

*BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE*

GENERAL HEARING

THURSDAY, AUGUST 9, 2012

7:00 p.m.

in

*Senior Center
806 Massachusetts Avenue
Cambridge, Massachusetts 02139*

*Brendan Sullivan, Chair
Constantine Alexander, Vice Chair
Timothy Hughes, Member
Thomas Scott, Member
Tad Heuer, Associate Member
Douglas Myers, Associate Member
Mahmood R. Firouzbakht, Associate Member*

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:00 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Thomas Scott, Douglas Myers, Mahmood R. Firouzbakht.)

BRENDAN SULLIVAN: Let me open up the meeting for the Board of Zoning Appeal for August 9, 2012. The first matter that we will discuss is a proposal from the Commissioner of Inspectional Services to adopt a new fee schedule for certain classifications.

A slight presentation, short presentation by the Zoning Specialist if you will.

SEAN O'GRADY: Okay, so as of right now we're charging \$100 for cell antenna applications and we're proposing -- which is well under the average. The average is in 1,000, 1500 plus range. We're asking to go to 500.

And then for miscellaneous uses, we were at no base fee and 20 cents per square foot, which I don't know as well as the others, but my understanding is that that's low, too. The proposal now is for a base \$100 fee and 50 cents per square foot.

CONSTANTINE ALEXANDER: Sean, on the first one, the \$100 to go to \$500, I'm sorry, what is that for?

SEAN O'GRADY: For telecom cases.

CONSTANTINE ALEXANDER: Only telecom cases?

SEAN O'GRADY: Yes, just telecom cases. The second part here we're talking about the square foot.

CONSTANTINE ALEXANDER: Right.

SEAN O'GRADY: There's no way to put a square footage on these facilities and so they just sort fell through the cracks.

CONSTANTINE ALEXANDER: And you said the average is 1,000, 1500 in other

communities?

SEAN O'GRADY: We've called several communities around and, yes, we were kind of laughed at. It was remarkable how low it was.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: Cathy, you've taken the attendance, Mahmood, and all of us sitting at the table?

THE STENOGRAPHER: Yes.

BRENDAN SULLIVAN: Is there any discussion by any members of the Board?

CONSTANTINE ALEXANDER: I move the adoption of the fee schedule as proposed.

BRENDAN SULLIVAN: I will make a motion then that the Board adopt the Board of Zoning Appeal fee schedule, Attachment C, dated effective August 1, 2012, creating a \$500 fee for telecommunication Special Permits and a \$100 plus 50 cent per square foot fee under other uses as per the

Attachment C as submitted by the Commissioner of Inspectional Services.

All those in favor?

DOUGLAS MYERS: Who may vote on this motion?

BRENDAN SULLIVAN: All of us.

All those in favor of adopting.

(Show of hands.)

BRENDAN SULLIVAN: Seven in favor.

(Sullivan, Hughes, Heuer, Myers, Scott, Alexander, Firouzbakht.)

(7:05 p.m.)

(Sitting Members: Brendan Sullivan, Timothy Hughes, Tad Heuer, Douglas Myers, Mahmood R. Firouzbakht.)

BRENDAN SULLIVAN: The Board will

hear the first case, 107 Reed Street, Case No. 10259.

RACHEL RUBIN: I'm Rachel Rubin.

JEFF MELNICK: Jeff Melnick.

JESSIE RUBIN: Jessie Rubin.

BRENDAN SULLIVAN: If you could just recap. Last time we met, we had some critique of the original design, thought it could be -- in reading the record, thought it could a little bit more friendlier, a little more compatible way to start with the house, No. 1, and somewhat to the neighborhood. And I see that you have done so. And if you could just sort of very briefly describe exactly what is before us now.

RACHEL RUBIN: Okay, so first of all, thank you for giving us the chance to present this modified plan. As you can see, we've come back to you with revised plans for our addition. Plans that were redrawn by architect Sammy Cassis, with the Board's

concerns very much at the front of his mind. As we understood the input of the Board at our last hearing, there were three major objections to our original plans:

The overall square footage exceeded 20 percent of the existing structure;

The backyard setback did not leave sufficient room between the addition and the adjacent yard;

The proposed structure, according to at least one Board member, did not meet a minimum level of aesthetic appeal.

Here the major concern raised had to do with the flat roof on the extension.

As the Board will see from our revised plans, we with the help of our contractor and architect, have addressed all of these concerns. The plans were submitted in late June just before we left for a month long trip to China where we were teaching as part of a scholarly exchange program. The new

dimensional form was filled out in the haze of jet lag present, and we hope you'll excuse any messiness on that part and because of Jeff's handwriting.

As the Board will see from our revised plans -- oh, sorry. You will note that the plans propose a modest addition that is under 20 percent of the existing structure. It's square footage mark. The loss in square footage mostly comes in the length of the structure which also allowed us to address directly the setback concern.

Finally, the architect who planned the structure now with gabled roof as more than one member of the Board suggested we do. We understand that we live in a house that because of the changes to Cambridge Zoning Law does not conform to current regulations. And further we understand that the relatively minor changes we propose take us further from the standard set by these more recent

regulations.

One Board member asked at our last hearing why we didn't propose building up rather than out, and we want to make sure we reiterate two very compelling reasons:

First, is that in polling our neighbors, one of whom appeared at the original hearing a few months ago to offer our support, it was clear that the strong preference was that we go out and not up.

The second reason is that of the eight to ten bids that we got for the work, building up would cost three times what it would cost to build out, and with skyrocketing college costs that just wasn't feasible for us.

Additionally at our last meeting, one of the Board members wondered rhetorically if people in Cambridge had gotten the idea that every family must have some minimum amount of square footage to live comfortably? We want to assure the Board that we have lived very

happily in our small house for over 15 years. And as historians, we want to assure the Board that we understand that ideas about proper living space change dramatically with each generation. We know that the McMansions and three car garages that now dot the suburbs are a relatively modern invention and that the worker's cottage that we have lived in for 15 years with our two children, was built originally for people employed at factories of Somerville, Cambridge, and other nearby towns often with much bigger families than we have. That said, much about our house is well below market standard in Cambridge. Just for instance, it's very uncommon for two or three bedroom dwellings in Cambridge to be advertised as having only one bathroom. And we don't have granite countertops.

We understand that the Board of Zoning has an obligation to the people of Cambridge to help manage its living spaces in a manner

that is most fair, environmentally responsible, and healthy for the largest number possible. We also know that remodeling an existing structure will always be a much greener effort with a much smaller carbon footprint than constructing an all new building just as buying a used car will always be more environmentally responsible in buying than even the best new hybrid out there.

We also know that the plans we put in front of you for our relatively modest addition to our lovely little greenhouse has been met with nothing but support from our dear friends and neighbors on our great block in North Cambridge. We also know that we are asking the Board for a Variance and we appreciate very much your good guidance at our last hearing, and the constructive advice you gave us proposing an addition more in keeping with the current practice in

Cambridge. And we hope very much that you will now be able to grant us the Variance that we request.

Thank you.

BRENDAN SULLIVAN: Okay.

I guess one of the questions I had is I was comparing the new dimensional form with the older dimensional form, these numbers are correct, is that -- and these are probably not correct, at all?

JEFF MELNICK: We asked the architect to go back and double check and triple check everything.

BRENDAN SULLIVAN: Okay. The proposal now is smaller than the original and yet the -- well, anyhow. So we'll disregard those as not being correct at all.

RACHEL RUBIN: Yes.

BRENDAN SULLIVAN: All right.

Any questions by members?

MAHMOOD FIROUZBAKHT: No.

TIMOTHY HUGHES: No.

BRENDAN SULLIVAN: Mr. Heuer?

TAD HEUER: What's your -- I have to confess I was looking at the old dimensional form which has most recently, but there's a new one that was submitted since Tuesday; is that right?

JEFF MELNICK: It was submitted Monday and then we had -- my handwriting was too messy, and I came back and made sure to fix it up so it was legible to everybody.

TAD HEUER: So it's this one that's typed; is that right?

RACHEL RUBIN: Yes.

TAD HEUER: Okay. Because it bears very little -- numbers that are -- not handwriting, just the numbers are wildly different; is that right?

JEFF MELNICK: While -- I don't want to argue with your characterization wildly, because with numbers this small there's

nothing wild in any direction.

TAD HEUER: Oh, sure, but you started, you know, is that -- it looks like 1,088 square feet, and now your -- that was existing what you said you had. Now it says 1153. So was that the architect --

JEFF MELNICK: The architect was working off of city records originally, and we said you can't do that, you have to come in.

TAD HEUER: And this is the form that was done with the architect?

RACHEL RUBIN: Yes. And not off those records.

TAD HEUER: Okay.

You have a distance between building issue now? Do you have that as well? So you're at 6.5 and you're going to 1.8? That seems kind of --

JEFF MELNICK: Centering the addition now instead of have having it a

little bit flush.

TAD HEUER: What's the other building that you're --

JEFF MELNICK: It's just the neighbor's house.

TAD HEUER: Right. So distance between built, distance to nearest building is distance on the same lot. There's no other building on your lot, right?

RACHEL RUBIN: No.

TAD HEUER: That should be not applicable. That's if you had a garage.

RACHEL RUBIN: No.

TAD HEUER: Can I correct that for you?

RACHEL RUBIN: Yes, please.

TAD HEUER: And then if I'm reading this correct, you still have some -- your first form, the one we're disregarding, you looked like you cured the rear yard setback violation and now you're only going to have

one but only by a few inches; is that right?

RACHEL RUBIN: Yes.

TAD HEUER: At the risk of belaboring it, seven inches was not possible?

JEFF MELNICK: It was possible. It was just, I think a miscommunication with the architect when I -- when we tried to communicate to him what the ordinance called for, he drew up the plans twice and doing the work that he's going to do. And to him it's not a problem. It's not a problem in reality. I understand that he got it as close as he wanted to, the design he wanted to make. I don't know if any of you are architects, so I don't want to characterize how architects work but he clearly had a design in mind. We pushed him on it a couple times, made it clear to him what we needed and then we went on vacation and he worked with what we had.

TAD HEUER: Who's the architect?

JEFF MELNICK: Sammy Cassis, Walpole. So is your question, could we -- let me make sure I'm getting the question correctly. Could we get it a few inches in so that it perfectly conforms? Is that your question?

TAD HEUER: Yes.

RACHEL RUBIN: And the answer is yes.

JEFF MELNICK: The answer is yes. Did we have time to get whole new plans drawn from this architect?

RACHEL RUBIN: From this architect, before he went on vacation?

JEFF MELNICK: Before he went on vacation and in time to submit it, no?

TAD HEUER: More of a comment on the architect rather than you, I kind of, to me, falls below professional standards of an architect. First thing you do is you go and you find out what the Zoning allows and then

you build to that. And if you can't build to that, then you explain why. You don't go in and think you know what the Zoning says, give you guys something noncompliant and ask you to come down and defend it in front the Board. He's essentially offloaded his faults on you which is not fair quite frankly.

RACHEL RUBIN: And we disciplined him.

TAD HEUER: And just so that we have that comparison. Originally you were planning a 17-by-14.7 and now you've shrunk it on both dimensions and essentially you're now at 12, 11. So you essentially pulled it back five feet, but you've got more volume because you're peaking the roof; is that right?

RACHEL RUBIN: Right.

TAD HEUER: And on the right side you wrote no change. You're five foot, 5.3 away and that's where your door -- removing the

door to get out; is that right? And do the stairs invade further into the setback or are they tucked in behind that?

RACHEL RUBIN: They're behind.

TAD HEUER: Okay.

So if you were looking at it straight on, the stairs would be tucked behind the rear now because of the way you pulled it in to center it?

RACHEL RUBIN: Right.

TAD HEUER: Okay.

DOUGLAS MYERS: May I ask a question?

BRENDAN SULLIVAN: Sure.

DOUGLAS MYERS: I'm going to hand you the dimensional information sheet that I found in the file Tuesday morning. Is that your -- that's not your original, is it? That's the one that you resubmitted later handwritten; right?

JEFF MELNICK: Yes.

DOUGLAS MYERS: And yet that one has information and entries on it that differ from the one you submitted on Tuesday?

JEFF MELNICK: Right.

DOUGLAS MYERS: After Monday?

JEFF MELNICK: Right.

