management Association, provide employees fair free access to the EZ Ride shuttle system which provides a connection to the Green Line at Lechmere Station and to the commuter rail and the Orange Line at North Station, fund the installation of a

Hubway station and annual operating and maintenance costs.

The Hubway station should be located on their property if feasible. Provide free Hubway membership to employees of the building.

Correspondence from the Planning Board. (Reading)

The Planning Board reviewed the Variance request to convert the top floor of the existing garage through technical office use at the September 6, 2016, public meeting.

Planning Board reviewed the application and the Traffic, Parking, and Transportation memo dated 9/6/16. Planning Board supports the granting of this request. Replacing the underutilized parking spaces with office is a better use in the Kendall Square area. The windows in this facade are an improvement to the overall design of the building.

Decreasing the number of parking space is in keeping with the City's policy to discourage single occupancy vehicle trips and to encourage public transportation and bicycle use through the implementation of traffic demand management

measures.

On the letterhead of the office of the Mayor, E. Denise Simmons. (Reading) I'm writing to express my support for the Oxford Properties application for a Variance to allow for the conversion of underutilized floor of the parking garage at One Memorial Drive into technical office space. The building built in the 1980s at the time when the city policy around parking and vehicle trip reduction was not as advanced as they are today. As a result, the garage actually contains more parking space than is needed to meet the demand for the parking -- for the building's tenants. This Variance represents a unique opportunity to incorporate many of the transportation programs now locally required for a commercial buildings, including long and short term bicycle parking, employee T passes, and participation in the EZ Ride shuttle program. In addition Oxford Properties has agreed to fund the cost and annual maintenance of a Hubway bicycle sharing station at this important location which is

at the foot of the Longfellow Bridge. I also wish to bring to the BZA's attention that the conversion of the garage floor to office space will be subject to the incentive zoning requirement, and under the current formula the applicant will be required to make a payment of \$468,000 to the City's Affordable Housing Trust. As someone who is particularly concerned about our affordable housing crunch, I appreciate that this would be a significant boost to the City's effort to preserve and create affordable units. I believe that granting this Variance represents the most rational use of this unoccupied garage. I understand that both the Planning Board and the City's Traffic Department have provided favorable recommendations as well. I thank you for considering my views on this matter as well and happy to elaborate of my support of this further if you desire. Sincerely, E. Denise Simmons.

Sum substance of the correspondence.

Any other questions from the Board at all?

ATTORNEY JAMES RAFFERTY: No, thank you.

BRENDAN SULLIVAN: You've used up all your oxygen?

Let me close the matter. Let the Board take it to a vote. Patrick, any comment or George?

PATRICK TEDESCO: Nothing to add.

GEORGE BEST: You know, I'm always looking for more housing.

BRENDAN SULLIVAN: Andrea?

ANDREA HICKEY: No, no further comment.

JANET GREEN: I'm unhappy about the Hubway station. I feel really strongly about that and I don't feel that they've made any attempt to even comment on addressing that situation of providing an unsafe bicycle situation. So I'm concerned about that.

ATTORNEY JAMES RAFFERTY: You know, I apologize, Ms. Green, I didn't realize -- I thought that was more -- I mean, when you say comment, do you mean the proponent here?

JANET GREEN: Yes.

ATTORNEY JAMES RAFFERTY: Oh, oh, okay. Are you suggesting that perhaps we could -- they could explore a program where they might have for loan in their lobbies --

JANET GREEN: Are helmets available?

CHAD REMIS: One of the things I did want to bring up --

BRENDAN SULLIVAN: If you just give your name, please.

CHAD REMIS: Chad Remis.

And one of the things I do want to bring up is actually across our portfolio, we're trying to enhance more biking across a lot of our assets. And part of that is putting in repair and helmet stations and lock stations within our garages and next to the bike parking. So that is most certainly something that we would be capable of doing here.

JANET GREEN: Great.

CHAD REMIS: Where we at least provide something

within the garage where the bikes are. It's a little bit harder if it becomes a Hubway issue to do outside of the building --

JANET GREEN: Right.

CHAD REMIS: -- but most certainly inside the building we can address the helmet aspect of it.

JANET GREEN: In which case, I feel --

ATTORNEY JAMES RAFFERTY: I apologize, I thought that was an editorial comment about Hubway's practices, and that's why --

JANET GREEN: I may have expanded it too far for the current situation. If it was up to me, I would be really happy to see you do that and I hope the City begins to ask companies that are providing things about that.

Thank you.

GEORGE BEST: I have a quick one. Do you have ZipCars in there as well?

SAM JOHNSON: Sam Johnson from Oxford. Yeah, we

certainly addressed that as a group and we're open to.

CHAD REMIS: And so we as of right now, do not have ZipCar. It is most certainly something that we can accommodate with the garage --

ATTORNEY JAMES RAFFERTY: I will say that we discussed that possibility with the Traffic Department, and their view to us was that they thought ZipCar in the -- first of all, ZipCar in a location where the garage is secured isn't as effective. They prefer to have easy access on grade. They also seem to be suggesting that with Uber and other measures, ZipCar, the demand on ZipCar, they think there's an adequate ZipCar supply. Because that was something that -- the limitation is that there isn't, we're dealing with a controlled parking garage facility. So evenings and weekends people not associated with the building wouldn't have access to the ZipCar and that's why it's not seen as an effective location.

GEORGE BEST: Okay.

In other buildings I've seen the fob on the ZipCar will allow you to come and go.

ATTORNEY JAMES RAFFERTY: Into a private garage?

GEORGE BEST: Uh-huh.

ATTORNEY JAMES RAFFERTY: Well, we expressed a willingness to explore that. We worked on these TDM measures. We certainly bring that up with the Traffic Department.

BRENDAN SULLIVAN: Take the key to ZipCar is accessibility.

ATTORNEY JAMES RAFFERTY: Right.

BRENDAN SULLIVAN: And the problem accessing it may not work.

GEORGE BEST: I was just thinking because you're in that area and if it's an emergency and you didn't bring your car or it's snowing or whatever.

ATTORNEY JAMES RAFFERTY: Right.

We'd certainly be happy and would explore that

both with the Traffic Department and with -- ZipCar leases these locations. And I think they do an assessment based on their criteria. I know, because many clients explore that, but we're happy to explore that with both the ZipCar and the City.

