



CITY OF CAMBRIDGE

BOARD OF ZONING APPEAL

831 Massachusetts Avenue, Cambridge MA 02139

617-349-6100

BZA Application Form

BZA Number: 107421

General Information

The undersigned hereby petitions the Board of Zoning Appeal for the following:

Special Permit: _____

Variance: X

Appeal: _____

PETITIONER: Thaddeus and Juliana Davis C/O James J. Rafferty

PETITIONER'S ADDRESS: 907 Massachusetts Avenue, Suite 300, Cambridge, MA 02139

LOCATION OF PROPERTY: 11 Gray Gdns E, Cambridge, MA

TYPE OF OCCUPANCY: Single Family

ZONING DISTRICT: Residence A-2 Zone

REASON FOR PETITION:

/New Structure/


DESCRIPTION OF PETITIONER'S PROPOSAL:

Petitioner seeks to construct spa/pool within the side setback and within 10' of the principal building.

SECTIONS OF ZONING ORDINANCE CITED:

Article: 5.000	Section: 5.31 (Table of Dimensional Requirements).
Article: 8.000	Section: 8.22.3 (Non-Conforming Structure).
Article: 10.000	Section: 10.30 (Variance).
Article: 4.000	Section: 4.21.H (Accessory Structure Location).

Original
Signature(s):


(Petitioner (s) / Owner)

James J. Rafferty
(Print Name)

Address:

Tel. No. 617.492.4100

E-Mail Address: jrafferty@adamsrafferty.com

Date: 2/8/21

OWNERSHIP INFORMATION FOR BOARD OF ZONING APPEAL RECORD

To be completed by OWNER, signed and returned to Secretary of Board of Appeal

Thaddeus and Juliana Davis

(Owner or Petitioner)

Address: c/o James J. Rafferty 907 Massachusetts Avenue, Cambridge MA 02139

Location of Premises: 11 Gray Gardens East, Cambridge MA 02138

the record title standing in the name of Thaddeus H and Juliana V. Davis

whose address is 11 Gray Gardens East, Cambridge MA 02138

(Street)

(City or Town)

(State & Zip Code)

by a deed duly recorded in the Middlesex South County Registry of Deeds in

Book 1481 Page 71 or _____ Registry

District of Land Court Certificate No. _____ Book _____ Page _____

Thaddeus H. Davis
(Owner)
Juliana Davis

On this 14th day of January, 2021, before me, the undersigned notary public, personally appeared Thad Davis, Juliana Davis proved to me through satisfactory evidence of identification, which were Known to me, Drivers License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

[Signature]
Notary Public

My commission expires: 2025



SINCE E. KOPROWSKI
Notary Public
Commonwealth of Massachusetts
My Commission Expires
January 10, 2025

SUPPORTING STATEMENT FOR A VARIANCE

EACH OF THE FOLLOWING REQUIREMENTS FOR A VARIANCE MUST BE ESTABLISHED AND SET FORTH IN COMPLETE DETAIL BY THE APPLICANT IN ACCORDANCE WITH MGL 40A, SECTION 10.

- A)** A literal enforcement of the provisions of this Ordinance would involve a substantial hardship, financial or otherwise, to the petitioner or appellant for the following reasons:

A literal enforcement of the Ordinance would prevent the petitioners from installing a spa on the lot.

- B)** The hardship is owing to the following circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures by not affecting generally the zoning district in which it is located for the following reasons:

The hardship is directly related to the irregular shape of the lot and the orientation of the existing house thereon.

- C) DESIRABLE RELIEF MAY BE GRANTED WITHOUT EITHER:**

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

There will not be any detriment to the public good by allowing the spa to be located in the backyard of this property.

- 2)** Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of this Ordinance for the following reasons:

The nature and intensity of the use of this single family structure will not be changed by the installation of the proposed spa.

***If you have any questions as to whether you can establish all of the applicable legal requirements, you should consult with an attorney.**

BZA Application Form**DIMENSIONAL INFORMATION****Applicant:** Thaddeus and Juliana Davis**Present Use/Occupancy:** Single Family**Location:** 907 Massachusetts Avenue, Suite 300**Zone:** Residence A-2 Zone**Phone:** 617.492.4100**Requested Use/Occupancy:** Single Family

	<u>Existing Conditions</u>	<u>Requested Conditions</u>	<u>Ordinance Requirements</u>	
<u>TOTAL GROSS FLOOR AREA:</u>	3,310	no change	4,212.5	(max.)
<u>LOT AREA:</u>	8,425 sf	no change	6,000 sf	(min.)
<u>RATIO OF GROSS FLOOR AREA TO LOT AREA: ²</u>	.39	no change	.5	
<u>LOT AREA OF EACH DWELLING UNIT</u>	8,425 sf	no change	6,000 sf	
<u>SIZE OF LOT:</u>				
WIDTH	varies	no change	65'	
DEPTH	varianes	no change	N/A	
<u>SETBACKS IN FEET:</u>				
FRONT	>20'	no change	20'	
REAR	varies	3'	25'	
LEFT SIDE	+/-20'	no change	10' (sum of 25')	
RIGHT SIDE	+/-9'	no change	10' (sum of 25')	
<u>SIZE OF BUILDING:</u>				
HEIGHT	+/-33'	no change	35'	
WIDTH	47'	no change	N/A	
<u>RATIO OF USABLE OPEN SPACE TO LOT AREA:</u>	55%	50%	50%	
<u>NO. OF DWELLING UNITS:</u>	1	no change	1	
<u>NO. OF PARKING SPACES:</u>	N/A	no change	1	
<u>NO. OF LOADING AREAS:</u>	N/A	N/A	N/A	
<u>DISTANCE TO NEAREST BLDG. ON SAME LOT</u>	N/A	0'	10'	

Describe where applicable, other occupancies on the same lot, the size of adjacent buildings on same lot, and type of construction proposed, e.g; wood frame, concrete, brick, steel, etc.

1. SEE CAMBRIDGE ZONING ORDINANCE ARTICLE 5.000, SECTION 5.30 (DISTRICT OF DIMENSIONAL REGULATIONS).
2. TOTAL GROSS FLOOR AREA (INCLUDING BASEMENT 7'-0" IN HEIGHT AND ATTIC AREAS GREATER THAN 5') DIVIDED BY LOT AREA.
3. OPEN SPACE SHALL NOT INCLUDE PARKING AREAS, WALKWAYS OR DRIVEWAYS AND SHALL HAVE A MINIMUM DIMENSION OF 15'.

BZA Application Form

Pacheco, Maria

From: LARRY NATHANSON <larrymd1@comcast.net>
Sent: Tuesday, March 9, 2021 5:26 PM
To: Pacheco, Maria
Cc: Lulu Davis
Subject: Petitioners: Thad and Juiana Davis, 11 Gray Gardens East

Ms. Maria Pacheco:

This letter is to support the petition of the Davis family to build a small pool/spa at the rear of their house. The pool would not be visible from the street. Our family has lived at 3 Gray Gardens East since 1936 and we have known the Davis family for several years. Both the Davis parents and children have proven to be responsible and in fact unusually kind and helpful people. Concerns about the safety of the pool would be conscientiously dealt with by the Davis family.

Any faint sounds produced at the pool would be unlikely to be heard by abutting houses or by people in the street. In addition two direct abutters already have pools in their yards which have not proven to be noisy or disruptive.

In summary we strongly support the Davis family in their petition for variance. Regards and thanks in advance for any effort on our behalf.

Dr. Larry and Anna Nathanson,
3 Gray Gardens East,
Cambridge, MA 02138

Pacheco, Maria

From: Michael Sullivan <cambmas1@comcast.net>
Sent: Monday, March 8, 2021 7:18 PM
To: Pacheco, Maria
Cc: James Rafferty
Subject: Petitioners Thaddeus and Juliana Davis, 11 Gray Gardens East, Cambridge MA

Hi Maria:

Hope all is well.

Maria, please convey our support to the board.

Denise and I wish to be recorded in support of the above referenced petition to construct pool/spa within the side setback and within 10' of the principal building.

As the BZA is aware, this house is placed oddly on the lot. Lulu and Tad have been tremendous neighbors and were very respectful of their neighbors during the renovation of their home. The pool (mini pool)/ spa will be located at the rear of their property. We are within view of their backyard and do not believe their request is inconsistent with the neighborhood. It will not be visible from the street. Their direct abutter has a resistance pool in their backyard as well.

Again, we wish to be recorded in support of this petition.

In advance, thank you for your consideration. If you have any questions, please do not hesitate to contact us.

Have a good night - stay safe.