RACHEL RUBIN: Which is why we submitted the correct --

JEFF MELNICK: Based on e-mails.

DOUGLAS MYERS: Okay. And in that sense I was on the wrong page so to speak.

RACHEL RUBIN: Literally, yeah.

DOUGLAS MYERS: Okay.

I had a question about the right side setback but I see it's really been obviated by the belated corrected version. So that's fine.

Thank you.

BRENDAN SULLIVAN: Okay.

Is there anybody here who would like to speak on the matter at 107 Reed Street?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance.

And you have no correspondence or any correspondence in support of -- obviously your neighbors have -- have you addressed these concerns with your abutters on either side and they have not expressed any displeasure?

RACHEL RUBIN: No.

BRENDAN SULLIVAN: Okay.

Let me close the public comment part unless you have anything further to add. It's all there. Okay.

All right. Well, the Board will discuss it then.

Mahmood, what are your thoughts?

MAHMOOD FIROUZBAKHT: Well, you know, I appreciate the responsiveness to our concerns, that you've incorporated into the plans. I think it just aesthetically a

design granted, maybe there are some miscommunication or miscalculations, personally for me that's not seven inches or whatever it is, it's just not significant. It's insignificant, and I think the project is a better one. So I'm glad you spent the extra time. So I would be willing to support, you know, what you've proposed here tonight.

TIMOTHY HUGHES: I agree with Mahmood.

BRENDAN SULLIVAN: Yes, I would think -- I would echo those comments. And as far as the encroachment of the rear setback, I don't have a problem with. I think those seven inches will be never noticed outside, but I think they would be very valuable inside. The room itself has been shrunk down a bit, and I think that the 12 -- 12, 11 outside dimension you're taking away the wall, I think that seven inches would hurt the

inside space. So I would support as what is before us.

DOUGLAS MYERS: I would vote in favor.

BRENDAN SULLIVAN: Mr. Heuer.

TAD HEUER: Yes, I don't have a problem with it now. I think you've done a really nice job in centering it. I think given the volume will help particularly with what you intended to use the room for. I think going up actually is more viable than perhaps going out in some sense. I think I still like my concern that the architectural quality of not understanding the Zoning Code is almost unforgivable and I hate to put that sin on the Petitioners who acted clearly in goat faith. I'm not sure whether I -- it sounds like the four votes will be there. I'm not sure I can vote in favor of it on principle, but I agree, that it's a well designed project. I think you're right, the

seven inches probably won't be noticed by anyone. To receive a filing from someone who's a licensed professional who appears to have ignored the basic tendance of what the profession is in my mind unconscionable.

BRENDAN SULLIVAN: Okay. Let me make a motion, then, to grant the relief as per the drawings which are very nice. I've never seen these before, and the accept the dimensional form as submitted and initialed by the Chair.

Let me make a motion, then, to grant the relief from the Ordinance, grant the relief from the Ordinance. Grant the Variance.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. The hardship would preclude the Petitioner from adding some very much needed space in a very rather small house, inadequate for the family needs.

The Board finds that the hardship is owing to the woefully inadequate lot size which predates the existing Ordinance.

The size of the house which, again, is quite small and inadequate for the family needs, and that any addition, extension thereof would require some relief from this Board due to an existing, pre-existing non-conforming danger.

The Board finds that desirable relief may be granted without any substantial detriment to the public good.

The Board finds that the request is a fair and reasonable one, and would not nullify or substantially derogate from the intent or purpose of the Ordinance to allow people some modifications, additions to the houses in order to stay in the neighborhood. And we find that the purpose for it, music or whatever, is quite commendable.

All those in favor of granting the

relief.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Myers, Hughes,
Firouzbakht.)

BRENDAN SULLIVAN: Opposed? One
abstaining.

(Heuer.)

BRENDAN SULLIVAN: Good luck.

(7:20 p.m.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Timothy Hughes, Tad
Heuer, Thomas Scott.)

BRENDAN SULLIVAN: The Board will
hear case No. 10229, 96 Griswold Street.

Okay, Counselor Page.

ATTORNEY SHIPPEN PAGE: Good
evening, Commissioners. My name is Shippen
Page. I represent Randy Cipoletta and
Carolyn Wilson Callender Wilson the
Petitioners.

RANDY CIPOLETTA: Randy Cipoletta,
C-i-p-o-l-e-t-t-a.

CAROLYN CALLENDER: Carolyn
Callender.

JOHN LODGE: And I'm John Lodge, the
architect.

ATTORNEY SHIPPEN PAGE: Thank you
for this opportunity to present. The
Petitioners have been here twice before on
March 25, 2012, and June 28, 2012, I gather.
I was not representing them at the time, but
I gather there was some confusion as to the
ownership of the land, and they've enlisted
me to try to help them clarify whatever
problems might exist.

It's an application for a Special
Permit. They are trying to expand by some
16.2 percent. They fall between the 10
percent and the 25 percent, and it's in
Article 8, and they are -- their application
comes well within the amount of first floor

area permitted to them in a Residence B Zone. I gather that there were some concern by the immediate abutters to their south, and the architect Mr. Lodge has discussed their problems with them and has made some accommodations, and I wonder, John, if you'd speak to that issue.

JOHN LODGE: Sure. In the original layout that we brought to you in March, the addition offset from the existing building to the south about five feet. Since then we've moved the building back so that the addition is actually in line with the south facade so that it's well within the setback of the -- well, actually I guess it's the -- the side yard setback, yeah.

ATTORNEY SHIPPEN PAGE: And the existing shed would be removed?

JOHN LODGE: And the existing shed which is a pre-fab shed would be removed.

CONSTANTINE ALEXANDER: So what is

it the Zoning problem tonight? It's not an FAR issue you said.

JOHN LODGE: It's a Special Permit.

CONSTANTINE ALEXANDER: I'm sorry?

ATTORNEY SHIPPEN PAGE: It's a Special Permit.

CONSTANTINE ALEXANDER: No, no, no. Why do you need a Special Permit?

JOHN LODGE: Because it's more than 10 percent of the existing square footage. We're proposing to add more than 10 percent of the existing square footage. It's non-conforming because one of the facades is within the front yard setback.

CONSTANTINE ALEXANDER: It's a setback issue?

JOHN LODGE: Yes. And then the lot size is too small for the district.

TAD HEUER: Right. It's a conforming addition to a non-conforming use because the front yard setback is currently

in violation making it non-conforming.

CONSTANTINE ALEXANDER: I had trouble getting there from your dimensional form.

ATTORNEY SHIPPEN PAGE: Thank you.

The work is going to be consistent with the existing building and with the buildings in the immediate neighborhood. I brought an exhibit which I'd like to submit to the Board consisting of the deed to Ms. Callender dated October 26, 2005. This land is overwhelmingly registered land. The -- I always have a problem with this. A small sliver of the land is on the southerly part, is recorded land and that's the land that immediately abuts the Griffin property. The submission will also show the existing plot plan, plan of land by Boston Survey dated September 6, 2011, a plan registered as document 14229C with Land Court in 1941, and plan No. 1011 of 1941 showing the division of

lots at the corners of Griswold and Loomis Streets. If I can present those, Mr. Chairman, please.

And I brought copies for the Board should that be helpful.

THOMAS SCOTT: Could you point out the sliver of land on the site plan? Is it this four feet?

ATTORNEY SHIPPEN PAGE: Yeah, Tom, on the exhibits that I show it shows a little, it says recorded land at the bottom.

THOMAS SCOTT: Yes.

ATTORNEY SHIPPEN PAGE: There you are. Why they put 95 percent of it registered land in 1941, I don't know. But that's the configuration of the land.

THOMAS SCOTT: Okay.

ATTORNEY SHIPPEN PAGE: I've got a full title search and would be happy to share the results of the title examination with the Board if you so choose.

None of the factors cited in the criteria for denying a Special Permit are present in this case in Section 10.43. The work is clearly consistent with the values and the temperament of the neighborhood. It's a modest addition. It's a modest cottage, and we have letters of support from certain of the abutters; namely, Lee Smith of 14 Loomis Street; Steven, I believe, his last name Kanode, K-a-n-o-d-e of 99 Griswold Street; Betty Kanode also of 99 Griswold Street; Susan Agger, A-g-g-e-r of One Loomis Street; and Ed and Nancy O'Callahan of 75 Normandy Street which I'll submit to the Board for inclusion in the record.

Is there anything that I've neglected, Randy or Carolyn.

CAROLYN CALLENDER: One thing that I wanted to say, the people that we spoke to, our neighbors, we only asked -- the Griffins are on one side and then Lee is on the other.

RANDY CIPOLETTA: It's direct abutters.

CAROLYN CALLENDER: And then we just went across the street on Griswold and across the street on Loomis and there's a house that's between the Griswold and the Loomis Street where it meets. Their address is Normandy Ave. and they use the back --

RANDY CIPOLETTA: Their garage is on Loomis.

CAROLYN CALLENDER: -- so we did a circle.

RANDY CIPOLETTA: And they use the back of the house as a main entryway.

BRENDAN SULLIVAN: The purpose of the addition remains the same?

CAROLYN CALLENDER: It does.

BRENDAN SULLIVAN: Is to accommodate a parent?

RANDY CIPOLETTA: Elderly parent.

CAROLYN CALLENDER: My mother was

actually released from Neville on July 20th and is living in my brother's living room so I'm hoping to move forward.

BRENDAN SULLIVAN: Okay.

All right. Anything else?

ATTORNEY SHIPPEN PAGE: No, I'm just hoping that the Board will favorably consider of the application.

Thank you.

BRENDAN SULLIVAN: Any questions by the Board at this point?

CONSTANTINE ALEXANDER: No questions.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: No.

BRENDAN SULLIVAN: Tad?

TAD HEUER: No. I'm fascinated by the title search, but that's not really for here nor there quite frankly.

ATTORNEY SHIPPEN PAGE: I was, too.

BRENDAN SULLIVAN: Okay. Let me

open it to public comment.

Is there anybody here who would like to speak on the matter on 96 Griswold Street? Mr. Griffin, any questions on this.

DAVID GRIFFIN: It just looks like we've changed plans three times now. We've gone from moving in --

BRENDAN SULLIVAN: Just introduce yourself, Dave, for the record.

DAVID GRIFFIN: David Griffin. I'm the resident of 92 Griswold Street.

So am I to assume from these new plans that the addition is going to go straight back and that the land between the houses, whether it be registered land, recorded land, whatever the case may be, none of that land's going to be encroached? To put it simply, they're not coming any closer to our property in any way, shape, or form?

BRENDAN SULLIVAN: It does not appear that they are coming any closer,

that's correct.

DAVID GRIFFIN: That's the only concern that's ever been a concern. I wish them well.

ATTORNEY SHIPPEN PAGE: Could you state that for the record, John, that they're not going any closer to the --

JOHN LODGE: Yeah, the line on the foundation is completely consistent from the existing facade to the -- the line of the foundation of the proposed addition follows the line of the foundation on the south -- the existing foundation on the south facade.

BRENDAN SULLIVAN: Did you get that? Why don't you look at it, Dave, and you can relay that to your mother.

JOHN LODGE: Just so you know, the plan I gave to your mother --

DAVID GRIFFIN: Did we get a copy of this?

JOHN LODGE: Yes.

TAD HEUER: Well, we need that copy because that's ours.

TIMOTHY HUGHES: Is that the same one?

TAD HEUER: What's the date?

DAVID GRIFFIN: Seven, yeah, today's date.

BRENDAN SULLIVAN: There's one in the file.

TAD HEUER: Okay.

BRENDAN SULLIVAN: Yes.

DAVID GRIFFIN: Do you need this back?

BRENDAN SULLIVAN: No, you can keep that.

DAVID GRIFFIN: Thanks.

BRENDAN SULLIVAN: Okay.

Is there anybody else wishing to speak on the matter at 96 Griswold?

(No Response.)

BRENDAN SULLIVAN: I see nobody in

attendance.

We are in receipt of letters of support as counsel has already entered into the record. We will accept those and I will close public comment.

Anything else to add, delete, change?

ATTORNEY SHIPPEN PAGE: No, thank you, Mr. Chairman.

BRENDAN SULLIVAN: Okay. Let me close that portion of it and the Board will discuss among themselves.

CONSTANTINE ALEXANDER: I'm in favor of granting relief.

