

BOARD OF ZONING APPEAL  
FOR THE  
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, AUGUST 10, 2017

7:00 p.m.

in

Senior Center

806 Massachusetts Avenue

First Floor

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Vice Chair

Janet Green, Member

Andrea A. Hickey, Member

Patrick Tedesco, Member

George S. Best, Associate Member

Sean O'Grady, Zoning Secretary

Sisia Daglian, Assistant Commissioner

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(7:05 p.m.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Board of Appeals to order. And as is our custom, we will start with continued cases. Actually, there's just one this time. This is a case that started at an earlier date and for one reason or another has been continued. In this case actually more than once, but we're going to hear it apparently tonight. Before I call that case, there's a statement I need to read:

After notifying the Chair, any person may make a video or audio recording of our open sessions or may transmit the meeting through any medium subject to reasonable requirements that the Chair may impose as to the number, placement, and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the Chair will inform other attendees at that meeting that a recording is being made.

And I wish to inform those of you in the audience that a recording is being made, actually two. A citizen of the city is tape recording the meeting, and our stenographer tape records the meeting as well to assist her when she prepares the transcript. So be advised that you're live on the radio or on somebody's tape.

Okay, with that I'll now move to the actual business.

\* \* \* \* \*

(7:05 p.m.)

(Sitting Members Case No. BZA-012995-2017: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: And I'm going to call case No. 012995, 4 Gracewood Park.

Is there anyone here wishing to be heard on this

matter?

SAROJ JOSHI: I wanted to apologize to the Board for keeping you. I was stuck.

CONSTANTINE ALEXANDER: That's okay, no problem.

As you know, the name and address to the stenographer, please.

SAROJ JOSHI: I'm Saroj Joshi of Cambridge.

PATTY SEITZ: Hi, and I'm Patty Seitz and my office is in Arlington, Massachusetts, and I'm the architect.

So we are here to present the case hopefully finally for 4 Gracewood Park. We've now met with all of the neighbors. We met with the last neighbor Michael who is also here tonight.

CONSTANTINE ALEXANDER: Michael Halley?

SAROJ JOSHI: Yes.

PATTY SEITZ: Is that his last name? Yeah. On the 28th. And he had -- he raised some issues around light,

both inside and exterior. We have tried to address them with him. I'm not sure that that's to his satisfaction, but I'm sure he'll speak for it on his own mind around that.

The issues that we're presenting tonight are a Variance for the -- in the front of the building that is -- we had an upper room that has five-foot, eleven and change at the side -- and just under six-seven, right around six-seven in the middle of the room. And we're asking to raise that. And because it doesn't meet FAR, it falls under a Variance, so we're looking for the addition square feet in there.

We're also asking in Special Permits in windows around that front. We're essentially reducing the number of windows and raising them. So the sill on the upper one which was in the original drawings is four-foot, ten to the windows. And below on the lower windows is five-foot, six. That there's no change to that whatsoever.

What we agreed with Michael that we would do is

frost them. We were gonna do it anyway. It's not in the drawings, but a letter that Saroj's brother submitted does explain that. But there's no change in dimensions. The dimensions are the same.

And then there was a light that he -- a spotlight on the corner of the building that he thought was offensive and didn't meet zoning regulations, and we also agree that we will, you know, move that or replace it as it will be inconsistent with the zoning regulations for the City of Cambridge. So that there would be no possibility of glare.

CONSTANTINE ALEXANDER: Does that change -- assuming we approve that, do you have to change the plans?

PATTY SEITZ: I have plans that show that, but that one light -- we've put it in the letter because it didn't change any of the requests that we were essentially making for a Variance or a Special Permit. But we will of course, Surinder has noted that in a letter to your Board,

and I did --

CONSTANTINE ALEXANDER: Do we have that letter?

I'm sorry. I don't remember seeing that letter.

PATTY SEITZ: You should have it.

CONSTANTINE ALEXANDER: Do we have that letter? I was at the ISD Department yesterday and there was no letter in the file I don't think.

PATTY SEITZ: Here is that letter.

CONSTANTINE ALEXANDER: We do have that letter -- it wasn't in the file yesterday, but I guess it is now. I have it.

PATTY SEITZ: Great, thank you. Excuse me.

So those were the material changes from it.

The other -- we've made no -- so as I've said, the location of the windows, the size of the windows, the only thing that's changed is that the glass would be frosted. We had not noted that in the original one because it's not an issue for a Variance or a Special Permit, but it will be in



there and he's put it in and I actually did make an R1 a couple of days ago. I've been in and out of the hospital in the last week and I also had to take my brother to the hospital, so I was a little bit incapacitated in being able to get those, but I do have those if that's helpful for tonight.

And then the other thing that we're also looking for was in the setbacks on the south side, which is if you're facing your house from the house is on the left side. There are some windows that we're actually reducing in size. And one that we are enlarging. And then in the rear of the house there was one window that we were actually making larger so that she would have more access to view her own back patio from inside.

And then we have an existing roof that's over -- that connects to her garage and her back house, and we wanted it -- it meets the requirements for FAR. We wanted to raise that roof slightly so that we could get a

stair in it to connect her in an indoor way to the garage, and that is a Special Permit because it meets the FAR. So those were the things that we're asking for essentially. And we -- and we have agreed to make the windows frosted and to do, you know, to make any other changes on interior lighting and anything else so that there would be no glare and lack of privacy. The only other issues that I -- or other things that I just wanted to submit, this is the view to Michael's house from her corner, that being his house. Here is the spotlight that's on the right-hand corner.

CONSTANTINE ALEXANDER: This is Michael's house with the arrow?

PATTY SEITZ: Yes.

CONSTANTINE ALEXANDER: And your house is where?

PATTY SEITZ: I'm standing at it. Then I'll show you it from the other direction.

CONSTANTINE ALEXANDER: Okay.

PATTY SEITZ: And then this is one -- these are

photos that I take. And this is one from, from in front of Michael's near that corner looking back at her house, and that's where the tree is. And then this is just a close up of where that tree is. Just to give you an idea of what the context is.

CONSTANTINE ALEXANDER: Okay. Just one more time, and I apologize my mind drifted for a second. You mentioned some modifications, like the light on the roof and the like. I just want to be sure that if they're not reflected on the plans, do they need -- do the plans need to be revised to reflect should we grant you the relief you're seeking?

PATTY SEITZ: Yes. And I have this revised set should you give us --

CONSTANTINE ALEXANDER: Is it materially different than this?

JANET GREEN: Is it just the light different than that?

PATTY SEITZ: I've actually highlighted them on

here if you want to look at it. It's just that we would take out the light and put in a light that complies with the Zoning --

CONSTANTINE ALEXANDER: Because under our rules and there are folks, the petitioner may need to be reminded of this. In our rules, the final plans must be in our files no later than five p.m. on the Monday before the hearing. Which means the final plans for your case must be must have been in our files. If the changes you're proposing are very modest as they appear right now, that rule, we can waive that rule and allow the plans that you now have, assuming we grant relief, to go forward. But if there are more serious modifications to the plans, they'll not --

PATTY SEITZ: There are no other modifications to the plans.

CONSTANTINE ALEXANDER: Okay, all right.

PATTY SEITZ: And I actually, on this set here I actually highlighted the things --

CONSTANTINE ALEXANDER: Okay, you've said that before.

PATTY SEITZ: -- just so you could, we could call it out. And I'd be happy to go over them. And I can hand them here now and also submit them electronically.

CONSTANTINE ALEXANDER: Okay, thank you.

PATTY SEITZ: Yeah.

CONSTANTINE ALEXANDER: Anything more at this point?

PATTY SEITZ: Not from me. I think we're --

CONSTANTINE ALEXANDER: Questions or comments from members of the Board at this stage?

JANET GREEN: No.

CONSTANTINE ALEXANDER: I'll open the matter up to public testimony, Mr. Halley, do you want to speak?

MICHAEL HALLEY: Thank you. I know I spoke either too softly or too loudly last time. I'll just to do it just right. First of all, before we start I'm sure you heard

this all --

JANET GREEN: You have to hold it a little bit closer to your mouth.

MICHAEL HALLEY: I'm sure you hear this all the time, but I'm cognizant of the fact of --

CONSTANTINE ALEXANDER: You're what?

MICHAEL HALLEY: I'm cognizant of the fact that you all are civic servants giving up your time to be here uncompensated, and I'm sure that every one of you has better things to do tonight on a beautiful evening.

CONSTANTINE ALEXANDER: That I'll agree with you with. But maybe move it closer to your mouth.

MICHAEL HALLEY: Maybe everyone can hear me without it. How about that? Thank you very much for your service.

JANET GREEN: You can hear when you talk into the mic.

MICHAEL HALLEY: But I'd like to say something.

I'd like thank you for your service and I'd like to mean it, because you set a good example for the city and you set a good example for my son. And you can't hear it too often. Thank you very much.

THE STENOGRAPHER: Can you state your name for the record, please?

MICHAEL HALLEY: My name is Michael Halley and I live at 6 Gracewood.

CONSTANTINE ALEXANDER: H-A-L-L-I-E.

MICHAEL HALLEY: H-A-L-L-E-Y.

CONSTANTINE ALEXANDER: E-Y? I'm sorry.

MICHAEL HALLEY: In any case, my objections to the entire project are legal. They're based on the statute. What you've heard today may have something to do with standing. Those issues are not before you. Those issues are before a court.

CONSTANTINE ALEXANDER: Right.

MICHAEL HALLEY: I have a presumption of standing

and it's a presumption that stands on this case. So light, noise, all those things, they can talk about it, I don't believe it's within your -- what you need to do on Section 10, respectfully, is follow the law. I'd like to go over it. I filed a brief three days ago. Can I just take a couple minutes and let's talk about circumstances first.

CONSTANTINE ALEXANDER: Let me just make one observation. You're correct about a presumption of standing, but of course just what the words mean. Presumption is not the same as saying you have standing. If you go into court with the wind at your back, if you will --

MICHAEL HALLEY: Certainly into court at which time if it's presumed, I'm allowed to swear witnesses and have experts. I haven't brought any experts here. I don't think it's necessary. But if we -- and I don't think that you can ask that of me right now to call -- to bring experts in. If you want me to, I will. But I don't think it's necessary, because I don't think you'll reach any of those



issues. Your job is four things:

Are there circumstances within Section 10 of the statute?

CONSTANTINE ALEXANDER: Right.

MICHAEL HALLEY: The answer is no. The only circumstances that are even alleged have to do with the size of the room and cramped quarters. There are numerous cases. I've cited five of them to you in my brief that says the size of a room has nothing to do with the shape of a structure. We have heard nothing about a shape of a structure. The cases are in my brief.

Secondly, the Cryan (phonetic) case from the Land Court says that interior design has nothing to do with the shape of a structure. So you can look at the cramped quarters, you can look at the measurements of the room, they have to do with size, they have nothing to do with the shape of the structure. I think she fails on the shape of the structure. Her only arguments are size, fails and interior

design, fails.

Secondly, her circumstances need to be unique.

They need to not generally affect the zoning. This --

CONSTANTINE ALEXANDER: We're familiar with what  
the --

MICHAEL HALLEY: I know but --

CONSTANTINE ALEXANDER: Let me cut to the chase  
for a second.

MICHAEL HALLEY: Okay, go ahead.

CONSTANTINE ALEXANDER: We have varying cases all  
the time. Just specifically what are your objections to  
what she wants to do? Why are you objecting? Just, I need  
to -- I would like to know that so as to not legally  
relevant. You're right, the standard is a standard we  
should apply. But this Board, like all Boards, tends, wants  
to promote harmony in the community --

MICHAEL HALLEY: I'm happy to tell you. And I can  
frankly tell you and it has to do with the political climate

that we have right now. This time I have to read because it's eloquently stated by the Supreme Judicial Court.

CONSTANTINE ALEXANDER: Again, sir, I want to know your -- on the facts of this case, what is it about the addition they want to put on that you object to? And how is it harming your home and your --

MICHAEL HALLEY: I am concerned -- these houses have been here for a long time.

CONSTANTINE ALEXANDER: That's true.

MICHAEL HALLEY: We are now gonna place a master bathroom in the most prominent portion of this house. I can't tell you how that's going to affect privacy. I can't tell you how that's gonna affect light. I can't tell you how that's gonna affect noise. I know it's -- I know unusual. And I have an experience -- and I mentioned it in my first brief, where I didn't oppose a Variance seven years ago. My neighbors can see right into my bathroom and I can see right into their, into their, into their, into their

front, into their front room, and it is 60 feet away. So I have experience that's analogous that tells me it is not appropriate to put a master bathroom in the front of that house. Where there is -- there's nothing like that in the front of any house there now.

CONSTANTINE ALEXANDER: Am I correct, and correct me if I'm wrong, that you're -- at this point the only neighbor, and several of you are going to be affected by this, but you're the only one objecting?

MICHAEL HALLEY: Can I go on to how the other neighbors were, were -- on why I believe you don't even have jurisdiction anymore? This has to do with this Memorandum of Understanding. I briefed this pretty thoroughly in my brief.

CONSTANTINE ALEXANDER: This is the one with all kinds of conditions for the construction process.

MICHAEL HALLEY: Yeah. But listen to what it says. In consideration of their support, the petitioner

agrees to conditions, which you've told them you have no jurisdiction over, to be incorporated in the approval of Joshi's petition.

CONSTANTINE ALEXANDER: Sir, you weren't here and you told us you weren't going to be here the last time we continued this case.

MICHAEL HALLEY: No, I wasn't.

CONSTANTINE ALEXANDER: I put on the public record that we're not going to do that, put these con -- wait, but there's nothing to stop a private contract between all of the people who've signed that document. The point is that ISD has better things to do than to get in the middle of private contractual disputes. I think we've learned that.

MICHAEL HALLEY: I agree with you.

CONSTANTINE ALEXANDER: So, it doesn't mean that those things are meaningless. It just means it's going to be a private contract between the petitioner and the signatories to that. It will be a contract. And presumably

it's enforceable, but I don't want to go there.

MICHAEL HALLEY: But I want, I wonder whether those neighbors know that you're not going to do --

CONSTANTINE ALEXANDER: I announced it at the last -- well, I'm sorry.

MICHAEL HALLEY: I'm not arguing.

ANDREA HICKEY: And presumably they have notice like you have notice that we're here tonight.

MICHAEL HALLEY: Well, that's a relief to me. That's good. Well, I mean, look, you're free to grant, you're free to grant a Variance. This is an administrative board. I know you're doing your best. I know there's a lot of harm here. I don't think. So Dano (phonetic) which I cited to you, Cryan, they don't have, they don't have circumstances, they don't have uniqueness. They admitted in their petition that every house in the neighborhood is the same. They don't have hardship other than that they want to do it. They really don't have anything as a matter of law.

And, you know, I take seriously the case in the Supreme Court, of the Supreme Judicial Court, that it says if you grant variances leniently, if you grant variances laxly, it becomes an exercise of administrative whim and it's contrary to the rule of law. And I didn't want to say this today, but in this climate where the City Council of Cambridge has, you know, voted to impeach Donald Trump presumably for actions --

CONSTANTINE ALEXANDER: Let's not go there.

MICHAEL HALLEY: I know, but it means something to me because these are legal standards. Why do we even have them?

CONSTANTINE ALEXANDER: Okay. Fair enough.

MICHAEL HALLEY: So I'm happy to leave it --

CONSTANTINE ALEXANDER: In light of your comments, you're --

MICHAEL HALLEY: I'm happy to leave you with my submissions. And believe me, I've spoke to Surinder many,

many times about this. This is not a personal issue with me. It's an issue that I believe in deeply. I am a zoning lawyer as it turns out. I don't do it anymore because I take care of my son. These issues are important to me. The City of Cambridge is important to me. I didn't want to make these arguments either, but I will. You know, every little intrusion that you guys allow means nothing in itself, but in the aggregate it means a lot. No one who works here for pay can live here. Everyone's driven out every time you let someone expand. Every time you let someone go beyond, you raise the price of the house, you raise the price of the house for the next occupants. You close people out of the city. This city isn't the city it was 30 years ago. I'm not saying you're responsible for it, but this is a practice that's -- that it does not comply with the law and that's all I really wanted to say.

CONSTANTINE ALEXANDER: Okay.

MICHAEL HALLEY: And I'm not sure --



CONSTANTINE ALEXANDER: I just wanted to get to the bottom of your --

MICHAEL HALLEY: That's the bottom and I told Surinder, that's the bottom.

CONSTANTINE ALEXANDER: You're basically saying the law is the law regardless of your neighbors --

MICHAEL HALLEY: I told them if they can really assure me that when the bathroom is done, that I'm not gonna see somebody bathing, or -- I'm serious. Or I'm not gonna see glaring lights at two in the morning. And those pictures by the way are with the big tree there. It's naked in the wintertime. I don't want to see glaring lights at three in the morning. Bathroom lights are garish. But I have no way to make an agreement like that. Once they do their thing, what am I gonna go say I don't like the bathroom, redesign it. It's not gonna work. But I don't want to beat a dead horse. I think you understand my position. I do want to say one more thing. I'm not sure

you can approve this petition with this -- but I'm saying this is part of the petition. If you sever it, I don't think -- I think you have to -- I don't think you can -- I don't think as a matter of law, and I haven't done the full research on this, but you know, I think it's an issue you might consider. Because this, because this has to be now considered part of the petition. I don't think you can say I'm severing this part of the petition and I'm gonna allow the rest of it. I think you have to include this and either deny the whole thing or grant the whole thing. I don't think you can just --

CONSTANTINE ALEXANDER: I don't agree with you, sir.

MICHAEL HALLEY: I may be wrong.

CONSTANTINE ALEXANDER: I just don't agree with you.

MICHAEL HALLEY: And I haven't done, but anyway I've given the arguments for that. But anyway, I'm just

saying -- you have my brief.

CONSTANTINE ALEXANDER: We do.

MICHAEL HALLEY: I said everything I had to say in there.