Sincerely,

Michael and Denise Sullivan
42 Huron Ave.
Cambridge, MA 02138

Sent from my iPad

Pacheco, Maria

BZA - 107421

From: Patrick Conte <pconte@adamsrafferty.com>
Sent: Tuesday, March 2, 2021 2:30 PM
To: Pacheco, Maria
Subject: Re: 11 Gray Gardens

Maria,

Sorry, there was some miscommunication on our end. It's being put up shortly. I will send a photo as soon as possible.

Pat

Patrick Conte
legal assistant

Adams & Rafferty
907 Massachusetts Avenue
Cambridge, MA 02139

From: pconte@adamsrafferty.com <pconte@adamsrafferty.com>
Sent: Tuesday, March 2, 2021 2:20:29 PM
To: Pacheco, Maria <mpacheco@cambridgema.gov>
Subject: 11 Gray Gardens

Maria,

I just heard back from the 11 Gray Gardens applicants; apparently last night's aggressive winds blew the sign into their driveway. They put it back up this morning, however. I should have a photo for you later today.

Pat

Patrick Conte
legal assistant

Adams & Rafferty
907 Massachusetts Avenue
Cambridge, MA 02139

Fwd: Back up- with LOTS of staples



Patrick Conte <pconte@adamsrafferty.com>

To: Pacheco, Maria

Reply

Reply All

From: Lulu Davis <luludavis44@gmail.com>

Sent: Tuesday, March 2, 2021, 3:57 PM

To: Patrick Conte; James Rafferty; Thad Davis

Subject: Back up- with LOTS of staples

11 Gray Gardens East

Sorry for the glare...





City of Cambridge

MASSACHUSETTS

BOARD OF ZONING APPEAL

831 Mass Avenue, Cambridge, MA.
(617) 349-6100

BZA

POSTING NOTICE – PICK UP SHEET

The undersigned picked up the notice board for the Board of Zoning Appeals Hearing.

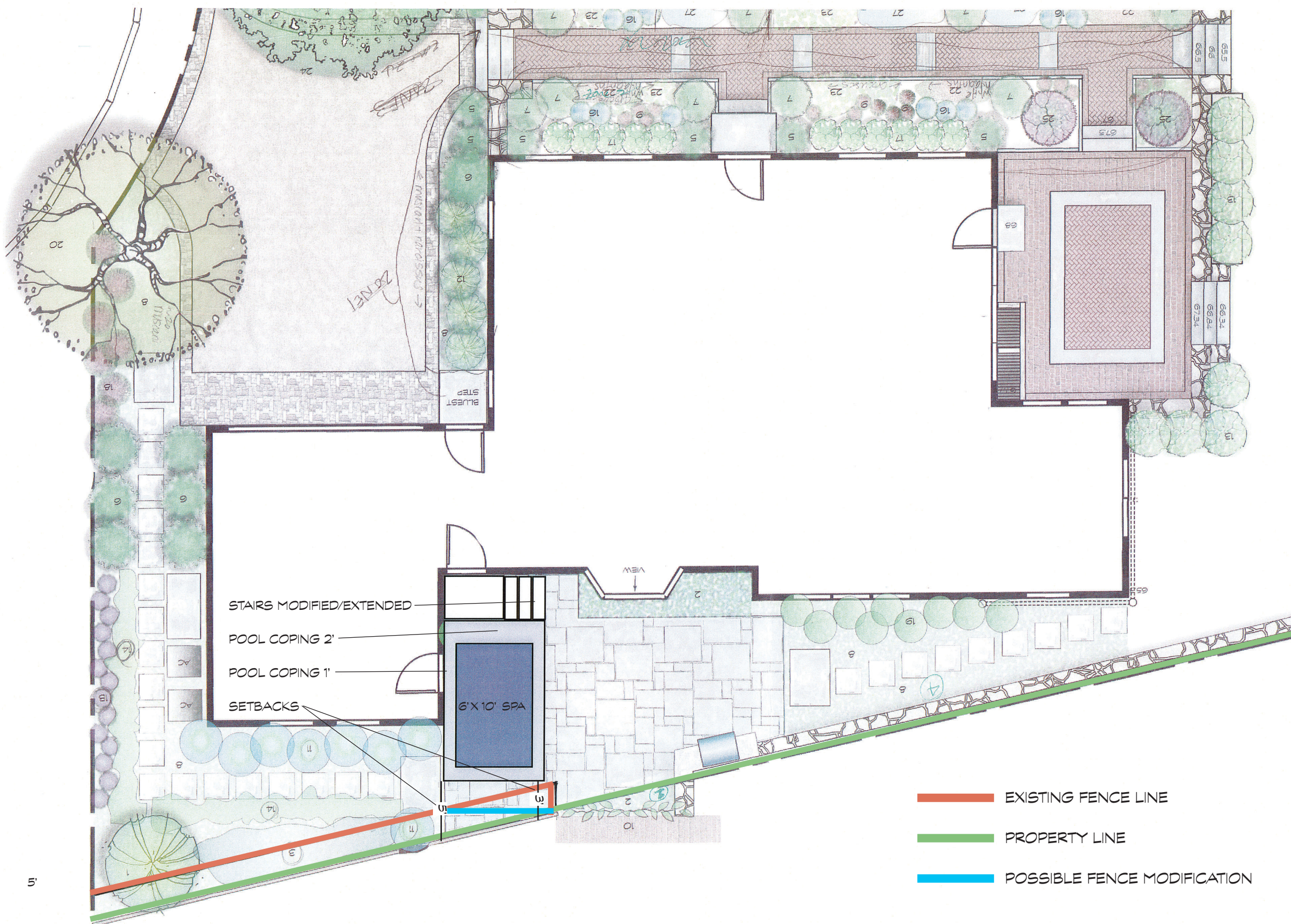
Name: Pat Conte / Dick Cont Date: 2/24/21
(Print)

Address: 11 Gray Gardens East

Case No. BZA-107421

Hearing Date: 3/11/21

Thank you,
Bza Members



255 Commandants Way
Chelsea, MA 02150

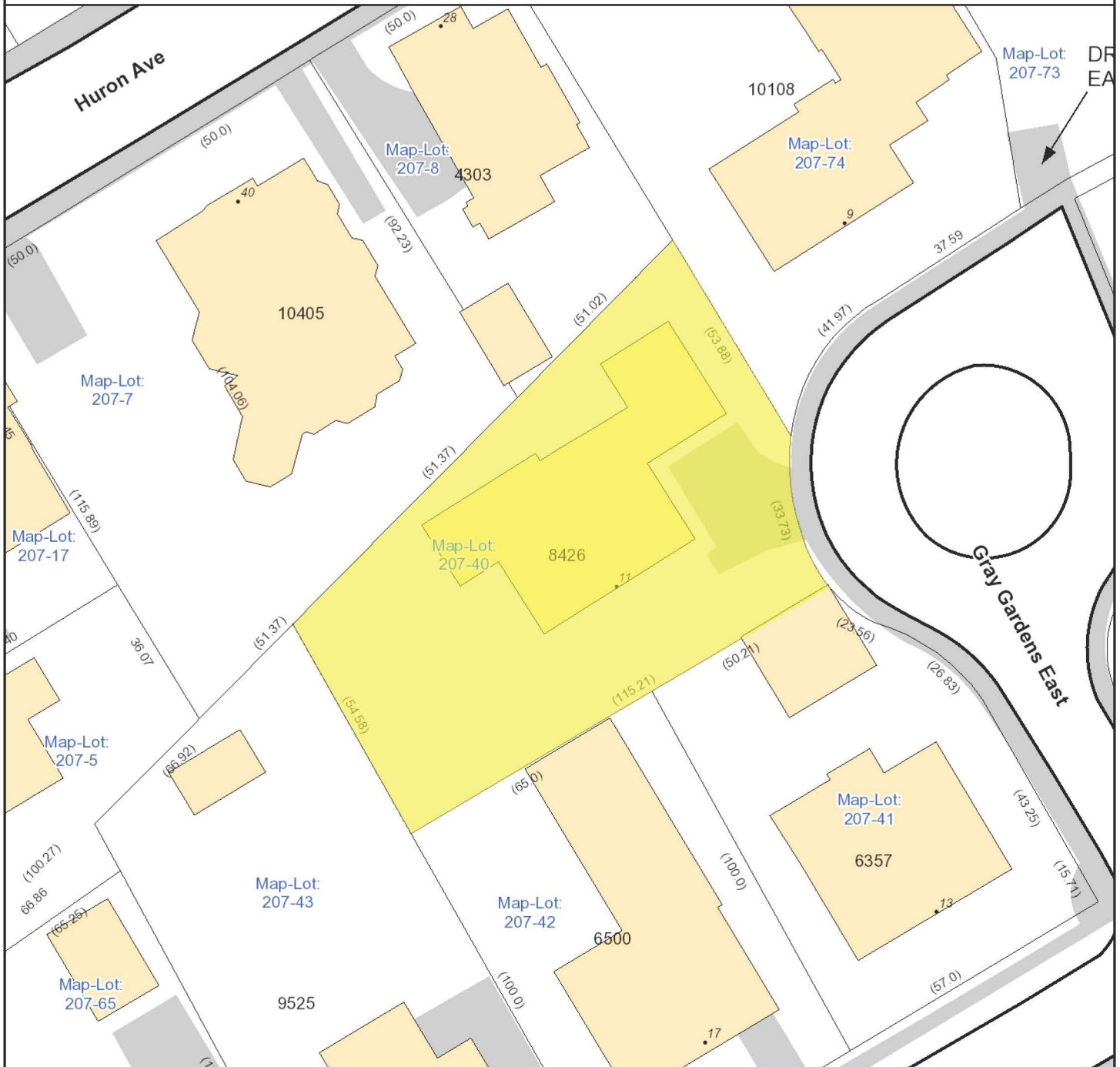
(617) 354-0643
info@jeanbrookslandscapes.com
www.jeanbrookslandscapes.com