THOMAS SCOTT: I'm -- I'm glad that you made the accommodation for the neighbor. I think it will go a long way to future, you know, relationship with your neighbor hopefully. Hopefully they appreciate what you guys did, because you really did extend out your time to do that for them, and I think it's commendable and I just wanted to say

that.

Thank you.

TIMOTHY HUGHES: I don't know the difference between registered land and recorded land, but I'm going to go look it up right after I vote in favor of this.

TAD HEUER: I'm fine.

BRENDAN SULLIVAN: Let me make a motion, then, to grant the Special Permit for the relief requested to allow for the addition as per the plan submitted and initialed by the Chair.

CONSTANTINE ALEXANDER:

Mr. Chairman, excuse me for interrupting you, but I would like to, if we grant the Special Permit, to pose as a condition that the shed be removed. And as a further condition that no new shed be erected on the property.

BRENDAN SULLIVAN: Yes, that's going to be mentioned, yes.

Thank you for reminding me because that's a good point and that was in the back of my head anyhow.

Let me make a motion, then, to grant the relief requested for the Special Permit as per the plans submitted and the dimensional form attached thereof.

The Board finds that in a residence district the Board may grant a Special Permit for the alteration or enlargement of a non-conforming structure not otherwise permitted in Section 8.22.1 but not the alteration or enlargement of a non-conforming use provided any enlargement or alteration of such non-conforming structure is not further in violation of the dimensional requirements of the Article 5.

The Board finds that as per the submission that this addition is not in further violation of Article 5.

And that provided such a non-conforming

structure will not be increased in area or volume by more than 25 percent since it first began to be non-conforming, and the Board finds that that is also not the case.

The Board finds that it appears that the requirements of the Ordinance can be met.

The Board finds that traffic generated or patterns of access or egress would not cause congestion, hazard, or substantial change in the established neighborhood character.

The Board finds that continued operation of or development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use.

There would not be any nuisance or hazard created to the detriment of the health, safety, and/or welfare of the occupant of the proposed use or to the citizens of the city. And the proposed use

would not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of the Ordinance.

The Board finds that as a condition that the shed be removed and that it be removed prior to the issuance of a Certificate of Occupancy or a final signoff from the Building Inspector for this project, and that no further shed be erected on the site.

CONSTANTINE ALEXANDER: You have to make an additional finding because we're under 8.22.2 that the extension is not going to be more substantially more detrimental to the neighborhood than the existing non-conforming use. So we have to add that to your findings.

BRENDAN SULLIVAN: So said.

THOMAS SCOTT: I have a question about the shed. Why are we restricting -- if the shed met all of the criteria for setback,

why would we restrict that?

BRENDAN SULLIVAN: There are two or three cases in the past where people have agreed to remove a structured shed, and two cases that I know of, actually garages, and have failed to do so after they got the project built. And then I think they've been cited by Inspectional Services, and the people said that they literally just ran out of money to do any further work.

CONSTANTINE ALEXANDER: And also in this case I believe the shed is too close to the lot line anyways; isn't that right?

SEAN O'GRADY: This property?

CONSTANTINE ALEXANDER: Yes.

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

JOHN LODGE: It's a pre-fab shed. You know, it's not on blocks.

BRENDAN SULLIVAN: I think as part of the application they're making a presentation to remove the structure and

hence, so we're taking that as a presentation, an offering, whether it be a peace offering or not, but to be as -- I think it's important to the abutters.

JOHN LODGE: Which is fine. I mean, it's in our submission.

THOMAS SCOTT: It's on the plan.

BRENDAN SULLIVAN: Yes. It's in the application.

I'm sorry?

TAD HEUER: Should we also make this on the further condition that the dimensional form indicating the setbacks is being indicated solely for the purpose of whether it is -- does not fall into the setback regardless of the ownership of the contested portion of the lot, and that our acceptance of this doesn't indicate any approval by the city or any other municipal entity as to the ownership or accuracy thereto because it's irrelevant as to the relief that would be

requested here because it's going to be within the setback regardless.

BRENDAN SULLIVAN: Correct. So said. Okay.

Anything else?

TAD HEUER: No.

BRENDAN SULLIVAN: All those in favor of granting the Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Hughes, Heuer, Scott.)

(7:35 p.m.)

(Sitting Members: Brandon Sullivan, Constantine Alexander, Tad Heuer, Thomas Scott, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10270, 21 Trowbridge Street. Is there anybody here on that matter?

(No Response.)

BRENDAN SULLIVAN: Sean, do we have correspondence from them at all?

SEAN O'GRADY: I lost the train of who was coming and who was sending letters. Is there nothing in there?

BRENDAN SULLIVAN: What was the last communication with them?

SEAN O'GRADY: That's --

CONSTANTINE ALEXANDER: They put the old sign up, the June sign.

SEAN O'GRADY: I spoke with her or him -- I spoke with somebody, and my impression is that they were unresolved as to whether they were going to ask for a

continuance or show up and ask for a continuance.

BRENDAN SULLIVAN: Well, let me make a motion to continue this matter if it's the Board's wishes.

The Board finds that the Petitioner is in violation of 10.421 which is the -- I'm sorry, 10.421 which is the notice requirement, the notice board reflected the wrong date.

CONSTANTINE ALEXANDER: And time.

BRENDAN SULLIVAN: I'm sorry?

CONSTANTINE ALEXANDER: And time.

BRENDAN SULLIVAN: And time. And as such cannot go forward tonight until such fact has been corrected.

The Board notes that the transcripts from the June 14th hearing the Chair said that on a motion to continue this matter from tonight, August 9th, on the condition that the Petitioner change the posting sign to

reflect the new date and time of tonight, and that any new submissions be in the file by five p.m. on the Monday prior to the office.

And that the Petitioner has failed to comply with that correspondence. The Board has advised the Petitioner of same and yet there is no appearance.

The Board as a courtesy will continue this matter until....

SEAN O'GRADY: September 27th.

BRENDAN SULLIVAN: September 27, 2012, at seven p.m. on the condition that the Petitioner change the existing posting sign to reflect the new date of September 27, 2012, and the new time of seven p.m. And that any changes to the submissions now in the file would be submitted by five p.m. on the Monday prior to the September 27th hearing.

Anything else to add?

On the motion to continue this matter until September 27th.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Heuer, Scott,
Myers.)

(7:40 p.m.)

(Sitting Members: Brandon Sullivan,
Constantine Alexander, Tad Heuer, Thomas
Scott, Douglas Myers.)

BRENDAN SULLIVAN: The Board will
hear case No. 10299, 675 Massachusetts
Avenue.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board, for the record, my name is James Rafferty. I'm an attorney with the law firm of Adams and Rafferty located at 130 Bishop Allen Drive which actually is in the same structure that this case involves.

Seated to my right is Mr. Marc Shulman. Mr. Shulman's last name is spelled S-h-u-l-m-a-n. And, Marc is with a C by the way.

Mr. Shulman is a local entrepreneur. He and his wife operate a restaurant nightclub called the All Asia located in Central Square on the corner of Blanche Street and Mass. Ave., familiar with the hotel at MIT and it's right one block in front of it, that's Blanche Street. It's a small street that runs parallel to Sidney Street one length of Mass. Ave. down to Green Street.

It's a popular establishment. He's operated it now for quite sometime. His wife Patty Chen, C-h-e-n is -- her family has operated a Chinese restaurant across the street from this location. So they have a longstanding reputation and history of involvement in the food service and hospitality industry in Central Square.

Mr. Shulman and his wife wish to relocate their business to a location on Prospect Street. And while the address of the application reflects the city's record keeping, this is an establishment that has its frontage on Prospect Street, but it's located in the ground floor of a building that fronts onto Mass. Avenue. And the application is directly related to that relationship because there is a provision in the Central Square Overlay District, a set of additional regulations beyond the Base Business B Zoning for this district that does

contain a limitation or a restriction that says: Establishments where dancing is provided or -- I'm paraphrasing -- dancing or entertainment is provided, that the principal entrance should be on Massachusetts Avenue. And the principal entrance currently for this premises is on Prospect Street.

The request for the relief is related to the hardship that would be associated with complying with that requirement. It is worth noting that it's physically possible to comply with the requirement. The building does have an office lobby that fronts onto Mass. Avenue. And to access this space through that entrance you would enter into an elevator, you would go up one floor, and you'd come to a second floor corridor, you would walk the length of the corridor, and then you would take an elevator down to the first floor. You would now find yourself in the

space that the proposed establishment is going to be occupying. That is burdensome for patrons, and we think an unnecessary and somewhat illogical requirement given the context of the street. There has been commentary expressed by a number of observers on this one -- but the Planning Board comment that came late today, I don't know if it made it into the file, the Planning Board essentially recognized that what is our fundamental argument, which is that the provision in question here was really intended to provide a buffer, if you will, or a -- some separation between the residential neighborhoods and the principal, and the entertainment districts in Central Square.

This particular block of Prospect Street has all the characteristics of Mass. Avenue that the current entrances -- in fact across the street from the doorway here is a restaurant bar called The Field. Next to it

is an entertainment venue called The Improv which also has a liquor license, and does comedy, and a mix of retail uses. So Prospect Street, this one block of Prospect, we're talking the stretch of Prospect Street between Mass. Ave. and Bishop Allen Drive, it has the same wide sidewalks, it has the same characteristics as the rest of Mass. Ave. And the thinking as expressed by the Planning Board, which would have participated in the creation of the Central Square Overlay, is that the focus of that restriction was really on Green and Bishop Allen. At the time it was created there were a number of active nightclub uses, particularly on the Green Street side of Central Square, and the thinking was that these principal entrances should be on Mass. Ave. So, the relief is to allow for the principal entrance to be on Prospect Street. The use is a permitted use, and it's just the -- because of the nature of

the -- this use includes entertainment, including dancing by patrons, that it falls under this restriction in Article 20. So that's, that's the relief being sought.

We do contend that the hardship is unique related to the shape of the structure itself. It's a structure-based hardship in that requiring patrons to take such a circuitous route into the building or into the space really is not commercially feasible and doesn't provide for the type of access into an establishment like this.

This is a restaurant for -- it is a mixed use. It's a restaurant and a nightclub, so it's not a case of entertainment or dancing occurring all day long. So it would be a curious situation where during the lunch business and the early evening business where there wasn't live entertainment or dancing, there would be one front door. But when entertainment was introduced later in the

evening, you'd have to use a different front door to comply with this requirement. So, those are the challenges and that's why we're here seeking relief.

BRENDAN SULLIVAN: My initial thought when I saw the file was that somewhat, first of all, that it was inadequate. That the drawing, I would have thought it would have at least orientate us to the street, whether it be Prospect and Bishop Allen, No. 1.

Also that there was no visuals, no aesthetics for us to evaluate, which is an integral part of any type of an establishment for us to consider.

The other thought I had as you're asking for a reduction of parking, what are the requirements of the parking? And I don't see that number somewhere.

ATTORNEY JAMES RAFFERTY: Well --

BRENDAN SULLIVAN: And the other

comment that I guess I had is that in reading the Central Square Overlay District, there had to have been a reason why they wanted to have a principal entrance on Mass. Avenue, and I think because they wanted to control all of that and not have all this stuff migrate down the side streets. Now you may say that Green Street was the principal focus and they did that, then they could have put boundaries in the language of the Ordinance, but they did not. They just basically said Central Square. So those are some of the concerns that I have.

ATTORNEY JAMES RAFFERTY:

Understood.

CONSTANTINE ALEXANDER: Before you respond to that, Mr. Chairman, I just want to point out -- I share the concerns, but I'll get into more detail in a second. But there are two types of concerns that Brendan expressed. One is that this case is probably

not ready to be considered by us because of the inadequate visuals, the lack of information about parking. He's enumerated several things which he feels, the Chairman feels is missing from the file. That would lead us to continue the case and have you supply the material.

The second point he points out is he doesn't think you're entitled to any relief in any event in the Variance or the Special Permit. So I think we should segregate it out. Do we want to go forward with the case tonight based on what you perceive to be an inadequate file? If yes, we should get into the merits, but we shouldn't get into the merits if you think it's an inadequate file.

BRENDAN SULLIVAN: Well, I could render an opinion, but based on the inadequate information it might be an inadequate decision.