CONSTANTINE ALEXANDER: I appreciate you taking the time to come down, I really do. I mean not too many citizens do that.

MICHAEL HALLEY: And I hope I've spoken in a respectful way.

CONSTANTINE ALEXANDER: You have.

MICHAEL HALLEY: Because, you know, I just something I feel strongly about.

CONSTANTINE ALEXANDER: That's clear. Thank you.

MICHAEL HALLEY: Thank you so much.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishes to be speak on this matter?

Sir. You may come forward and give your name, use the mic, etcetera, etcetera.

SURINDER AHLUWALIA: My name is Surinder Ahluwalia. Last name A-H-L-U-W-A-L-I-A.

THE STENOGRAPHER: And your first name?

SURINDER AHLUWALIA: S-U-R-I-N-D-E-R.

And I'm the brother of Doctor Joshi and I've been assisting her with the outreach to the community. And all I wanted to say was I was here the last week --

CONSTANTINE ALEXANDER: You were.

SURINDER AHLUWALIA: And so was my mother who couldn't make it today. Based on what the Board had advised us about the understanding reached between the neighbors, except Mr. Halley and Doctor Joshi, I have talked to them, I talked to them on the 28th, and again this morning I send them an e-mail making sure that they understood about today's hearing and that what you had said about that it cannot be incorporated. But I did advise them that even though it's not incorporated, the agreement we agreed with Doctor Joshi is still enforceable and she fully intends to

comply so she can live in harmony with her neighbors.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishes to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I'll return to you folks. Mr. Halley has raised, correctly so, a number of legal issues as to the propriety of us granting a Variance on this case based on the facts. We haven't reached a decision whether we agree with it. This issue comes up before us every time not that we grant a Variance every time, we're faced with a Variance request. This Board, like I think most other zoning boards in the Commonwealth, tends to look at the statute liberally and looks at not only the legal wording but also the impact in the community and the neighborhood, and many times Variances are granted where perhaps a judge would say you shouldn't have granted it. But we grant it and -- sometimes and the

world moves on. Should we grant the Variance, and I'm not -- at this point I'm not suggesting that we're going to grant it, the next step could be a lawsuit. He can bring a lawsuit challenging the granting of the Variance. And it's one of the first issues will be standing, and I don't want to get into the technicalities, that's a legal issue. But the fact of the matter is, bottom line is you will be held up for 12, 24 months before the case gets resolved. And if it gets resolved adversely to you and reverses our decision, or presumed the Variance is overturned, you cannot proceed at all at least with the plans. You should have that in mind. I take it you've -- as far as you're concerned, you've exercised every effort to reach agreement with Mr. Halley so you could go forward. I mean, is there any possibility of further discussions that might lead to his withdrawing his objections?

SAROJ JOSHI: I think we have made as much of an effort as any human being can make.

CONSTANTINE ALEXANDER: Okay.

SAROJ JOSHI: I've been available at my house. My representative, my brother, has called him numerous times, sent him e-mails, communicated. So I think we've exhausted what anybody can do.

CONSTANTINE ALEXANDER: Okay. I just want to be sure you understand.

SAROJ JOSHI: And whatever God wishes I will be happy with it.

MICHAEL HALLEY: May I speak on that?

CONSTANTINE ALEXANDER: Just briefly, sir.

MICHAEL HALLEY: Well, I just had a conversation with Surinder today. I mean, I don't know whether anything can be arranged or not, but I suggested -- we've spoken many times. Well, we've communicated. I've never spoken with the petitioner. This is kind of like a situation where I have only spoken with a go-between. And it's frustrating to me.

CONSTANTINE ALEXANDER: One second.

MICHAEL HALLEY: And, you know.

CONSTANTINE ALEXANDER: Okay. Well, we do have a possibility right here, though. You're all here tonight. We have other cases to hear. One thing we can do, and we have done in other cases, is to suggest we'll recess this case, suggest you folks go in the room back there, have your discussions and come back and see whether you've resolved things or not.

MICHAEL HALLEY: I can't do that tonight. I've got to get home.

CONSTANTINE ALEXANDER: All right. Okay, I was just throwing that out.

MICHAEL HALLEY: I have to get my son.

CONSTANTINE ALEXANDER: Another member of our Board has to leave shortly anyway. But that's something we do when we have this kind of situation. Okay.

Anything further you want to say? It's up to you.



SAROJ JOSHI: No, you know, I have been in my house everyday and Mr. Halley has had the opportunity to knock on my door and come and talk to me, so I'm not sure what more I could have done.

CONSTANTINE ALEXANDER: Okay.

SAROJ JOSHI: And he has been in my house. He has celebrated my daughter's graduation, so it's not like we have been at odd terms in any way.

CONSTANTINE ALEXANDER: Thank you.

I will -- excuse me, I apologize for my cold. I will end public testimony. The Board can begin its deliberations.

Any thoughts, views from members of the Board at this point before we take a vote?

JANET GREEN: I find that some of the plan is aimed at bringing the house up to code and I appreciate that. I think that's important. And I also noted that all of the abutting neighbors have, some of whom who even had

their own construction problems, had projects, have been spoken with, and have approved of it. And while I'm sympathetic to a disapproving neighbor, I do feel like in general this is a -- that they've made every effort to reach out and make compromises to do that.

CONSTANTINE ALEXANDER: Thank you, Janet. Anybody else want to speak or go for a vote?

(No Response.)

CONSTANTINE ALEXANDER: Okay. The Chair will move that we make the following findings:

First, that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being that the petitioner has a space in her home that is not suitable for occupancy in terms of the ceiling heights, and there's a need to make that space usable, to get the relief that's being sought tonight.

The hardship is owing to the nature of the

structure. It is an older structure. It is a non-conforming structure. So legally non-conforming, so that any zoning relief that we grant would require a Variance. Any modifications of the structure would require a Variance.

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

In this regard the Chair would note that the relief being sought is rather modest in nature. By the way, we're talking about the Variance, we haven't gotten to the Special Permit yet.

Is modest in nature. At this point it seems to have the support of all the neighbors in this tight neighborhood. And to do -- what is being proposed will upgrade the housing standards for at least this house to the benefit of the City of Cambridge.

So on the basis of these findings, the Chair moves

that we grant the Variance requested on the condition that the work proceed in accordance by the plans prepared by Seitz, S-E-I-T-Z Architects, the first page of which has been initialled by the Chair. It looks like the date is 3/28/17.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The Variance is granted.

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

CONSTANTINE ALEXANDER: Thank you.

JANET GREEN: Special Permit.

CONSTANTINE ALEXANDER: Now we'll move to the Special Permit.

I will now turn to the Special Permit. I think you've already addressed your comments about why you need the Special Permit and what's going on.

Mr. Halley, did you have any comments on the Special Permit request?

MICHAEL HALLEY: I'll rest with my submissions.

CONSTANTINE ALEXANDER: Okay. I should point out to you that when it comes to Special Permits our Zoning Ordinance says that basically is a presumption just so you understand.

MICHAEL HALLEY: My understanding the Special Permit has to do with the memorandum of -- I don't believe you have the authority to sever it from the petition.

CONSTANTINE ALEXANDER: Okay. I just want to be sure that you understand.

MICHAEL HALLEY: No, I understand. But I just want to be clear what I believe.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that we make the following findings with regard to the Special Permit being requested. That relief cannot -- I mean, that the requirements of the

Ordinance cannot be met without the grant of a Special Permit that is being sought tonight. That traffic generated or patterns of access or egress resulting from what is being proposed 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 Ordinance will not be adversely affected by what is proposed.

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 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.

So on the basis of these findings, the Chair moves that we grant the Special Permit requested again on the condition that the work proceed in accordance with the plans

referred to in the Variance we just granted.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor, Special Permit granted.

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

CONSTANTINE ALEXANDER: Thank you.

PATTY SEITZ: I have one point of order. Do you want the plans that show the frosted glass? Just replacing clear or --

SEAN O'GRADY: I'm sorry, I missed it.

PATTY SEITZ: So do you want the drawings that show the replacement of clear glass for frosted and the removal of one spotlight that wasn't on the original drawings but I've located it on our envision.

SEAN O'GRADY: This is the one --

PATTY SEITZ: I have envision here with whatever is being changed is highlighted. So it was only in --

MICHAEL HALLEY: Can I see it? So what does frosting mean anyway?

PATTY SEITZ: Frosting means the glass becomes more opaque. It's no longer clear. Only in this front area. So here --

MICHAEL HALLEY: So the whole bath?

PATTY SEITZ: The whole bath, yes.

SEAN O'GRADY: Patty, we've got to move on. Patty, are these drawings the drawings you want?

PATTY SEITZ: Yes. Those are the drawings. Everything else is otherwise identical, the other sheets.

SEAN O'GRADY: What I'm saying, though, is can I throw that away and use just this?

PATTY SEITZ: No, I didn't add this. I didn't add the existing conditions back in. I just added the changed sheets. But I can refigure this for you, Sean, and bring it to you tomorrow if you want. Whatever works. You can keep that and I'll make you a new set.



SEAN O'GRADY: I'm just, I just -- Gus, can you  
give me your signature there? And I'll look at it.

Thanks.

\* \* \* \* \*

(7:40 p.m.)

(Sitting Members Case No. BZA-013692-2017: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 013692, 302 Walden Street.

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

DUNJA VUJINIC: My name is Dunja Vujinic, D-U-N-J-A V-U-J-I-N-I-C and I'm here for Reisen Design, R-E-I-S-E-N Design Associates, the architects of the renovation of 302 Walden Street.

This is an existing two-family that was converted or that is being converted to a single-family. The relief we are seeking results from the narrow lot. The north side in the front of the building fall within the setbacks. The owners are looking to add a side entry with an entry porch and an enclosed stairs and are looking to put a roof over the side entry porch. The side entry porch steps into the

side air setback by 16 inches.

The building is non-conforming as far as FAR is concerned.

We are eliminating a second floor rear roofed porch or eliminating the roof off of the second floor rear porch which eliminates about 88 square feet in FAR but are adding it, adding 18 square feet to roof this side yard porch, side entry.

The clients apologize for not being able to be here, and I believe they've submitted a letter. They had to take care of a family member. Yeah.

CONSTANTINE ALEXANDER: Yes.

DUNJA VUJINIC: Yep.

CONSTANTINE ALEXANDER: Just to get the facts out. What is your FAR now and what will it go to and what's the requirement for the district? Same as setbacks to the extent that you're going to be violating setbacks.

DUNJA VUJINIC: The Ordinance required FAR is

0.47. The existing condition is 0.52, and the requested condition goes down to 0.51.

CONSTANTINE ALEXANDER: Excuse me. I never seen a FAR requirement of 0.47; is that right?

SEAN O'GRADY: You're in a B-Zone?

DUNJA VUJINIC: Yes.

SEAN O'GRADY: So it's the first 5,000 is 0.5 and then you max it all together.

CONSTANTINE ALEXANDER: Oh, that's right. Thank you. Okay.

DUNJA VUJINIC: And then you asked for the setbacks?

CONSTANTINE ALEXANDER: To the extent that you need setback relief.

DUNJA VUJINIC: Correct. So it's on the right-hand side, the south side of the building. The Ordinance requirement would require that to be a twelve-foot, six setback so that the two setbacks combined

are 20 feet. We would be at eleven-foot, two. The existing condition is at fourteen-foot, eight.

CONSTANTINE ALEXANDER: Thank you. I want to make sure the record is complete that's all. Okay.

Questions or comments 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 on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. We'll close public testimony.

The Chair would report that we are in receipt of some letters. One from Lauraine L-A-U-R-A-I-N-E Bocone, B-O-C-O-N-E who resides at 300 Walden Street. (Reading) I am an abutter to 302 Walden Street located at 300 Walden Street. I have no issue with the Variance.

Then there's a letter from -- well, actually this is a letter from the petitioners advising us that they weren't going to be here tonight.

DUNJA VUJINIC: Yes.

CONSTANTINE ALEXANDER: They say in this letter, which I'm not going to read in its entirety. (Reading) We discussed the proposed overhang with our neighbors and they have approved of it.

And that's it. I will now close public testimony.

Discussion or we ready for a vote? Ready for a vote. Okay.

The Chair moves that we make the following findings of fact 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 there is a need for a covered entrance to the side of the house. That it would apply not only to this petitioner but to any person that occupies that house.

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

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

In this regard the Chair would note that the relief being sought is rather modest.

The nature of the further Variance, bad word, the Variance from the zoning requirements are modest in nature.

There appears to be no neighborhood opposition.

So on the basis of all of these findings, the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with the plans prepared by Reisen R-E-I-S-E-N Design Associates, the first page of which has been initialled by the Chair.

All those in favor, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Relief granted.

Thank you.

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

DUNJA VUJINIC: Thank you very much.

\* \* \* \* \*

(7:50 p.m.)

(Sitting Members Case No. BZA-013744-2017: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 013744, 155 Erie Street.



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

BHUPESH PATEL: Hi, Bhupesh Patel, the -- from Design Tank, Inc. B-H-U-P-E-S-H.

The owner's actually on his way.

CONSTANTINE ALEXANDER: Okay, and you want to hear the case a little bit later?

BHUPESH PATEL: No, he's literally around the corner. His office so he should be here in five minutes.

CONSTANTINE ALEXANDER: Okay.

BHUPESH PATEL: I'm just gonna go ahead and get started. I have to hold this, don't I?

This property is actually a series of row houses that exists on Erie Street, and the actual row house is the third row house here.

CONSTANTINE ALEXANDER: How did that come to pass? It just fascinates me that they all of a sudden, this is a floor missing at that structure.

BHUPESH PATEL: As far as I can tell, it seems like the owners, some of the owners bought these pre-construction and opted for a more affordable option than the other owners. But the original drawings are actually for all of them to be the same height. So as far as I could tell, that seems to be the only reason.

CONSTANTINE ALEXANDER: Okay. Just curious.

BHUPESH PATEL: Yeah, six of them were pre-sold, but I don't know which ones. So basically, so that's the reason as far as I can tell, but not really sure.

Basically the owner is asking for relief for adding a third floor on what is a two-story row house. By adding the third floor, however, the height is raised considerably because we will be matching that roof slopes rather than having a float roof.

CONSTANTINE ALEXANDER: What will the height be, then, if we go to grant the relief?

BHUPESH PATEL: Hold on a second. That's -- it's

a little shy of 35. It's 34-foot, nine.

CONSTANTINE ALEXANDER: It would be conforming?

BHUPESH PATEL: Correct, it would be conforming.

And that actually would be the ridge height here.

The building itself is basically comprised of a kitchen in the back with an eat-in area and a living room in the front. Two small bedrooms in the front and a large bedroom in the back. So basically a three-bedroom row house. Currently the owners are husband and wife with three children. So they were attempting to basically add the third floor to create two new rooms and a master suite, and then basically put a den here or what is basically a living room and have their dining room here since there's really no dining room in the facility. At the same time even though there's no relief for this basement that's created, the basement is denoted because we had to define it as a basement because the work sheet requirements for a basement as far as state building code is concerned has to be that

the basement is two-thirds below grade. We count it as a basement. So since there isn't an existing basement, we have to include in the description the basement as a new basement, but it is a basement that doesn't count towards the square footage and it doesn't have to abide by the setbacks because it is defined as below grade.

And the main reason why is because of the sunken courtyard that's introduced here that allows a small portion of the facade to be calculated as above grade, but again that portion is well below the one-third you have to exceed to not count as basement.

I'm just going to quickly go through the plans.

CONSTANTINE ALEXANDER: Let me just make for the record, one comment, that is currently the FAR for the structure is 0.71 in a 0.75 district so it's conforming.

BHUPESH PATEL: That's correct.

CONSTANTINE ALEXANDER: But the relief you're seeking would push the FAR to 1.07 which is 33 percent

roughly more than our Ordinance requires or -- yeah, requires.

BHUPESH PATEL: That's right. It's a pretty significant increase. What I tried to explain is similar to many of the row houses, clearly these lots are not 40 feet wide, they're 19 feet point two wide. So that significant swath of side yard that you'd have typically on a 40-foot wide property is not there. So you end up with a lot that is quite small relative to most lots. Roughly it's about 40 percent less lot because you don't have the side yards. So even though it's a two-story building, it's very close to the FAR. So as in other row houses I've worked on, that's sort of the, you know, big killer when it comes to establishing how much you're over the FAR. So I can say that's sort of the hardship relative to the fact that it's just not just a typical lot in the sense that you don't have the seven or eight feet on either side of the lot. So that lot size is just generally 19 feet wide, so it's quite

tight.

That would be the main reason I think that's described in the active submission for why we consider this hardship viable. It is a lot of square footage, though, because you are going from 71 percent, you're only allowed four more percent, but you're going to 107 percent.

So I wanted to make sure I went through the floor plan so you can kind of understand why we decided to do that.

This is the existing kitchen and eat-in area and this is the living room. The house that doesn't have a mudroom so they use the front area, basically as -- actually all the row houses do. This is where they put their bicycles. A lot of them have an outdoor shed that they use as a closet, and it's basically heavily utilized in what is what you typically put in a basement, what you typically put in a mudroom. And then they -- because they have three kids, clearly they use this area as a mudroom and this area

as a dining room.

And then this is just the three bedrooms that are upstairs; two kids in one room and one child in the other, and then the parents here.

Again, they have no basement so they just have the closets that exist in their bedrooms, and a small closet that exists under the staircase.

The proposed plan would actually -- this is actually showing the basement. And this is showing the second floor. And what we've done is eliminated the two bedrooms in the second floor and made this be a living room and a place for the kids to study.

We've maintained that master bedroom and basically added three rooms here for the kids.