DAVIS RESIDENCE

POOL LAYOUT

GRAY GARDENS EAST
CAMBRIDGE, MA

1/8" = 1'
OCTOBER 4, 2020



City of Cambridge
Massachusetts

1" = 35 ft

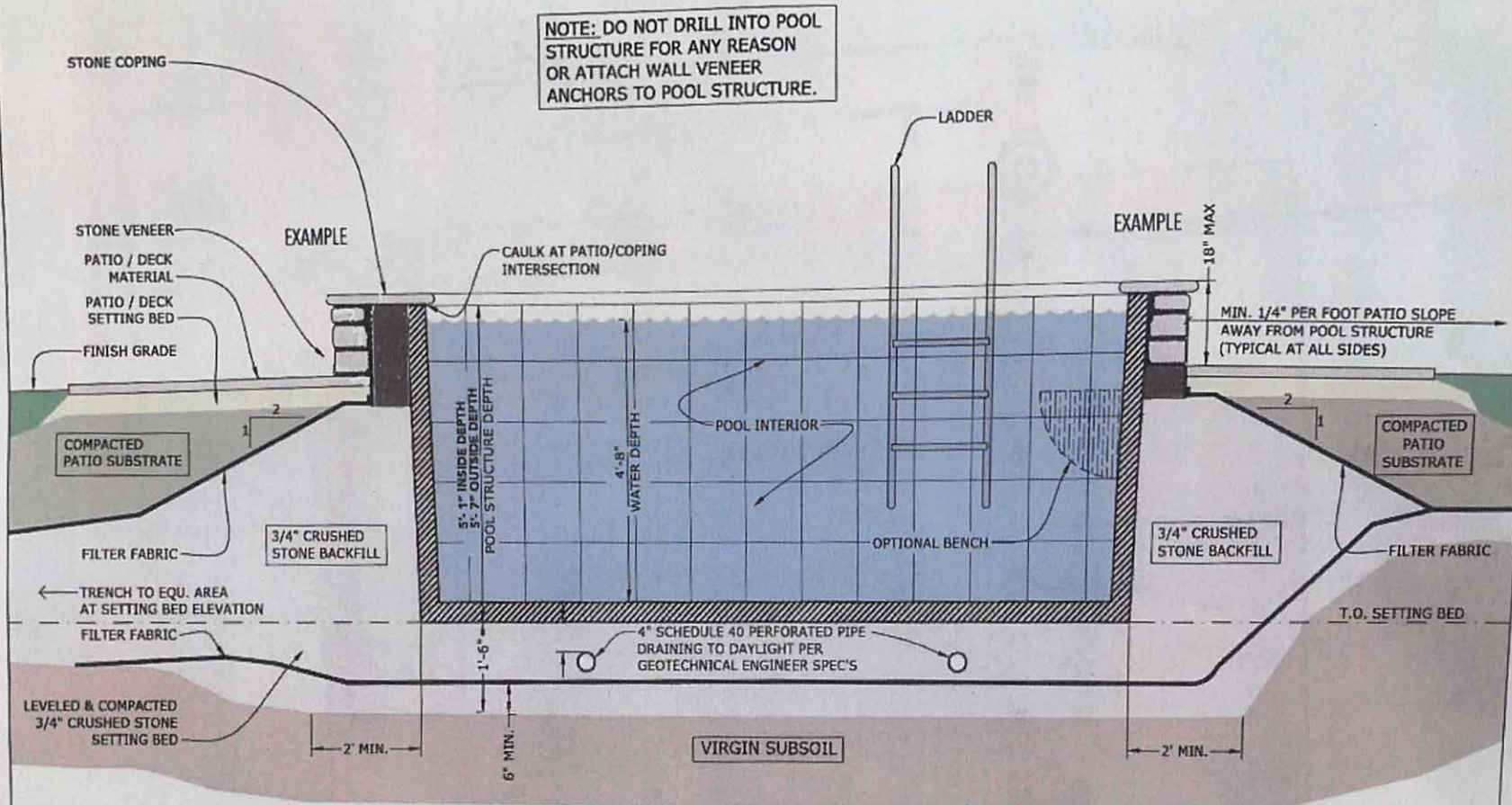
All data is provided for graphic representation only. The City of Cambridge expressly disclaims all warranties of any type, expressed or implied, including, but not limited to, any warranty as to the accuracy of the data, merchantability, or fitness for a particular purpose.

www.cambridgema.gov/gis



- Address
- Rail
- Building Footprints
- Parcels
- Paved Surfaces
 - Paved Roads
 - Bridges
 - Unpaved Roads
 - Unpaved Parking
 - Sidewalks
 - Driveways
 - Alleys
 - Other Paved Surface
 - Public Footpath





NOTES:
 Interior pool depth 61" (5'-1")
 Exterior pool structural depth 67" (5'-7")
 Base of pool is 6" thick