ATTORNEY JAMES RAFFERTY: Well, if I

could speak to the adequacy. The existing conditions will be largely unchanged. It's plate glass, retail space with a door.

BRENDAN SULLIVAN: We don't know that. In other words, the Dunkin' Donuts up on Mass. Avenue that came down and we asked for visuals. And we were aghast at what they came back with.

There was a Dunkin' Donuts on Church Street that we are aghast at the visuals. So that the visuals, the aesthetics are an integral part of any decision that I make. And to assume that it's not going to change or it's going to be very aesthetically pleasing to you, you'll love it, it will be the bar that all others will have to meet. That's not, does not carry it for me.

DOUGLAS MYERS: The toast of Central Square.

CONSTANTINE ALEXANDER: I would support the Chairman's point of view given

the fact that we're in the Central Square Overlay District, talking about a bar, entertainment, dancing, I think we need to know more information about what this project is going to look like before we even get to the merits. That's my -- so I concur with the Chairman on this.

ATTORNEY JAMES RAFFERTY: Are you interested in the interior of the premises?

BRENDAN SULLIVAN: Not the interior so much as I am the exterior.

ATTORNEY JAMES RAFFERTY: Well, the proposed --

BRENDAN SULLIVAN: I think also the real hurdle that you have to cross for me is the fact that the principal entrance does not front Mass. Avenue.

ATTORNEY JAMES RAFFERTY: Well, that's why we're here. The use is allowed. I agree with you, that's the principal issue.

BRENDAN SULLIVAN: So that's the

hurdle you have to get me.

CONSTANTINE ALEXANDER: The use is not allowed. You keep saying that. That's not true, Mr. Rafferty. The section -- the overlay district says that you can have a bar and establishment where alcoholic beverages are consumed and where dancing and entertainment is provided only if the principal public entrance and entrances are directly from Massachusetts Avenue or Main Street. You're not going to do that. This is not a permitted use. If you had -- you had a principal --

ATTORNEY JAMES RAFFERTY: Excuse me, it is a permitted use if the door were on Mass. Avenue. That's my point.

CONSTANTINE ALEXANDER: That's right, that's right.

ATTORNEY JAMES RAFFERTY: It may be a semantic difference, but my point is if they were able to get a door -- so, I guess it

depends on one's definition of use. It's not the case that the use isn't permitted. The door isn't permitted. We're in a Business B district, and these uses have to have their principal entrance. We're in a building that has a principal entrance on Mass. Avenue. This portion of the building would require access through the office lobby of that building. So my point was, and I strive to be accurate in my representations.

CONSTANTINE ALEXANDER: You do.

ATTORNEY JAMES RAFFERTY: That the restriction here is related to the entry. So you could have this very same establishment, same size and everything else, if they could figure out a way to come in from Mass. Avenue. And that's why -- I'm not trying to be semantic about it, but that's why I say the use is permitted. We're in a Business B District where these uses are permitted, and there are plenty of uses, similar uses around

here.

As to the Chairman's comment about what was intended, I think the Planning Board's recommendation is somewhat interesting because they are, they offer rationale, a planning rationale for why that restriction was there. I think there's letters from councillors that suggest it was a lack of precision perhaps or the -- but that's obviously a determination for the Board to make. And we can certainly come up with, I believe it probably exists, what the door looks like, but that isn't going to -- we still find ourselves with this restriction and asking for the Board to look at the context of the building and conclude that notwithstanding the restriction in the overlay district, that this particular location in this particular building represents a significant -- enough of a hardship, and more importantly is not

inconsistent with the objectives of the Ordinance. Because I would agree, if a Board members believes at the end of the day that this block at Prospect Street is what was intended to be protected, then I suspect you wouldn't support this. Our contention is that that wasn't the case at all, and that there's a legislative history represented by the Planning Board recommendation to suggest as much as well.

CONSTANTINE ALEXANDER:

Mr. Rafferty, the only hardship here is that your client can't operate a bar that serves alcoholic beverages with an entrance on Prospect Street.

ATTORNEY JAMES RAFFERTY: That's right.

CONSTANTINE ALEXANDER: But that's not the standard. The standard is can these premises be used -- do they have a legitimate use? They have loads of permitted uses.

The one use that's not permitted per section -- the Central Overlay District regulations is what we're talking about tonight. There's no hardship. The hardship is -- the owner of the property could rent this to a shoe repair shop, an ethnic grocer, optical shop, a bunch of things. But your client wants to operate a place that the overlay district which is specific says you can't do. I mean it's not like a typical Variance case where you have a one size fits all Zoning Ordinance that creates individual hardships around the city that were not anticipated. That's not the case here. The City Council, maybe they didn't know what they were doing, but they did adopt a specific overlay district provisions that says you can't do this. Your relief is not before us, it's before the City Council to get the provisions of the Ordinance changed. But I could see the rationale for not

allowing -- when they adopted the overlay district regulations, restricting these type of enterprises to Massachusetts Avenue or Main Street. Those are main thoroughfares with broad sidewalks. Prospect Street is a narrow street.

ATTORNEY JAMES RAFFERTY: No, it's not.

CONSTANTINE ALEXANDER: Oh, I'm sorry, I drive down -- you drive down more than I do, but I drive down the street. It's a narrow street. Parking's not -- you can't park on the side. The sidewalk is relatively narrow at least compared to the sidewalk on Massachusetts Avenue. This is not an ideal location which is why for an enterprise of this sort that your client wants to do, which is why the City Council wrote the Central Square Overlay District regs as it did. There is no hardship. There is simply no hardship. Unless you assume -- it's up to

your client, there is no hardship that runs with this property. There's plenty of legitimate uses that could be made of this property. It's very much like the Dunkin' Donuts case on Mass. Ave. which was a use variance, slightly different than here, it's the same thing.

ATTORNEY JAMES RAFFERTY: I would respectfully disagree only to the extent that I think the degree of relief is quite different. In that case there was a prohibition against this use. The prohibition here is of the principal entry. So the definition of principal entries here would suggest that he -- they would have to create a different principal entry to utilize this space.

BRENDAN SULLIVAN: And it may not be a fit for this building.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Any questions?

ATTORNEY JAMES RAFFERTY: Well, anyway, I'm trying to understand the wisdom of getting an extension because I don't think the rendering can address what I'm hearing. I mean, you need a hell of an artist to be able to overcome these objections. I mean, at the end of the day if -- I mean, we're hoping that the letters from -- the support from City Councillors and the recommendation of the Planning Board allows this Board to see the broader context of this restriction.

BRENDAN SULLIVAN: I think if two of the City Councillors found in divine wisdom to support this, then they could easily entertain an Ordinance Amendment of the overlay district to change it.

ATTORNEY JAMES RAFFERTY: Let me be clear to the extent that it's relevant. There was a petition filed by Councilor Reeves to remove that restriction. It had hearings at the Planning Board and at the

Ordinance Committee. The conclusion of the Ordinance Committee deliberation was that there are many issues being evaluated in Central Square. Currently there's a C2 commit ongoing. You may have read about it in the context of other land use issues in the past few weeks. And the thinking was that this has -- this restriction has application in certain locations. Primarily Green Street and Bishop Allen. And that was the testimony of the councillors and that was some of the feedback from some of the public hearings. The advice we were given by the Ordinance Committee was that this particular location was not a location that was a source of their concern. And the Petitioner, and I'll be happy to give you the transcript, was encouraged to file this application. What you should do is go to the Board. With all due respect, that's said by people who don't come here a lot. And I often say, you know,

you really shouldn't be advising people to do that. I've had a recent rezoning case in North Cambridge where someone told me, support the down zoning and then you can come in and then we'll come down here and support a Variance and you could build more. And people are told all over the city then we'll support you in a Variance. As much as one enjoys support, we know it doesn't carry the day all the time. So there is a history here. There is a -- there was a petition filed. The testimony at both the Planning Board -- well, I don't know about the Planning Board. I don't recall the Planning Board testimony, but at the Ordinance Committee, and the advice from two councillors was, you know, this is a one-off case, we don't really think one-off zoning works. If we were to change this for one block, it would feel perhaps a bit like spot zoning. So go to the Board and we'll come down. And Mr. Shulman was

encouraged, and I don't know how many councillors signed it, but six councillors have told him they were sending letters. And one councillor sitting in the other room said she's here in support. And I said well, then we'll go to the Board and make our case. But I'm very mindful of the Board's understanding. But I think to sit here with certainty about what was intended, might be somewhat misplaced. I think this block has the vestiges of other uses. But I certainly respect and understand the Board's role, and I just wonder, you know, we'll certainly request a continuance but it sounds to me for everyone's time that the rendering isn't going to address the issues -- and they're legitimate issues. But maybe the Petitioner needs to leave this hearing with an understanding that the Board doesn't see a hardship.

BRENDAN SULLIVAN: Well, there's a

number of hurdles that I haven't gotten over yet. I throw that out there.

ATTORNEY JAMES RAFFERTY: Well, in light of that I think I would request a continuance.

BRENDAN SULLIVAN: Well, let me -- I was asking fellow Board members if they have any comments.

DOUGLAS MYERS: My comment is I would like -- I mean, I think the Board ought to go on and discuss the merits. We're fairly far into it. This probably would be continued as a case heard at this point anyway. And I do think there are deficiencies in the file that would warrant a continuance if that were the only issue. I think serious issues have been raised, and why cure curable deficiencies when in fact the real issue can be addressed tonight on probably the same basis that would be beyond a continued case. If other Board members are

willing, I would just -- I'm prepared to go on and discuss the merits.

BRENDAN SULLIVAN: Okay. Your thoughts.

TAD HEUER: So I'm kind -- my thoughts on what whether we proceed? I'm kind of lost as to where we are.

BRENDAN SULLIVAN: In general. Start with the general and then we'll get to the specific.

TAD HEUER: So having heard what's just been said, I tend to agree with the Petitioner to the extent that I think I do view it as a permitted use where the issue is the door, not a non-permitted use. And I think that's because you as counsel for the Petitioner has found out you can access that space although not with some -- a great deal of, I think, legitimate word is hardship through the Mass. Ave. entrance. You could get there. The issue is not that you can't

get to that space. It's that you could get to the space, but that it would have absolutely no value in doing so and it would be very difficult and it would make it unfeasible for this use. I think that's more of the -- I think that's in my mind the more accurate way of describing it than to say it's a non-permitted use because you can't get to it any way other than through the Prospect Street entrance.

That being said, this is one more in long line of cases, and almost comically I think that we have so many letters from City Councillors as to the paradigmatic instance in which the City Council has an obligation to write an Ordinance. We are not here to make up the law. I would love to make up the law. That would be kind of cool. It's not within my jurisdiction, and it would be illegal for me to do so. To the extent that the City Council says that we didn't really

mean that, let the Zoning Board fix it and have it out and be the bad guy, I don't buy that and I somewhat resent it. The City Council has an obligation to write an Ordinance and we have an obligation to enforce it where it's clear and to have a determination made if there was a situation which merits relief. Here where the City Council said we didn't feel like making it as accurate as we should have, someone else could fix our problem, is not our job.

ATTORNEY JAMES RAFFERTY: Well, to the extent that I represented what I said, I would want to be careful to say that was not what was said to us. I think there might be a difference, understanding through a lack of perhaps legal training and the like, to think that there are certain exceptions that are warranted and historically exceptions have been granted, and we were encouraged to do that. I don't think there was any intention

to, you know, you do our job.

TAD HEUER: I would amend my remarks so to say that nothing which I said is a reflection of what Mr. Rafferty is representing to the Board.

ATTORNEY JAMES RAFFERTY: Thank you.

TAD HEUER: It's my own belief based on reading the file the representations made by the letters provided by the City Council and on that basis alone I have made the comments I just made.

CONSTANTINE ALEXANDER: And again I would reiterate, I think what you're asking us to do tonight is to rewrite the Zoning Ordinance in this area, and that's just not our job. This is not -- this doesn't fit. This is not a Variance case in my judgment. And, therefore, it seems to me that the relief if the City Councillors feel the way they do, this is, this was an oversight, change the

Ordinance. We don't have the legal basis to rewrite the Ordinance and that's what's being asked of us.