And then the basement, a third of it is basically a basement with mechanical equipment and storage. And then the front is basically a den. And they're envisioning that they're gonna come down the set of stairs to the basement

level and this would be their mudroom. So basically the three kids and the parents would be storing all their closet items here and going up the staircase and into their house. So it would allow the front room that used to be basically a mudroom, sort of half living room, to basically be a dining room, formal dining room. And that's why we shifted the living room to the second floor. Clearly it's a tight footprint on either side as far as the length goes, and the girth is 19 feet. But you can see that by standards of a typical sofa and so forth, it's not as big as it seems. But what we've basically illustrated is that we could put in much more minimal size furniture with, you know, skinny legs and very thin cushions to make the living room more viable with a mudroom. And because it's stretched this way, it allows the living room and the mudroom to exist and that 19 foot girth that it couldn't exist as easily in the old floor plan.

BRENDAN SULLIVAN: How long have the McGinns lived



there?

CONSTANTINE ALEXANDER: Introduce yourself if you will.

CORAIN MCGINN: Sorry I'm late. My name is Corain McGinn, and we've lived at this house for 17 years, since 2000.

CONSTANTINE ALEXANDER: You might want to speak into this microphone.

CORAIN MCGINN: So I've lived there since 2000. I have three kids. I'm an attorney two doors up. I coach Little League down on Central Cambridge and sponsor a team and coach a couple of teams down at the Little League. My wife's a nurse at the Brigham which is why I'm late because she just got off work.

BRENDAN SULLIVAN: Okay.

Bhupesh, when was the structure built?

BHUPESH PATEL: It was built in mid-70s, but according to the drawings, we don't think there's a

foundation wall between the units. We think there's a grade beam there. And the demising wall between the units is basically a studs wall with a layer of sheetrock. So for us to add a third floor we have to put foundations along both sides of the property, and we're actually going to be putting a sprinkler system in because the other row houses don't actually have the appropriate demising walls they're supposed to have. So originally when I approached the project, we thought about just doing the third floor, but there's basically pretty significant cost in correcting the building's foundations below grade from front to back on both sides and that's why we decided that we would attempt to get a basement space that doesn't count towards the FAR to take advantage of the fact that we have to put in new footings along both demising walls and -- yeah.

PATRICK TEDESCO: So a question. So all of the additional FAR, as I understand it, is being obtained by the added floor?

BHUPESH PATEL: Correct.

PATRICK TEDESCO: Not by the expanded -- you're calling it a basement?

BHUPESH PATEL: That's correct.

PATRICK TEDESCO: It's partial basement partial first floor. It's not full basement but it's legally a basement?

BHUPESH PATEL: It's legally a basement, right.

PATRICK TEDESCO: But none of that additional square footage is contributing to FAR?

BHUPESH PATEL: None of that additional square footage is contributing to FAR.

PATRICK TEDESCO: It's just popping.

BHUPESH PATEL: And that's six inches above grade, so the basement really is pure basement.

PATRICK TEDESCO: That's a basement?

BHUPESH PATEL: Yeah.

CONSTANTINE ALEXANDER: Any other questions or

comments from members of the Board?

JULIA BERG: Am I allowed to ask some questions?

CONSTANTINE ALEXANDER: Oh, sure. You have to give your name, though.

JULIA BERG: Okay. Hi, Julia Berg, B-E-R-G. Hi, how are you? I own the property next-door. I just had a couple of questions because I don't live there full time. I was wondering if you're going to be digging the basement from the front of your yard? Is that my understanding what you'll be digging into the patio to lower the patio and then create a basement and then part of that basement will be exposed?

BHUPESH PATEL: Correct.

JULIA BERG: Yeah? Okay.

And when you do that, will you be having all of your construction trucks and plows in the front of the house rather than the back?

BHUPESH PATEL: The property's the third from the

end so basically there's gonna be a lay area they refer to where equipment will be all the way on the third property on the only side yard that exists. And we've already made an agreement with the two properties to the right of us to allow us to use that area and to also access through their backyards for some of the access. But basically most of it's gonna come from the front driveway --

JULIA BERG: Okay.

BHUPESH PATEL: -- and they're going to be digging down.

JULIA BERG: Yeah. No, I --

BHUPESH PATEL: Before they do that they'll actually be laying two trenches on either side of the property and pouring two concrete walls so that all of the work that's being done to create the basement space will be done within the actual property lines.

JULIA BERG: Okay.

BRENDAN SULLIVAN: Have you had a chance to review

the drawings at all?

JULIA BERG: I have not. My parents are architects, though, and they looked at it. My concern really is that there's been two construction projects the last three years and the people who have performed them have not adhered to the noise ordinance, or they're starting construction very early on the weekday and on the weekends. That's my primary concern is that the contractors wouldn't begin before eight and that the driveway wouldn't be obstructed. But I'm fine with the basement as long as digging into the foundation isn't gonna affect my foundation since I have an adjacent adjoining wall. If that makes sense.

CORAIN MCGINN: In a way that would be paramount in getting this whole thing done. That's what the contractor would have to take care of.

JULIA BERG: Yeah, okay.

CORAIN MCGINN: So we didn't actually have -- so,

I'm sorry what's your name?

JULIA BERG: Julia.

CORAIN MCGINN: Julia lives in the studio apartment on the left side as you're looking at the building and there's a three-bedroom house beside it. It used to be a two-family and it was condoized. And Julia owns -- you rent out the studio? And so I didn't have your contact information, but I talked to the family that owned the three bedroom.

JULIA BERG: Yeah, I spoke to them, too, and they're fine.

CORAIN MCGINN: And they're fine. And the lady on the other side, I don't know if she's here. Hi, Em. But Mimi manages the two properties on the right side which are both two families that are rentals and she strongly supports it. And so down the side of that, at the end of the units there's a space where we would be able to get access to get into the back as well.

JULIA BERG: Yeah, yeah, and that's fine.

CORAIN MCGINN: And we have a two car driveway in the front.

JULIA BERG: And do you know how long the construction will take?

CORAIN MCGINN: So we actually had the GC and Bhupesh and the concrete basement --

BHUPESH PATEL: The excavator and the contractor.

CORAIN MCGINN: He estimated he can do it in two months.

JULIA BERG: Okay.

CORAIN MCGINN: Yeah.

BHUPESH PATEL: That's not the whole thing.

CORAIN MCGINN: Just the basement.

JULIA BERG: But that's the basement, yeah, yeah. The third floor won't impact me. I don't care.

CORAIN MCGINN: And the slab. Slab condition.

JULIA BERG: Okay.



BHUPESH PATEL: There's a lot of things that have to be worked out on the property because there's not a separate utility line going to each unit. Somehow it was developed in a way that isn't typical relative to the gas lines and the water lines. So we're going to be spending the winter basically rectifying just our unit's water lines and gas lines to get them to the public line that's on the street. It appears that the lines are actually -- the property's pretty far away from the sidewalk, and it appears that there's a gas line running underneath all of these sheds and the water line somewhere near it. And obviously they would typically be off the utility line that's out here and T'd into the property with a shutoff here. So we think that this sidewalk was redone when this very large construction project was going on for many years and part of the remedy -- I'm sorry part of the grievances that as far as appeasing the neighbors was to redo this sidewalk. And I think it was just quickly done and rectifying the gas and

water shutoffs was not done at that time. So the City's got it on docket that that's something that they need to do. And that's why there's sort of heavy documentation on some of the foundation situations on the property before it all started that I knew I would have to deal with. So there will be a lot going on this fall that will have to do with utilities before we'd even get started on the project. But DPW's very happy to resolve this issue because it's been something that they will actually have documented on their property which it should be relative to the main line and the T's running into each property rather than a private line with T's running ten feet off the properties.

CONSTANTINE ALEXANDER: Is that it?

JULIA BERG: Yeah.

CONSTANTINE ALEXANDER: Okay. I'm not going to rush you.

JULIA BERG: Oh, no, no, no. I was concerned about the parking obstruction and the noise primarily and if

there was any concern I should have about digging in when I don't have a wall there. But it sounds like that's okay.

BHUPESH PATEL: Yeah, we'll -- basically the property will have the walls on either end, on either side prior to any construction.

JULIA BERG: Okay.

CONSTANTINE ALEXANDER: Okay, thank you.

The issues regarding construction, I'm just going to make a comment, the noise, disruption, is a common complaint before our Board. It's something that we as a Zoning Board don't take into account. There are, as you probably know, there are other city boards that do get involved, like regulating the hours of construction, noise, and the like. And to the extent that you feel that you're -- there are problems, you can go to those boards. But we don't get involved. We can't put conditions. We don't want -- not can't we don't put conditions regarding that.

JULIA BERG: What Board would I go to to do that?

SEAN O'GRADY: Inspectional Services.

CONSTANTINE ALEXANDER: I'm sorry?

SEAN O'GRADY: Inspectional Services.

CONSTANTINE ALEXANDER: Inspectional Services.

CORAIN MCGINN: And I think that's only an issue if it becomes an issue? They don't do anything ahead of time?

CONSTANTINE ALEXANDER: The Inspectional Services?

CORAIN MCGINN: Yes.

CONSTANTINE ALEXANDER: Well, no, they -- for example, the hours of construction, what are the hours of construction, Sean?

SEAN O'GRADY: Seven to six?

CONSTANTINE ALEXANDER: Seven to six, something like that. Seven to six. So they assume you're going to do -- your contractor's going to do construction between seven and six. If she calls up and said it's 8:30 at night

and they're still out there working, you're going to hear from Inspectional Services.

CORAIN MCGINN: I'm just saying it's not something that -- you'd only call them if it became an issue.

JULIA BERG: I think you can get two different kinds of permits, though. Can't you get like an early morning permit and like an eight a.m. start permit; is that right?

SEAN O'GRADY: No, everything starts at seven.

JULIA BERG: Everything starts -- okay. The units four doors down kept doing like six o'clock construction and on the weekends, so that's what I was worried about.

CONSTANTINE ALEXANDER: Okay, let me just stop at this point. You can have this conversation -- this is not appropriate to our Zoning Board.

JULIA BERG: Well, that's fine. I've never been at a Zoning Board meeting. I was unaware. I get it.

BHUPESH PATEL: I can go through the schedule with

you if you want as far as the hours and all. Weekends as well.

CONSTANTINE ALEXANDER: Anything further you want to say at this point?

JULIA BERG: No, I'm good.

CONSTANTINE ALEXANDER: Questions or comments from members of the Board?

(No Response.)

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

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. And we're not in receipt of any letters or other communications from communications period.

So I'm going to close public testimony.

Discussion by members of the Board or ready for a

vote?

ANDREA HICKEY: I'm ready.

CONSTANTINE ALEXANDER: Everybody ready?

BRENDAN SULLIVAN: Yeah. It's somewhat of a large  
add.

CONSTANTINE ALEXANDER: It is a large request.

BRENDAN SULLIVAN: You know, numbers wise.

However, I think that Bhupesh has sort of explained the mathematics of it all, that it's going to be fairly -- even though we don't get into the cost of things, but in order to make it worth it, worthwhile and everything is going to be a tremendous amount of work. And I think that the rearranging of the interior space makes a far more liveable unit, if you will and will allow the family to live there in better comfort, better organization of space and what have you. And it's not inconsistent with the adjoining properties. So, that would be my thought.

CONSTANTINE ALEXANDER: Thank you.

Okay. I think we're ready for a vote.

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. Such hardship being is that this row house unit is out of proportion with its abutters on either side, and as a result, the amount of living space is substantially reduced.

That the hardship is resulting from the fact that this is a non-conforming structure with no -- townhouse structure and therefore any relief requires zoning approval.

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.

The Chair would simply note that there's no opposition to -- apparent opposition to what is being proposed.

That the relief would make this house consistent



with its abutters on either side.

So on the basis of all of this, the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with the plans prepared by Design Tank, Inc., each page of which has been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor, Variance granted.

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

\* \* \* \* \*

(8:10 p.m.)

(Sitting Members Case No. BZA-013783-2017: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 013783, 1815 Mass. Avenue.

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

ATTORNEY MICHAEL GIAIMO: Yes, thank you. Good evening. My name is Michael Giaimo for Verizon Wireless from the law firm Robinson and Cole and I've got George Evsuk with me from Structure Consulting.

THE STENOGRAPHER: Who?

ATTORNEY MICHAEL GIAIMO: George, last name E-V-S-U-K. And my name is Michael, last name Giaimo.

Very good, thank you very much. We're here, as we have in the past, to install some antennas on an existing building. This is another Section 6409 application for an eligible facility request. The case here is that Verizon Wireless is installing antennas on the tower of a Lesley University building that has been in use as a wireless facility for many years by several carriers. One of the carriers vacated the lower slot on the tower and Verizon Wireless is going to install its antennas on that level of the tower where that previous carrier was and install its equipment behind the fence on the roof at a location where there's previously been equipment. This is sort of a typical cellular installation. There's instead of four antennas on three sides, there's three antennas on four sides because it's a square tower with these three recesses going down the sides. The equipment consists of two cabinets on the roof of the -- on the roof of the -- lower roof of the building, and there's a fence there which this

equipment would go behind. It satisfies all the requirements under federal law as an eligible facility. It conforms to the conditions that were in the previous permit that require that these be painted to match, and these antennas will be painted to match the background.

CONSTANTINE ALEXANDER: Let me ask you a question. I see in our file we have a brief memorandum from Liza Paden of the Community Development Department and the -- regarding this case. And it says: The Planning Board was not able to review this particular installation as the application materials were insufficient. And they did not discuss the case.

What's that all about?

ATTORNEY MICHAEL GIAIMO: I have absolutely no idea why they concluded that. I am not sure if they ever got color copies when they ask the Zoning Board for a copy of the application. We filed colored copies. My understanding from Liza is that she was on vacation. My

understanding is that Sean may also have been on vacation, so maybe there was a miscommunication, or Maria was on vacation on this end. I don't know if it was you, Sean, or Maria, but there was no communication between the boards; is that right?

SEAN O'GRADY: No idea.

ATTORNEY MICHAEL GIAIMO: Yeah, so I can't explain it to you. I've talked to Liza.

CONSTANTINE ALEXANDER: Nothing nefarious is going on here?

ATTORNEY MICHAEL GIAIMO: No, no. She, she actually thought the staff planner would review it and give some comments, but that's how they decided to handle it.

So anyway, and again, with these kinds of sites there's not a lot -- I mean, we would have appreciated the Planning Board comments but there's really not a lot of discretion for -- there's no discretion. There's not a lot that the Board could do.

CONSTANTINE ALEXANDER: Well, I wouldn't go that far. We don't have to resolve that tonight. But the comments you get from Community Development tend to be the same. They have a list of checkoff points, which are good, and like "don't raise the antenna above the roof line" and --

ATTORNEY MICHAEL GIAIMO: Right.

CONSTANTINE ALEXANDER: -- "paint to match the background." And all of which seems you comply with anyway.

ATTORNEY MICHAEL GIAIMO: We would do that anyway, yeah, and we are aware of those generally.

CONSTANTINE ALEXANDER: I know you are.

Questions from Members of the Board?

BRENDAN SULLIVAN: The only comment I would have is that we had, I think it was T-Mobile on this probably three, four, five, six months ago and we were waiting for the second half, the second guy to come in, and you're it. Basically we want them all to look alike. It's been a

mish-mash and it's been terrible over the years and we haven't really got it right. And we started saying, okay, match the background, which was the brick, and that didn't work. So I think what we did is we told T-Mobile to paint it a certain background color. I think what we would like or -- what I would offer is that whatever they painted theirs, that you paint yours. Is that right? So the colors match.

ATTORNEY MICHAEL GIAIMO: You can see there's one level of antenna here that looks like maybe they tried to match the brick including the mortar in between the bricks.

BRENDAN SULLIVAN: Right.

ATTORNEY MICHAEL GIAIMO: That's the second level down. And we wouldn't propose to do that. We're proposing to just match that red color in the background.

BRENDAN SULLIVAN: I think if we get all of the antennas from all the carriers to match colors, that's where I'm headed somehow however we do that.

CONSTANTINE ALEXANDER: The color that you're proposing the same as T-Mobile's except that there's no --

ATTORNEY MICHAEL GIAIMO: I don't know which one of these -- honestly I don't know which one of these is T-Mobile. But I can show you -- if you see that pinky color in the middle is not particularly attractive.

BRENDAN SULLIVAN: Let me see the other set of graphics that you have there, the photo sims that you underneath your folder there. In your -- yeah.

ATTORNEY MICHAEL GIAIMO: Yeah, that's what I've got here. That's what I was showing you but here's a larger version.

BRENDAN SULLIVAN: Yes.

ATTORNEY MICHAEL GIAIMO: I'll hand them out to everybody.

If you look at the bottom row of antennas, that's the simulated photo of Verizon Wireless. If you look at the middle row, that's somebody else. And then the top row,



that might be T-Mobile. I don't know who that is. If it was only six months ago, it may not be because this is a -- these photo sims were taken last year.

BRENDAN SULLIVAN: How many carriers are on there, do you know?

ATTORNEY MICHAEL GIAIMO: George, do you know?

GEORGE EVSUK: Two now.

ATTORNEY MICHAEL GIAIMO: There's two now. And does that include T-Mobile yet or not? They may be replacing somebody else up there.

GEORGE EVSUK: Because when they left (inaudible).

BRENDAN SULLIVAN: So there's just two carriers?

ATTORNEY MICHAEL GIAIMO: Currently there's two. This would be a third.

BRENDAN SULLIVAN: Okay.

So I guess what I would like is that we have all of the antenna on both carriers painted the same can of paint. That would be my thought.

ATTORNEY MICHAEL GIAIMO: I don't know about the same can of paint, but we can certainly match the background, and presumably T-Mobile's gonna to match the background, too. And there could be some communications between the construction people?

BRENDAN SULLIVAN: I mean can you guys call each other? I mean, you are telephone companies. Just pick up the phone and call them.

ATTORNEY MICHAEL GIAIMO: I think he wants it to match the better looking one, not the pink one.

THE STENOGRAPHER: I'm sorry?

ATTORNEY MICHAEL GIAIMO: That's a side bar.

His question was if the two up there now have different colors, which one are we supposed to match? And my suggestion is we would match the one that looks like the background.

ANDREA HICKEY: More like most like the background.