GEORGE BEST: Okay.

BRENDAN SULLIVAN: Let me make a motion, then, to grant the relief requested to convert the top floor of the pre-existing above grade parking facility from automobile parking to technical office use as per the plans submitted.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner because it would preclude the petitioner from utilizing a greatly underutilized space now, a use that over time has changed, and that the conversion from parking space to office space would also be a useful and a revenue producing and a productive purpose.

The Board finds that the hardship is directly

related to the existing structure that was built in 19 --

SAM JOHNSON: '87.

BRENDAN SULLIVAN: -- '87 under the existing zoning at the time, and also the City policies regarding parking and the number of parking spaces to be associated with the buildings at that time.

And the fact that the -- and also the fact that the hardship is related to the fact that the entire floor of the garage is not needed now to park vehicles. So the hardship is the fact that it is a greatly underutilized space.

The Board finds that there would not be any substantial detriment to the public good.

The Board notes the letter from the Mayor in particular, comments that she makes, as to the benefit to the City and the reduction of parking.

That the availability of bicycle parking that this is bringing -- this building more in compliance with current

City policies which has evolved over time.

And that also the payment to the incentive zoning requirements to the City's Affordable Housing Trust which will be an added benefit to a great number of citizens.

Also the Board notes the Planning Board report which is in favor of it and highlights certain salient points, and also more directly the memo from Traffic, Parking and Transportation in full support of this proposal and the usefulness and the desirability of bringing this building more into compliance with current city property -- current city policies.

The Board finds that relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

The Board again notes the three correspondence which alludes to the fact that this proposal will bring this building more in line with current city policies regarding parking, the availability of bicycle theme in the city, and

also would note the benefit of the Hubway station.

Now as an aside here, one of the conditions that I will impose, and I know that there are bullet points here, and I'm not sure if those are suggestions or actual requirements, but I think that one of the requirements that I would -- Counsel, you can see if you're comfortable with this, that the applicant, the building owner, comply with the Traffic, Parking and Transportation recommendation that the project should re-register the parking facility with the TP&T Department which will then meet the City's bicycle zoning requirements for the building and implement the TDM measures.

ATTORNEY JAMES RAFFERTY: Yes, my expectation was that all four of those bullets would be made conditions.

BRENDAN SULLIVAN: Okay. If you re-register, then, you're accepting that condition that you basically --

ATTORNEY JAMES RAFFERTY: Yeah, I see what you mean. The re-registration is not in the bulleted area. I

noticed it. Yes. The re-registration is actually --

BRENDAN SULLIVAN: You would then have to comply with those basically?

ATTORNEY JAMES RAFFERTY: Well, yeah, but the re-registration is a requirement. The registration has a certain number of spaces in it.

BRENDAN SULLIVAN: To another analysis on it?

ATTORNEY JAMES RAFFERTY: We have to -- well, no, we just have to re-register it and show the new -- so right now the registration is showing the full amount of spaces at 396. We're going to re-register -- if this is approved and we do the work, we'll re-register the garage with the correct -- with the new number of spaces.

BRENDAN SULLIVAN: Right. Right. And that's the application. But also to meet the City's bicycle zoning requirements for the building and implementation of the TDM measure.

ATTORNEY JAMES RAFFERTY: That's correct. And

that was also agreed to. So it's clear that the new space is subject, the new GFA would be subject to the bicycle parking requirements, but we have agreed that the entire building -- so, and the bicycle requirements are apportioned according to the size of the building. So we're saying over and above the a new addition would require, so this condition as we understand it and have discussed it, would require of us to make the entire building comply with the bicycle parking requirements. So we will supply the building that way.

BRENDAN SULLIVAN: Okay.

Further the Board notes that this application and the granting of this relief will bring this building in better compliance with requirements of Article 6, Section 6.35.1 reduction of required parking, the availability of public transportation, and also the current city policy of reducing vehicular traffic especially in the Kendall Square area which this application will allow this building to

comply with.

Anything else?

GEORGE BEST: Yeah, I just have a quick question.  
Where is the pick-up and drop-off for the EZ Ride shuttle?

ATTORNEY JAMES RAFFERTY: They set those spots.  
And currently I think closest one is probably --

SAM JOHNSON: The Kendall T stop.

ATTORNEY JAMES RAFFERTY: I was going to say  
Broadway.

GEORGE BEST: It doesn't come to the building at  
all?

SAM JOHNSON: When we discussed with the TMA  
around that subject, they suggested that it might be a  
congestion issue if they were to reroute around Memorial  
Drive. But they were comfortable maintaining their current  
spots, the closest drop-off.

ATTORNEY JAMES RAFFERTY: They're like the MBTA.  
They have set stops. And if they stopped at every building,

it would lose its efficiency. So that location is two minutes from there.

GEORGE BEST: Okay.

BRENDAN SULLIVAN: Okay. All those in favor?

(Show of hands.)

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

ATTORNEY JAMES RAFFERTY: Thank you very much.

\* \* \* \* \*

(8:45 p.m.)

(Sitting Members Case BZA-011008-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will now call case No. 011008, 1221 Cambridge Street.

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

ATTORNEY DANIEL GLISSMAN: Good evening, members of the Board. My name is Daniel Glissman. I'm an attorney with Prince, Lobel, Tye, and I'm here on behalf of T-Mobile Northeast. This is a continued case from back in August and we have since made some modifications to our proposal. I have some photo simulations depicting the updated program on the --

CONSTANTINE ALEXANDER: I have one from the file.

ATTORNEY DANIEL GLISSMAN: Here we are.

CONSTANTINE ALEXANDER: Okay, when you were here before us, we had some problems with what you were proposing and that we had significant comments from the Planning Board so we sent you back to work things out with the Planning Board and come back with hopefully a new plan. Which you have. So why don't you walk us through those? And I will read into the file the memo from the Planning Board regarding these new plans that are before us tonight.

ATTORNEY DANIEL GLISSMAN: Absolutely. So

primarily the changes that took place between the last meeting and our working with the Planning Board was realigning the antennas on the north face. So if you go to photo simulations page 7 out of 10, you'll see that one of the existing antennas is located adjacent to an existing window and another antenna is more aligned into the center of existing facade in between the two windows.