ATTORNEY JAMES RAFFERTY: Right. Well, I appreciate -- it's been a very helpful exchange. I think with all due respect, I would request a continuance just to allow --

BRENDAN SULLIVAN: Hold on. Mr. Scott, any --

THOMAS SCOTT: I mean, I kind of -- knowing what I know about it, the, you know, the circuitous route from Mass. Avenue to the space in my opinion would be a hardship. And I would, however, like to see more of the design of the space from the exterior. I think it's important for the Board to know what kind of an impact the building is going to have on the surrounding neighborhood. So I think that's important and I'd like to see more information in the file with regard to that.

BRENDAN SULLIVAN: Let me, I don't know if anybody from the general public has -- let me -- is there anybody here who would like to speak on the matter at 675 Mass. Avenue? Please introduce yourself for the record.

JAMES WILLIAMSON: My name is James Williamson. I live at 1000 Jackson Place in Cambridge. And these are very interesting questions that are being raised. I came here out of -- I have met Mr. Shulman a couple of times in the past, I don't know how many months, in the context of the major rezoning proposal at Forest City have put forward that is, I think the main reason why Mr. Shulman is compelled to look for another location. I'm impressed with Marc and the hard work that he's put into this establishment and as far as I know there haven't been any major complaints about the All Asia Club, and I've heard positive things about it over their 11

years in business there. It's unfortunate that he's going to have to move one way or the other regardless of what happens to the Zoning in that location.

I found myself actually thinking about some things which are not the crucial issue that you're focusing on, which if you're gonna have more discussion, I think might be useful which are, there is currently an entrance on Mass. -- on Prospect Street that presumably would be the main entrance to Valhalla if it's allowed to open there. There's also an entrance around to the side, and I'm curious of what the plan would be for the use of the side entrance, that alleyway that goes up the side of the space then goes around behind to where there is the parking lot where evidently some of those spaces may be made available which I think would be a great solution to whatever the remaining parking issues may be. But there is a

wonderful, way underutilized open space in the back there, green open space, trees, and I've often wondered back to when CCTV were in that location about why -- how there might be a better use for that green open space in the back that is part of the property next, sort of between the parking and the back side of what would be Valhalla. And I was -- I'm not sure what the opportunities are for access to that space or complimentary use of that space. That was another question. And my final question was I know that there's a major, major commitment that's just been, after years of litigation, been resolved for the remodeling of the YWCA, and although there aren't residences, I mean I'm very sympathetic to this as an appropriate potentially, if the different -- if the issues can be resolved as an appropriate use for Prospect Street, but I would think that it would be worth thinking about the

potential impacts for the residents behind the Valhalla across Temple Street, what the impacts might be and how what sorts of mitigation might be appropriate for that where they're indeed is a residential use. But other than that, I mean, those are concerns just because I live here and, you know, pay a lot of attention to the environment here. But generally speaking quite sympathetic to Marc and his -- the interest in finding another location and it's not his fault that, you know, Forest City gobbled up the block where he invested so much time and energy and money.

BRENDAN SULLIVAN: All right, thank you.

Anybody else present who would like to speak on the matter, 675?

GEORGE CHIPGREENWICH: Hi, everyone. My name is --

BRENDAN SULLIVAN: Just come up --

GEORGE CHIPGREENWICH: I talk loud. My name is George Chipgreenwich (phonetic) I'm a native of Cambridge. I grew up in Central Square, and I'm very proud of the work that All Asia has done over the years and building community, especially the artist community and the Cambridge area. I now live in Boston, I live in Dorchester. I live at 95 Fuller Street for the record, but I just wanted to come here today and just talk about the amazing community work that the All Asia Restaurant has been doing. It's a place where community networking can be done. I've held a number of different professional workshops there where people can do some great networking. Some poet sessions have been done in that place. It's also a place where local musicians and our outstanding Berklee students right over the river can actually come here and do their own performing and so forth. It's a necessary

piece for the square. And I know as I grew up in Central Square, Central Square didn't have these long, big sidewalks like they did in 1993 and '94, they extended the sidewalks out there. So I don't know what year the Ordinance. Does anyone know what year that Ordinance was passed.

ATTORNEY JAMES RAFFERTY: 1981.

GEORGE CHIPGREENWICH: 1981. So that is a very outdated Ordinance, and you know, Central Square has now been as I know and you know, has been the word being gobbled up by entities of Harvard which I'm a graduate of, and also MIT where it's encroaching on the square. I do believe that this establishment should stay in Central Square. I think it's a great community building piece, and I'm here to support that. And I know many of my friends have signed a petition to make sure that -- we want to make sure that this entity does stay here because it's a

major treasure and it's also a piece of the character of the square. And I hope that this Board right here would actually look into their hearts and knowledge and be able to really come up to a remedy of this situation so it doesn't become a situation of City Council versus this and goes into this larger --

BRENDAN SULLIVAN: Thank you.

GEORGE CHIPGREENWICH: Thank you very much.

BRENDAN SULLIVAN: Anybody else like to speak on the matter?

Okay, yes, if you would just identify yourself.

ANTHONY KENZA: My name is Anthony Kenza (phonetic). I live at 44 Columbia Street. I don't have much to say, just that me and my friends love to frequent All Asia and we would love it to stay in the area.

BRENDAN SULLIVAN: Okay.

UNIDENTIFIED MALE: I'm Marc's son. I just like they work really hard their whole lives, and I'm not like the perfect son. I'm trying to work -- I'm back in school right now, and like our family has been through a lot. Like, a lot. Like, my grandma, a lot. And I feel like this is another obstacle, but I feel like if, you know, you give Valhalla a chance, that it will make the community better. And, like, I'm working hard and he's working hard and I just know that, like, through their hard work that it's just, the community is going to be better just through their hard work.

BRENDAN SULLIVAN: Thank you. Anybody else like to comment on 675?

ERIC HEVNEKE: I'm Eric Hevneke, H-e-v-n-e-k-e. We're residents at 112 Prospect and we also have a bed and breakfast there. We have ongoing concerns about noise in the area in general. Prospect is

obviously a busy street, but we have a lot of activities going on with night activities at the gallery which is next-door to us that have had extra people congregating on the street creating extra noise. Another big concern we have is parking in the area because of the two lots have been closed to any public parking in the evenings since January. You're probably aware of that. Both of those big lots on the corner are completely closed up and it's made the parking much, much tighter in the area for any street parking during that time.

BRENDAN SULLIVAN: Okay, thank you.

Anybody else like to speak on the matter, 675 Mass.?

(No Response.)

CONSTANTINE ALEXANDER: I have a question if I may. Most of the comments we've heard are heartfelt support for the All Asia restaurant which is a complement to you,

sir. And the need for, or the desirability of having a presence in Central Square. Is this the only space available? I mean, can't you have an All Asia -- your restaurant in some other location in Central Square that doesn't run into the Zoning problem that you now have?

ATTORNEY JAMES RAFFERTY: I can let the Petitioner -- it is one of the few areas. And so I'm mindful, I'm also mindful of the time and I do want to restate the request for the continuance only because I understand that the file does make a difference. I would like an opportunity to address the deficiency if you will. I only mention that I recognize and have a great respect for the view that suggests that the hardship isn't present. I would like an opportunity to continue to show you perhaps the interior layout of the building, where this access would have to be. I do think it is relevant

that this is a building that sits on Mass. Avenue, and I would hope the Board would regard the distinction -- if this was a building facing Green Street and wasn't part of a Mass. Ave. building, I would quite agree this is a different. But we have a building here that sits on the corner of what is ground zero in Central Square, Mass. and Prospect or Mass. and Western, and I would like an opportunity to through -- enhance imagery and even floor plans to identify why making patrons go up that elevator and down the hallway and come down again doesn't serve the interest. But I also am mindful this has been helpful because I think the Petitioner needs to know and has now -- because frankly he did receive a lot of advice that this was an option available to him, and you should note the sequence of our efforts. We began with the Zoning Petition for the reasons I heard here tonight. I mean, I have a

profound respect for the legal standards.

BRENDAN SULLIVAN: That was my purpose in letting it air out so that --

ATTORNEY JAMES RAFFERTY: Yes, that's been helpful.

BRENDAN SULLIVAN: And that this obviously will be enhanced which is the only plan that we have.

ATTORNEY JAMES RAFFERTY: Right. We can -- there is all types of drawings and renderings of the interior and all that.

BRENDAN SULLIVAN: It's the outside --

ATTORNEY JAMES RAFFERTY: Right. Frankly I don't think he anticipates much by outside change. I've seen the lease from the landlord.

BRENDAN SULLIVAN: We'd like to see the not much.

Now, on the Special Permit are you still seeking reduction in the parking?

MARC SHULMAN: No, we -- that was already offered.

ATTORNEY JAMES RAFFERTY: At the moment we are. I had earlier indicated to Mr. O'Grady that I didn't think it was necessary based on conversations with the Traffic Department. The landlord has made access to parking available, but there's a long -- there probably needs more time to understand the permitting history around the current parking, how it's occurring, what that -- if that parking is necessary to satisfy.

BRENDAN SULLIVAN: And I keep going back to the Porter Square shopping center where every time somebody comes down CVS, the health establishment upstairs, Cambridge Savings, they all say oh, yeah, we have parking in the shopping center. And yet that parking has been sold and resold dozens of times. And at some point we're going to

make -- and as new people come in, a dentist comes in, oh, yeah, we have plenty of parking. I don't think they do. And if we at some point decide well, how many spots is the Shaw's going to need, and we keep going down the line, at some point there's going to be a total deficiency of parking. So I just want to make it 675 Mass. Avenue to see what the parking requirements are of the building, how many parking spaces are available, and whether or not there's parking left over for this use. And also how many are required and where they are.

ATTORNEY JAMES RAFFERTY: Well, it's one per 15. The shorthand analysis is it's my -- given my understanding of the parking supply and the demand under Zoning, is that there is not, but I learned today, too, that the building was constructed pursuant to a Variance. So whether that Variance addressed parking or not. So that

would be relevant. We can do a full parking analysis in the time that the continuance would allow us to look at that. I thought today frankly that we were -- that we would simply -- the landlord said I'll make spaces available to you, and we were going to satisfy that issue, but I think I received wise counsel from ISD staff that perhaps withdrawing at this time. So that's another reason to support the continuance.

BRENDAN SULLIVAN: Okay. So let me offer a motion to continue this matter until -- we're into October?

SEAN O'GRADY: One left on September 27th.

CONSTANTINE ALEXANDER: I won't be here the 27th. It's a case heard.

SEAN O'GRADY: That's right. You're out to October 11th.

BRENDAN SULLIVAN: Any further comments?

TAD HEUER: No.

BRENDAN SULLIVAN: On the motion to continue this matter to October 11, 2012, at seven p.m. on the condition that the Petitioner change the posting sign. Are there one or two signs?

TAD HEUER: Three.

BRENDAN SULLIVAN: Three signs, to reflect the new date of October 11, 2012, and the time of seven p.m. And that any new submissions be in the file by five p.m. on the Monday prior to the October 11th hearing.

Anything else to add?

CONSTANTINE ALEXANDER: I only request that right now you have the signs that you posted on Bishop Allen Drive and on Mass. Ave., but there's none on Prospect Street.

TAD HEUER: Yes, there is.

CONSTANTINE ALEXANDER: There wasn't when I looked.

JAMES WILLIAMSON: There was when I

went by there just now.

ATTORNEY JAMES RAFFERTY: I'm there everyday. It's been there everyday.

CONSTANTINE ALEXANDER: No sign up. I went Sunday and there was no sign up. I walked all the way around. All right. On Bishop Allen Drive but not on Prospect Street.

TAD HEUER: No, there's one on Prospect Street.

ATTORNEY JAMES RAFFERTY: There is one on Prospect.

CONSTANTINE ALEXANDER: I withdraw my comment. I must be mistaken.

ATTORNEY JAMES RAFFERTY: Right by the door. Maybe not on Sunday, but it's been there everyday. I was there today and it was there today.

CONSTANTINE ALEXANDER: I want to make sure there was a sign on Prospect.

ATTORNEY JAMES RAFFERTY: We were

given three signs and we put up three signs.

BRENDAN SULLIVAN: So you'll be vigilant.

On the motion to continue this matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

Continued.

(Sullivan, Alexander, Heuer, Scott, Myers.)

(8:20 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Tad Heuer, Douglas Myers, Thomas Scott.)

BRENDAN SULLIVAN: The Board will hear case No. 10300, 69 Reservoir Street. Is there anybody here on that matter?