ATTORNEY MICHAEL GIAIMO: Yeah.

BRENDAN SULLIVAN: The solid color.

ATTORNEY MICHAEL GIAIMO: Yeah.

BRENDAN SULLIVAN: Thank you.

CONSTANTINE ALEXANDER: Okay.

Any other questions or comments?

BRENDAN SULLIVAN: No, that's it for me.

CONSTANTINE ALEXANDER: The Chair would open this matter up to public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I will close public testimony.

Further discussion or we ready for a vote? Ready for a vote.

Okay, the Chair -- we've got a lot to say. The Chair moves that we make the following findings of fact,

findings as required pursuant to Section 10.43 of our Ordinance:

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

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

That the continued operation or development of -- operation of or the development of adjacent uses as permitted in the Ordinance will not be adversely affected by what is proposed.

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

Ordinance.

Further, the Board 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 Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, also known as The Spectrum Act.

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.

Two, 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 and initialled by the Chair.

And further, that the background color will be such to match that of other facilities on the building in the area where this is going to be installed in terms of the solid color, the solid red color.

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

That should be 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.

And five, that the petitioner is in compliance with and shall 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.

Continuing, 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 emissions 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 suspended, revoked, or terminated.

C, that to the extent that a 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 applications discloses in reasonable detail that the application has been



filed because of a termination of Special Permit pursuant to paragraphs A or B above. Any such new application shall not be deemed a repetitive petition and shall therefore will not be subject to the two year period during which repetitive petitions may not be filed.

And that D, that within ten business days after receipt 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 as individuals, including nearby

residents and occupants of nearby structures, will be sufficiently protected from excessive radiofrequency radiation under federal law.

That's it.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Four?

Five in favor. Special Permit granted.

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

ATTORNEY MICHAEL GIAIMO: Thanks very much.

\* \* \* \* \*

(8:25 p.m.)

(Sitting Members Case No. BZA-013582-2017: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 013582, 25 Sacramento Street.

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

Are these new plans?

ERIN MASKET: Same plans.

CONSTANTINE ALEXANDER: You can hand them out to others. I have them in the file.

ATTORNEY JONATHAN LEVIN: Good evening, Mr. Chairman, members of the Board. My name is Jonathan Levin and I'm an attorney representing Campbell and Theodore

Murray who are owners of 25 Sacramento Street with respect to their request of a Variance tonight.

CONSTANTINE ALEXANDER: Why does the application in the name of Gary Hendren?

ATTORNEY JONATHAN LEVIN: Unfortunately that was the architect's name and he submitted it in his name. We've submitted an ownership affidavit so that we've corrected that.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Could you use the microphone, please?

ATTORNEY JONATHAN LEVIN: Also with us tonight is Erin Masket who is from Hendren Associates the architects for the project.

CONSTANTINE ALEXANDER: If anyone wishes to see these plans and can't from where you're sitting, feel free to come around behind us and look.

ERIN MASKET: I can also turn it.

CONSTANTINE ALEXANDER: Okay. Let's leave it this

way for now.

ATTORNEY JONATHAN LEVIN: Thank you, Mr. Chairman.

The applicants are seeking relief to slightly increase the height of the existing house by two feet and expand the third floor of the property by approximately 409 square feet in order to maximize and normalize the height and size of the third floor living area.

CONSTANTINE ALEXANDER: But also would mean the height would no longer be conforming with our Zoning Ordinance.

ATTORNEY JONATHAN LEVIN: That's correct. That's correct.

The property is currently --

CONSTANTINE ALEXANDER: As I'm sure you're well aware, this Board looks at great askance at any attempts to create residential structures higher than 35 feet. You should appreciate that.

ATTORNEY JONATHAN LEVIN: I do appreciate that,

Mr. Chairman. This is an unusual circumstance in the sense that the third floor is a very low ceiling third floor. It is not a normal height ceiling and --

CONSTANTINE ALEXANDER: Well, this building, you don't -- the owners don't occupy the third floor, am I correct, they rent it out?

ATTORNEY JONATHAN LEVIN: That's correct.

CONSTANTINE ALEXANDER: They rent out the whole structure?

ATTORNEY JONATHAN LEVIN: Yes, they do.

CONSTANTINE ALEXANDER: They do. So not an owner/occupant of the structure?

ATTORNEY JONATHAN LEVIN: Not an owner/occupant.

CONSTANTINE ALEXANDER: I'm reading from the supporting statement that's submitted by the petitioner. And dealing with first of all the hardship and it says: The current third floor apartment has very low ceilings and knee walls which make the space very tight and not as functional

as it should be. The limited headroom and limited volume would reduce the unit's marketability and result in reduced options for tenants and rental income. So that's not a substantial hardship under a matter of law that justifies a granting of a Variance.

ATTORNEY JONATHAN LEVIN: Well, it would be a financial hardship, Mr. Chairman, because to the extent that you have limited height it limits the number of --

CONSTANTINE ALEXANDER: That's just the way the building was built. Many attics don't have sufficient height. You're looking to get relief here, go above the height requirements of our Ordinance just to increase the rental income from this property. That's --

ATTORNEY JONATHAN LEVIN: Well, it's also to increase the liveability of the space, Mr. Chairman.

CONSTANTINE ALEXANDER: Liveability so you can rent the unit out again higher rent.

ATTORNEY JONATHAN LEVIN: If they were

owner/occupants the issue would be the same.

CONSTANTINE ALEXANDER: I didn't say it's in order. I'm not saying it would be different. But I'm pointing out, you start with a case with a height variance which is very rarely granted by this Board, and then the justification is pure economic. We can make more money from this rental unit if we have higher ceilings. I'm going to tell you, at least in my view, that one, it doesn't satisfy the legal requirements for a Variance. And, two, I'm not going to support the relief you're seeking. But I'm only one of five so keep going.

ATTORNEY JONATHAN LEVIN: Thank you, Mr. Chairman. This is existing three-family house, a legal three-family house with three stories. It's currently 34 feet, 10 inches high. And the proposal will increase the height by two feet to 36 feet, 10 inches high. The existing gross square foot area is 3225 square feet and an additional 409 square feet will be added. And the main reason that there's additional



space being added is to improve the circulation and flow-through space. Now the space will be better utilized by eliminating the knee walls, which is the reason for increasing the actual square footage.

The floor area ratio adjusts slightly up from 0.78 to 0.88. The Zoning Board requirement is 0.5.

There will be no changes in any of the setbacks. The new work will be done within the footprint of the existing second floor. So there's no encroachment into the side setbacks, the front setbacks, or the rear setback. It's all within the existing envelope.

We do have letters of support from eight neighbors as well as two renters which I'm more than happy to submit to the Board.

CONSTANTINE ALEXANDER: We can keep it in our files. We didn't have any in our files.

ERIN MASKET: There's another copy here, too.

CONSTANTINE ALEXANDER: You want this back?

ATTORNEY JONATHAN LEVIN: Thank you, Mr. Chairman.

And Erin will explain exactly what's being done, but in response to Mr. Chairman's concerns, we do feel that a literal enforcement of the provisions of the Ordinance does involve a substantial hardship, financial and otherwise, and that the existing space is almost not functionable -- functional in terms of it being adequate living space particularly for today's standards.

CONSTANTINE ALEXANDER: Is it nevertheless being rented out now?

ATTORNEY JONATHAN LEVIN: Excuse me?

CONSTANTINE ALEXANDER: Is that third floor nevertheless being rented out?

ATTORNEY JONATHAN LEVIN: Yes, it is.

ERIN MASKET: But can I add to a very specific tenant --

CONSTANTINE ALEXANDER: Very short?

ERIN MASKET: -- happens to be female and very

short. And that would be the only option to be honest.

When Gary Hendren entered the property, he had to duck his head.

CONSTANTINE ALEXANDER: Okay, thank you.

ATTORNEY JONATHAN LEVIN: The size and the shape of the lot do impact the flexibility that the owners have in terms of avoiding a Variance and therefore they are seeking the Variance, and that desirable relief can be granted without substantial detriment to the public good because all we're seeking to do is, and I understand it's an unusual circumstance, but all we're seeking to do is raise the roof by two feet. It will not be noticeable to the neighbors. The surrounding houses are of comparable size and scale. It fits in with the neighborhood quite nicely as we've indicated. We've received letters of support. And the -- when the work is completed, it realistically will not be noticeable. It's, the work as being designed by Hendren and Associates is essentially a mirror image of what's there

now. It's just a little bit further out in the circumstance and the roof pitch changes slightly. But this is not an imposing structure that's going to stand out like a sore thumb and appear like it doesn't belong there. When the work is complete, I believe that the Board would find that it fits in and looks exactly similar to what is there now.

So with that, Erin, if you could explain.

CONSTANTINE ALEXANDER: Sure.

ERIN MASKET: Absolutely.

CONSTANTINE ALEXANDER: You may need a mic.

ERIN MASKET: Sure. Hi, I'm Erin Masket representing Hendren Associates. And of course Campbell and Thea with their home here in Cambridge. So here are some drawings of the property. Here's the front elevation. This is the existing and this is the proposed. So you can see that the changes are minimal. They have already had bump outs and lofted areas in the space and it wouldn't make, it wouldn't really impact that very much.

Here's a floor plan of the third floor. Here again is the existing and here's the proposed. So the space would be reformatted because currently the bathroom isn't very functioning and the half of the living space is cut down by the roof line so it would just be to, once we add the height to the ceiling, you gain back a lot of living space as well as being able to have a more functioning bathroom.

From -- I did want to point out that from, from bird's-eye view site plan, the back property line is close to the building, however, the neighbor's actually over the property line on our side.

CONSTANTINE ALEXANDER: What do you mean over?

ERIN MASKET: He has a, he had built out some sort of little nook. I don't know who exactly that neighbor is.

CONSTANTINE ALEXANDER: I don't care who the neighbor is. I just didn't understand the comment.

ERIN MASKET: Okay.

And the bay window pops out over the top of the property line.

CONSTANTINE ALEXANDER: So it violates your lot line that's on the property?

ERIN MASKET: Correct, yes.

And then I have the other elevations as well. This one does show in an interior picture actually of the third floor. You can see that even the doors don't actually fit on the third floor. They had to be cut out and redesigned to fit the space because it's not proper height.

This is an image of the exterior in the front as well where you can see all the changes that had been made previously.

This is the west existing and here's the west proposed. The difference being this little area right here and of course the roof height.

Here's an image of -- from the street view.

Here's the other side street east side. Again,

change would be here's the existing, here's the proposed. So it pulls the roof out just a little bit. And here would be the rear elevation existing and proposed. So you can see the changes are very minimal.

PATRICK TEDESCO: Do the dormers meet the dormer guidelines, the proposed dormers?

ERIN MASKET: The proposed dormers, yes.

PATRICK TEDESCO: Could you just refer to the previous board? Because the length....

CONSTANTINE ALEXANDER: You are aware of our dormer guidelines that's what Mr. Tedesco referred to. For zoning relief we have the dormer guidelines as to what the dormers are -- their dimensions and their location. It's not a requirement, it's a guideline but it's something we take very seriously and we expect people to comply with them unless there's a very good and sufficient reason not to. So that's --

PATRICK TEDESCO: Because I'm looking at the

length of the proposed dormer on the attic roof. Yeah, that right there.

ERIN MASKET: This one right here?

PATRICK TEDESCO: That overall length.

ERIN MASKET: Right.

CONSTANTINE ALEXANDER: That's not supposed to be more than 15 feet under our dormer guidelines. That looks clearly more than 15 feet.

ERIN MASKET: That's more than 15 feet.

CONSTANTINE ALEXANDER: Okay, thank you.

BRENDAN SULLIVAN: What is the length of the existing dormer that's up there, that you're attaching to?

ERIN MASKET: The existing?

BRENDAN SULLIVAN: Yeah.

ERIN MASKET: I don't have a scale with me. This is 13. And probably about 20.

BRENDAN SULLIVAN: 20.

ERIN MASKET: So it's already in nonconformance.



BRENDAN SULLIVAN: 20, and you're going to 38 feet overall?

ERIN MASKET: Yes.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: And I can't connect the dots that it will not be discernible when it's done what is there now. And I think it will -- have you done a shadow study as to how that's going to affect the adjoining house? That's a three-family and I can't believe that this -- what you're doing is not going to have a deleterious effect on that three-family. It looks like there are bedrooms down along the side of that and by that, this -- adding this bulk and this mass up there, is obviously going to cast shadow or diminish the light and air.

ERIN MASKET: We have not done a shadow study. But we can do one.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Anything further you want

to add?

ATTORNEY JONATHAN LEVIN: No, I think that we appreciate the fact that the dormer is longer. I think with the density of the area and the likelihood of there being a significant difference in terms of shadowing would not be that great. And in terms of the overall mass, I think that it's not, it looks larger on the plan than it actually would be. So I think that the -- when you consider that only 400 square feet is being added, it's not a significant amount of space.

ERIN MASKET: It would be comparable to this.

PATRICK TEDESCO: Yeah, I'm not troubled by the square footage as much as I'm troubled by the loft of where that square footage is. That it's occurring on the third floor extending what's already, you know, a long roof, and then on top of that, raising that roof. Even though it's a, you know, a minor dimension, it still is -- you're seeking relief for that.

BRENDAN SULLIVAN: Yeah, and you're doing that on both sides --

PATRICK TEDESCO: Right.

BRENDAN SULLIVAN: -- of the house.

ATTORNEY JONATHAN LEVIN: I understand that. I mean I think that in order to, in order to meet the needs of the property and to and in order to maximize the space and make it liveable, I mean this is a legal three-family and Inspectional Services has been through the house. There's no questions in terms of egress and things like that. So what we're trying to do is we're trying to make space that is barely passable in terms of living -- liveability, not in terms of the other legal requirements, into more liveable space. And I understand that that means as a result, there is going to be some changes to the exterior, but I think that in the overall context of the house and the overall context of the neighborhood which has very similar structures with many which have third floor type structures

similar to this, that it's something that the Board should consider and approve.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY JONATHAN LEVIN: Thank you.

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

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

We are in receipt of letters received by the petitioner. They're identical letters. Did you say there are eight in number? I'll read the letter and cite the addresses of the person who wrote each letter.

(Reading) I am in the process of doing some renovation on the third floor of 25 Sacramento Place, unit 3, Cambridge, Mass. I have architectural plans to raise the ceiling on the third floor to a reasonable height.

Currently the ceiling is considerably low. This renovation would allow more space for the tenant, and by doing so would make the unit ceiling height a more comfortable height size for my tenant. I am meeting with the Zoning Board soon and would like your support to allow the process to go unhindered. I thank you in advance of your support.

And the letter is signed by -- I have trouble reading handwritings, but a resident of 3 Sacramento Place; 23 Sacramento Street; 11 Sacramento Place; 21 Sacramento Place; 22 Sacramento; 10 Sacramento Street; 8 Sacramento Street; 25 Sacramento Street; 25 Sacramento Street again. It's a different name. So obviously they're both are living in the same structure. And 26 Sacramento Street. And one -- no more, that's it. So we have all of these letters of support.

I am going to close public testimony. Any final words you would like to add?

ATTORNEY JONATHAN LEVIN: No.

CONSTANTINE ALEXANDER: Discussion from members of the Board. I'll close all public testimony. Any discussion from members of the Board before we take a vote?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

Okay. The Chair will make the following motion with regard to the Variance being sought:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being is that the structure is now being utilized. It is a three-family structure, but if they can raise the roof, they could involve -- they or whoever owns the property can get a higher rent with this third floor unit.

That the hardship is owing to circumstances relating to the shape of the structure, I suppose, and especially affecting such structure but not affecting generally the zoning district in which it is located.

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.

Do you have the plans? Thank you.

So on the basis of these findings, the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with the plans prepared by Hendren, H-E-N-D-R-E-N Associates, the first page of which is initialled by the Chair.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently nobody is in favor. The Variance has been denied.

The Chair would move that the reason we granted -- we denied the Variance was that the hardship that was cited by the petitioner is not a sufficient legal hardship to justify the granting of relief. And that what

is being proposed will violate our former guidelines and it's something that we pay close attention to.

Anything else people want to add to it?

BRENDAN SULLIVAN: No, just that I think they failed to establish the legal basis for a hardship.

CONSTANTINE ALEXANDER: Yeah, I mentioned that.

BRENDAN SULLIVAN: Basically.

CONSTANTINE ALEXANDER: Okay.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Thank you.

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

\* \* \* \* \*



(8:50 p.m.)

(Sitting Members Case No. BZA-013839-2017: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 013839, 21 Lakeview Avenue.

ATTORNEY SEAN HOPE: Good evening, Mr. Chairman, members of the Board. For the record, attorney Sean Hope, Hope Legal Offices in Cambridge. I'm here on behalf of the petitioner, 21 Lakeview Avenue Nominee Trust. I'm here with the trustees of the trust. We have David Egan and Marianna Egan. This is an application requesting variance relief to reduce the size of 21 Lakeview Ave., thereby eliminating the

use of a common driveway that is shared by 21 Lakeview Ave. and 15 Lakeview Ave. and creating a new and separate driveway for 21 Lakeview Ave.

The petitioner lists this as a subdivision although, and that's the way the Ordinance describes it, but this is really just reducing the size of 21 Lakeview and then creating a separate driveway, but it's known as a subdivision.

The purpose and the reason for the Variance request is that the existing driveway which is preexisting non-conforming is approximately at its closest point two feet from 15 Lakeview Ave. This is a common driveway that's shared by both properties, and with the vehicles entering and exiting, as well as the pedestrians walking passed, as well as the children in 15 Lakeview and formerly at 21 Lakeview, it created a tension between vehicles and children playing. This caused a potentially hazardous condition. There's also antidotal evidence that the trustees can talk

about about this condition and how it's potential caused this hazard.