DIAGRAM A

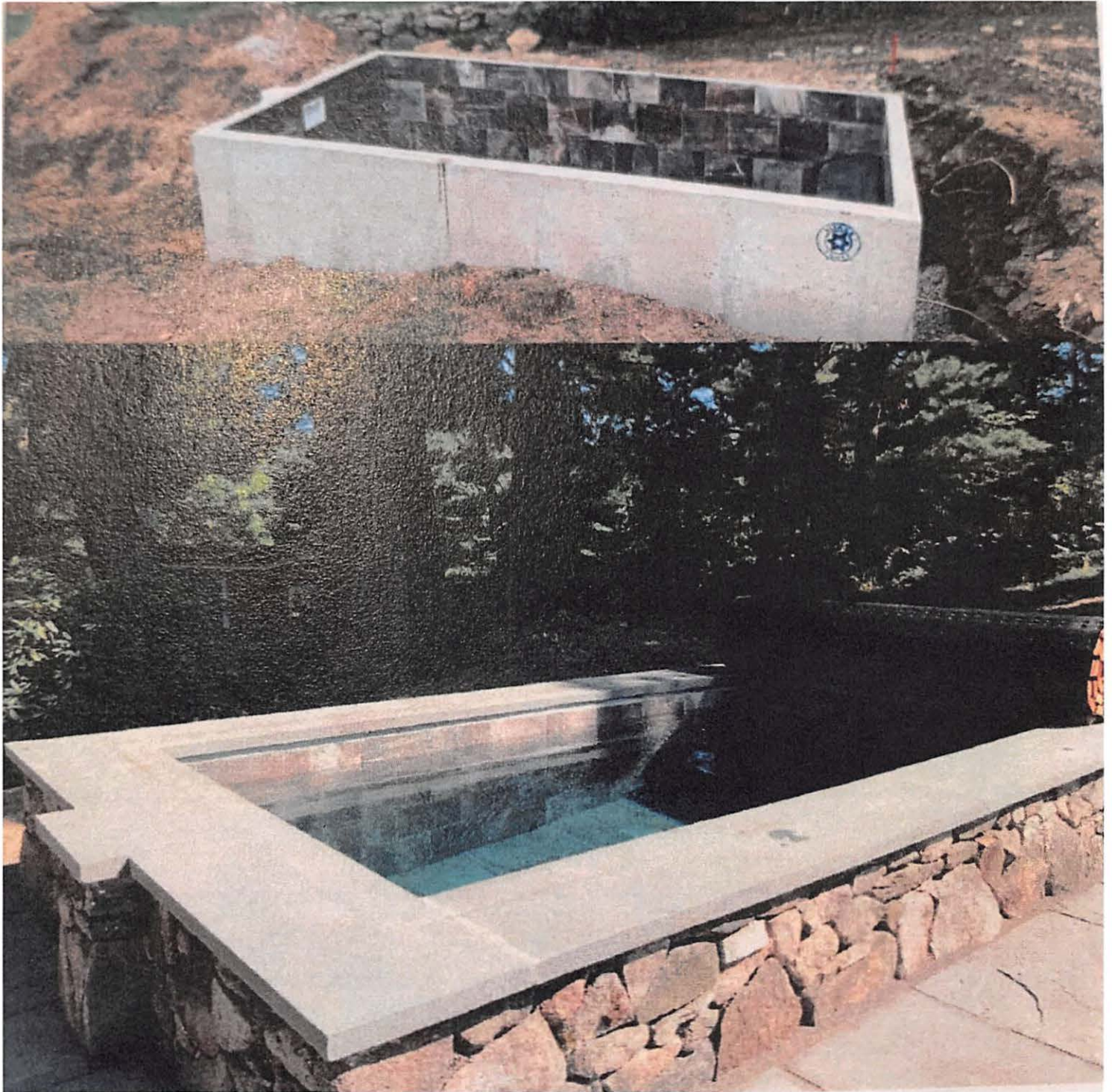
RAISED INSTALLATION

GRAPHIC SCALE:



SOAKE POOLS
 WWW.SOAKEPOOLS.COM
 PHONE: 603.749.0665

NOTE: Methods described for backfill and compaction are not guaranteed to be ideal for all sites. To be certain of what method you should use, consult a licensed geotechnical engineer & structural engineer in your state





255 Commandants Way
Chelsea, MA 02150

(617) 354-0643
info@jeanbrookslandscapes.com
www.jeanbrookslandscapes.com

DAVIS RESIDENCE
11 GRAY GARDENS EAST
CAMBRIDGE, MA

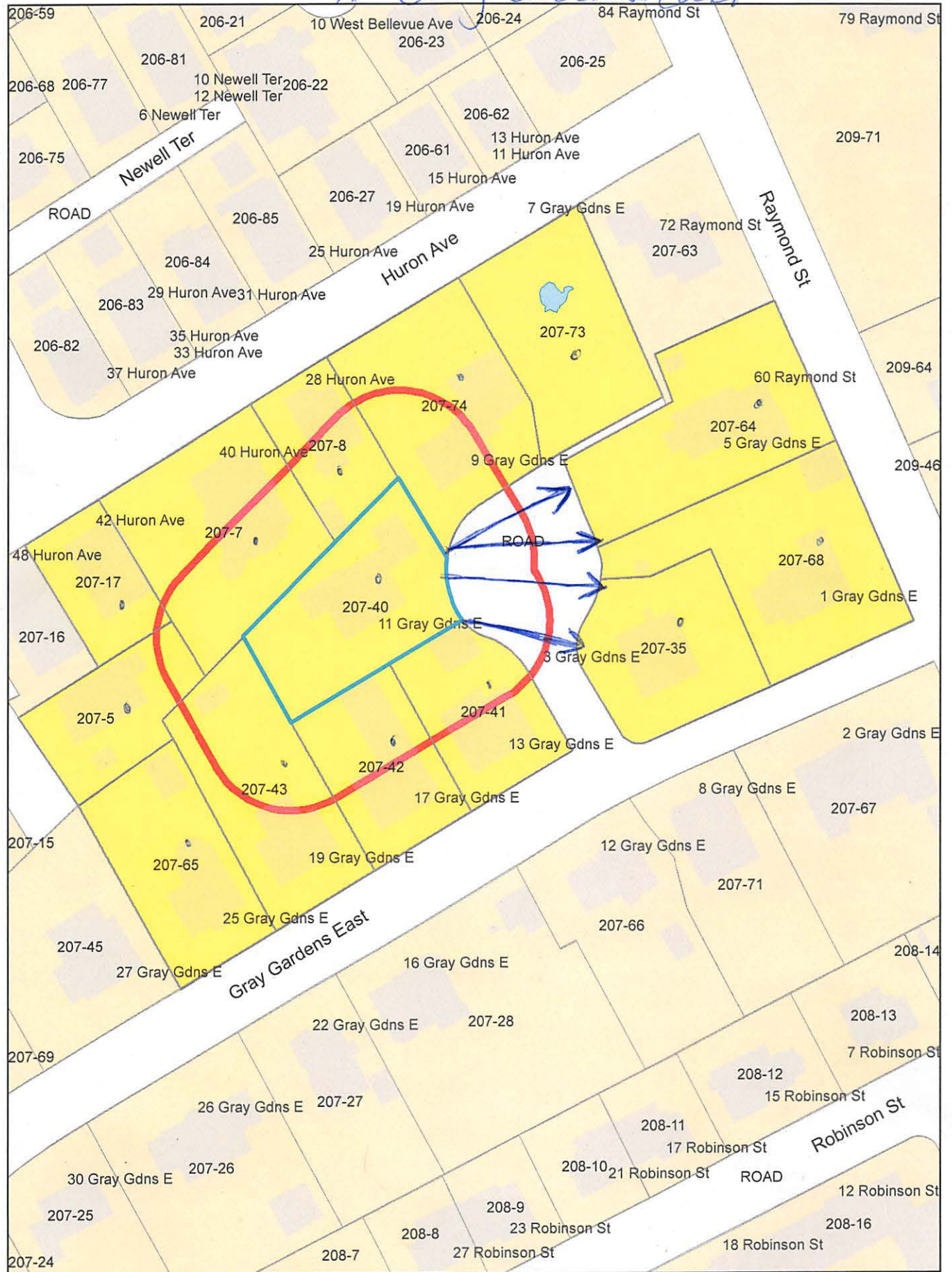
Built Or Paved Area
(Impermeable)
approx 3,892

Permeable Area:
approx. 4,492

SCALE 1/16" = 1'
JANUARY 27, 2021



11 Gray Gardens East



11 Gray Gardens E.

Petitioner

207-7
SULIKOWSKI, ALAN V. & MARISA G. SULIKOWS
40 HURON AVE
CAMBRIDGE, MA 02138

207-17
SULLIVAN, MICHAEL A. & DENISE M. SULLIVAN
42 HURON AVE
CAMBRIDGE, MA 02138-6706

JAMES J. RAFFERTY, ESQ.
907 MASS AVENUE – SUITE 300
CAMBRIDGE, MA 02139

207-64
MORIARTY, JOHN J.III &
KATHRYN ROSE MORIARTY
60 RAYMOND ST
CAMBRIDGE, MA 02140

207-40
DAVIS, THADDEUS H. & JULIANA V. DAVIS
11 GRAY GDNS E
CAMBRIDGE, MA 02138

207-5
SEVERINO, VITTORIO & STEPHANIE HAIMS
6 CUTLER AVE
CAMBRIDGE, MA 02138

207-8
EPSTEIN, ARON & JACQUELINE BELL
28 HURON AVE
CAMBRIDGE, MA 02138

207-42
KHOSLA, ANIL
17 GRAY GARDENS EAST
CAMBRIDGE, MA 02138-1509

207-43
WEBB, CHARLES & FRANCES T WEBB
19 GRAY GARDENS EAST
CAMBRIDGE, MA 02138

207-65
HOLTZWORTH, ANNE S.
23 GRAY GARDENS EAST
CAMBRIDGE, MA 02138

207-73
JOBIN-LEEDS, GREGORY & MARIA JOBIN-LEEDS
TRUSTEES OF SEVEN GRAY GARDENS REALTY TR
BOX #390109
CAMBRIDGE, MA 02139

207-35
NATHANSON, LARRY & ANNA NATHANSON
3 GRAY GARDENS EAST
CAMBRIDGE, MA 02138

207-68
IATRIDOU, SABINE & CONSTANTINOS MARINOS
1 GRAY GARDENS EAST
CAMBRIDGE, MA 02138-1547

207-74
JOBIN-LEEDS, GREGORY & MARIA JOBIN-LEEDS
9 GRAY GARDENS EAST
CAMBRIDGE, MA 02138

207-41
HARWOOD, SIBLY Y.
13 GRAY GARDENS EAST.
CAMBRIDGE, MA 02138-1509

ADAMS & RAFFERTY
ATTORNEYS AT LAW
A Professional Association *
907 Massachusetts Avenue, Suite 300
Cambridge, MA 02139

James J. Rafferty, P.C.
jrafferty@adamsrafferty.com

Telephone (617) 492-4100
Fax (617) 492-3131

March 19, 2021

Board of Zoning Appeal
831 Massachusetts Avenue
Cambridge, MA 02139

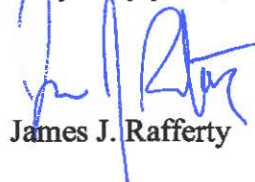
RE: BZA Case No. 107421
11 Gray Gardens East

Dear Members of the Board:

Please find delivered herewith revised plans for the above-captioned case.