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt of correspondence. (Reading) To the Board of Zoning Appeal: I would like to continue my case to the earliest possible meeting. Thank you, Valerie Peck.

The earliest possible meeting?

SEAN O'GRADY: Would be 9/27.

BRENDAN SULLIVAN: Are we closed for the next one in September?

SEAN O'GRADY: No. We have one opening left on 9/27, one opening left on 10/11 and then it's wide open after that.

BRENDAN SULLIVAN: But I mean the first one in September we're closed?

SEAN O'GRADY: Oh, yes, the first one in September we're well closed.

TAD HEUER: Isn't that Huron?

SEAN O'GRADY: Well, there's one case there but we have Hamilton and Matignon, both of those could be -- Matignon is going to be a large case.

TAD HEUER: Okay.

BRENDAN SULLIVAN: So we're saying September 27?

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: Let me make a motion to accept the Petitioner's request for a continuance for September 27, 2012, at seven p.m. on the condition that the Petitioner comply with regulation 10.421 which is the notification requirement for the posting sign to be adequately displayed not more than 20 feet from the public way, and clearly legible from said public way. And that it be maintained as such 14 days prior to the hearing of September 27th.

Any submissions different than those in the file be resubmitted and in the file by

five p.m. on the Monday prior to the September 27th hearing.

All those in favor of continuing this matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Heuer, Scott, Myers.)

(8:20 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Tad Heuer, Thomas Scott, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10301, 9-11 Fairmont Avenue.

ATTORNEY SEAN HOPE: Good evening, Mr. Chair, members of the Board. For the

record, attorney Sean Hope, Hope Law Offices. I'm here tonight with Mr. Alan Carvalho, C-a-r-v-a-l-h-o, he's the Petitioner and owner of the property.

This is an application to add a rear deck to the third floor of an existing two-family ground --

CONSTANTINE ALEXANDER: The application says Paul Cammarata.

ALAN CARVALHO: He's the developer, the person doing the work.

ATTORNEY SEAN HOPE: Yes, this is an application to add a third floor deck to an existing two-family brownstone. The property is located in a Residence C1 and it's about 38, 3900 square feet the lot size. Mr. Carvalho has lived in the neighborhood for about 30 years. If you visit the property, it's a very dense area.

CONSTANTINE ALEXANDER: Yes it is.

ATTORNEY SEAN HOPE: Mr. Carvalho

and his partner have been extremely active in the neighborhood. You may have seen them here before in other hearings. Mr. Carvalho and his partner have also supported their neighbors when they went to get outdoor space.

The purpose is part of the remodel of the structure is they're going to have the kitchen located on the third floor. And so having this kitchen and having a deck off this kitchen will allow for additional outdoor space. If you go visit the site and you walk down the slanted driveway, you'll see that even though there is an ample size backyard, the majority of that is paved with four parked cars, and there's a small sliver of the right-hand corner of the lot that it has some seating for chairs. But as you can imagine living on the third floor of a brownstone is very difficult in bringing your recyclables down from your kitchen down to the third floor

area.

You would also note that this is a, this is a brownstone, so unlike a normal two-family where you may have one level, you're actually living on two floors. Now, the first floor which is the basement, is at grade or at grade from the front of the property and then as the property recedes down, it gives more access to the basement area. But most importantly this is really a quality of life and a functional issue. Having this outdoor space would allow Mr. Carvalho and his partner or anyone who lived in that property to be able to utilize this outdoor space. Specifically the deck itself, it's a eleven by three feet so it's, it's, I would say appropriate in size. The deck itself is below the third floor, and per rules of the Ordinance it's not considered additional gross floor area. The deck is conforming in terms of setbacks. Per rule of

Inspectional Services, the area below the deck is counted so that's why there is an increase of GFA. But in terms of the deck itself, the size and where it's located, they made sure it was away from that side yard setback so it is conforming in that way. I'd also say that the deck is consistent with the character of the neighborhood. If you go in that backyard, you look and there's some pictures, there's about ten decks and we have pictures so you can see.

CONSTANTINE ALEXANDER: Can I see it?

ATTORNEY SEAN HOPE: And these decks are actually specifically looking into the same backyard that Mr. Carvalho has. I know oftentimes with the Board one of the issues with the decks is about privacy and you want to make sure that you're not going to be changing the privacy of abutters. In this case there are several decks as you can see

there. As well as the majority of the decks and even the decks of the abutters are paved areas. So adding this deck is not going to affect privacy. Part of this application, we did an outreach to the neighbors and abutters and we have letters here. And there are also some, there is an abutter who actually shares a party wall with the Petitioner who is here as well to speak in support.

As a point of clarification, the original application requested for two decks; one on the second and one on the third floor. After consultation with the neighbors and abutters, we really wanted to get as much deck as we needed and not ask for more. So we actually revised the plans. And so now it's only the third floor deck that is off the kitchen to allow functionality. So, we reduced the amount of decks that we had there.

CONSTANTINE ALEXANDER: Do I take it from that that there was, with regard to the original idea of the two decks, neighborhood opposition and that you're responding to that.

ALAN CARVALHO: The original condo document when we turned it into condos clearly stated that when we talked about this, we talked about the possibility of having a deck on each side.

CONSTANTINE ALEXANDER: Right.

ALAN CARVALHO: But when I gave these -- when I told the contractor, he drew it up as top and bot -- at second and third level. He wasn't clear that the condo document stated clearly that we can't, that can't be done. It has to only be one floor or the other.

TAD HEUER: So I'm a bit confused by this when I looked at the plan. First of all, because I think one of them is labelled dead

wrong unless I'm also wrong, but -- so this is what we have, we have --

ALAN CARVALHO: That's wrong.

TAD HEUER: That's wrong?

ALAN CARVALHO: Yeah.

TAD HEUER: Is it also wrong because that's -- I presume if that's wrong, that's No. 9 and that's No. 11?

ALAN CARVALHO: That is correct. That is very good. Yes, you're right.

TAD HEUER: So my question is are we hearing a different case than what you've handed in?

ATTORNEY SEAN HOPE: No. So on Monday I sent in an amended plan that showed a revised A9 showing only one deck as well as a revised dimensional form that was stamped and submitted. What wasn't taken out was the original plan. So that error was corrected.

THOMAS SCOTT: So this is 11, this is 9?

BRENDAN SULLIVAN: That dimensional form is reflective of that?

ATTORNEY SEAN HOPE: Yes. It says amended. Yes, exactly with the date.

TAD HEUER: Tuesday.

BRENDAN SULLIVAN: Right, at 4:23. As opposed to 4:59.

TAD HEUER: Wednesday was the 8th. 7th was a Tuesday.

ATTORNEY SEAN HOPE: It's a late stamp. I brought it on Monday. Even though they're open till eight o'clock, I made it specific to be there before five because I know --

CONSTANTINE ALEXANDER: Well, that's the requirement. Even though we are open until eight, it has to be there by five.

ATTORNEY SEAN HOPE: I did bring it to the Board on Monday.

DOUGLAS MYERS: It's stamped Tuesday.

BRENDAN SULLIVAN: Yes, I checked with Maria and there were a couple that were late stamps. And one was Griswold Street which was before us, which actually was brought in on Friday, and she stamped it in. And this one here was also on Monday.

DOUGLAS MYERS: It wasn't in the file on Tuesday morning.

BRENDAN SULLIVAN: It was on her desk actually is what she said.

ATTORNEY SEAN HOPE: I would like to again amend that if we were granted favorable relief --

TAD HEUER: We're doing that regardless. So it's going to be on No. 11?

BRENDAN SULLIVAN: I questioned her on that and she apologized and she explained that it was a late stamping. They were there. She was there Monday night. She did receive them. And actually they got put in the front office. She brought them back and

put them on her desk, did not stamp them in and did stamp them in on Tuesday.

TAD HEUER: Okay, that helps. That now makes sense.

On the merits, three feet's about the width of this table; is that about right?

ATTORNEY SEAN HOPE: Uh-huh.

TAD HEUER: Is that usable space at all?

ALAN CARVALHO: One of the decks in the photo is the three feet.

ATTORNEY SEAN HOPE: Yes, we actually brought --

ALAN CARVALHO: I'm sorry, I can show you which one.

TAD HEUER: The reason I ask is because most of the time people come in and say my three foot deck is not wide enough, I can't do anything on it, I need a wider deck.

ALAN CARVALHO: Right. This is a three foot deck. And I just met with them

this evening and they said to me the same thing you just mentioned, are you sure that's gonna be accommodating? But there they have two chairs, a table, and a barbecue. And I thought that's -- I don't want that. I don't want to encourage that.

ATTORNEY SEAN HOPE: And also I think the size of the deck speaks to the intentionality. This is not gonna be a place to have a dinner party or going out to talk to neighbors and you're talking about the use of it. Although we could because we do have the rear yard space if we wanted to do a larger deck. Like I said before, it's conforming. When we did the deck, we did enough to be able to maybe have a coffee or a cocktail on this deck and we also made it consistent with the other decks that are really looking into the adjacent backyards. So it was really looking to what was there, what was permitted. I believe Mr. Carvalho and his

partner supported --

BRENDAN SULLIVAN: You know what these tend to become? Are little garden areas.

CONSTANTINE ALEXANDER: Little what?

BRENDAN SULLIVAN: Garden areas with flowers and pots. And something in close proximity to the unit. That's really what they --

THOMAS SCOTT: I have a question. What holds the deck up? You don't show any supports. Are there going to be columns? It's magical?

TAD HEUER: I can't wait to see that transcript.

ALAN CARVALHO: I understand it's cantilevered underneath the flooring.

THOMAS SCOTT: So they're going to run the structure back into the space?

ALAN CARVALHO: Correct.

THOMAS SCOTT: Okay. And it will be cantilevered?

ALAN CARVALHO: Yeah, they are.

THOMAS SCOTT: Okay. So there will be no visible supports?

BRENDAN SULLIVAN: Just cantilevered.

ALAN CARVALHO: Correct.

TAD HEUER: Is there a reason why we're not seeing an application for whatever it is, No. 9?

ALAN CARVALHO: The residents of No. 9 are here.

TAD HEUER: It's already been condoed?

ALAN CARVALHO: Yes.

TAD HEUER: We're really only talking about No. 11 with a bit of recognizance of whether this is possible for No. 9?

ATTORNEY SEAN HOPE: I would not

Speak for --

ALAN CARVALHO: Go ahead speak.

DAVID GRANT: May I? We are the owners of No. 9. And not really actually. I mean, we probably would --

BRENDAN SULLIVAN: I'll open it to public comment in a moment so you can hold the thought and I'll get to you in about 15 seconds.

Any other questions at this time?

TAD HEUER: No. Only one question, so you only need two parking spaces by an Ordinance, right? And you have three but you show four.

ALAN CARVALHO: Two each.

TAD HEUER: Two --

ATTORNEY SEAN HOPE: Well, I'm not sure if the parking predates the Ordinance meaning when these were condoed. I guess an existing two-family, I wouldn't be able to speak to why there's four spaces.

TAD HEUER: But you only need -- but minimal you only need one?

ATTORNEY SEAN HOPE: Right, one per dwelling unit.

TAD HEUER: So conceivably if you wanted additional open space, you would take out two of the parking spaces that you don't need. So essentially what you're saying is I have open space, I don't want to take away some of the parking, because by Ordinance you'd only need two for the two units.

ATTORNEY SEAN HOPE: True. But also to get to the parking spaces you need a paved area. And if you look at the way the parking is, there's also a fourth car that's angled. So I don't think --

ALAN CARVALHO: I don't think that should conserve as much of the open space.

ATTORNEY SEAN HOPE: So the driveway is on the property line and the parking goes to the other spaces to the right. And I

actually may have a better plan.

TAD HEUER: I have this one.

ATTORNEY SEAN HOPE: Okay.

So it's actually a six-foot which by today's standards, obviously, would be for Zoning but this building was built --

TAD HEUER: All right.

ATTORNEY SEAN HOPE: And it's that fourth, the deed parking space that really creates a challenge to not be able to use, I guess, what would be additional open space.

TAD HEUER: Right.

ATTORNEY SEAN HOPE: And even that yard area that's common, a lot of that is parked. And if you go back there's a small corner where there's some vegetation and it's been, I would say far from --

TAD HEUER: Yes, I'm just looking at technically you can take away D and C and still be left with A and B and you can get to A and B because you have enough distance out

through the easement. Because I presume -- is this a shared driveway; is that right?