By way of background, common driveways aren't particularly rare in Cambridge. But if you look at this specific area on Brattle -- excuse me, on Lakeview between Brattle and Huron, it is a pretty rare condition on the street. As we look for remedies prior to coming before the Board, there was really no practical remedies besides exploring and being able to move the property line. 21 Lakeview had the advantage of being a very generous size lot and is typical of a lot of the houses on the street, but it's 9500 square feet plus or minus, which actually allowed us to move the property and still stay within the lot area per dwelling unit, which in the Res. A-1 is 8,000 square feet.

As the Board is aware, Res. A-1 and Res. A-2 have some of the larger setbacks and open space requirements as well as the lot sizes. So we had the advantage of being

able to reduce the size of 21 Lakeview and still meet the minimum open space requirement. So the one trigger was the minimum lot width. The district requires 80 feet. The existing property at 21 was 66 feet. So we reduce that plus or minus by ten feet and so that is triggering the Variance that we're requesting.

I would also say in terms of the design, if you go up on Lakeview Ave., and we have some pictures of similar properties, you do see several properties that have their driveways along the boundary lines and most of those properties, and we have examples of four which I can just submit to the Board if they'd like to see, oftentimes these properties have a buffer in between them much like what we had -- are proposing to create. This separates the driveways, eliminates safety, but it also adds an element of privacy. And so I think one of the, one of the elements was to make sure that we were designing something that was consistent with the streetscape and also the adjacent

properties, and I think we have chose to accomplish that.

As part of the outreach and in addition to contacting the direct abutters and getting letters of support, there was also a -- there was also a petition sent out to the larger neighborhood group. So there was a feedback and questions asked about the proposal. I do believe the idea that it's a subdivision may have created some concern that they were looking to add additional, additional units to the proposal. But, again, as I said, this is really to remedy what we believe is a substantial hardship which is the concentration of intensity of vehicles using this common driveway which is extremely close to 15 Lakeview Avenue.

I'd also say, too, in addition to the occupants of this structures both 15 and 21 having vehicles, these are large lots. These are both structures that are likely to be occupied by families. And also there is the issues with landscapers coming in and out of the property. So there is

an intensity of a use. There is examples of situations that have caused a hazard, and we believe that this Variance simply subdividing the lot and creating the lot would remedy that.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

BRENDAN SULLIVAN: What is contemplated at the property, at the new property line?

ATTORNEY SEAN HOPE: So we did a photo schematic rendering of what the finished product would look like and --

CONSTANTINE ALEXANDER: We have it right here.

ATTORNEY SEAN HOPE: Yeah, it's in the file. Just to give an idea conceptually it's very similar to the photos. I would say it's schematic only in that there's a foundation wall and some other elements that we, you know, we believe we can do. But I think we wanted to make sure that the Board as well as the neighbors had an idea of

aesthetically what it would look like. This is an area of Brattle Street that gets a lot of attention from neighbors and others, and so we wanted to make sure that everyone was comfortable with what the finished product would be if the Board was thought to approve it.

BRENDAN SULLIVAN: So we're not doing a six-foot stockade fence?

ATTORNEY SEAN HOPE: No fence, no.

CONSTANTINE ALEXANDER: And you're wise to be sensitive to the needs or the concerns of your neighbors on Brattle Street --

ATTORNEY SEAN HOPE: Definitely.

CONSTANTINE ALEXANDER: -- because they are vocal.

ATTORNEY SEAN HOPE: Definitely.

CONSTANTINE ALEXANDER: Any other questions from members of the Board at this point?

(No Response.)

CONSTANTINE ALEXANDER: I'll open the matter up to

public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. We are in receipt of some letters all of which I believe are in support. Some are new so I haven't read them myself yet.

There's a letter from Ann Sweeney and Martin Cassidy who reside at 87 Lakeview Avenue. (Reading) We are writing to lend our support for the Variance application to subdivide a portion of the 21 Lakeview property thereby eliminating the existing common driveway that is extremely close to the property of 15-17 Lakeview Avenue. We are neighbors at 87 Lakeview Avenue and have lived there for seven-and-a-half years. We have spoken with the owners and have reviewed the site and landscaping plans. We believe that a proposed subdivision, including separate driveways and curb cut, will cure the present dangerous condition for



the occupants of both properties, making the lots more family-friendly, create a safer situation for drivers, cyclists, pedestrians, and all others who use the street, and enhance the attractiveness of the premises of the properties for the neighborhood. This is that letter.

We also have a letter from Joel G. Beckman, B-E-C-K-M-A-N and Christine Alaimo, A-L-A-I-M-O who reside at 25 Lakeview Avenue. (Reading) We are writing to lend our support for the Variance application to subdivide a portion of the 21 Lakeview property thereby eliminating the existing common driveway that is extremely close to the property of 15-17 Lakeview Avenue. I'm a direct abutter at 25 Lakeview and have lived in the neighborhood for approximately four years. We have spoken with the owners and have reviewed the site and landscaping plans. We believe the proposed subdivision including separate driveways and curb cut, will cure the present dangerous condition for the occupants of both properties, make the lots more family-friendly, and

enhance the attractiveness of the properties for the neighborhood.

A letter from Verinique (phonetic) -- I'm not going to -- I can't get the accents right so I'm just going to spell the last name. H-E-L-E-N-O-N. (Reading) I am writing to lend my support for the Variance application to subdivide a portion of the property, blah, blah, blah. From 2012 until June 2017 I've lived in 21 Lakeview Avenue. I have a young daughter and the Egans at 15-17 Lakeview Avenue also have young children. From living at home, I have seen that there can be a lot of car traffic in the shared driveway. The cars pulling in and out can create dangerous situations with the children, especially when the children are playing in the yard but out of view. I believe that the proposed subdivision to create separate driveways would solve that dangerous situation. Additionally, I reviewed the site and landscaping plans, I believe that the changes would make the lots more family-friendly and also enhance

the attractiveness of the properties for the neighborhood.

A letter from Steve and Rosemarie Johnson, J-O-H-N-S-O-N who reside at 12 Lakeview Avenue. And the letter is the same effect as the letters I've previously read.

We have a letter from Muireann M-U-I-R-E-A-N-N Glenmullen, G-L-E-N-M-U-L-L-E-N. (Reading) As agent for the Silwidttes (phonetic) family family of 5 Fayerweather Street, I am writing to lend support of the Variance application -- blah, blah, blah. I have reviewed the site and landscaping plans and believe the proposed subdivision is very sensible and in keeping with the neighborhood with no detriment to anyone. Separate driveways would -- and curb cuts would cure the present dangerous condition for the occupants of both properties, make the lots more family-friendly, and enhance the general attractiveness of the properties to the benefit of all.

And then the last letter that came in just

recently which I never read. It's a little bit longer. It's from Joseph Ferrara, F-E-R-R-A-R-A. (Reading) We certainly agree that the child safety could indeed be improved by having two separate driveways rather than a shared drive. However, we did want to raise certain points that we hope the Board can address at tonight's meeting.

Earlier -- I skipped over, they said they could not attend tonight but that's why they're writing the letter.

(Reading) Regarding moving the property line, I think the proposed plan on the ZBA website does not show two separate driveways so that proposal is clearly not meeting the safety objective of the proponents. However, the proponents did provide us with a proposed driveway plan which shows two driveways separated by about a ten-foot buffer. That landscape plan better reflects at least for the proposal. That's the one right here, right?

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: Please find in view of the assumptions and comments on the proposed two driveways based on the landscape plan below. Driveway setbacks: We want to be sure that both driveways meet the five-foot setback requirements under zoning.

The plan was not dimensioned in detail, but we are assuming that the driveway will meet the five-foot setback requirement on both sides of the property line and are the required distance from the buildings themselves. If this is not dimensionally possible only entirely for the driveways, it seems they should come as close as possible to meeting that requirement to provide adequate safety.

Side-by-side drives can look like a parking lot if not done well, so that is why we think the ten-foot buffer between driveways would be essential for the proponent's proposal success. More importantly, the ten-foot buffer will better meet the safety objectives.

You want to speak to that before I get to the

second one?

ATTORNEY SEAN HOPE: Yeah. So the property line was shifted really to the point that it could accommodate the driveway but not to the point where we push the driveway too close to 21 Lakeview. We made sure that the 21 Lakeview driveway was compliant with the minimum ten-foot width and the five-foot buffer. But the existing driveway stays the same. We did do the measurement in response to this comment and it's, I think we're half a foot short. So instead of having the five-foot buffer, we have about a four-and-a-half foot buffer. There is a possibility, because driveways don't actually have to be landscaped, there is from the driveway to 15 Lakeview, there is the potential to shift over the driveway, but to me that would be having the vehicles so close to the house that it wouldn't make sense. So it really wasn't possible to be able to achieve five feet on both sides without creating another condition. And I would say the half a foot is probably not visible from the

eye. So we're extremely close --

CONSTANTINE ALEXANDER: And in addition you don't need zoning relief because this pre-existed.

ATTORNEY SEAN HOPE: That's right.

CONSTANTINE ALEXANDER: The other comment, paved area. (Reading) We're assuming that the amount of permeable paving on both properties will not exceed the limits set by zoning. I am sure that is a calculation that is made and reviewed.

ATTORNEY SEAN HOPE: That's right. And so on the proposed site plan we did a thorough analysis of the open space, mostly the general open space as well as the private open space, and we satisfied both of those conditions.

CONSTANTINE ALEXANDER: Okay, thank you. Other than the above, we are generally supportive of the proponent's safety goals with the two separate driveways as long as they are achieved with adequate buffer meeting zoning requirements. And we discussed that.

And that's all the comments we have.

I'll close public testimony unless you have anything further you want to add.

ATTORNEY SEAN HOPE: No.

CONSTANTINE ALEXANDER: Discussion or ready for a vote?

ANDREA HICKEY: Ready.

CONSTANTINE ALEXANDER: Ready.

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 ship. Such hardship being that the current driveway situation which proposes safety concerns will be perpetuated and this will eliminate -- what is being proposed will eliminate those safety issues.

The hardship is owing to the shape of the lot, or the two lots.



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 proposal has unanimous neighborhood support, and so it would appear. And that it does solve a safety issue and improves basically the -- well, it solves a safety issue for the benefit of the occupants of the properties and the citizens of the city generally.

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

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(9:05 p.m.)

(Sitting Members Case No. BZA-013849-2017: Constantine Alexander, Brendan Sullivan, Andrea A. Hickey, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 013849, 60 Foster Street.

As you probably learned by sitting here this evening, please give your name and address to the stenographer.

MARC HOLZER: I'm Marc Holzer, 60 Foster Street.  
And?

MADELEINE HOLZER: And I'm Madeleine Holzer, 60 Foster Street.

MARC HOLZER: And we're accompanied by our architect Amy Semmes.

AMY SEMMES: Amy Semmes, S-E-M-M-E-S, 120 Auburn Street, Medford.

CONSTANTINE ALEXANDER: Thank you.

The floor is yours, go ahead.

MARC HOLZER: Well, thank you very much for your time this evening.

CONSTANTINE ALEXANDER: We have nothing better to do anyways.

MARC HOLZER: Neither do we.

So what we are proposing is to make some simple repairs basically to the 60 Foster Street which is a house built in the 1850s, and moved to the present location in the 1880s. So we want to rebuild the front stairs, which are crumbling, tilting, and are a little bit dangerous, especially in the winter.

We want to put a, a little roof, a hip roof over the front door and the platform at the top of the stairs, not the full stairs. And the hip roof is very much in character with the two adjacent houses in the small kind of courtyard where we are and some construction and, you know, in the neighborhood and house of, you know, similar, similar

age, and to replace the front door which is not really in character with the mid-19th century style of the house. There's workers house but something that is frankly simpler.

So we have the support of our neighbors. At least five of them have written to the Half Crown Commission. The Half Crown has, you know, has supported us with a unanimous vote and we have consulted, you know, sensitively with their staff.

So I'd like Amy to, you know, to just address the specifics of the proposal.

AMY SEMMES: So the specifics from a zoning point of view are we need relief to build in both the side setback.

CONSTANTINE ALEXANDER: And you're going to increase the non-conforming FAR?

AMY SEMMES: We are. We're adding -- the area that would be covered by the new open roof is 26 square feet.

CONSTANTINE ALEXANDER: Right.

AMY SEMMES: In total.

CAROL O'HARE: Could you turn the mic on, please?

AMY SEMMES: The area that would be covered by the new opened roofed porch is 26 square feet in total, and the house is on a tiny lot in the --

CONSTANTINE ALEXANDER: Well, just so you, finish the thought. The zoning requirement for your district is no more than 0.75. Right now you're the structure is non-conforming. It's at 0.8. And with 26 feet you're going to 0.82.

AMY SEMMES: Yes. We're increasing the nonconformity by two percent.

CONSTANTINE ALEXANDER: Yes, okay.

AMY SEMMES: And the current entry is right up against the side property line because it's a side entrance, so we also need relief from the side setback requirement.

I think Marc mentioned that we went through

extensive review with the Half Crown Marsh Historic Commission, and went through a couple of design changes and shrunk it down a little bit. And essentially Marc and Maddie have just finished renovating the inside of the house and this is the sort of last part of their hopeful renovation. And they feel it's a hardship not to have the front entry covered for protection from the elements. Marc has had a fall there and --

CONSTANTINE ALEXANDER: And this hardship runs with the property, if you will. It's not just you. Anyone who occupies the property would have this hardship of not having a covered entry.

MARC HOLZER: Yes, that's exactly right.

MADELEINE HOLZER: Exactly right. And in addition, I mean Marc has fallen and I have arthritis and we had icicles coming down and we said we have to do something about this and so that's the reason for the hardship.

AMY SEMMES: I think the project's pretty

straightforward. Does anyone have questions?

CONSTANTINE ALEXANDER: We'll find out. Anyone have questions?

(No Response.)

CONSTANTINE ALEXANDER: No, apparently not. I'm going to open the matter up to public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. And I don't believe -- we don't have any letters of support or letters at all in our files from neighbors and abutters.

So I'm going to close public testimony. Discussion or are people ready for a vote?

BRENDAN SULLIVAN: All set.

CONSTANTINE ALEXANDER: 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 to the petitioner. Such hardship being is that there is no covered entry to the outside which creates a dangerous situation for people who reside in the house or otherwise going in and out of the house.

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

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

And in this regard the Chair would note that this project has the support of the Mid -- I never get it right.  
Mid Crown?

MADELEINE HOLZER: Half Crown Marsh.



CONSTANTINE ALEXANDER: Half Crown Marsh District.

That there appears to be no neighborhood objection.

The relief is modest in nature. So the kind of relief we've seen before.

And it makes sense in terms of liveability of the structure.

So on the basis of all of these findings, the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with the plans prepared by Amy Semmes, S-E-M-M-E-S, architect, the first page of which has been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

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

(Alexander, Sullivan, Hickey, Tedesco, Best.) (9:10 p.m.)

(Sitting Members Case No. BZA-013730-2017: Constantine

Alexander, Brendan Sullivan, Andrea A. Hickey, George S.

Best.)

CONSTANTINE ALEXANDER: The Chair will call case No. 013730, 8 Brattle Street.

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

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, Members of the Board. For the record, my name is James Rafferty. I'm appearing this evening on behalf of the applicant. As I suspect the Board is aware, I filed a request to continue this case yesterday. I did so after receiving and reviewing a copy of the Planning Board comments on the case which are extensive, but actually quite specific with regard to the design. The Planning Board suggests that the final design should be revised. They go on to give specific advice that the applicant -- or the project would benefit from design review and advice from the City's urban design staff. And they further subject that

the applicant seek advice collaboratively from design staff at CDD, Historical, and Inspectional Services.

The Planning Board spent a great deal of time on this case last week. I was present for that hearing. They had previously conducted a hearing, because as I'm sure the Board is aware, this is a case involving a location and a proposed Special Permit that was before the Board less than two years, I think in April of this year. So there is a specific role for the Planning Board in such cases with regard to the requirements associated with the repetitive petition. Planning Board needs to make a determination that they will consent to the BZA's reviewing the case within the two-year period. So --

CONSTANTINE ALEXANDER: The new case within the two-year period a case that has to meet the standard, precise of Section 10.51. It's really, what you want to propose is something different than what we voted on back in April, modified the --

ATTORNEY JAMES RAFFERTY: Right, well, that certainly would be our position. But I think that's subject to a determination by this Board.

CONSTANTINE ALEXANDER: To be sure, right.

ATTORNEY JAMES RAFFERTY: But I'm not certain that's a role for the Planning Board. The Planning Board's role and the transcript suggested that they concluded that they felt they would -- that this Board had adequate capabilities to make that determination on their own.

It's an area where there's very little guidance of this area of Section 16 that talks about the consent of the Planning Board. And the Chair of the Planning Board at that hearing acknowledged that. The Planning Board was asked -- is asked in such a case to consent to something about in many cases they have no knowledge of. So it's a case heard by the BZA, but the Planning Board didn't know all the particulars. So the Chair at that hearing acknowledged that he read the entire transcript, had to

familiarize himself with the proceedings, and based on that, relied on some guidance from some memoranda from the Community Development Department of the State Department of community planning, but suggested that the standard should be -- the standard for consent is a different standard than a standard for approval. But nonetheless, the point being that the Planning Board has taken active role I would say in this location, perhaps more than has historically been the case. And in light of their advice and the fact that we had to comply with the four p.m. -- five p.m. requirement on Monday, there wasn't ample opportunity to do any of the things that appeared in yesterday's request. So a -- the recommendation. So the request for a continuance is to allow the applicant to pursue the recommendation set forth in the Planning Board memo.

CONSTANTINE ALEXANDER: Can I ask a question? You know, you're late to the case and so some of the errors of your client, which I'm going to deal with in a second, are

not yours needless to say. But why did they file the application for the hearing before going to the Planning Board and seeing whether the Planning Board might have something to say as they did with regard to design? If they had done that, we wouldn't have to have a continued case and bring citizens down to hear this case thinking that maybe we're going to hear the case on the merits. This has been a hallmark, and again this is not to you.

ATTORNEY JAMES RAFFERTY: I understand.