If you look to photo simulation 8, we've now moved everything in between the two windows to try to give it a more symmetrical layout which was a request of the Planning Board.

And then actually if you flip back towards the beginning for the western view which is photo simulation 4 out of 10, you'll see the sector with the most equipment on it. And what we've done here is gotten permission from the landlord to paint all the equipment, including the landlord's property and ours to match the facade. We're repainting the extension of the existing cable tray and

we're just trying to give it a good matching look overall, and we believe that that has hopefully reduced the visual clutter on the penthouse facade.

And aside from that we've set back the remote radio head units a minimum of 12 feet from the roof line which was another request by the Planning Board. And you can't see those on the photo simulations, but we have made specific notes on the plans to ensure that they'll be set back as far as possible.

And those, that would be the extent of the changes that were made to hopefully accommodate the request to the Planning Board. And the Planning Board I believe did submit an updated set of recommendations that appear to be favorable for this proposed installation.

CONSTANTINE ALEXANDER: Which I'll read into the record at the appropriate time.

Just to confirm, I don't think you've done it, you're duly licensed -- is T-Mobile duly licensed and in

good standing as a carrier?

ATTORNEY DANIEL GLISSMAN: Correct.

CONSTANTINE ALEXANDER: Okay. That's one of the requirements.

ATTORNEY DANIEL GLISSMAN: And the copy of their FCC license should be included in the application.

CONSTANTINE ALEXANDER: Okay.

That's the original license. It's still in effect, I want to make sure, and there's no outstanding charges or questions about your ability to continue to operate?

ATTORNEY DANIEL GLISSMAN: No, not to my knowledge, no. And it's still in effect, yes.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board at this point?

(No Response.)

CONSTANTINE ALEXANDER: There appear to be none. 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. As the counsel for the petitioner indicated we do have a memo from the Planning Board dated today reporting back to us on the meeting that they had with the petitioner with regard to the original plans that had been submitted and which we had requested that the -- the re-thought and going back to the Planning Board. The memo states: CDD staff, that's Community Development staff, has reviewed the revised photo simulation package dated 9/21/2016, for 1221 Cambridge Street and provides the following comments with reference to the Planning Board memo submitted to the Board of Zoning Appeals on August 24, 2016:

Several of the Planning Board's suggestions have been adopted as described in the following points:

Point 1, photo 1 west elevation of the penthouse

shows improvement with regard to the color finish of the existing and proposed antennas as well as other equipment. An enclosure or a screen would provide a tidier appearance, however, staff is of the understanding that some of the equipment is not owned by T-Mobile which limits screening opportunities.

And you had indicated that at the last hearing as well.

ATTORNEY DANIEL GLISSMAN: Correct.

CONSTANTINE ALEXANDER: And that point as you addressed in your oral comments with photo No. 1.

Next point. Photo 3, north elevation shows improvement with a better layout that is more balanced, tidier, and responds to the existing patterns of windows on the facade. The antennas also have an improved color finish that matches the facade. The roof mounted RRU has been set back further, at least 12 feet from the principal facade, which will reduce its visual impact. And, again, you

address that in your comments.

And lastly, photo 4 east elevation of penthouse, the painted color finish of all three antennas appears improved. A roof mounted RRU has also been set back further, at least 12 feet from each facade which will reduce the visual impact.

And those are the only comments we have.

I'll close public testimony unless anyone wishes to testify. Apparently not.

Comments or questions from members of the Board at this point?

(No Response.)

CONSTANTINE ALEXANDER: Ready for a vote?

Okay. The Chair moves that this Board make the following findings:

That the requirements of the Ordinance cannot be met without a Special Permit that's being sought tonight.

That traffic generated or patterns of access or

egress will not cause -- resulting from the proposal will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of or development of adjacent uses as permitted in the Zoning Ordinance will not be adversely affected by the nature of the proposed use.

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

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

The Chair moves that the Board make the following further findings:

The Board also finds that the modification of its existing telecommunication facility at the site proposed by the petitioner does not substantially change the physical

dimensions of the existing wireless tower or base station at such facility within the meaning of the Section 6409(a) of The Middle Class Tax Relief and Job Creation Act of 2012, also known as The Spectrum Act.

So based on these findings, the Chair moves that the petitioner be granted the Special Permit it is seeking subject to the following conditions:

One, that the work proceed in accordance with the plans submitted by the petitioner and initialled by the Chair. These are plans dated --

JANET GREEN: Wasn't it on the front? It says they were taken 9/21.

CONSTANTINE ALEXANDER: Those are the photographs. I have my glasses here.

ATTORNEY DANIEL GLISSMAN: I have a larger set here.

CONSTANTINE ALEXANDER: Thank you. They're dated 8/24/2016.

ATTORNEY DANIEL GLISSMAN: 8/22.

CONSTANTINE ALEXANDER: 8/22/2016. That's the first condition.

Second condition, that upon completion of the work, the physical appearance and visual impact of the proposed work will be consistent with the photo simulations submitted by the petitioner. They're dated 9/21/16, and initialled by the Chair.

Three, that the petitioner shall at all times maintain the proposed work so that its physical appearance and visual impact will remain consistent with the photo simulations previously referred to.

Four, that should the petitioner cease to utilize the equipment approved tonight for a continuous period of six months or more, it shall promptly thereafter remove such equipment and restore the building on which it is located to its prior condition and appearance to the extent reasonably practicable.

Five, that the petitioner is in compliance with and will continue to comply with in all respects the conditions imposed by this Board with regard to previous Special Permits granted to the petitioner with regard to the site in question.

Further, inasmuch as the health effects of the transmission of electromagnetic energy waves is a matter of ongoing societal concern and scientific study, the Special Permit is also subject to the following conditions:

A, that the petitioner shall file with the Inspectional Services Department each report it files with the federal authorities regarding electromagnetic energy waves emissions emanating from all of the petitioner's equipment on the site. Each such report shall be filed with the Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities. Failure to timely file any such report with the Inspectional Services Department shall ipso facto

terminate the Special Permit granted tonight.