ALAN CARVALHO: Yes.

TAD HEUER: Is there parking for the other, for 13, 15?

ALAN CARVALHO: Yes.

TAD HEUER: Immediately adjacent to where you are A and B?

ALAN CARVALHO: Yes.

ATTORNEY SEAN HOPE: That whole backyard to the left. And as I said, before because this is a townhouse that's up and down, it's not that the whole living quarters of one unit is on the first floor where you have easy access to the other space, and you have your bedroom's on the second floor and your kitchen's on the third floor, it's really not the size of the open space although I would say this isn't very much there, it's also the access to it which makes deck

appropriate.

TAD HEUER: Right.

BRENDAN SULLIVAN: Mr. Myers, any questions at this point?

DOUGLAS MYERS: No.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: No questions.

BRENDAN SULLIVAN: Let me open it public comment. Is there anybody here who would like to speak to No. 11 Fairmont?

If you would introduce yourself, please, for the record.

DAVID GRANT: My name is David Grant. I and my wife Elaine Miller own the condo at No. 9. First of all, on the subject of the parking spaces, the parking spaces you have to remove are the ones that are in the deed for No. 9, so we wouldn't want to do that.

TAD HEUER: So you're C and D?

DAVID GRANT: We are the two that are closest to the yard, including the angled

one.

TAD HEUER: Yes.

DAVID GRANT: When the condo was created, there was put in there the capability of putting in one of the decks, and I had concerns when I heard decks were going in, and actually I'm the one who said oh, you can't put in decks on both floors because I had one when the plan was drawn up. You could only have one deck as far as the condo association is concerned, which I'm one of the trustees of. You could only have one deck per unit maximum. One deck per unit subject to getting planning permission. And my concerns would be if the deck was large, which this is not. When I saw the amended plans with the single deck and I spoke to the contractor and asked Paul how are you going to attach it because I don't want great big ugly brackets and tearing off the walls. And he said he was cantilevering it. And I said,

I'm good. So my wife and I are very happy with a deck provided it's cantilevered, provided it's not built with shotty materials, provided it's the size that's in the most recent drawing, and I've signed something here saying that I'm quite happy with it. Obviously you've got a record of it. Provided it's only on the one floor. The dimensions are per the dwelling, eleven feet by three feet deep and it's cantilevered into the structure we have no option.

BRENDAN SULLIVAN: Okay. Anybody else like to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see nobody. The material of the deck is to be?

ALAN CARVALHO: We talked wood structure.

ELAINE MILLER: Cedar.

DAVID GRANT: The flooring part.

ALAN CARVALHO: Right.

DAVID GRANT: And for the vertical mahogany or some kind of birch wood. He's going for very decorative.

ALAN CARVALHO: Yes, that's right.

TAD HEUER: So you're not doing pressure treated lumber?

ALAN CARVALHO: No.

BRENDAN SULLIVAN: All right, so I'm going to mark this up -- well, let me allow our resident architect to mark it up. So if you would repeat that again. It's to be....

ALAN CARVALHO: The -- it's supposed to be higher end lumber that we're going to be using, and I'm sorry?

ELAINE MILLER: Cedar flooring.

DAVID GRANT: And mahogany or some sort of bur wood.

CONSTANTINE ALEXANDER: Can you do that on decks?

BRENDAN SULLIVAN: Yes. It's not really mahogany, but it's name is mahogany.

TAD HEUER: Mahoganzed materials.

CONSTANTINE ALEXANDER: That's more like it.

BRENDAN SULLIVAN: Yes, it's really --

CONSTANTINE ALEXANDER: You think we're in India or something.

BRENDAN SULLIVAN: No, I mean the Philippine mahogany you can use, but the mahogany that they're using now actually comes up from Brazil but it's not the same species. But at any rate -- so it's to be either cedar/mahogany?

ALAN CARVALHO: Yes.

BRENDAN SULLIVAN: Okay.

Are you writing a set of specifications down?

THOMAS SCOTT: Yes.

BRENDAN SULLIVAN: The balusters are to be an inch and a half by inch and a half. Does that sound about right?

ALAN CARVALHO: Yes.

BRENDAN SULLIVAN: Spaced as per code, which is not to exceed four inches.

THOMAS SCOTT: All right.

BRENDAN SULLIVAN: Height is going to have to be 42 inches because it's a -- okay.

Anything else to add, Mr. Hope, at this point?

ATTORNEY SEAN HOPE: No.

BRENDAN SULLIVAN: Anything to amend or anything? No? Nothing to amend further?

ATTORNEY SEAN HOPE: No.

ALAN CARVALHO: And then this was changed?

ATTORNEY SEAN HOPE: Yes. And the Chair noted --

ALAN CARVALHO: That the 9 and 11 were changed?

CONSTANTINE ALEXANDER: It's on the plans.

ELAINE MILLER: You're not going to give us a free deck?

ALAN CARVALHO: No, I'm sorry. I like you, but not that much.

BRENDAN SULLIVAN: So that's --

ATTORNEY SEAN HOPE: Right, and that was so that there was existing two windows and one of those windows is going to be a door. So it doesn't require a Special Permit relief. It's outside the setback and it's going to be the same, but it's an opening so we referenced it.

BRENDAN SULLIVAN: So I'm going to make a motion to grant a Variance to construct one balcony at the rear of the house, at No. 11, as per the plans submitted and the dimensional form, and as per the marked up drawing and signed and initialed by the Chair.

The Board finds that relocation, enlargement, or additions of the windows,

doors, skylights, or similar openings to the exterior of the building provided that the side of the building upon which such relocation, enlargement, or addition is occurring conforms to the yard requirement and faces the street.

So this does not that you're asking for relief under that section. Okay.

Then the dimensional, it's because the building is non-conforming now. And that's a dimensional relief that you're asking for.

ATTORNEY SEAN HOPE: Right, because of the additional gross floor area.

BRENDAN SULLIVAN: So we make a motion, then, to grant relief requested. The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would prevent the Petitioner providing much needed and desirable outdoor space for the unit.

The Board finds that the hardship is owing to the size and shape of the lot and the location size and shape of the building, and the location of the building thereon which predates the current Ordinance and by nature is existing non-conforming any addition of this nature which the Board finds is quite de minimus. And a fair and reasonable request would require some relief from this Board.

The Board finds that desirable relief may be granted without substantial detriment to the public good or not nullify or substantially derogating from the intent and purpose of the Ordinance.

Anything else to add?

CONSTANTINE ALEXANDER: I'm not going to vote in favor of this.

BRENDAN SULLIVAN: All those in favor of granting this relief.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Heuer, Myers, Scott.)

BRENDAN SULLIVAN: Any dissenting?

CONSTANTINE ALEXANDER: The relief on its face is modest, I don't think there's a hardship and I'm concerned about the impact on the neighborhood. It's one more deck in an area that probably has too many decks already. There are privacy issues that could result from this. I think we're going to see another petition soon for yet one more deck and so I would draw the line here.

BRENDAN SULLIVAN: Okay. Granted.

ATTORNEY SEAN HOPE: Thank you.

(8:45 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Tad Heuer, Thomas Scott, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10302, 8 Chauncy Lane.

Good evening, introduce yourself for

the record.

BLAKE ALLISON: Blake Allison, A-l-l-i-s-o-n. Dingman Allison Architects at 1950 Mass. Ave., Cambridge.

The petition is for a Special Permit to alter three areas on the existing structure which is non-conforming, but it's Special Permit because there's no change in FAR, there's no further dimensional encroachments. The back side of the building there are two areas that we're proposing to enclose. One of them is at ground level that you see in the photograph here. We're calling it a porch because it's roofed over, but it's almost like it's a basement space and they just left it open to the weather.

The second is a balcony at the living room level. And the third is on the front side of the building which faces out into Chauncy Lane which is the right of way for

vehicular access. And it's here in the photograph. This is adjacent to the kitchen.

I think the project was straight forward enough and pretty standard kind of Special Permit request. The owners David and Iris spent a lot of time talking to the neighbors. We actually made some design modifications along the way because of feedback we got from the neighbors. And they'll speak to their lengthy conversations in that regard. But yesterday one of the neighbors wrote an e-mail to the Board. We just became aware of it this afternoon. And we thought that she had indicated that she was not in opposition to it, but the letter actually seems to indicate that she has some issues that are important to her which she expressed in the letter. So our feeling at this point, we spent most of the afternoon talking about it is that the enclosure of the

two back spaces no one's raised any objections to them. They're not visible to anybody really if you go and look at it carefully. They look out onto the adjacent driveway and the roof of the parking garage for the condo project next-door. So there's really no visibility on that side at all. And none of the neighbors expressed any concern about it, but I think the focus here is on the kitchen balcony. And we've even considered just abandoning that part of the proposal. And I think it's fair to say that if this had involved a Variance, we would have just taken it out of the proposal. But our issue is that seeing how it's a Special Permit, the question would be does enclosing this balcony constitute a substantial detriment to the neighborhood? And if it does, then we would remove it from the petition of course. But given that this is the kitchen renovation and it's a very

expensive part of the house, if we could enclose the balcony, we're going to come up with a much better kitchen solution. So it does have some importance. It's not something we're doing just because it seemed like a nice idea. It does actually have implications about the dollar investment in the property and so on. So, I think we're going to hopefully be able to get some discussion from the Board as to what constitutes this idea of the substantial detriment.

CONSTANTINE ALEXANDER: I'll start. The relief you're seeking here is not unusual to us. This kind of structure and location is. We've had cases before, Special Permit cases, generally triple deckers with decks on the street, facing the street, people want to enclose them for extra space just as you want to do here, and we've often turned them down on the grounds as to too much massing on the

street front. And I think that's the gist of the opposition in the letter that's in the file. Which I thought was a rather frankly thoughtful letter. And you are going to -- you've got to talk about the street is a very narrow lane. And you are going to bring the buildings closer to each other, if you will, by breaking up the symmetry that's there now, some open space, some street space. So I think it's not a slam dunk to me anyway, that we should grant you relief because it's a Special Permit case. I think there are issues. I'm not saying how I'm going to come out. Other members of the Board may have different views. But I think that's the gist of the problem. And as I said, it's not unique to this one.

BLAKE ALLISON: Right. Well, maybe -- would the Board care to hear from the owners about their conversations with the neighbors and then maybe we could get a better

idea.

BRENDAN SULLIVAN: Sure.

Introduce yourself for the record.

DAVID BROOKS: I'm David Brooks.

PAI-HUI IRIS HSU: I'm Pai-Hui Iris Hsu, H-s-u. And we're the owners at 8 Chauncy.

DAVID BROOKS: So as Blake said, we did contact many of the adjacent properties and we did focus on the cluster in Chauncy Lane because those are the ones that are most impacted by the potential changes here. We actually got a lot of good feedback from the other owners. I think it was really helpful because these properties are a little bit unique and other owners have made changes in the past and we wanted to learn from their experiences about what kind of things work and what kind of things didn't work. So we got a lot of feedback.

We met in person with Jen and Brian in

No. 1; Wendy in No. 2; Linda and Roger in No. 4; Judy No. 5; and Lois and Carlos in No. 7. And that's basically the range of them. A couple of them were out of town, so we were only able to communicate by e-mail and postal mail. And basically I think No. 1 and No. 2, No. 6 and No. 7 had no objections. They were fine with the plans that we submitted. As Blake mentioned, Judy initially had some concerns about covering up the front balcony. I think she was a little bit confused and thought we were going to have brick there. And we, we -- when we talked to her and showed her the plans, we actually modified it a little bit to have a bigger windowsill where we could have a flower bed that would project out on to the lane. I think her concern was the changes that would seem very different in what she was used to seeing in the lane.

TAD HEUER: What number was she again?

DAVID BROOKS: No. 5. She would be No. 5. So after we talked to her, she initially sent an e-mail to the BZA and she told us she would send an addendum. I don't know if that e-mail was actually received.

CONSTANTINE ALEXANDER: We have it.

DAVID BROOKS: Okay. She said she would send an addendum to the e-mail because after she saw the changes to the plan she was okay with it.