CONSTANTINE ALEXANDER: A hallmark of your client's behavior. I have to say that in all my years on this Board, and there have been many, I have never seen a case of zoning relief so badly handled. In fact, bungled by your client. They keep filing applications before they should and then they have to seek a continuance and then make another continuance and coupling that with another continuance with this evening. Not only has it wreaked havoc for the citizens for the city interested in the

outcome of this case forcing them time and time again to spend late hours to attend our hearings when they should not have had to do so. And they've also ignored our Board's published rules regarding deadlines for filing plans and drawings. Nevertheless we waived those our rules to allow, allow them to proceed but our forbearance has not been repaid. We're back here again with a request for a continuance that Did not have to have been made.

What should have been done is you should have taken step by step. Gone to the Planning Board to see to get them to okay or if they had comments to make changes to reflect the comments. So we got the end of the procedure. Everything would have been done, we could have read the Planning Board's recommendation, whatever plans or drawings that are hopefully timely filed, they will be if you're the counsel for them, and then we can make our decision. And we wouldn't be dragging citizens of the city down here needlessly and forcing them to waste their time for no good

reason since there's no case to be heard that night. We're stuck but those neighbors aren't.

I just have to say your client are in the hospitality business? How can they not -- I shouldn't have to lecture this. Why didn't they have a public hearing with the citizens of the city when they started to come in? This is a very sensitive location. Other, other -- and again this is not directed to you. Other applicants far less controversy relief set up public hearings and invite the citizens of the city to come in and give their comments and they can react or not react to the comments. None of this has been done by your client. And once again this case is going to be dragged on from -- assuming we grant the continuance, dragged on again and again. Anyway, you had to sit here to my tirade --

ATTORNEY JAMES RAFFERTY: No, no. I --

CONSTANTINE ALEXANDER: But that's how I feel about this case.



ATTORNEY JAMES RAFFERTY: I think -- I understand it. Candidly I think but for that history, I might not be sitting here this evening, frankly. So I think there did finally emerge some awareness on their part that this was proceeding in unusual fashion.

I do want to just say one thing in fairness, I've only had recent involvement, it is correct, but I did request a continuance. The Planning Board comments are quite specific and they came in a day before. So we can't ignore the history. I did my best to get the letter in quickly. They told me they were going to alert, I believe it was the local media organ that then shared with them that the request was being sought for the continuance to at least get word out that that possibility existed. But had the Planning Board commentary been different, I don't any I would have felt the need to file a request for the continuance.

CONSTANTINE ALEXANDER: I understand that. My

point is is that why did they file the application for a hearing tonight on the merits before they knew what the Planning Board was going to have say about it?

ATTORNEY JAMES RAFFERTY: No, I understand that. And I didn't prepare that application.

CONSTANTINE ALEXANDER: I know you didn't.

ATTORNEY JAMES RAFFERTY: And I will say that I think once again we're at an area where the protocols aren't all that well established, because frankly when I found myself in this scenario, I seem to recall a point in time when there used to be three hearings; that you'd come here first, then you'd go to the Planning Board, and then you come back here. So you get the initial determination -- or I'm trying to remember, maybe -- but it was a two-step dance. And it's changed over the years depending on different BZAs and how they approached it. And I've sat at the Planning Board on the consent thing, and they look at each other and say what is it you want us to do? And I

explain, well, you've got to say it's okay for the BZA to look at a case that they've seen within the past two years. And they say well, what do we know about it? And I say well --

CONSTANTINE ALEXANDER: Well, they read the transcript.

ATTORNEY JAMES RAFFERTY: Right, so in fairness. I mean it's further -- there's even greater uncertainty now when you think about when the case does go forward. There has to be determination by board members who may not have sat in the first case. So do they have a sufficient basis to make the requisite finding on the question of material change? And it would seem to me it's incumbent upon someone sitting on that case they'd have to do probably do some homework and understand that. The statute isn't clear that the Board -- I think the statute presumes you're talking about the same Board. But as we know, we've got four alternates and you could have as many as four people that

had no familiarity with the case, and would be then in a difficult position to make the first finding. So I did ask, I said how do you, how do you propose to handle this? And I haven't, I haven't heard an answer yet as to what the protocol is on that issue. I've sought some legal research on it and there isn't any direct guidance on that.

But I, I don't mean to minimize the impact. There were nights I was, I sat here on other cases and observed from afar and feel your pain particularly with filings and deadlines. And believe me, I know the five o'clock deadline and I've come close.

CONSTANTINE ALEXANDER: I know you know.

ATTORNEY JAMES RAFFERTY: But 4:48 is before five. But in this case I know that to be the case, and I'm mindful of the fact that there is a high level of interest here. But I do think if one were to take a step back, the suggestions I think are helpful. Whatever the outcome is here, I think the process could be benefitted. The head of

Community Development was at the Planning Board hearing. She expressed a willingness to coordinate this type of collaboration.

The one criticism the Planning Board had of the approach was, it was twofold when it came to the design. One was they weren't particularly sure what the design was. But nearly every member of the Planning Board said -- what I came to conclude when I reviewed the case, is what has happened here is in an effort to accommodate as many viewpoints as gets heard, things are changing all the time. And Mr. Russell said it well, he said, it's like you're throwing things against the wall hoping something will stick. And I've asked the client, well, why did you do this? You had this. Well, we heard from someone to do that. Well, who was that someone? Well, we met with these people and they wanted that. And I've never seen a design process like this from this side of the table. The way -- and I kept wondering well, who did you meet with and

who are they and what did they tell you? But that isn't what the advisory committee told you. Why did you -- well, I went to a meeting and people told me this is what they wanted. So, I think the Planning Board really hit the nail on the head when they said this could benefit from some collaboration. It would be one more case. I can assure you there will be no further cases on it. And the request is, as I said, based on that. Mindful the history but recognizing the Planning Board comment.

CONSTANTINE ALEXANDER: What is the date you would like to continue this case to?

ATTORNEY JAMES RAFFERTY: I requested September 14th because I didn't think there might be enough time in the month of August to do the type of collaborative design. Wanted to be able to commit to getting whatever final design is in the file before then.

CONSTANTINE ALEXANDER: Is that going to be enough time? I don't want to have another continuance come

September 14th. A request for a continuance I should say.

ATTORNEY JAMES RAFFERTY: I'm going to make a rash prediction that there won't be any tolerance for further continuances. So it will have to be enough time.

BRENDAN SULLIVAN: Is the Planning Board meeting on the 12th? Because one of the problems here tonight is that the Planning Board met over a week ago.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: Okay? And some of the comments from that they had to then rush to get to the five o'clock, but so that was one of the problems. If the Planning Board had met two nights ago, that's one thing. They didn't. It was a week ago. So now the question is does the Planning Board meet on the 12th so that they have a chance to review what we're going to see on the 14th?

CONSTANTINE ALEXANDER: And get us comments.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: What we're both pressing

is maybe don't push the date so soon. Maybe you need another two more weeks, a little more time.

ATTORNEY JAMES RAFFERTY: I do know based on other matters I have that the Planning Board is meeting at the end of this month, and they're meeting the first Tuesday, the Tuesday after Labor Day. But I have an appearance here at the end of the month at the Planning Board on August 29th. So I know they'll be meeting then.

CONSTANTINE ALEXANDER: Tuesday after Labor Day is the 5th of September.

ATTORNEY JAMES RAFFERTY: Okay.

CONSTANTINE ALEXANDER: You're looking to continue it to the 14th, right?

ATTORNEY JAMES RAFFERTY: Yeah. It's a --

BRENDAN SULLIVAN: Our date and their date should coincide and should be on the same week.

ATTORNEY JAMES RAFFERTY: Right.

I think it has to be a week ahead of time. The



two days is inadequate perhaps. So they, they've got to then reduce to writing the comments.

CONSTANTINE ALEXANDER: Yes. And I would like it to be in the files --

ATTORNEY JAMES RAFFERTY: By the Monday?

CONSTANTINE ALEXANDER: By the -- yeah, that's not a requirement because it's not a plan or drawing.

ATTORNEY JAMES RAFFERTY: I can see the --

CONSTANTINE ALEXANDER: But that would give the citizens of the city the opportunity to read what the Planning Board has to say.

ATTORNEY JAMES RAFFERTY: Well, in light of that I, you know, based on what -- I mean I've talked to the staff person who I think will do the coordination. But I do know that there is a vacation by one person next week. End of August is a tough time to try to herd people.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: So I would defer to the Board. Maybe that makes sense, that a -- later in the month of September would allow ample time, and I think we could get everything done and --

CONSTANTINE ALEXANDER: Okay. So you're now requesting whatever the second meeting in September. I forget what the date is. What's the date?

SEAN O'GRADY: 28th.

CONSTANTINE ALEXANDER: 28th of September. Am I right? I'm not trying to put words in your mouth.

ATTORNEY JAMES RAFFERTY: I know. I know. I'm --

CONSTANTINE ALEXANDER: Do you want to go out into another room and talk to yourself?

BRENDAN SULLIVAN: Why don't you think about that and see if there's any public comment that needs to be.

CONSTANTINE ALEXANDER: Yeah, in the meantime, that's right.

ATTORNEY JAMES RAFFERTY: Right, maybe people have

a preference over one date over another.

BRENDAN SULLIVAN: Well, then you can think it through, too.

ATTORNEY JAMES RAFFERTY: I love to think.

CONSTANTINE ALEXANDER: That's always a good idea.

ATTORNEY JAMES RAFFERTY: Yeah, yeah. That might be helpful. I imagine there's comment and I'll sit aside.

CONSTANTINE ALEXANDER: I'm going to open the matter to public testimony. And the commentary should be limited to whether we should continue this case. Not to the date unless people have a specific reason why the 28th is not a good date, but -- you'll have a chance. Why shouldn't we continue this case.

Ma'am, I saw your hand up first. Professor?

SUZANNE BLIER: Thank you.

CONSTANTINE ALEXANDER: For the benefit of the stenographer.

SUZANNE BLIER: Suzanne Blier, B-L-I-E-R, 5

Phillip --

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Is the mic on, Suzanne?

SUZANNE BLIER: Thank you very much. Thank you for opening up this for public commentary at this point. I know you usually don't do that. I also know that usually it's pretty pro forma on a continuance, and so what I'm going to be suggesting here I say very carefully and respectfully and understand that this is -- would be out of the ordinary.

You are absolutely correct in saying this has been a longue duree as one says for the public but also set for the various commissions. Now No. 10 we've been meeting late into the night on -- across the board on this. And so it is a burden on the City and on the public.

From my vantage point this is yet another example, the first of which was when they came before the BZA originally when they were late in turning in their plans.

Here too they're not prepared for the meeting. And these are not the only meeting that they have to ask for a continuance. These are not the only occasions when they came before the --

CONSTANTINE ALEXANDER: I don't mean to interrupt you.

SUZANNE BLIER: Yeah.

CONSTANTINE ALEXANDER: I want to correct you a bit.

SUZANNE BLIER: Yeah.

CONSTANTINE ALEXANDER: They're looking for a continuance tonight not because they're not prepared, because they got comments from the Planning Board too late to give meaningful -- to respond to. And the Planning Board's comments were --

SUZANNE BLIER: Okay.

CONSTANTINE ALEXANDER: -- you got to work some more on your design, guys. It doesn't look too great to us.

SUZANNE BLIER: Right, okay. So but at the Harvard Square Advisory the architect did not show up until halfway through and didn't bring the plans. So there have been a variety of ways. You know, two plans were presented to the Planning Board. This is, it's a serial problem as you know.

CONSTANTINE ALEXANDER: Yes, I know.

SUZANNE BLIER: But these -- procedural issues on the part of &pizza. There are procedural complexities and problems on the part of the City and certainly on the part of the property owner, Colliers who has already leased this property to them which precludes other businesses from going in.

My final point, and I think it's a really important one, Harvard Square is under enormous pressure right now, not only with the Abbott and Corcoran building and businesses that would go in there but also with the sale of Dow Stearns' property. The likely, you know, proposal

for a demolition and other ventures coming in there. We're at a tipping point on fast food or formula businesses versus local. This is such an extraordinary case already ten plus times before you. If we don't set an example here and say it's got to be done right and it's got to be done carefully, you can't break the rules and come back. I mean, the amount of time in the commission for the city staff, already they have actually been in consultation with the architects for the City right after the Planning Board. I think that this is something that others will see going forward and say well if &pizza was able to do it, let's see how we can push the borders, the boundaries as well.

Thank you very much.

CONSTANTINE ALEXANDER: Thank you. I just want to comment as I tried to say in my comments, we recognize -- this Board recognizes the abuse of our rules and process by this petitioner. And, you know, I use the word bungled and I think I used the word advisedly. But we

are where we are today.

SUZANNE BLIER: Yes.

CONSTANTINE ALEXANDER: And I don't think this is going to be repeated. This kind of bad -- not bad behavior, but behavior that flouts our rules is going to be repeated. But let me just, let me just finish.

But we are where we are. I mean I think we need to see the process to its completion. I like to think we're close to the finish line. I wish the petitioner did a lot of things differently like filing plans -- not bringing the plans the night of the hearing rather than the five p.m. on the Monday before. I would have liked to see a public meeting so people could come and give comments. I would have liked to work with the Planning Board on an earlier date, all of which is true, but they didn't do that and we are here today. And I don't think it's a reason to force the case to go forward tonight because of this. Because I think we've got -- they now have finally have competent



counsel representing them. Close your ears. And I think now we can, we can expect the process to go forward as it should.

SUZANNE BLIER: Right. If I could just make one more comment for the record.

CONSTANTINE ALEXANDER: Go ahead.

SUZANNE BLIER: I and many people who are working with me are not opposed to pizza coming into the Harvard Square, but there are many other sites that are now vacant buildings, including Burke Shoes, Pizzeria Uno, Hidden Suites, etcetera. This is a very busy intersection. It's at a key part in Harvard Square, and it is a combination of these things, some of which you brought up at your last meeting, that raises particular concern for us as well as the process.

Thank you.

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

BRENDAN SULLIVAN: Just for the record, the Planning Board meets September 5th and September 19th.

CONSTANTINE ALEXANDER: 5th being the Tuesday after Labor Day.

ATTORNEY JAMES RAFFERTY: I just checked with my associates. So the 29th we do have two or three matters, but I've become convinced, that the suggestion of the 28th, to avoid any possibility that -- and to make sure that all three departments identified, we have ample time to get there, get their comments. I've become convinced that the 28th of September. So I'd like to modify the request at this point for a continuance until the second meeting of September the 28th.

CONSTANTINE ALEXANDER: The 28th.

ATTORNEY JAMES RAFFERTY: The 28th of September.  
Yes.

CONSTANTINE ALEXANDER: Ms. O'Hare, you want to say something?

CAROL O'HARE: Carol O'Hare, 172 Magazine Street.

I just have a couple of things to say. I haven't been involved much in this. You've received a couple of e-mails from me about the sign certification that is a puny little sub-note on this. That is, there is no sign certification. They haven't submitted any information to Liza at least as far as recently as two days ago or three days ago. That is a basic part of the permit application. There isn't one, there wasn't one filed in April for the April hearing. There wasn't one filed for any of the ten proceedings, and there isn't one filed as of now unless that's been updated by Mr. Rafferty.

CONSTANTINE ALEXANDER: Let me, before you move on let me address that point so we can do this in some sort of order.

The petitioner has represented to us that when they finish their plans, assuming approval from our Board to go forward, they're -- they will not be seeking, they are

going to comply with our sign ordinance without the need for a Variance.

CAROL O'HARE: Fine. Why didn't they say so?

CONSTANTINE ALEXANDER: Well, they did say so. I asked that question.

CAROL O'HARE: Where?

CONSTANTINE ALEXANDER: Prompted by many of your proddings.

CAROL O'HARE: Was that in a public proceeding?

CONSTANTINE ALEXANDER: Yeah. They didn't tell me privately. Yes. So, and I think you can be rest assured that when we finally deal with this case on the merits again --

CAROL O'HARE: Well --

CONSTANTINE ALEXANDER: -- there will be no -- it will be clear and be a condition that they plan to comply with the sign ordinance requirements of our Zoning Bylaw without the need of a Variance.

CAROL O'HARE: Fine, that's great. May I respectfully suggest that in order to avoid this problem in this case and in every other case where we have signs coming in at the end or in the middle or whenever the petitioner chooses to, and I've talked to Liza about this, and that ISD -- that this Board direct ISD not to complete and process the application until a sign data information sheet is submitted.

CONSTANTINE ALEXANDER: Whatever the merits to which you're proposal is we don't have the authority to tell ISD what to do with regard to procedures. We hear cases that come out of the building permitting process or in this case, the ordinance itself.

CAROL O'HARE: Can you make a recommendation like you have with the microphones? Like it would ease --

CONSTANTINE ALEXANDER: We have made the recommendations, Ms. O'Hare. We have. And maybe at some point the ISD will comply with them. That's all we can do.

And I understand. You've made the point.

CAROL O'HARE: I'm so sick of being the, you know, whatever, the alarmist about stupid signs when they could just be required to submit that information along with every other detail that they provide. That's my editorial comment.

CONSTANTINE ALEXANDER: Okay, thank you.

CAROL O'HARE: And I do think this is repetitive.

CONSTANTINE ALEXANDER: That's not before us right now. That's irrelevant, I'm sorry.

CAROL O'HARE: Okay. Thank you.

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

Is there anyone else wishes to be heard?

Mr. Williamson.

JAMES WILLIAMSON: I'm accustomed as I am sitting this close to this esteemed body. James Williamson, 1000 Jackson Place. So first of all, I want to thank Chairman

Constantine for your remarks. Your tirade, if you will, I think as some are feeling that many of us share about how this whole thing has been going and how it seems like it's maybe on the verge of being continued, I would say it might be appropriate to think of it as a hot mess. And I don't think it's fair and it's troubling. I just want to reference a -- the case that is included in the submission from Mr. Rafferty where there's --

ATTORNEY JAMES RAFFERTY: Mr. Chair, that has nothing to do with the continuance.