B, that in the event that at any time federal authorities notify the petitioner that its equipment on the site, including but not limited to, the Special Permit granted tonight, fails to comply with the requirements of law or governmental regulation, whether with regard to the admissions of electromagnetic energy waves or otherwise, the petitioner, within ten business days of receipt of such notification of such failure, shall file with the Inspectional Services Department a report disclosing in reasonable detail that such failure has occurred and the basis for such claimed failure. The Special Permit granted tonight shall ipso facto terminate if any of the petitioner's federal licenses are suspend, revoked, or terminated.

C, that to the extent that the Special Permit has terminated pursuant to the foregoing paragraphs A and B, the petitioner may apply to this Board for a new Special Permit

provided that the public notice concerning such application discloses in reasonable detail that the application has been filed because of a termination of Special Permit pursuant to paragraphs A and B above. Any such new application shall not be deemed a repetitive petition and therefore will not be subject to the two-year period during which repetitive petitions may not be filed.

And D, that within ten business days after the receipt the of a building permit for the installation of the equipment subject to this petition, the petitioner shall file with the Inspectional Services Department a sworn Affidavit of the person in charge of the installation of equipment by the petitioner with a geographical area that includes Cambridge stating that;

A, he or she has such responsibility, and;

B, that the equipment being installed pursuant to the Special Permit we are granting tonight will comply with all federal safety rules and will be situated and maintained

in locations with appropriate barricades and other protections such that individuals, including nearby residents and occupants of nearby structures, will be sufficiently protected from excessive radio frequency radiation under federal law.

On the basis of these findings the Chair moves that we grant the Special Permit requested.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

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

ATTORNEY DANIEL GLISSMAN: Thank you.

\* \* \* \* \*

(9:00 p.m.)

(Sitting Members Case BZA-011142-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will now call case No. 011142, 20 Walker Street.

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

DOUG ELMENDORF: Yes, thank you.

KELLY SPEAKMAN: My name is Kelley Speakman. I'm from 30 Bows Street in Somerville. And give your name as well.

DOUG ELMENDORF: I'm Doug Elmendorf and my wife and I just purchased 20 Walker Street.

CONSTANTINE ALEXANDER: The floor is yours.

KELLY SPEAKMAN: So 20 Walker Street is an attached single-family house located off of Garden Street and Doug and his wife just bought the right half of the house. The property was subdivided in the nineties, and so

even though it is attached to the other half of the house,  
this is a standalone lot.

ANDREA HICKEY: What's the address of the other  
half of the house?

KELLY SPEAKMAN: This is 20 and this is 18.

So the house is a beautiful old historic house and  
we are proposing to add a minor addition out the back.

So this is the rear of the house as it exists now.

There's the front main house with the little back  
addition that was added sometime later that sets back from  
the main facing the house.

And our proposal is a one-story addition to expand  
living space --

PATRICK TEDESCO: Could you lift the board up a  
little bit?

KELLY SPEAKMAN: Oh, I'm sorry.

PATRICK TEDESCO: That's okay. Thank you.

SPEAKER: Here you go.

So this is the house now. And there's a deck with steps leading out to the backyard, a little cupboard back door, some French doors into the dining area. And we're proposing to extend this wall back. And also this as a little bump-out that's in the kitchen now to extend it back. So we're sort of filling in the part that's now the deck with a kitchen addition. A one-story addition.

And in addition to that, we've proposed a window in the second floor study which is actually as of right because there's no setback violations either in the side or in the rear. And a few skylights as well.

CONSTANTINE ALEXANDER: The reason you're here before us tonight is because of GFA issues. FAR issues I should say. That for the district you're supposed to be either 0.5 to 0.35.

KELLY SPEAKMAN: So the lot's under 5,000 square feet so we would be at a 0.5 FAR.

CONSTANTINE ALEXANDER: Right now the building is

at 0.79. Which is almost 50 percent --

KELLY SPEAKMAN: It's at 0.75 now and we're hoping to expand up to 0.79.

CONSTANTINE ALEXANDER: I'm looking at the wrong notes. You're absolutely right. 0.71 now and you're going to 0.75.

KELLY SPEAKMAN: Right.

CONSTANTINE ALEXANDER: Let me make a comment and frankly it's more addressed to you than the petitioner. I have to say that the application that was filed is minimal at best and it's not really responding to why you should be here. You're seeking a Variance. Legally to get a Variance you've got to meet -- we have to find certain conditions that have been met.

One condition is that, reading from -- and this is by state law as well as our Ordinance, that a literal enforcement of the provisions of the Ordinance would involve

a substantial hardship, financial or otherwise, to the petitioner. In your submission you said the ground floor addition allows the house to be brought up to date for occupancy by a contemporary family. The house pre-dates the Ordinance, and a literal enforcement would create a hardship. That says nothing. I mean, the fact that the building is not up to code -- up to snuff with regard to contemporary family is not a substantial hardship unless we find it to be such.

And second of all, we have to find that the hardship is owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structure but not affecting generally the zoning district in which it's located. And in response to that your application says, the hardship is owing to the fact that the building and lot placement pre-date the Ordinance. That has nothing to do with it. You don't have any setback issues. The fact that

you pre-date the Ordinance doesn't in any way address what we're supposed to find under our Ordinance. I say this and your office -- you're not a zoning lawyer, but your office is very familiar with zoning requirements and I would have expected a better presentation, frankly, than what we've got. That said, I mean, the project seems to be very modest in nature and makes sense. I think it has, as I'll indicate later, unanimous neighborhood support. So I am speaking for myself, sympathetic to the relief you want, but I would have expected more, better from the -- in the application.

DOUG ELMENDORF: Sorry.

CONSTANTINE ALEXANDER: You make your case harder for us to decide in your favor than need be. Anyway....

PATRICK TEDESCO: In particular the statement about the building pre-dating the Ordinance, that pertains to most properties in the city.

CONSTANTINE ALEXANDER: Usually that would be relevant if they have a setback issue.

PATRICK TEDESCO: Right.

CONSTANTINE ALEXANDER: Because they built the house before the Ordinance has setback. There's no setback issues here, just FAR. Anyway....

KELLY SPEAKMAN: So I apologize for that. Don't mean to be disrespectful to the Board, certainly not.