Thank you for your attention to this matter.

Very truly yours,

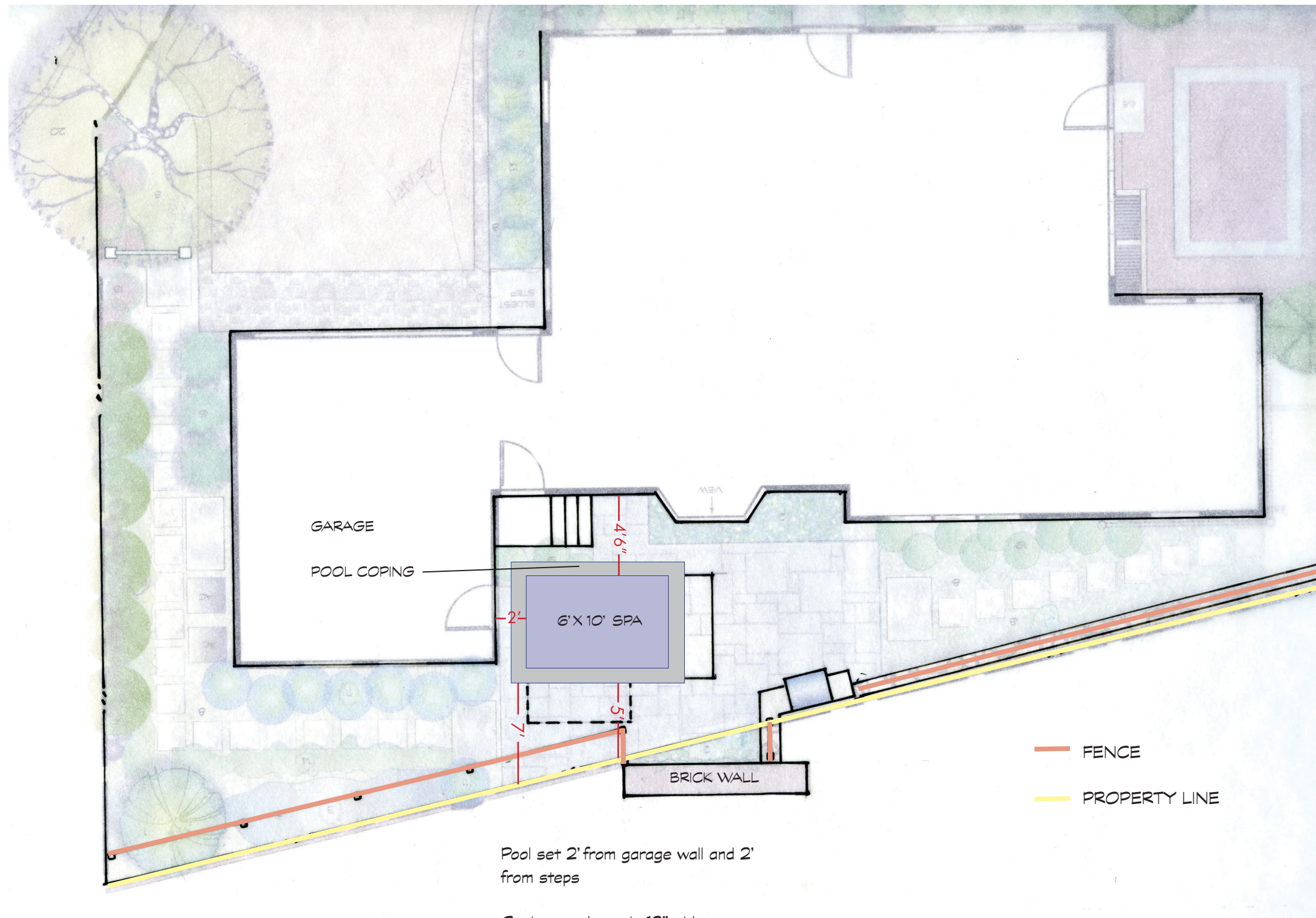


James J. Rafferty

cc: Lulu and Thad Davis

JJR/pwc

**not a partnership*



255 Commandants Way
Chelsea, MA 02150

(617) 354-0643
info@jeanbrookslandscapes.com
www.jeanbrookslandscapes.com

DAVIS RESIDENCE

6' x 10' SPA LOCATION

GRAY GARDENS EAST
CAMBRIDGE, MA

1/8" = 1'
MARCH 16, 2021

* * * * *

(7:45 p.m.)

Sitting Members: Constantine Alexander, Brendan Sullivan,
Andrea A. Hickey, Jim Monteverde, and
Laura Wernick

CONSTANTINE ALEXANDER: Okay, the Chair will now
call Case Number 107421 -- 11 Gray Gardens East. Anyone
here wish to be heard on this matter?

JEFF ROBERTS: good evening Mr. Chair, it's James
Rafferty on behalf of the applicant, Thaddeus and Julianna
Davis. Mr. and Mrs. Davis are on the call as well. They
are joining us from the subject property, their home, where
they live with their children in West Cambridge.

And this is an application to allow for relief
from -- or provide for a reduction in the setback
requirement associated with an accessory structure.

The accessory structure in this case is a small
spa or pool. It's a 6 x 10 some might call it a hot tub or
as far as it's a -- it's something that is intended to be
used in the -- by the family in their back yard.

And part of the hardship here is that it is a very
unusual shaped lot. It is on a cul-de-sac. The rear yard

1 gets narrow at a 45-degree angle. If it's possible to take
2 a look from Ms. Daglian at the plan we submitted by Gene
3 (sic) -- that's perfect, thank you -- this image really
4 tells the whole story of the case quite effectively.

5 The spa that we're referring to is the blue
6 rectangle in the left-hand corner there. Its set back as an
7 accessory structure, is required to be five feet from the
8 rear and side lot line.

9 In this case, given the need to accommodate a
10 stairway coming out of the house, the spa is actually only
11 going to be three feet from that rear setback.

12 There is a six-foot fence along the rear property
13 line, and -- so the issues of privacy or impact on abutters
14 is quite narrow and limited. The way the house is oriented,
15 this really represents the only area of privacy that this
16 fixture could be located in.

17 It -- we've been over -- I've been over this issue
18 many times with the Building Commissioner as to what
19 qualifies it as a structure, or why it would be subjected to
20 the same requirements as accessory structures.

21 Often, the most typical accessory structure the
22 Board encounters is a garage, and those accessory structures

1 need to be five feet off the rear and side, and cannot be
2 greater than 15 feet in height, as I'm sure the Board is
3 aware.

4 In this case, as I said, the plans reveal that
5 this -- reveal on as far as only approximately 18 inches out
6 of the ground. It would be in a landscaped patio area, and
7 would fit nicely within the existing yard.

8 And the relief is to allow for a reduction that
9 setbacks were I2P.

10 It's also the case for accessory structures that
11 they need to be -- have extensive separation between the
12 structure and the principal structure. And in this case,
13 that also is not possible. So the relief on the dimensions
14 affects both the setbacks involving the rear abutter and the
15 10-foot separation between the principal structure and this
16 pool or spa. Thank you.

17 CONSTANTINE ALEXANDER: You talked in your
18 presentation and submission about privacy as a justification
19 for seeking the relief here. But of course privacy is not
20 what setbacks are all about. Can you -- putting privacy
21 aside for a second, can you locate the structure -- spa/pool
22 -- on the site without any zoning relief?

1 JEFF ROBERTS: I mean, theoretically it could go
2 in the -- I mean, I imagine it could fit in the front yard
3 of the house. That is correct. I am --

4 CONSTANTINE ALEXANDER: This is my problem -- and
5 this is probably only my problem -- setbacks are a big issue
6 in our zoning, because of the fact that this is a densely
7 settled city, and particularly the older portions of the
8 city setbacks often kill a project or alter the nature of a
9 project -- and it has nothing to do with privacy -- it's a
10 matter of that's the way the ordinance is written.

11 Here, the same ordinance applies. You can do it
12 somewhere else. Yes, you can't be as private as you might
13 like, but legally there's nothing in the variance
14 requirements that deal with privacy. I mean, what's the
15 hardship? What's the hardship owing to circumstances
16 relating to the soil conditions, shape or topography? I
17 just don't get it. I understand the non-legal reasons why.