JAMES WILLIAMSON: Hold on. Hold on. Hold on.

CONSTANTINE ALEXANDER: I'm the Chair, I'm running the meeting.

JAMES WILLIAMSON: I didn't interrupt you.

CONSTANTINE ALEXANDER: We're not going to get into --

JAMES WILLIAMSON: But, no, there's a sentence.

CONSTANTINE ALEXANDER: Does it apply to the

continuance?

JAMES WILLIAMSON: Yes.

CONSTANTINE ALEXANDER: Okay.

JAMES WILLIAMSON: I understand. He's highlighted certain things, but what he didn't highlight, which I would like to reference for your consideration --

CONSTANTINE ALEXANDER: All right.

JAMES WILLIAMSON: -- is the following sentence:

In considering the question we have in mind, the policy which underlies statutory text, such as Section 16, to give finality to administrative proceedings and to spare affected property owners, or presumably the public, to have to go repeatedly to the barricades on the same issue. So I feel I just want to emphasize that that is a crucial problem --

CONSTANTINE ALEXANDER: Okay.

JAMES WILLIAMSON: -- here that we're facing with a request for a continuance.

Now, moving to the specifics of the request for a



continuance.

CONSTANTINE ALEXANDER: Request for a  
continuance --

JAMES WILLIAMSON: For a continuance.

CONSTANTINE ALEXANDER: -- until September --

JAMES WILLIAMSON: -- until September 28th.

The grounds for the -- the request for the  
continuance, as stated in the letter, have to do with the  
filing -- the Planning Board comments: The project would  
benefit as from design review in order to follow the  
suggestion of the Planning Board and seek design  
consultation, the petitioner would request the case be  
continued until September 14th.

Now, there's something that's troubling that I  
don't quite understand here, which is that Mr. Rafferty has  
already said that he was sitting there at the Planning Board  
over a week before the memo was finally filed, only just  
yesterday he was sitting there, he heard everything that was

said at the Planning Board as did Drew Murphy the representative from &pizza. They knew very well back then that the Planning Board were gonna make these recommendations. They might not have known the specific wording of the memo, but they knew that the Planning Board were planning to suggest this consultation.

CONSTANTINE ALEXANDER: But Mr. -- that's right. They did know that and then having the consultation, sitting down with the Community Development, doing new plans, and then getting them into our Board on a timely basis could not be done within the time frame that was involved. That's the reason why we're continuing the case or will continue the case.

JAMES WILLIAMSON: Okay, but then if that's the case, then why was -- why were new plans filed on Monday? Why wasn't --

CONSTANTINE ALEXANDER: I've already spoken to the way their case has been handled by Mr. Rafferty's client,

okay? And, you know.

JAMES WILLIAMSON: It just seems --

CONSTANTINE ALEXANDER: -- and one more, one more evidence of the incompetence --

JAMES WILLIAMSON: Right, yeah, okay. But it's kind of troubling that if it was known that they weren't gonna have the time to wait until the BZA and had the opportunity to agree to this recommendation from the Planning Board, that why then on Monday file new plans that had the appearance of being, you know, a submission based on revisions which wasn't, you know, where did those --

CONSTANTINE ALEXANDER: I agree with you.

JAMES WILLIAMSON: And then two days later on the eve of this claiming that oh, we're doing this now because of the memo from the Planning Board as if it wasn't known about prior to yesterday which I think would be disingenuous.

CONSTANTINE ALEXANDER: The fact of the matter is

there may be some bad comments, maybe some stumbling about, but at the end of the day is they want to and we would want them to work with Community Development to come up with the final plans and they need more time to do that. And the way that things work it couldn't be done in time for tonight, that's why they're requesting a continuance.

JAMES WILLIAMSON: Okay.

CONSTANTINE ALEXANDER: And to make it clear, we're going to have one more date for a continuance and that's why we're pushing this around.

JAMES WILLIAMSON: Okay. I get the impression that this is what's going to be what the decision of the Board is probably going to be. So now I want to speak to a specific aspect of that.

The problem with this process in some specifics is in -- partly in that the both boards if the submission Monday would have been what you might have considered in terms of whether it's repetitive petition, that material is

different from what the Planning Board reviewed when they made a decision about whether this --

CONSTANTINE ALEXANDER: That's not relevant to what --

JAMES WILLIAMSON: It is, no, it is. And let me explain how it's relevant.

If you now decide to continue the case, it's very important, as I see it, that both the Planning Board and the Board of Zoning Appeals have the same presence, the same materials, the same submission from the applicant finally, their final revised, refined, perfected proposal that both the Planning Board and the Board of Zoning Appeals, according to the statute, should review the same plans and make a decision as to whether those plans are repetitive.

CONSTANTINE ALEXANDER: I agree, except that it's going to be a slightly different process.

JAMES WILLIAMSON: And that's why the timing of the next meeting is important and why September 14th would

have been way too soon.

CONSTANTINE ALEXANDER: Exactly. The way this is going to work is the Planning Board is going to sign off or give comments on the plans and designs first and then -- and make a recommendation to this Board. And then we're going to meet and take action. Listening to the Planning Board's recommendations listening to the citizens of the city, listening to the Harvard Square Advisory Committee --

JAMES WILLIAMSON: Right, presumably there would have to be another opportunity for them to comment.

CONSTANTINE ALEXANDER: Well, I would hope so. I can't speak for them.

JAMES WILLIAMSON: Right.

CONSTANTINE ALEXANDER: And we have -- I mean the Planning Board is a different organization --

JAMES WILLIAMSON: Right, but there is a procedure recognized at least to some degree as to how this should properly --

CONSTANTINE ALEXANDER: Yes. Sitting here when they finally get the plans that working, whatever they work out with the planning department, those plans will be shown to the Harvard Square group, shown to the Planning Board, and we would expect that we would get comments, responses from both organizations when we have our meeting on the 28th. And then we'll have the benefit of that, and what as I said, citizen commentary because those plans will also have been in the public file --

JAMES WILLIAMSON: Right.

CONSTANTINE ALEXANDER: -- by five p.m. on the Monday before September 28th.

JAMES WILLIAMSON: But here's the detail that I'm not clear about, which is the 10.51 or whatever it is, on repetitive petitions, specifies that both the Planning Board and the Board of Zoning Appeal, when an applicant returns with a revised, you know, before two years, that that, that application and, you know, the submission that is the

embodiment of it, have to go before the Planning Board and the Board of Zoning Appeal. So if there's a continuation of the case to allow for further revision, that revised plan, set of plans, then it seems to me, must go back to the Planning Board and come back here, and it could happen when it comes here, it could happen on the same night, for a decision on whether or not it's a repetitive petition. In other words, the Planning Board will have to meet again --

CONSTANTINE ALEXANDER: To consent the --

JAMES WILLIAMSON: -- to evaluate first of all not what they think of the design, but is it a repetitive petition.

CONSTANTINE ALEXANDER: And they could do it all at the same time.

JAMES WILLIAMSON: They can do it all at the same time.

CONSTANTINE ALEXANDER: When the Planning Board meets with the fruits of the efforts of the Community



Development program, they give --

JAMES WILLIAMSON: By in large, yes, to the applicant.

CONSTANTINE ALEXANDER: -- and they give comments to our Board, I would expect and I think Mr. Rafferty is an experienced counsel would do this anyway, he would also ask them to reconfirm that they consent to the -- to us hearing the repetitive petition. So your point's well taken I think, but I think it will be dealt with.

JAMES WILLIAMSON: Okay. I think that's enough.

CONSTANTINE ALEXANDER: That's all right, James. Thank you for coming down as always.

JAMES WILLIAMSON: Appreciate it.

Thank you.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard? Ma'am.

MARILEE MEYER: I'm Marilee Meyer, 10 Dana Street.

CONSTANTINE ALEXANDER: Again, just address the

continuance.

MARILEE MEYER: Exactly. But I am totally exhausted and on the verge of tears over this whole thing because it has been going on so long and I'm spent and I'm sure you are, too. The continuance, as I understand it, is to have the applicant come up with a plan, a design that everybody likes basically that could pass the Board. My issue is that -- and I have seen it with the Historical Commission over and over again, that when they start giving leeway to somebody or they have, you know, a precious applicant that they want to help, they end up designing the project for them. And as a result, the applicant complies and complies and complies and the Commission gets backed into a corner because there's no place else to go because the applicant has complied with everything they wanted but it may still be a bad design.

CONSTANTINE ALEXANDER: But you've got to understand, the Planning Board may -- the process you

described, may happen at the Planning Board and they come up with a design that we think -- they say we recommend this. Our Board is going to make an independent determination. It's not a matter of us just going along with people. Everybody can come in, every Board and say we support this, and this Board if it chooses, can vote against it. So don't think --

MARILEE MEYER: That's refreshing because the continuance is for plans and design and it does not deal with redundancy or the need in the square itself. This is a two-pronged issue and --

CONSTANTINE ALEXANDER: You're starting to get into the merits of whatever these plans are.

MARILEE MEYER: Right.

CONSTANTINE ALEXANDER: I don't want to go there tonight.

MARILEE MEYER: Okay. No, no, that's fine. But the applicant is like a flunking student that has been given

17 tries to quote Professor Blier. And there comes a time when it is not helpful to the community in the long run and is this the only business that can go into this?

CONSTANTINE ALEXANDER: You're getting into the merits again, Ma'am. Please. You'll have an opportunity to deal with it but on September 28th.

MARILEE MEYER: Oh, goody, I have a long time to come back again and do it all over for the tenth time.

CONSTANTINE ALEXANDER: Well, I bemoan that fact. It's not our Board's --

MARILEE MEYER: But you know -- you understand my point --

CONSTANTINE ALEXANDER: Yes, I do.

MARILEE MEYER: -- a continuance is to me is kind of coddling after all of this. I mean, the people are not sophisticated or they should be by now because they are professionals, and they are not complying. And they have been given chance after chance after chance. If they want

to come back with a good design, designed by the City of Cambridge, fine. But it's a two-pronged issue.

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

Anyone else wishes to be heard? Ms. Gifford.

PEBBLE GIFFORD: Good evening, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening. How are you?

PEBBLE GIFFORD: We go back so far.

ATTORNEY JAMES RAFFERTY: We do.

CONSTANTINE ALEXANDER: We're speaking only to whether to continue the case until September 28th. We do not want to hear about the merits of the case. We do not want to hear about anything else. Okay?

PEBBLE GIFFORD: Yes, I understand. Now I forgot what I was going to say.

ATTORNEY JAMES RAFFERTY: Name and address.

PEBBLE GIFFORD: My name is Pebble Gifford, and I

live at 15 Hilliard Street. And I can see there are no visuals tonight so we don't go there either, do we?

CONSTANTINE ALEXANDER: No, no.

PEBBLE GIFFORD: To visuals of the project.

CONSTANTINE ALEXANDER: The only question is do we continue the case until September 28th.

PEBBLE GIFFORD: Well, as far as I'm concerned, I don't think I've seen a more messier process than this one. And as far as the member of the public, I have no idea what the current proposal is it's been changed so often. And it's often changed right before a hearing or a scheduled meeting with a Board and it's left me totally in the dark as to what this very, very important corner in Harvard Square is gonna look like. And I happen to love that building 8 Brattle Street. It's a wonderful example of colonial revival architecture and it's got that beautiful doorway with two pediments going up. I can't even find that doorway in the plans that I've been looking at. And I just would

hope that the applicant would take the time, and some other people would tell them the same thing, to please focus on that building and its location in the square. It's frontal to everybody coming in that can see it. And it's a pretty building and it's not gonna be with a big black cave on one side or God knows what else on the other. They don't have anything to do with that I guess. But I think that -- what do they call it? Branding business is very destructive of a building like this. I think the trick with the revival brick building that's sympathetic to the Harvard buildings across the street is to low key it, is to make a design that fits, is compatible, and feels comfortable. Not a big black jagged cut in the building. I'm calling it the black hole for the moment that we're all gonna fall into.

So thank you.

CONSTANTINE ALEXANDER: Thank you very much.

Anyone else wishes to be heard? Mr. Brandon -- oh, no, sir, please.

FRANCIS DONOVAN: Francis Donovan, 42 Irving Street. I confess to being somewhat baffled by this process and I think I'd like to pick up on something what Mr. Williamson was talking about. As we were told at the Planning Board hearing, this is a rather unusual procedure. The project itself that we're all taking about now is dead, right? You voted it down. It has no further life.

CONSTANTINE ALEXANDER: That project.

FRANCIS DONOVAN: Exactly. Therefore, if the petitioner or any other group of associated petitioners wants to frame a new proposal, they first have to go to the Planning Board and the Planning Board has to find that it is significantly different and therefore not just pester you with the resubmission of the same thing? They did that. They brought a plan. It was found erring on the side of generosity that it was different enough that it could come to you.

The delay I'm hearing about now is to change that



plan, to continue to changing that plan. What -- I don't know what's coming to you to decide whether it's different or not. But, and finally, if this goes awry, if this doesn't work, they have another 23 months or something or 22 months to bring another plan. I don't understand the urgency. If they went to the Planning Board with one plan, the Planning Board found that it was significantly different and worthy of your consideration and the time in between is used to change that plan, doesn't the new plan have to go back to the Planning Board? I'm baffled.

CONSTANTINE ALEXANDER: Okay, let me try to explain as best I can.

FRANCIS DONOVAN: Thank you.

CONSTANTINE ALEXANDER: The Planning Board in this process plays two roles: One is to give a consent, if they wish, to allow a new proposal to be considered by our Board. That's petition.

Second, when we have cases before us, the Planning

Board also comments on the merits of the case, not all the time.

FRANCIS DONOVAN: You can't get to the merits --

JAMES WILLIAMSON: They shouldn't be allowed to do that out of order, that's the question.

THE STENOGRAPHER: One at a time, please.

JAMES WILLIAMSON: They shouldn't be allowed to do that out of order.

CONSTANTINE ALEXANDER: I don't see. The order is, the order is the Planning Board looks at things, like telecom cases, they look at the plans and they write a memo to us. They don't ever appear. They write a memo to us saying we like this, we don't like this, or these are our comments. That's what's going to happen between now and September 28th. They've already said in effect, the way I look at it, we don't like the plans that you've shown you want to get the Board of Zoning Appeals to approve. We think you need to go back to the Community Development and

get some help. That's what they've told them. And I guess they are going to get the help. But once that help is obtained, I assume, I would expect that the Planning Board will then comment on what that -- those revised plans are and they will give us probably a brief memorandum saying we support it, we don't support it, blah, blah, blah. And then that will be in advance and that will be in the public file and that would be in advance of our hearing on the 28th.

FRANCIS DONOVAN: So you're saying that the Planning Board is going to have another finding before it comes to you?

CONSTANTINE ALEXANDER: They made two findings. The first finding was they consented to hearing -- to us hearing a new petition, not a repetitive petition.

FRANCIS DONOVAN: They consented that it was a significantly different petition.

CONSTANTINE ALEXANDER: Correct.

ATTORNEY JAMES RAFFERTY: Incorrect. That is

not -- I don't mean to interrupt.

CONSTANTINE ALEXANDER: No, go ahead.

ATTORNEY JAMES RAFFERTY: Continually misstating the law here. The consent function is different from the determination --

CONSTANTINE ALEXANDER: I understand that.

ATTORNEY JAMES RAFFERTY: But the speaker doesn't. The speaker is saying that the consent by the Planning Board is a determination around the miss efficiency of the material change. That is a separate and distinct, that is exclusive role of this Board.

CONSTANTINE ALEXANDER: That's right.

ATTORNEY JAMES RAFFERTY: The Planning Board is consenting. There's a variety of reasons for which they consent. And they consented -- and in consenting in this case, they said we have confidence in the judgment of the BZA based on everything that they've heard that they can make this determination. That's what a consent is.

FRANCIS DONOVAN: Then the error was in the explanation to the public at the planning meeting.

CONSTANTINE ALEXANDER: Again, I don't want to rehash --

FRANCIS DONOVAN: Okay.

CONSTANTINE ALEXANDER: Maybe they -- you may very well be right.

FRANCIS DONOVAN: Because that's how it was explained to us.

CONSTANTINE ALEXANDER: Let's not rehash.

FRANCIS DONOVAN: And it should just go to you after.

CONSTANTINE ALEXANDER: I think we hopefully clarified it tonight.

FRANCIS DONOVAN: Well, we'll see.

JAMES WILLIAMSON: 10.51 doesn't say anything about consent.

ATTORNEY JAMES RAFFERTY: It most certainly does.

CONSTANTINE ALEXANDER: Stop it. Stop it.

Mr. Brandon, do you want to speak?

MICHAEL BRANDON: Good evening. I'm Michael Brandon, 27 Seven Pines Avenue, Cambridge.

I'm sorry I came in late. So I don't want to dread on anything that's happened. I can get the gist of what the last few speakers and the Chairman have been discussing. What I don't understand is why you're considering the request for a continuance, which I believe was asking continuance on the merits of the case, redesign being a rationale. But I don't understand why you're not immediately going to the question of is this a repetitive petition? Because if it is repetitive, and I think I know what you're going to say, but if it's repetitive, then there's no need to have yet another delay in this, a continuance. It's been a travesty of process as others have said and as you all know. I think it's time to put a stake in the heart, you know, because it's going to send them back

and what if we are asked to do this all again? My thought about the general process was suppose PepsiCo had come to you and proposed a KFC for that site and it went through the process and it went to the Planning Board and it came to you and for the very same reasons you decided the previous case that there's no need and so forth for a fast food restaurant and didn't meet with the -- harm the integrity of the surrounding area? Sound decision in my opinion. And then they waited a few weeks, came back, and went through all this other rigmarole and asked for a continuance because now they want to add a Taco Bell which they often do. They have shared spaces. The proponent argues oh, that means more people are going to sit down and eat because they have a dessert option? No. It's gonna double everything, more takeout, more problems. That's getting into the merits. But as far as Mr. Rafferty's arguments, and he cited a case as to why it's not a repetitive petition, I think that should be discussed before you go into the matter of

granting a continuance and decide is it? And I think, it's almost on its face, a repeat repetitive petition in terms of what the -- why the Board denied it on those issues. Now arguably the changes that are in what's before you and that's really all you should be deciding on now in my opinion, it was advertised, people came out, you know, it's really not fair to abutters and others in the public who care about this site, but the argument that, you know, well, it's very different, you know, because we're changing the awnings. Well, you can change the color and the Planning Board and the Historical Commission say no, we want -- we're going to make this into a (indiscernible) by changing the color and the -- the lipstick from pink to green or something more historical. It's not. It's the question before you was and is is this particular site appropriate for a fast food? And you decided, and I think all of the Board, even the ones who voted to grant out of fear that something worse could come in, a bank or something else,



something better could also come in.