From my perspective the -- when this was split up, this lot is not a 5,000 square foot lot, which is the minimum size as required in the zone, either half of the house. And it's true that it meets the side and the rear setbacks. It's got a non-conformity in the front, but we're not doing anything there. And the shape of the lot and the way the house is placed on it makes it so that the -- there's a big house on a very small divided lot. And so when they subdivided into such a small lot, is the reason --

CONSTANTINE ALEXANDER: By the way, these are two, single-family homes with a party wall, this is not a

condominium?

DOUG ELMENDORF: Right.

PATRICK TEDESCO: Do the two units collectively on the larger lot exceed the FAR? They must, right?

KELLY SPEAKMAN: They must. Their lot -- this, it's square to the front and the middle, but the back is a little bit at an angle. So the neighboring lot which is not Doug's property is slightly smaller, but the house is exactly the same size. So they have a little bit of a higher FAR for the same size house.

JANET GREEN: So the problem happened when they split is when the FAR became twice the amount?

KELLY SPEAKMAN: I think that it would not have been conforming anyway, and if the lot was bigger than 5,000, then I would have had to kick in the 0.35 it would have been even less conforming.

But it's very consistent with all the other houses in the neighborhood. That most of the properties along the

street have been divided in two. They're big stately old half and half --

CONSTANTINE ALEXANDER: Especially when you're basically filling in -- as you said, filling in the gap. It's not --

KELLY SPEAKMAN: Yeah, just this little --

CONSTANTINE ALEXANDER: In my opinion garish addition on it would impact -- you can't even tell.

KELLY SPEAKMAN: You can't see it from the street. We're really concerned with making sure the symmetry of the house remains the same and the impact is minimal. We had proposed a roof deck which as you all know, are not very popular to anyone all over the city. And through talks with the neighbors we decided to take that off, even though that wasn't a thing that we were requesting permission for.

CONSTANTINE ALEXANDER: Wise.

KELLY SPEAKMAN: And instead of a roof deck we've added a few skylights, which are conforming. There's no

setback requirements to get the light in. And so we could have done some things that might have enangered the neighborhood that were perfectly as of right which we are not gonna do in order to be good neighbors which I think is --

CONSTANTINE ALEXANDER: Wise decision given that neighborhood.

DOUG ELMENDORF: Yes, you may know there was an incredible fight between the previous owners of this house and the house behind this that they stopped speaking some years ago.

CONSTANTINE ALEXANDER: Oh, really?

KELLY SPEAKMAN: Over a roof deck issue.

DOUG ELMENDORF: Over a roof deck issue so we were very eager to not begin our life in Cambridge under those circumstances.

CONSTANTINE ALEXANDER: Questions from members of the Board at this point?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I'll open the matter up to public testimony.

Is there anyone here wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Guess not.

We are, as you mentioned, in receipt of numerous letters all in support. I'm not going to read them. A lot of them are sort of social in nature and personal and which is fine, but we all want to get out at a reasonable hour. But I would report that there seems to be very strong and unanimous neighborhood support from what you're proposing.

With that I'm going to close public testimony unless you have any final comments.

KELLY SPEAKMAN: No.

DOUG ELMENDORF: Thank you.

CONSTANTINE ALEXANDER: Discussion or ready for a vote?

JANET GREEN: I'm ready.

CONSTANTINE ALEXANDER: Ready for a vote.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being that the kitchen space area is not sufficient -- I got to phrase this right. It does require additional space to maximize the utility of the kitchen.

That the hardship is owing to the fact that the location of the side-by-side single-family house on the lot.

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 the project seems to have a unanimous neighborhood support.

That the relief really is modest in nature in terms of its visual impact to the neighborhood.

So on the basis of these findings the Chair moves that we grant the Variance being sought on the condition that the work proceed in accordance with plans prepared by Boyes-Watson Architects. They're dated 9/23/2016, and which have been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: Good luck.

KELLY SPEAKMAN: Thank you.

DOUG ELMENDORF: Thank you very much. We appreciate it very much.

JANET GREEN: You're welcome.

\* \* \* \* \*

(9:10 p.m.)

(Sitting Members Case BZA-011312-2016: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case No. 011312, 23 Robinson Street.

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

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chair, Members of the Board. For the record, James Rafferty appearing on behalf of the applicant. Seated to my left Nikola, N-I-K-O-L-A Ivanovic, I-V-A-N-O-V-I-C. And seated to Mr. Ivanovic's right is his brother Igor Ivanovic.

This is an application involving a property known as the botanical gardens development in a very toney section off Garden Street in West Cambridge.

CONSTANTINE ALEXANDER: I hate to interrupt you. You've got to answer one question for me. How did these buildings ever get built in Cambridge? They're not at all Cambridge-like. There's five or six buildings on Robinson Street. They look like something from a military base.

BRENDAN SULLIVAN: They were built for faculty.

ATTORNEY JAMES RAFFERTY: Yeah.

CONSTANTINE ALEXANDER: Was it faculty?

ATTORNEY JAMES RAFFERTY: Oh, yeah, they're affiliate housing. But they were a certain modernistic and

minimalist qualities. Some people like them.

ANDREA HICKEY: I like them.

JANET GREEN: I like them.

ATTORNEY JAMES RAFFERTY: Yeah, if you took one down, Charles Sullivan would be -- trust me.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: But you know the neighborhood, but I wanted to tell you, and I know you got a busy night, but I know how interested you people are in things in Cambridge. But the Ivanovic brothers know, but you don't know why you know them. I'm going to state with great confidence that you know the Ivanovic brothers. And Igor and Nikola, starting with Igor came to this country in 1987 from Yugoslavia and he went to school in New York City, the city university of New York, and he began delivering bread, Zabar's in New York City.

JANET GREEN: Zabar's, I love it.

ANDREA HICKEY: Me, too.

ATTORNEY JAMES RAFFERTY: In fact he then started delivering the bread up to Boston. And then in the 90s he realized there was no artisanal bread movement that hit Boston. And Igor better known as Iggy opened Iggy's Breads in Watertown.

CONSTANTINE ALEXANDER: Now in Cambridge.

ATTORNEY JAMES RAFFERTY: And in 1997 he moved that operation to Cambridge and he's been on Fawcett Street for nearly 20 years. This is Iggy of Igor's Bread. And he is now --

PATRICK TEDESCO: But no bread?

ATTORNEY JAMES RAFFERTY: What?

PATRICK TEDESCO: No bread.