18 JAMES RAFFERTY: Well, Mr. Chair, let me suggest
19 that I wouldn't concur with your assessment that privacy is
20 an irrelevant consideration to the Land Use Law. The whole
21 purpose of setbacks has to do with mass. Privacy is very
22 much a factor. That's why special permits are needed to put

1 windows in nonconforming walls; it's a direct function of
2 privacy.

3 Now in this case, the reason I noted the privacy
4 is because it's two feet closer to the rear setback. And I
5 think the issue for the Board to consider is what is the
6 impact of this spa being two feet closer to that rear
7 property line. Does it adversely affect the property
8 interest of the rear abutters?

9 What -- that two-foot requirement, there's a
10 reason accessory structures have a height limitation.
11 Because if they're allowed to be five feet within a rear or
12 side setback, it has an impact on how looming the structure
13 might be when it gets the benefit of that compromised
14 setback.

15 It's worth pointing out here that there is no
16 mass, there is no walls associated with this. This zoning
17 relief is subject to the same requirement if this was a
18 shed. If this was a shed or any other structure 10 feet
19 high, it would have a visual impact on the rear abutters.

20 It may even have a privacy impact on the rear
21 abutters, which I would contend has high relevance in terms
22 of assessing the impact of this and whether it has --

1 whether it derogates on the intent of the ordinance.

2 So the reason for the accessory -- the reason for
3 the modified setbacks for accessory structures is a
4 recognition that those structures are less impactful. So as
5 garage can be closer than a principal residence.

6 In this case, it may not be dispositive, the issue
7 of privacy, but I would contend it certainly has relevance.
8 And the Board looks at the shape of the lot.

9 These are features, these are pertinences that
10 ordinarily go in rear yards. It would be an unusual case to
11 have a spa of this nature in the front yard of a home. So
12 the applicants have come before the Board having now been
13 informed that what they're proposing is two feet too close.

14 So I suppose theoretically one could say, well,
15 and then if the -- if the spa was a bit not as long, if it
16 wasn't six foot by 10, but if it was six foot by eight, they
17 would make the five-foot setback. But unfortunately, the
18 manufacturer doesn't have a model of six foot by eight.

19 So I think the Board should focus on what the
20 impact is on this structure being two feet closer to the
21 rear abutters. Because the setbacks are there for the
22 protection of those abutters. And I think in this case it

1 cannot be said that there is an adverse impact.

2 So the two-foot differential here on something as
3 modest and small as this simply isn't going to derogate from
4 the intent of the ordinance, and what's intended by the
5 accessory structure reduced setback.

6 That's the case, and it has everything to do with
7 the size of the lot and the very unusual shape of that
8 narrow -- if you look in that rear yard, this is the most
9 expansive section of rear yard on the lot. So it's a
10 logical location to seek, to locate this spa.

11 CONSTANTINE ALEXANDER: I'm trying --

12 ANDREA HICKEY: I'm sorry, go ahead, Mr. Chair.

13 CONSTANTINE ALEXANDER: Oh, I'm sorry. Go ahead,
14 Andrea.

15 ANDREA HICKEY: Counselor, is there any reason why
16 the spa couldn't be sort of turned in the other direction to
17 sort of go --

18 JIM MONTEVERDE: Rotated 90 degrees?

19 ANDREA HICKEY: Exactly.

20 JIM MONTEVERDE: I think one of my -- they looked
21 at a number of alignments, and maybe Mr. and Mrs. Davis
22 might be permitted to respond to that?

1 THADDEUS DAVIS: It actually, it mostly -- thank
2 you, very much, everyone, by the way. It mostly -- that
3 orientation, and I agree with you, makes more sense to
4 consider it to be an east-west, the way that it comes out.
5 It has to do with the systems and mechanics and tying it in
6 to the electrical and gas needs. And that -- this
7 orientation is the easiest.

8 What has not been said yet is these are
9 prefabricated models. And so, we just mentioned the size
10 constraint and the limitations on the customization there.

11 But one thing that I think we should emphasize is
12 this project, ideally, is going to be very quick, and this
13 is the fastest method for it to have.

14 And our back abutter has been fantastic about it.
15 And no one has raised any concerns beyond what -- how long
16 the construction will be, really.

17 So this is to be the most expeditious. But I do
18 suppose we could explore a sort of east-west orientation as
19 well.

20 ANDREA HICKEY: Attorney Rafferty, if it was moved
21 90 degrees, would you still need relief?

22 JAMES RAFFERTY: It would from the 10-foot

1 separation requirement, but --

2 THADDEUS DAVIS: Either way --

3 JAMES RAFFERTY: Not from the rear setback, I
4 don't believe.

5 THADDEUS DAVIS: Correct.

6 LAURA WERNICK: I have a question to the Chair.

7 CONSTANTINE ALEXANDER: Go ahead, Laura.

8 LAURA WERNICK: Mr. Rafferty, if this was not a
9 spa, but simply a rain platform, a different layer for the
10 outdoor patio, would it still require the solid -- would it
11 require a --

12 JAMES RAFFERTY: Yes.

13 LAURA WERNICK: -- a --

14 JAMES RAFFERTY: No, it would not. And it's an
15 excellent analogy. I asked the Commissioner, "So if this
16 was a patio with a fire pit -- which are becoming
17 increasingly popular recently with people spending time
18 outside -- it would acknowledge that this same hardscape,
19 the same gathering could occur around the fire pit, and it
20 would not be subject to the setback requirement, because the
21 fire pit would not be considered a structure.

22 So this piece of equipment that comes 18 inches

1 out of the ground is being treated as a structure under the
2 terms of the zoning ordinance. And if you look at the
3 definition of structure, it's a little hard to think of it.

4 If it was a swing set, which could be right in
5 that location and engender even more activity, it would not
6 require zoning relief, because it would not be treated as a
7 structure.

8 If it was an aboveground pool that wasn't
9 permanent, but was one of those pools that are not in
10 ground, but above ground, it would not be treated as a
11 structure, nor would it require this. But because it is of
12 a configuration that it has plumbing and gas heating tied to
13 it, the inclusion by the Building Department has been that
14 it is a structure.

15 So it is not a conventional structure, it is not a
16 typical structure, and I think that factor as well suggests
17 that some relief from the requirement is in order when we're
18 dealing with less than conventional structures. This thing
19 is 18 inches out of the ground.

20 ANDREA HICKEY: And it does just seem a little odd
21 that we're concerned about the back yard setback; we don't
22 seem to be concerned about the adjacency to the home, and

1 that neither of those variance requirements really impact
2 anyone or anything. And it just seems like this is a very
3 legalistic issue that we're dealing with, rather than
4 something that has any impact on anyone or anything.

5 So the definition of what a structure is. And in
6 this case, the physicality of this is the only -- or the 18-
7 inch depth of it is the only thing that puts it into this
8 category.

9 Counselor, it would be helpful for me to visualize
10 what's on the other side of that fence, if you know.

11 JAMES RAFFERTY: Well, the Assessor's database,
12 which I believe is in there, shows -- I found this rather
13 coincidental for Cambridge -- is image #5. The property's -
14 - what was considered the former Massey (sic) home, which is
15 right in front here, has -- which is above, the front's on
16 Huron Avenue, those property owners have a swimming pool.

17 And the people two doors over -- the other side
18 and rear abutter -- they happen to enjoy a swimming pool as
19 well. I can't think of another neighborhood in Cambridge
20 where I've come across so many swimming pools.

21 So that's why I pointed out the privacy of the
22 fence ensures that the abutters who spend time in their back

1 yards and swimming pools do enjoy privacy that would not be
2 adversely affected by the introduction of this stock.

3 CONSTANTINE ALEXANDER: Laura, do you have any
4 follow up questions, or Andrea?

5 ANDREA HICKEY: Not at the moment.

6 JIM MONTEVERDE: This is Jim Monteverde, I have
7 one. Sisia, can you go back to slide one, please? This is
8 the follow up to other options on the property. So I see
9 that in the upper left-hand corner, that looks like the
10 drive-in and drive court --

11 COLLECTIVE: Yes.

12 JAMES RAFFERTY: That's the driveway off the --

13 JIM MONTEVERDE: -- at the top of the drawing it
14 looks like a --

15 JAMES RAFFERTY: Right.

16 JIM MONTEVERDE: And in the top that's a walkway,
17 pedestrian walkway. And then you take a right, and that's
18 the front door of the house?