CONSTANTINE ALEXANDER: Yeah.

MICHAEL BRANDON: But that issue, you know, really does ride. But the bigger issue, then, is on the other issue is that is there a need for fast food there? And that hasn't changed at all. I'll let you counter.

CONSTANTINE ALEXANDER: You're getting into the merits a little bit. Let me try to explain a little bit. Your points are well taken.

We turned, this Board denied the Special Permit in April. We cited three reasons:

One, there was no need for a -- for this type of fast food -- fast order food enterprise. One.

Two, the design was inappropriate for Harvard Square.

And three, it was going to cause increased congestion on the streets and the like.

They want to come back with a new proposal. They

have to demonstrate that there are -- that they're going to come back with a proposal that shows specific and material changes in the conditions upon which we voted on the last time. What they're going to do, is say -- I know, we've seen enough information. They're going to say regarding the nature of the fast order food establishment, it's not going to be just a pizza joint, it's going to be a pizza plus Milk Bar. And don't get into --

MICHAEL BRANDON: I'm just saying, you know, fast food is by the definition the Ordinance.

CONSTANTINE ALEXANDER: That's for us to decide on September 28th. But anyway, they're saying because of that, that's a specific and material change.

No. 2, with regard to the design features of the structure which we found unacceptable and why we denied the Special Permit in April, they're going to redesign and show us a different design that has specific and material changes to what we saw. When they did that and went to the Planning

Board to show them, because the Planning Board does comment on cases, the Planning Board said whoa, we don't like this. They didn't say this. They said that basically we think you need some help. And so that's what they want to continue the case for. They want to get the help to put together a final proposal for us that which they say with regard to design, contains specific and material changes from what they had shown us in April. We'll make the decision whether we agree with that. That's what this is all about. And I don't mean to lecture you. I think it's for the benefit of the people in the audience that don't seem to understand the way this case is unfolding. Okay? And that's why they need to go back to -- they went to the Planning Board, and when they heard from the Planning Board, that what they wanted to do really didn't -- they didn't get the support of the Planning Board, but they wanted to take up the Planning Board's suggestion that they work with Community Development to improve the design. That doesn't mean they're going to

approve it. And if they do that, and if the Planning Board supports that approved design, it still comes back to us and we may say nice try, guys, but it didn't work, it's a repetitive petition. Or, we may find, because it's two hearings, we find, yes, it does constitute a specific and material change, it's not a repetitive petition. We'll hear the case on the merits. And at the end of the time on the case of the merits we say, we might, as we did in April, Special Permit denied. So there will be two cases on September 28th. The second one happens only if the first goes favorable to the petitioner's request. That's what this is all about. Okay?

MICHAEL BRANDON: I wonder what your response would be to the point that was raised is why keep this permit alive? You can deny it. If it's not repetitive, then they can come back when they're ready.

BRENDAN SULLIVAN: They're interconnected,  
Michael.

CONSTANTINE ALEXANDER: Yeah.

BRENDAN SULLIVAN: They're interconnected. If they improve on the second part, then it makes it easier for us to determine the first part. All right? They're interconnected.

CONSTANTINE ALEXANDER: And they're entitled. They have the legal right.

BRENDAN SULLIVAN: And the Planning Board actually even separated them. They said, let's decide -- because of the addition the Milk Bar that it is a -- what they deemed somewhat substantial. They basically, they just said let the, let us decide. But anyhow, they separated the two issues. I'm separating the two issues as one of the dissenting votes. If they improve on the second part, because that's where I hung my hat was on 11.30(b), and give them the opportunity, this is the last shot to get this thing right or possibly not, but give them the opportunity to do that and then that will then enhance or reinforce

their position that it's a material change.

MICHAEL BRANDON: I understand what you're saying. I guess the only last point I would make would be that the section of the Ordinance and the Statute that discuss repetitive petitions, and even the case that Jim Rafferty cited, talk about not just specific and material change in the application but in the conditions, and they talk about the circumstances. And in my view, it's -- there had been no changes in the conditions and --

CONSTANTINE ALEXANDER: Save those arguments for September 28th.

BRENDAN SULLIVAN: Those are the merits again.

MICHAEL BRANDON: I'm not talking about changes in the --

CONSTANTINE ALEXANDER: I'm talking about -- the determination --

MICHAEL BRANDON: It's still a congested corner. It's --

CONSTANTINE ALEXANDER: Mr. Brandon, you're not listening.

MICHAEL BRANDON: All right, go ahead.

BRENDAN SULLIVAN: Michael, you're just talking. I mean, Michael, you're just talking. Please.

CONSTANTINE ALEXANDER: Yes.

MICHAEL BRANDON: Okay.

CONSTANTINE ALEXANDER: On September 28th they will come before us, presumably, and they will try to persuade us that they are -- that what they now have, and which will be in the files, you'll have seen, everyone will have seen. I will read from the familiar Ordinance which is a state statute contains -- I'll find the words now: Specific and material changes in the conditions upon which the previous unfavorable action was based. We'll say yes.

MICHAEL BRANDON: What's changed?

CONSTANTINE ALEXANDER: What?

MICHAEL BRANDON: What's changed about the

circumstance -- I guess we're not gonna connect.

CONSTANTINE ALEXANDER: You're right.

MICHAEL BRANDON: But, I'll stop.

BRENDAN SULLIVAN: Thank you for your testimony.

MICHAEL BRANDON: Thank you. I will say on the 28th I hope it's the same people who are sitting that night.

CONSTANTINE ALEXANDER: I can't guarantee who the people are going to be.

MICHAEL BRANDON: Well, that may be what's going on here, too.

CONSTANTINE ALEXANDER: If it is --

MICHAEL BRANDON: Because maybe another somebody.

CONSTANTINE ALEXANDER: There is something to be said for having the people who heard the case.

BRENDAN SULLIVAN: Now you're questioning the integrity of the Board and there --

MICHAEL BRANDON: Not the Board.

BRENDAN SULLIVAN: -- I will call you out on that.



MICHAEL BRANDON: That was not meant to question the integrity of the Board.

BRENDAN SULLIVAN: Well, what was the comment that said well, maybe that's what's going on here tonight?

MICHAEL BRANDON: I meant that the proponent may be shopping for --

BRENDAN SULLIVAN: I'm calling you out of that. No. You're out of order.

MICHAEL BRANDON: I certainly didn't mean any offense.

CONSTANTINE ALEXANDER: Thank you.

MICHAEL BRANDON: Thank you.

CONSTANTINE ALEXANDER: One last time, James, and then I'm going to end this.

JAMES WILLIAMSON: That's fine. This is on a -- I think this is on an important point detail. And the clarification I think may help. It may not change any result. Yes, having reread the repetitive petition

ordinance, yes, there is mention of consent so I just want to clarify that I now have a much, a sharper understanding of how that part of this is meant to work. Here's where the problem has come in tonight: The Planning Board first decides whether or not it's a repetitive petition. Or they give, in this case they give their consent of one -- just one person can vote against that. Then it's been consented to come back to the BZA. But what happened is in order to accommodate the scheduling problems that for the applicant, as I see it, there was another meeting scheduled, another discussion of the Planning Board's schedule both on the merits, on the substance of the application, before the BZA had had this hearing tonight on the question of whether it was or was not deemed to be repetitive by this body. So in other words, there was an intervention, an inappropriately timed meeting of the Planning Board was inserted into the process wherein the Planning Board got into its discussion of the merits of something that it had not yet been approved

as repetitive or not -- as not repetitive. So the Planning Board got inserted into the process because of the rearrangement of the scheduling of the normal process, the normal steps, then the Planning Board starts spouting off on well, you know, we think you should do this differently and we think you should do that differently, and that shouldn't have happened. And because they did that, then that's used as the explanation for the justification for saying, okay, we -- well, now we want a continuance. But that meeting really was not appropriate and that discussion should not have happened in the way that it did.

CONSTANTINE ALEXANDER: I agree with you. As I said earlier and I'll say it again, the problem here is that the petitioner filed an application of a hearing before it should have. And that, and they did that, we had to schedule the case for tonight. And then someone said oh, my God, we're not ready to present the case because we have to go to the Planning Board and oh, my goodness, the Planning

Board doesn't, is not saying hooray to our design. Now, we've got to go back to the drawing board. Given all of that, they have to continue it.

Again if they had not filed the application when they did with this Board, we would not be having this discussion tonight. We no have the dragged the citizens of the city down here to have it discussion, but it has happened.

JAMES WILLIAMSON: Right. But if the Planning Board had not had that second meeting inserted into the process --

CONSTANTINE ALEXANDER: I don't want to get into the Planning Board --

JAMES WILLIAMSON: Well, then you all would have had -- then the process would have then been the Planning Board judged it to not be repetitive. The plans were submitted upon which they made that judgment. Those same plans would have been the plans that would have been on file

for your consideration tonight and then there would have been -- you would have had -- if there was a request for a continuance, it would have been on some other basis and the plans that were submitted, which you would have then reviewed, you would have then had the opportunity tonight to review. And that shouldn't have necessarily been a problem except for the fact that there was this irregularity in the way that the process, the steps were -- the Planning Board, the second meeting was inserted I think wrongly in the process. And then they said oh, well we don't, we don't even like the fact that you're making a judgment about pizza. How can there be possibly too much pizza? So because they have a bias for no limit on pizza, we're now having to accommodate the applicant for a whole new look at a, at a, at a set of plans which they already submitted for review as to whether it's repetitive or not. I don't think that's really proper. But I, I realize that I, you know --

CONSTANTINE ALEXANDER: Like I tried to say --

JAMES WILLIAMSON: You're heading the way you seem to be heading.

CONSTANTINE ALEXANDER: This process has been terrible right from the beginning right up to now. And we're the people who have to put up with it. Okay? But hopefully on the 28th, whatever mistakes have been made, bad judgments that have been given, on September 28th, assuming we vote to continue the case, we will finally sign off on this case. I will not -- I for one will not vote for any further continuances on this case. It's going to be over and done with on September 28th at least as far as this Board is concerned.

JAMES WILLIAMSON: Well, I just want to say I do appreciate your giving ample opportunity for the public to be heard on this tonight. So thank you.

CONSTANTINE ALEXANDER: Professor, very briefly.

SUZANNE BLIER: Five words. At the last BZA meeting Milk Bar was already in play with &pizza so that --

CONSTANTINE ALEXANDER: They mentioned it but they didn't go into great detail about it. And that's one of the things that I'm -- well, tip my hand --

SUZANNE BLIER: I wanted to verify that.

CONSTANTINE ALEXANDER: -- one of the things I really want to hear a lot more about should we on the 28th. We just got a little taste, bad choice of words, a little taste of what they're proposing.

SUZANNE BLIER: Thank you.

CONSTANTINE ALEXANDER: And I'm sure Mr. Rafferty will do it anyway, but I want to say it. I want to hear a lot of details about exactly what the Milk Bar's going to bring to this operation and the like.

ATTORNEY JAMES RAFFERTY: Well, as you know from our filing, it's being cited as one of the material changes.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: That is Milk Bar in a different format than was presented in the other case.

CONSTANTINE ALEXANDER: Yeah. Whether it's material will depend upon just the nature of --

ATTORNEY JAMES RAFFERTY: No, I understand that.

CONSTANTINE ALEXANDER: Okay. That's all I'm saying.

ATTORNEY JAMES RAFFERTY: Yeah, we intend to address that completely.

CONSTANTINE ALEXANDER: Finally, anybody else?

BRENDAN SULLIVAN: Counselor Devereux.

COUNCILLOR JAN DEVEREUX: Hi. Hello, good evening.

CONSTANTINE ALEXANDER: I see you grimacing.

COUNCILLOR JAN DEVEREUX: It's hard to follow. I guess the only thing --

CONSTANTINE ALEXANDER: Give your name and address to the stenographer.

COUNCILLOR JAN DEVEREUX: Hi. Jan Devereux, 255 Lakeview Avenue.



I guess my observation aside from agreeing with everybody else that this is tremendously confusing and burdensome is that allowing a continuance also extends the time that this storefront, which is in a pivotal location is vacant, and the landlord, the property owner is not here. I don't feel that -- I mean, that presents a burden on the community as well. And for whatever reason he seems not to have chosen very wisely. He bet on a horse that hasn't performed very well up to now, and so this whole process could have been avoided had he perhaps picked an applicant who had gotten his act together sooner.

CONSTANTINE ALEXANDER: That's true.

COUNCILLOR JAN DEVEREUX: And presented a plan the community could have embraced, so on and so forth. Not only are we being inconvenienced by having to come for repeated hearings, we are also being inconvenienced by a property that's now verging on blight. So I don't know, what if anything, the various boards in the city can request of the

property owner, you know. It's a vacant property. There are homeless people sleeping in the doorway. It is dark all the time. It seems like some accommodation ought to be made to the community whether they could open it up and allow pop-up retail as has been suggested in other vacant storefronts, something. Because if we're not even going to hear this until the end of the September, in the best case scenario, if the applicant gets their Special Permit, it doesn't sound like anything would be operating there until potentially early 2018 which would mean that it would have been vacant for almost a year at that point. So it's a pity.

Thank you.

CONSTANTINE ALEXANDER: It is a pity. Thank you.

Finally, I think we're ready to take a vote, I think.

The Chair moves that we continue this case as a case not heard. This is only a motion to continue, we never

got into the merits, subject to the following condition:

Continue this case until seven p.m. -- we did late, you know, I'm wondering about the time, I welcome people's views. The first time we heard this case in April, we heard it as one of the first cases and it went on for hours, not surprisingly. And all the other petitioners who were coming down here were forced to sit around and wait and wait until the very end which was a rather inconvenience to them. So this time around ISD decided let's make this case the last case on the agenda, so the people who are not involved in this case can get in and out early. The result of that means that people like the folks in the audience who are interested in this case have got to sit here, we have no choice, until the very late hours of the morning. What time, I welcome people's views, we continue it until seven p.m. or some other time?

ATTORNEY JAMES RAFFERTY: Just a suggestion, there have been times based on my findings, I don't think there

are any cases on yet for the 28th of September.

SEAN O'GRADY: I don't know that.

ATTORNEY JAMES RAFFERTY: Yeah.

CONSTANTINE ALEXANDER: Probably not.

ATTORNEY JAMES RAFFERTY: So it is possible, and it has happened from time to time, that no cases be scheduled before eight o'clock, so it becomes a night where instead of taking your traditional eight cases, you take this and four others.

CONSTANTINE ALEXANDER: That depends on whether we're under the gun, you know, we've got to decide a case within a certain period of time.

ATTORNEY JAMES RAFFERTY: Understand.

CONSTANTINE ALEXANDER: Plus, I don't think the extra hour is going to make a big difference frankly. We've been over an hour and a half tonight on just discussing whether to continue this case. Not exactly into the merits so, and you took about two hearings, potentially, whether it

was a repetitive petition. And if it's not we're --

ATTORNEY JAMES RAFFERTY: No, no, I was just trying to be helpful.

PATRICK TEDESCO: How about two p.m.

CONSTANTINE ALEXANDER: Suggestions?

BRENDAN SULLIVAN: Two thoughts that I have.

FRANCIS DONOVAN: Schedule it and they will come.

CONSTANTINE ALEXANDER: That is true.

BRENDAN SULLIVAN: One is it has usually been the policy of this Board to allow for continuances if we felt that a better outcome would be the fruit of that continuance. So I think that by allowing a continuance, we are being consistent with passed practices. The other practice is that we're usually schedule the continuances for seven o'clock. I would like to be consistent in both.

CONSTANTINE ALEXANDER: All right, you would recommend seven o'clock?

BRENDAN SULLIVAN: Right. And that any further

petitioners for that night be advised that the seven o'clock hearing may not be brief. That's all. And they can take their option of either going the night after, or the hearing after that or something like.

CONSTANTINE ALEXANDER: And also to the point maybe we don't, for the regular agenda, if we can, we don't schedule as many cases that night as we would otherwise do it. But we have to again be cognizant of the state laws requiring a time for decision. That's a good suggestion and we'll do that as best as we can do.

So back to the motion. That we continue this case as a case not heard until seven p.m. on September 28th subject to the following conditions:

One, that the petitioner sign a waiver of time for decision. And you've already done that, or your client has.

ATTORNEY JAMES RAFFERTY: No, this is a new case.

CONSTANTINE ALEXANDER: You're absolutely right. Thank you. It's a new case. So must be done right now.

ATTORNEY JAMES RAFFERTY: Not withstanding all the barrage about that other case, this is a new case.

CONSTANTINE ALEXANDER: Second, that the new posting sign reflecting the new time and the new date be made for the 14 days prior to the September 28th as required by our Ordinance.

And third, and this is for the benefit of your client, any plans, drawings, other materials must be, and I underscore, double underscore, must be in our files no later than the five p.m. on the Monday before September 28th. Okay? That's what you tell your client.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The case is continued.

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

ATTORNEY JAMES RAFFERTY: Thank you very much.

CONSTANTINE ALEXANDER: See you in September.

(Whereupon, at 10:25 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.

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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 30th day of August, 2017.

---

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

My Commission Expires:  
April 29, 2022

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