ATTORNEY JAMES RAFFERTY: Funny you say that. Because they asked me about that, and I said well, you know, there's going to be a guy here from Cambridge Day and he reports everything. We better not bring the bread. But, you'll notice when you go to your cars tonight -- no, I'm

just kidding.

But at any rate. So, Nikola, like most older brother, younger brothers situations, Igor gets all the headlines and Nikola does all the work.

So he's been living in Charlestown and he has to get to the bakery at all hours of the day and night, and so when this opportunity arose in this house he ceased upon it. He's very excited to be here. And I told him when he came to me, I said, you know what, I really don't think you need a lawyer, but, you know, he heard he should so here I am. But it's a very simple case involving a modest addition.

The reason the case is before the Board is because the houses as they were all built then don't, the rear setback at that time was 20 feet and it's now 25 in that district. So the current setback on the house is about 21 square feet. So it also happens to be an attached single so there's no side yard setback. So I don't know if we have a townhouse ordinance, but I don't know how that happened.

So a part of this is that we've got a non-conforming structure. And we're certainly well -- the proposed addition is -- the additional square footage is quite modest. I have the amount right here, but it's also a case that we're well within the ten percent but we have a -- we're less than 300 square feet. So I guess we're within the 25 and not the ten. But the issue is that it's not a conforming addition, because the element of the addition, but only the first floor in the rear is a level across the back of the house. They want to put in a -- Nikola's plans involve a new kitchen. So there's an area behind the garage now. And the house now has a bit of an L-shape if you look to the site plan. It's a very logical plan and it brings consistency to the existing conditions. So we're talking about this square right here, which there's kind of a notch here now. So this is the existing back of the house. The proposal is an addition here.

On the second floor the addition will meet the setback. So the second floor portion of the addition -- this is going to be a one-story addition with skylights. So this portion of the addition is within the rear setback, but it doesn't create a new zoning violation because it simply follows the established setback on the house.

That's the case. We have lots of issues associated with hardship related to the unique development of the properties, the attached nature of the building, the fact that they've all been sited in their way. And at the end of the day it still will remain considerably below the allowable FAR. It's a very modest increase which still remains below.

The rear setback is established. Throughout the whole development there's a series of garden style houses like this. The house has a very nice scale to it. It hasn't been updated in quite sometime, and Nikola is very

excited. His Australian architect has been hard at work on the plans, but it's been a very contemporary interpretation of what's there.

He's met with all of his neighbors. They're supportive of it. One of his neighbors is here in the front row, and we're here asking for relief to allow for this slight encroachment into the setback to be consistent with the balance of the house, and that's essentially the reason for the nature of the relief.

If you look at the floor plan, it's a logical way to organize the house and it's -- will not at all have any adverse impact upon any neighbors. We're hoping the Board will feel --

CONSTANTINE ALEXANDER: Special Permit. Talk a little bit about the Special Permit.

ATTORNEY JAMES RAFFERTY: The Special Permit has to do with the location of the windows on the non-conforming wall. So as I noted that's the wall. It will be in good

company. There are existing windows along the non-conforming wall, so this portion of the wall has a window. This portion of the kitchen will have a window in it.

CONSTANTINE ALEXANDER: And that window looks out in the rear yard, does it?

ATTORNEY JAMES RAFFERTY: It does.

CONSTANTINE ALEXANDER: Does the rear yard slope upwards? Is there any privacy issues? The person who abuts you on the rear, have they any complaints about their privacy being invaded by these?

NIKOLA IVANOVIC: No, we didn't see any.

ATTORNEY JAMES RAFFERTY: This is one of those cases, too, when, you know, you apply for the Variance for the rear setback, you also need the Variance -- I mean the Special Permit for the window. I think it's safe best practice is to ask for it. So the relief, thank you for reminding me, does also recognize the fact that contained

within the one-story wall on the kitchen is a window. And so for that a Special Permit is required.

CONSTANTINE ALEXANDER: Questions from members of the Board?

(No Response.)

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: Okay. There is no one wishing to be heard, and I don't see any letters in our files.

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

CONSTANTINE ALEXANDER: Correspondence one way or another.

So any final comments, Mr. Rafferty?

ATTORNEY JAMES RAFFERTY: No, thank you.

CONSTANTINE ALEXANDER: I will close public testimony. We can discuss it or ready for a vote. Ready for a vote?

JANET GREEN: Yes.

PATRICK TEDESCO: Yes.

CONSTANTINE ALEXANDER: Okay. We need to take two motions -- take two votes I should say, you're requesting both a Variance and a Special Permit. Starting with the Variance.

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

That a literal provisions of the Ordinance would involve such a hardship. Such hardship being is that this building requires additional living space and it will be provided by the, if we grant the Variance being sought.

The hardship is owing to basically the location of the building now which is in the rear yard setback, although when it was built, it was not, the zoning changed that

caused this current non-conformance.

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.

So based on these findings, the Chair moves that we grant the Variance being sought on the condition that the work proceed in accordance with plans submitted by the petitioner. There are five pages, each one of which has been initialled by the Chair.

So just Mr. Rafferty I'm sure has told you this, if these plans should change in any material respects, you're going to have to come back before us. These hopefully are the final plans. Okay?

ATTORNEY JAMES RAFFERTY: Fully baked.

CONSTANTINE ALEXANDER: I'm sorry?

ATTORNEY JAMES RAFFERTY: Fully baked.

CONSTANTINE ALEXANDER: All right, on the basis of this these findings for the conditions I mentioned, I move

that we grant the Variance.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

CONSTANTINE ALEXANDER: Now the Special Permit for the windows.

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

That the requirements of the Ordinance cannot be met without the Special Permit.

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

That the continued operation or development of adjacent uses will not be adversely affected by what is

being proposed. And in this regard the person most affected by the new window has expressed no opposition to what you want to do.

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

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 the Ordinance.

On the basis of these findings, the Chair moves that we grant the Special Permit requested on the condition, again, that the work proceed in accordance with the plans referred to with regard to the Variance we granted.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

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

\* \* \* \* \*

(9:20 p.m.)

(Sitting Members Case BZA-011312-2016: Constantine

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

Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case  
No. 011314, 283 Upland Road, No. 3.