19 JAMES RAFFERTY: Correct. As you pull in that
20 driveway, Mr. Monteverde, on the right is a two-car garage,
21 right there. This is located --

22 JIM MONTEVERDE: Oh, okay, yes. I got it.

1 JEFF ROBERTS: This is located behind the garage
2 and can be accessed easily right from the garage, and the
3 equipment associated with it can be stored in the garage.
4 And then --

5 JIM MONTEVERDE: Okay. And then -- yep. And if
6 you continue down that walkway past the entry, there's a
7 paved yard area?

8 THADDEUS DAVIS: There's a patio, correct. That's
9 correct.

10 JIM MONTEVERDE: Yeah, right. And then the
11 property extends further to the right, off page right?

12 THADDEUS DAVIS: It does.

13 JIM MONTEVERDE: Yep.

14 THADDEUS DAVIS: Approximately 20 feet or so?

15 JIM MONTEVERDE: Okay. And it -- just so not at
16 the front door, not at your front driveway, but is there an
17 opportunity to locate the spa in that -- toward the right?

18 THADDEUS DAVIS: We looked and carefully
19 considered that, and I will --

20 JIM MONTEVERDE: Yep.

21 THADDEUS DAVIS: -- say this; the systems of the
22 house are very closely oriented where this rendering has the

1 pool.

2 So the -- I mean I guess our goal here was to do
3 the combination of what the most sense from sort of a
4 privacy and that type of prospective, but also what was the
5 most efficient use of everybody -- the trains that needed to
6 come in and run various, you know, lines, and the other side
7 of the yard, which is much sort of more open, was much --
8 was considerably more difficult to do that.

9 JULIANNA DAVIS: Additionally, getting it to that
10 other side of the yard, with the particular company that
11 does the prefabricated pools is not possible. We considered
12 doing it there first, actually -- you know, even though we
13 prefer to do it where it was more private, but we considered
14 it there first, and the company is not capable of getting it
15 to that place.

16 JIM MONTEVERDE: Really?

17 JULIANNA DAVIS: Yes.

18 JIM MONTEVERDE: So how did they get it -- but
19 they can get into that location behind where you're
20 proposing?

21 THADDEUS DAVIS: This is -- it's a prefabricated
22 metal. I mean, I'm sorry --

1 JIM MONTEVERDE: Yeah, no, I saw the photos, yep.

2 THADDEUS DAVIS: It's very heavy, and the -- and
3 crane necessary to reach to our other yard, which would be
4 the --

5 JULIANNA DAVIS: Was impossible.

6 THADDEUS DAVIS: -- was very --

7 JIM MONTEVERDE: Yeah. No, no, I can see the
8 logistics of that.

9 JULIANNA DAVIS: Yeah. We contacted three crane
10 companies and got -- and they all said the same thing.

11 JIM MONTEVERDE: Yeah. And I'm sure the
12 helicopter was too expensive.

13 JULIANNA DAVIS: It was.

14 THADDEUS DAVIS: We actually looked at a
15 helicopter.

16 JULIANNA DAVIS: No.

17 THADDEUS DAVIS: The new Sikorsky would do it.

18 JIM MONTEVERDE: The Sikorsky would do it.

19 JULIANNA DAVIS: Yeah.

20 JIM MONTEVERDE: And looking at the plan again --
21 not that I want to beat this thing mercilessly --
22 but there's a stair that's modified that's extended. Again,

1 I'm just looking to find a way to either rotate your full 90
2 degrees to get it out of that setback --

3 THADDEUS DAVIS: Yeah.

4 JIM MONTEVERDE: -- or the other option. I see
5 the stair that is at the top of that pool plan. Is there a
6 way to relocate it so you could snug the pool in that inside
7 corner of your existing dwelling to get it out of the
8 setback and find another location for that stair down to the
9 patio area?

10 THADDEUS DAVIS: No. Well, to answer your
11 question in all honesty, not to get it out of the setback,
12 but we are accurately trying to figure out a way to skinny
13 that stair. So that's an important egress from our house.

14 We're trying to figure out how we might be able to
15 keep the pool a little bit underneath it. That's where our
16 filter is, and that's where some necessary mechanics are.

17 JIM MONTEVERDE: Mm-hm.

18 THADDEUS DAVIS: So we are assessing that. But
19 what we wanted to do is show kind of warts and all, this is
20 worst-case scenario. We are going to try once we get under
21 there to see if we can move it away from that back property
22 line.

1 JULIANNA DAVIS: Actually, we still have the issue
2 of it being not 10 feet from the house. So we have the --

3 THADDEUS DAVIS: Yeah.

4 JULIANNA DAVIS: -- two issues.

5 JIM MONTEVERDE: Right, but you have that either
6 way.

7 JULIANNA DAVIS: Right, correct.

8 THADDEUS DAVIS: Right, right, exactly.

9 JIM MONTEVERDE: You've got that either way. All
10 right. I can deal with that one I think easier, then the
11 sitting and the setback. So I'm just looking for those in
12 this location, those two opportunities -- rotated 90
13 degrees, or modify the stair, get rid of it so you can tuck
14 the pool up into that corner so you don't have to deal with
15 the setback issue --

16 THADDEUS DAVIS: Correct.

17 JIM MONTEVERDE: -- and yes, you may have to
18 rearrange plumbing or your egress from the house, but there
19 should be a way to enable that to happen with the pool in a
20 slightly revised location so you're out of the setback.

21 THADDEUS DAVIS: Mm-hm. Right.

22 JIM MONTEVERDE: So that's my comment. I would

1 just ask you to look at those, those two particular options
2 in that location and just make it work.

3 THADDEUS DAVIS: Yeah. And I would just offer
4 that because of the proximity to the fence line there, you
5 know, that makes for an awkward transition as we come around
6 the house, and we'd like as much space there as possible
7 too.

8 So we are well incentivized to create as much
9 space between the pool that -- you know, you think of an 18-
10 inch, you know, shin wrecker, this is that. So you want to
11 have a little bit of a lift there between that and the fence
12 line.

13 JULIANNA DAVIS: And we just figured if we needed
14 a variance anyway, we could consider --

15 THADDEUS DAVIS: Yeah, right, exactly.

16 JULIANNA DAVIS: If it's a deal killer, we would
17 rotate it 90 degrees.

18 JIM MONTEVERDE: Yeah. And I'm just looking for
19 the grounds to be able to support it. You know, what could
20 be modified that I could be in support of this proposal?

21 And I think at the moment it's just -- you know,
22 I'm trying to figure out a way -- it looks graphically like

1 there should be a way to be able to maintain this setback at
2 least by the -- as we said, either rotating the pool, and if
3 that's an option for you, then I would encourage you to
4 explore that route and suggest modifying this. That I could
5 support.

6 JAMES RAFFERTY: Mr. Chair, it's worth noting in
7 the exchange with Mr. Monteverde, it's helpful that the
8 relief does involve two components, and it seems like if the
9 Board were to evaluate this, it seems like there might be
10 more support for the 10-foot separation from the house than
11 for the relief, the two-foot relief being sought in the rear
12 setback.

13 And if that proved to be the case, I wouldn't want
14 the matter to go to a vote tonight from the Board, because -
15 - as you know -- if there was an adverse finding on the
16 application, it would affect the ability to explore the 10-
17 foot separation issue with a turned pool or a --

18 CONSTANTINE ALEXANDER: Mr. Rafferty, are you
19 suggesting that we sort of bifurcate or vote on part of this
20 proposal tonight? And continue the other part of the
21 proposal?

22 JAMES RAFFERTY: Well, I was trying to see whether

1 I was sensing that there may not be four votes for the
2 setback, given the fact that there is an as-of-right
3 alternative in the general area this far that would not
4 require relief from the five-foot setback.

5 And I was gathering from Mr. Monteverde's comments
6 that perhaps compliance with the rear setback might be
7 sufficient for his willingness to support the 10-foot
8 separation request. And I'm guessing that once that spa
9 gets turned, the 10 feet probably gets reduced to about five
10 feet.

11 So I'm trying to -- it's hard not to be able to
12 lean over to one client in this format and say, "You know,
13 we've got an option here you could continue. The Board
14 doesn't typically allow for alterations by hand at the
15 hearing.

16 So if the Board were -- if the applicants were to
17 follow the suggestion of Mr. Monteverde to explore the
18 different alignment of the pool, I'm guessing the view of
19 the Chair would be that that would warrant a continuance of
20 this case and the submission of a new drawing.

21 CONSTANTINE ALEXANDER: You're correct. And I
22 encourage that exploration. But I think we have to continue

1 the case tonight and hear more after you've gone through and
2 worked with these -- some of the things that have been
3 talked about tonight.