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

ATTORNEY JAMES RAFFERTY: Mr. Chairman, it's me  
again. James Rafferty appearing on behalf of the applicants  
John and Judy Bright seated to my right and our architect  
Robert Linn, L-I-N-N is seated next to the Brights.

And this is an application for a Variance seeking some additional gross floor area for the home that the Brights live in with their daughter at the corner of Huron Ave. and Upland Road. It has a mild case of celebrity to this. It is the home of Mr. Payette, a well-recognized architect for years. Still lives there in the home. It's a large lot, but it does contain three dwelling units. And the Brights have been living there now for?

JUDY BRIGHT: Seven.

ATTORNEY JAMES RAFFERTY: Seven years. And they love it. They love the neighborhood. It's a fabulous neighborhood. And they have spent a considerable amount of time trying to explore their options because it is acknowledged that the house today has an FAR that exceeds what's allowed. Because it is in the Res. B district, as the Board knows, that the dimensional calculations for FAR becomes more onerous as the lot size exceeds 5,000 square feet. So this lot bears the burden of that. So when you

take a look at the FAR admittedly this is a house that exceeds the existing FAR.

The Brights have worked with Mr. Linn to try to come up with an addition to the house to conserve their functional needs, to allow them and their daughter to stay in the home. They are active parents in the neighborhood. They began the process by engaging with all of their abutters. And I told them that to even be able to make a credible case to the Board it would be critical that there would be no objection from any abutters. And they have spent many, many weeks reaching out to all of their abutters. It's one of the few cases I have where two former mayors are able to write letters. Both Alice Wolf and Michael Sullivan are abutters across the street. And we know that alone shouldn't persuade the Board, but I think both of them have a recognized track record of caring about neighborhoods and their quality. So I think it begins to recognize that what's being proposed here, at least in the

eyes of the people most immediately impacted by it, is not seen as objectionable.

The relief itself has been confined to an area on the plan which is currently a porch. So it's an actively used -- it's a deck, it's a roof deck --

CONSTANTINE ALEXANDER: You're not going to increase the external dimensions?

ATTORNEY JAMES RAFFERTY: Exactly. The footprint of the house remains unchanged. So the bulk, if you will, the open space, the things that are typically associated with additions or sometimes associated with additions would not be present here.

So if you've had an opportunity to review the floor plan, it is not a large home, but is an extremely comfortable home in a neighborhood where the property owners really wish to stay.

The math on the GFA to be candid is -- the addition itself is under 300 square feet at 299. Modest by

most definitions, understandably in a scenario here where there is some additional GFA. And there is some recognition of the fact that the house has over its history received other relief as it has evolved.

But in this case I think, and I know the Board's appropriate focus on hardship, I think the hardship here is quite genuine and quite related to the structures itself.

The addition was a contemporary addition and had the effect of really creating a profile of this house. It's almost -- the portion of house the Brights are in is more of a conventional gabled two-family style house, and then you have this addition reflecting Mr. Payette's expertise, I think, in modern architecture and thinking associated with housing in the 60s and 70s.

But he continues to live in the house. He owns one of the units, and he is supportive. They have sent a letter and he unfortunately because of physical limitations can't be here, but was willing to come here. But it's a

tight-knit neighborhood where the overall density of the neighborhood doesn't reflect the underlying zoning. Reality is that the zoning changed. It's more like a C-1 District as you head down Upland Road. So what's being proposed here is very consistent.

The house immediately abutting on Huron Ave. is a three-family house and there are a series of multi-family houses as you proceed down Huron towards the traffic light and Garden Street. So contextually it works. And that was an abutter that the Brights spoke to early on to understand -- that structure will be the one most proximate or adjacent to the addition and he had no objection to it.

PATRICK TEDESCO: Is that unit No. 2? Three units?

ATTORNEY JAMES RAFFERTY: In that house?

PATRICK TEDESCO: Yes.

ATTORNEY JAMES RAFFERTY: There are three units.

It's a single --

PATRICK TEDESCO: Abutter?

ATTORNEY JAMES RAFFERTY: It's a single owner.

The other units are rented.

PATRICK TEDESCO: Oh, I see.

ATTORNEY JAMES RAFFERTY: I'm talking about the  
blue three decker --

PATRICK TEDESCO: Yeah.

ATTORNEY JAMES RAFFERTY: -- on Huron Ave.?

PATRICK TEDESCO: Okay.

ATTORNEY JAMES RAFFERTY: Yeah.

PATRICK TEDESCO: I'm sorry, I was confused. 283

Upland is three condominiums?

ATTORNEY JAMES RAFFERTY: Oh, the subject  
property?

PATRICK TEDESCO: Yes.

ATTORNEY JAMES RAFFERTY: The subject property is  
three condominiums.

PATRICK TEDESCO: So, but I understand Mr. Payette

owned the whole house once upon a time?

ATTORNEY JAMES RAFFERTY: Yes, he did.

PATRICK TEDESCO: Combined the lot to build the --

ATTORNEY JAMES RAFFERTY: Exactly. The lot  
next-door was a --

CONSTANTINE ALEXANDER: And he lives on the ground  
level unit?

JUDY BRIGHT: Below us.

CONSTANTINE ALEXANDER: Below you, exactly.

PATRICK TEDESCO: So at some point it was  
converted to three into a condo association?

ATTORNEY JAMES RAFFERTY: Yes, it is a condo, and  
it was done at the time Mr. Payette did his work. And it's  
a case where he, as I said, he continues to live in the  
building, supports the application. And it is a case that  
involves an opportunity for a family to remain in the  
neighborhood. You know how and great demand there is, but  
there's also great demand for families. And their daughter

is now?

JUDY BRIGHT: Nine.

ATTORNEY JAMES RAFFERTY: Nine and attending local schools and such a strong desire to remain here that they've undertaken this acknowledging the burden they have but optimistic that the recognition by the abutters that there is no adverse effect, and the logical organization of the property as designed by Mr. Linn would allow for the Board to find hardship related to the size and shape of the structure of the lot.

CONSTANTINE ALEXANDER: I have to comment that this house is in our Zoning Hall of Fame. This is the fifth Variance being sought for this property. I don't have any property that I've ever seen in Cambridge that has gotten five Variances.

ATTORNEY JAMES RAFFERTY: In most places that's an honorary title. I hope that is seen as such here.

PATRICK TEDESCO: It's legendary.

ATTORNEY JAMES RAFFERTY: Yeah.

ANDREA HICKEY: How many attempts were there?

CONSTANTINE ALEXANDER: I only know of the five that were granted.

ATTORNEY JAMES RAFFERTY: My only regret is that this is the first time I've appeared on behalf of this house.

BRENDAN SULLIVAN: I sat on two or three of them. When Tom designed this house, it was with his family, his children in mind and each one of them sort of had their own wing, if you will, and sort of built around central core type of thing, what have you. As time went on, the children got older and moved away and what have you, then the purpose of all of that changed. And has tried to keep the house up to the changes and to update the house for current occupancy and need. And I think that's --

CONSTANTINE ALEXANDER: I've been in the house a good number of years ago. The ground floor unit was up for

sale and they had an open house and I couldn't resist.

JUDY BRIGHT: Oh, that was the modern ground floor.

CONSTANTINE ALEXANDER: Yeah, the modern. Yeah.

JUDY BRIGHT: Not Tom's.

ATTORNEY JAMES RAFFERTY: No, no, not Mr. Payette's either.

CONSTANTINE ALEXANDER: Not yours.

JUDY BRIGHT: No, there are two ground levels.

CONSTANTINE ALEXANDER: Are there two ground levels?

JUDY BRIGHT: Yeah.

ATTORNEY JAMES RAFFERTY: Yeah.

JUDY BRIGHT: The Victorian --

CONSTANTINE ALEXANDER: Yeah.

JUDY BRIGHT: -- and we are on the top two floors --

CONSTANTINE ALEXANDER: Right.

JUDY BRIGHT: -- and Tom and Ginny are below us.

And to the right is an attached ground floor.

ATTORNEY JAMES RAFFERTY: That's the one that was for sale.

CONSTANTINE ALEXANDER: That's the one I recall.

ATTORNEY JAMES RAFFERTY: Mr. Payette's never left, never put the house up for sale.

JANET GREEN: So you have one of the three?

ATTORNEY JAMES RAFFERTY: Yes, they have the second and third floor of what would be considered the original Victorian house.

PATRICK TEDESCO: And I'm sorry, I may have missed this. Is there support not only from Mr. Payette and from the other owner as well?

JUDY BRIGHT: Yes, very much so.

ATTORNEY JAMES RAFFERTY: Very much so.

CONSTANTINE ALEXANDER: I'll get to that in a second. Let me ask, any further comments?

ATTORNEY JAMES RAFFERTY: Not at the moment.

Unless I sense it's needed. But I learned a while ago sometimes my best work is when I stop talking.

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

Is there anyone here wishing to be heard in matter?

(No Response.)

CONSTANTINE ALEXANDER: There is none. We are in receipt of substantial communications from neighbors all in support as Mr. Rafferty pointed out. Many of them is in support based on the qualities of two of you and the contribution you make to the neighborhood. Very nice.

JANET GREEN: They're glowing.

CONSTANTINE ALEXANDER: Yes, glowing letters, exactly. Not necessarily relevant to the zoning.

ATTORNEY JAMES RAFFERTY: One has to take an expansive view, Mr. Chair, but they're a welcomed departure

from those cookie cutter form letters that some people try to -- that have no authenticity to them.

CONSTANTINE ALEXANDER: Right.

And I don't propose to read them into the record. We want to get out of here tonight and we would be here for a couple of hours. But I would just report that they are all enthusiastically in support of the relief being sought.

Questions or ready for a vote?

JANET GREEN: I'm ready.

CONSTANTINE ALEXANDER: So am I.

Okay, the Chair moves that we make the following findings with regard to the Variance being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. The hardship being is that given the unique configuration of the structure, there is need for an additional living space for a family. And the purpose of what is being proposed is to create that living space.

That the hardship is owing to the basically the location of the structure on the lot and is, again, is a unique configuration.

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 the project has unanimous and enthusiastic community support.

And that what is proposed is modest in nature. In fact, the exterior of the structure is not going to be extended, just a deck, it's going to be enclosed to create a bedroom for the petitioner's daughter.

So on the basis of these findings the Chair moves that we grant the Variance being sought on the condition that the work proceed in accordance with plans prepared by Moskow, M-O-S-K-O-W Linn, L-I-N-N Architects. They're dated 8/12/2016. They're several pages, and all of which have been initialled by the Chair and which are in the file.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: Good luck.

\* \* \* \* \*

(9:35 p.m.)

(Sitting Members Case BZA-011345-2016: Constantine  
Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey,  
Patrick Tedesco.)

CONSTANTINE ALEXANDER: The Chair will call case  
No. 011345, 820 Memorial Drive.

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

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard.

The Chair would report that we are in receipt of a letter from counsel for the petitioner, Philip C. Lombardo, Jr. (Reading) On behalf of the petitioner Pecten, P-E-C-T-E-N Properties, Inc., I am writing to request a continuance of the public hearing until October 27, 2016. The petitioner needs additional time to look into an issue relating to its request.

The 27th, is that the right date?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: This is a case not heard. I won't be here on the 27th. It makes no difference. We can have any five people can hear the case.

So, the Chair moves that we continue this case until seven p.m. on October 27th subject to the following conditions:

That the petitioner sign a waiver of time for decision. And he has. Or his counsel has on his behalf.

That the posting sign, that must be maintained, the date must be changed to October 27th, the time must be changed to seven p.m., and that that sign must be maintained for the 14 days required by our Ordinance. In that regard the petitioner should be cautioned that the sign is in a precarious location. And they better be sure that it's maintained for the period required under our Ordinance.

And lastly, and I don't think I have anything meaningful, but to the extent that the petitioner is going to submit revised drawings, plans, that these be in our file no later than five p.m. on the Monday before October 27th.

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

(Aye.)

CONSTANTINE ALEXANDER: Done. Case continued.

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

(Whereupon, at 9:40 p.m., the

Zoning Board of Appeals Adjourned.)

**ERRATA SHEET AND SIGNATURE INSTRUCTIONS**

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

**INSTRUCTIONS**

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

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

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C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.

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

That 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 12th day of October, 2016.

---

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

My Commission Expires:  
April 29, 2022

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