4 So why don't we just continue this case? I think
5 it's the safest way from your perspective, Mr. Rafferty.

6 JAMES RAFFERTY: No, I share that view and I
7 appreciate your candor. And I just -- I just want to be
8 able to express that to the Davises while we're discussing
9 it.

10 Continuing the case really seems to be the only
11 vehicle, because four members of the Board would have to
12 vote to sign the necessary hardship for this relief, and I
13 think I'm sensing that before there was support for that,
14 there would at least be an expectation that an alternative
15 alignment be explored.

16 CONSTANTINE ALEXANDER: Okay. How much time -- so
17 let's talk about continuing the case -- how much time would
18 you like to -- before we reconvene? And then we'll see
19 about the availability of the Board members and our calendar
20 as well?

21 JAMES RAFFERTY: It really comes down to the
22 Davises being able to tell me how long do they think it will

1 take Ms. Brook's (sic) office to generate a --

2 JULIANNA DAVIS: They already have it. We have it
3 already.

4 THADDEUS DAVIS: I think what we've tried to do
5 here is put the combination forward of the most realistic
6 scenario, which we actually hope would -- as I mentioned --
7 the worst-case scenario, we were hoping the setback would be
8 actually ultimately less than this once we got really into
9 the specifics of what's underneath those steps.

10 But this is the orientation of the people involved
11 have advised us is that is the best. And so, this was the
12 case that we felt was the most representative of what we
13 wanted to achieve.

14 JAMES RAFFERTY: No. We understand that. The
15 question is do you wish to continue the matter to present an
16 alternative?

17 CONSTANTINE ALEXANDER: And I'd -- I'm sorry to
18 interrupt, Mr. Rafferty -- you may not continue when you
19 come back and say, "There is no alternative that works for
20 us. We want to go ahead with the project and take the
21 vote." But I think your case -- as Mr. Rafferty correctly
22 has assessed this, taking a vote tonight would be very

1 risky.

2 And I think it's -- I personally think, I'm not
3 your counsel -- it's worth the while to take the time and to
4 further explore this, taking into account what Mr. Rafferty
5 and other members of the Board have said.

6 THADDEUS DAVIS: Yeah.

7 LAURA WERNICK: Mr. Davis, could you -- or, could
8 you just clarify something for me? Are you -- do you feel
9 that there's a question if you did turn the pool 90 degrees
10 there's a possibility that could not work with the
11 installer? You're not confident that it will work?

12 THADDEUS DAVIS: The installer in tandem with the
13 landscape architect came up with this orientation. And we -
14 - in all fairness, we had oriented it the other way to begin
15 with. And this was their preferred orientation.
16 Accommodation of cost access and really kind of -- the way
17 that they wanted the pool oriented. And so, that's why we
18 were --

19 LAURA WERNICK: We live in a, you know, an
20 electronic time and I don't know if this makes any sense to
21 any party, but perhaps the Board might consider if you feel
22 you could go ahead with the other alternative and you have

1 it in hand, you could get autographs and scans sent to us,
2 and the Chair could conceivably sign that plan, and there
3 wouldn't have to be a continuance. I'm just offering that
4 as a possibility.

5 THADDEUS DAVIS: Yeah. Well, is that -- like, we
6 could do that this very minute type thing?

7 LAURA WERNICK: That's what I'm asking the Chair
8 if that would be acceptable?

9 THADDEUS DAVIS: We do have those renderings, and
10 we have had them assessed for feasibility, and we've gotten
11 signoff on it. This was our preferred avenue, as I said,
12 but we do have the other renderings. And I think we would
13 be willing to accept that.

14 I don't want to put a big gross, aboveground hot
15 tub back there. I was trying to do something that was
16 slightly more serene and calm and frankly nicer.

17 But we're thinking -- you know, now I sort of feel
18 -- I don't -- so it's a strange place we find ourselves in.

19 LAURA WERNICK: Maybe we're taking the two weeks
20 to think about it?

21 THADDEUS DAVIS: Yeah. I don't know if I can scan
22 this.

1 LAURA WERNICK: You can e-mail it to somebody, if
2 that helps?

3 JIM MONTEVERDE: Yeah. Photograph it, e-mail it,
4 I don't know.

5 CONSTANTINE ALEXANDER: I'm not sure --

6 JULIANNA DAVIS: And who should I send it to?

7 CONSTANTINE ALEXANDER: I don't think this is a
8 useful discussion right now. If you've got these other
9 plans, you're giving them to us on the spot, let's sit down,
10 take however long -- we'll figure out how long you need to
11 do that, come back with a new presentation that shows those
12 plans, if you want to, or other alternatives. Now, I'm not
13 going to do make -- on the fly. I don't want to vote on the
14 fly on these alternatives, I'm sorry.

15 JAMES RAFFERTY: I understand, Mr. Chair.

16 CONSTANTINE ALEXANDER: I'm sorry.

17 JAMES RAFFERTY: I think the answer is that we
18 would -- it appears that the applicants would be able to
19 come back as soon as the Board's schedule would permit their
20 return, since it appears they already have the plans
21 necessary. So we wouldn't need any time in preparation, it
22 would just be a question of how soon the five members could

1 assemble for it?

2 CONSTANTINE ALEXANDER: All right. Let's start --
3 fine. Sisia, if we want to do it on March 25, which is the
4 very next hearing --

5 SISIA DAGLIAN: Yeah, we already have three cases.

6 CONSTANTINE ALEXANDER: We have three cases?

7 SISIA DAGLIAN: April 8? Yeah, April 8 we could
8 do.

9 CONSTANTINE ALEXANDER: April 8 is the quickest?

10 SISIA DAGLIAN: Correct, yeah.

11 CONSTANTINE ALEXANDER: That's the date that
12 accommodates our schedule. I have to deal with the other
13 Board members to make it on April 8. That's what we're
14 looking at. So let me just ask that question before you
15 answer.

16 BRENDAN SULLIVAN: [Brendan Sullivan], I'm
17 available on the eighth.

18 CONSTANTINE ALEXANDER: Brendan's available. I'm
19 available.

20 JIM MONTEVERDE: Jim Monteverde's available.

21 CONSTANTINE ALEXANDER: Laura?

22 ANDREA HICKEY: Andrea -- I'm sorry, Laura, go

1 ahead.

2 LAURA WERNICK: I'm available as well.

3 CONSTANTINE ALEXANDER: We're all available, so we

4 --

5 ANDREA HICKEY: And Andrea Hickey. I'm available.

6 CONSTANTINE ALEXANDER: -- until 7:00 p.m. on
7 April 8.

8 JIM MONTEVERDE: There we go.

9 CONSTANTINE ALEXANDER: If that's -- should I make
10 the motion, Mr. Rafferty?

11 JAMES RAFFERTY: Yes, please. I'm looking at my
12 clients, and I think since that's the earliest the Board can
13 have us back, I think we'd appreciate that, and that will
14 give us time to review this and get a submission in, in
15 adequate time.

16 CONSTANTINE ALEXANDER: Okay. Well, time for a
17 motion then. The Chair moves that we continue this case as
18 a case heard until 7:00 p.m. on April 8, subject to the
19 following conditions, all of which are well known to Mr.
20 Rafferty:

21 First, that the petitioner must sign a waiver of
22 time for a decision -- well, Mr. Rafferty can explain is a

1 standard form. However, this waiver must be signed no later
2 than 5:00 p.m. on a week from Monday. If not, then the case
3 will be dismissed.

4 Second, the new posting sign, assuming there's no
5 winds this time -- a new posting sign must be put up for the
6 14 days prior to April 8, and maintained for those 14 days.

7 And last, to the extent there are new drawings,
8 plans, what have you, which I think there may be, those must
9 be in our files no later than 5:00 p.m. on the Monday before
10 April 8. Brendan, how do you vote?

11 BRENDAN SULLIVAN: Yes to the continuance.

12 CONSTANTINE ALEXANDER: Brendan votes yes.

13 CONSTANTINE ALEXANDER: Jim?

14 JIM MONTEVERDE: Jim Monteverde yes to the
15 continuance.

16 CONSTANTINE ALEXANDER: Andrea?

17 ANDREA HICKEY: Andrea Hickey yes to the
18 continuance.

19 CONSTANTINE ALEXANDER: Laura?

20 LAURA WERNICK: Laura Wernick yes to the
21 continuance.

22 CONSTANTINE ALEXANDER: And the Chair votes yes as

1 well.

2 [All vote YES]

3 Case continued until April 8 at 7:00 p.m. Thank
4 you.

5 JAMES RAFFERTY: Thank you very much.

6 THADDEUS DAVIS: Thank you. Have a good night.

7 CONSTANTINE ALEXANDER: Goodnight.

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