And then as Blake said, No. 4 which is Linda and Roger actually had very extensive e-mail conversations, and a long in-person discussion with them as well. Initially they were actually very supportive. And then just yesterday we found out that they had sort of changed their mind a little bit and were concerned about the front enclosure. I think everyone that we talked to has no problems with the rear enclosure and that's pretty common in this neighborhood to have

the rear porches closed.

BRENDAN SULLIVAN: My initial thought when I saw this, and I'm very familiar with Chauncy Lane is well, you've got one over on Walden Street and (inaudible) and well, all that same genre. Is that they sort of worked because there is sort of a -- even though obviously a very narrowness to it, but again muse you have that narrow -- the sort of the in and the out and the texture of and it works that way as opposed to a facade of just facing each other. And I think as an architect you would appreciate that. And the different textures and gives it a different feel. And once you start to fill these in, then I think it does change the character. And probably three times of going down Chauncy Lane and I've sort of stood there and looked and then actually came back and actually read the letter, and that actually summed up some of the thoughts that

I had. You know, so she didn't convince me, she sort of reinforced what my feelings were about it. And the effect now and going forward, too. And even if all of the neighbors were in support of it, sometimes we get that in that, you know, gee, we may want to do the same thing some day, so we don't want to oppose it now. So, that's sort of where I am with it on that front pushing that out.

When did you buy the unit?

DAVID BROOKS: In June we moved. We closed in June.

BRENDAN SULLIVAN: So, you know, you sort of bought the place as is. And, you know, you can say okay, it works except if we push this out, you know -- well, if someone comes down beforehand and said, you know, we will buy this unit subject to, that's one thing. But to buy it and say okay, but now let's see if we can't do that, that's sort of rolling the dice if you will. I don't mean

to simplify it or make light of it, but I really feel that once we start enclosing this, it really does chip away at that nice texture that the lane has. So that's sort of my thought on it.

Tom?

THOMAS SCOTT: Yes, I tend to agree. I think that, you know, in a confined space like this, the playfulness of the elevation is what makes it accommodating and feel like a nicer place to be. And as soon as you start enclosing it, like you say, I think there are a lot of other tenants or occupants who may say, gee, let's do the same thing. And once that becomes a wall, it's very --

BRENDAN SULLIVAN: It becomes an alleyway at that point.

THOMAS SCOTT: Yes. It becomes unforgiving. I have a question, how deep is the balcony currently?

BLAKE ALLISON: Five and a half

feet.

THOMAS SCOTT: It's only five and a half feet? Thinking back to the last case, the three feet that they have, you know, the difference between three and that be enough to kind of leave a balcony of some kind and yet still give you a little bit of space inside. Maybe there would be a compromise there that, you know, a neighbor might appreciate. But I think to eliminate it completely on that particular facade would be a mistake architecturally.

BRENDAN SULLIVAN: I mean I like to see those balconies. And, again, they're space, they're open spaces. Sometimes they're just clutter spaces depending upon the season, make them problematical for snow, for leaves and for everything else. But I think the type of people who occupy these are very sensitive to their surroundings. It may, again, be flowerpots. It may be

furniture. It may be just somebody sitting out there having a cup of coffee reading the paper. And to a person across the lane is somewhat soothing, somewhat pleasant. Once you take that away, again, I think you're chipping away at the fabric is all.

Any thoughts, Mr. Myers?

DOUGLAS MYERS: I really tend to agree with everything that's been said by my fellow Board members. I also visited the property, and I have to say that the effect of the not quite analogous alteration at No. 10 reinforces me in my view is that is not a favorable precedent. If anything, it tends to be unfavorable. And my judgment is it tends to support the opinions mentioned by other members of the Board. So I do think it would violate the rather sensitive intimate space on the narrow lane to build out.

BRENDAN SULLIVAN: Mr. Heuer.

PAI-HUI IRIS HSU: Does the Board

have any comments on the back porches?

DOUGLAS MYERS: I'll just add I have no objection. Also part of the view, there's nothing comparable to what I was saying on the rear side, just for the reasons that your architect said.

BRENDAN SULLIVAN: Let me -- Mr. Heuer.

TAD HEUER: I have no problem with the back, that's fine. Strangely I think the Board would expect that I would have the same view as they do in this, but I think we are now possibly for one of the only times I can remember potentially reversed.

I usually agree that filling a porch creates more massing in the public way. Perhaps it's my own version to post-modern and post-modern architecture, but those structures are on something that I would find to be a stretch to be a public way to be begin with. There's no reason for a way, I presume

it's a private way?

PAI-HUI IRIS HSU: Yes.

TAD HEUER: I mean it's a way for the purpose of zoning. It's a large driveway. And because of that I don't think that natural -- no one's going down there. It's a dead end cul-de-sac. No one sees it except for those across from it. If this were a driveway, there would be no issue of fronting out on anything to make it a front porch to be enclosed. I think those, to the extent that those buildings can be playful, that's nice, it kind of depends. It's almost a lost cause. And if the interior is what's salvageable, I just think the interior should be made to be as useful as possible. I just think that our Zoning By-Laws looking at structures that are actually facing on public ways that are going for ways that are going to be traversed by the public. Particularly for No. 8, no one's going down there except

for No. 10. So given that it's a Special Permit, I'm not sure it's given rise to where the Board is entitled and should be considered to granting relief. But that being said, you know, I have no problem with the rear, but I think there seems to be four votes against enclosure on the front.

DAVID BROOKS: So can we withdraw the front and still do the rear?

BRENDAN SULLIVAN: We can. What I would ask is that the dimensional form -- does that change? No, it does not.

TAD HEUER: No.

BRENDAN SULLIVAN: Because we're not increasing FAR. Basically there's no change in anything. I'm correct in that, right?

BLAKE ALLISON: Yeah.

BRENDAN SULLIVAN: Okay. Yes to your question.

Let me open it to public comment.

Is there anybody here who would like to speak on the matter of case No. 10302, 8 Chauncy Lane.

(No Response.)

BRENDAN SULLIVAN: There is nobody in attendance. There is correspondence in the file which the Board has reviewed and we'll make part of the record.

Okay. So there is a motion, then, to withdraw the front portion of the application and to only include the rear elevation which would be sheet A2-2 and sheet A -- is it just A2-2, Blake?

BLAKE ALLISON: We've got A2-2 and A1 and A2-1, A2-2, A3-1.

BRENDAN SULLIVAN: Just run through it again. A1.

BLAKE ALLISON: A1.

BRENDAN SULLIVAN: Is applicable which would be --

BLAKE ALLISON: The floor plans.

BRENDAN SULLIVAN: Right. And here.

BLAKE ALLISON: Uh-huh.

A2-1 is --

BRENDAN SULLIVAN: A2-1.

BLAKE ALLISON: -- is now canceled. That only showed the front.

BRENDAN SULLIVAN: That's deleted.

BLAKE ALLISON: That's deleted.

CONSTANTINE ALEXANDER: Do it the other way around. What are the ones that will survive?

BLAKE ALLISON: A1, A2-2, and A3-1.

CONSTANTINE ALEXANDER: Thank you.

BLAKE ALLISON: And on the actual form, item No. 1 is enclosed. The basement level. And item No. 2 is enclosed, the existing living room porch. And item No. 3 is the kitchen porch and that's withdrawn.

CONSTANTINE ALEXANDER: That's withdrawn?

BLAKE ALLISON: Yes. So items No. 1 and 2.

BRENDAN SULLIVAN: Okay.

BLAKE ALLISON: And I mean as the Board can see the owners have made terrific efforts to consult with the owners and so when they kept saying this afternoon that they wanted this to work out so that nobody was going to be upset in their new little neighborhood, so they knew this was --

CONSTANTINE ALEXANDER: I commend you on the way you've approached it.

DAVID BROOKS: We're happy with the outcome.

CONSTANTINE ALEXANDER: That's the way it should always be done.

BRENDAN SULLIVAN: Let me make a motion, then, to grant a Special Permit for the enclosure of the basement level and also the living room level as per sheet A1, A22, and A31, and the plan as submitted, initialed

and signed by the Chair, and the dimensional form contained therein and made a part of this application.

The Board finds that under Section 8.22.2 that extensions or alterations of a pre-existing non-conforming structure may be granted after the issuance of a Special Permit. Such a permit shall be granted only if the permit granting authority specifically finds that such changes, extension alterations, would not be substantially more detrimental to the neighborhood than the existing.

The Board finds that the requirements of the Ordinance can be met.

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

Continued operation of or development of adjacent uses as permitted in the Zoning

Ordinance would not be adversely affected by the proposed use.

There would not be any nuisance or hazard created to the detriment of the health, safety, or welfare of the occupant of the proposed use or to the citizens of the city.

That the proposed use would not impair the integrity of the district or adjoining districts otherwise derogate from the intent and purpose of the Ordinance.

Anything else to add to that?

All those in favor of granting the Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Heuer, Scott, Myers.)

PAI-HIU IRIS HSU: Can you please remind me how long to keep the sign on the door?

CONSTANTINE ALEXANDER: For how long?

SEAN O'GRADY: Until the decision?

CONSTANTINE ALEXANDER: I thought through the period until they get the --

SEAN O'GRADY: Is it through the appeal period?

BRENDAN SULLIVAN: It's until the decision has been certified by the Court.

SEAN O'GRADY: That's what I thought.

CONSTANTINE ALEXANDER: And then 20 days.

TAD HEUER: No, no.

BRENDAN SULLIVAN: Then the question is does that mean certified initially and then the 20 days? And I was told yes. And I said that doesn't make sense. It should be until the appeal period is over with. And I was told that's not what the Ordinance says.

TAD HEUER: Doesn't the City Clerk have to certify that no appeal has been filed?

BRENDAN SULLIVAN: It's when Maria takes it over to the City Clerk and certifies it for the first time. That's what I was told. It didn't make any sense to me. What does it say?

SEAN O'GRADY: I'm not finding it. I'm not finding the part that I thought I would find.

BRENDAN SULLIVAN: There is language in --

CONSTANTINE ALEXANDER: 1043.

SEAN O'GRADY: We'll get you a definitive answer. How's that? It will be up longer than you want it to be.

PAI-HUI IRIS HSU: I'm hoping to put some flowers there. Thank you.

CONSTANTINE ALEXANDER: Okay. Here, it says right here: Sign shall be maintained in legible condition until a

notice of decision has been filed with the City Clerk.

BRENDAN SULLIVAN: Right.

CONSTANTINE ALEXANDER: By the permit or Special Permit -- that's us.

BRENDAN SULLIVAN: That's when I sign it. That's when the Chair signs.

CONSTANTINE ALEXANDER: Not during the appeal period, the Court appeal period?

BRENDAN SULLIVAN: No. Makes no sense.

CONSTANTINE ALEXANDER: Makes no sense.

(9:05 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Tad Heuer, Thomas Scott, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10303, One Kendall Square.

ATTORNEY MICHAEL BOZZA: Good evening. Let me introduce myself. I'm Michael Bozza, B-o-z-z-a of Dhar Law Boston, representing Bon Me Foods. And this is the owners Patrick Lynch.

ALLISON FONG: Allison Fong, F-o-n-g.

BRENDAN SULLIVAN: Okay. What is it you would like to do?

ATTORNEY MICHAEL BOZZA: So we're applying for a Special Permit for a fast order food permit. It's going to be a space in One Kendall Square complex. There's a few restaurants in that area. It's currently unoccupied. These business owners have operated two food trucks in the City of Boston, and now they're expanding to a brick and mortar establishment so they're looking to get the proper permitting in place before

they start their interior construction. We have some renderings of the plans if you guys would like to see them.

CONSTANTINE ALEXANDER: Would you be provisioning the two food trucks from this restaurant if we were to grant it?

ATTORNEY MICHAEL BOZZA: The food trucks operate in Boston. They're kind of self-sufficient. This is an establishment into a regular place.

UNIDENTIFIED FEMALE: Would you like to see the plans for this?

DOUGLAS MYERS: Thank you.

BRENDAN SULLIVAN: Mr. Rafferty should have taken note earlier in the evening.

ATTORNEY MICHAEL BOZZA: Would you like the proprietors to speak a little bit about the food concept or any other questions you would prefer a direction to go in?

DOUGLAS MYERS: Again, we see your

trucks but these trucks really have nothing to do with the proposal on the premises.

ATTORNEY MICHAEL BOZZA: No, just by way of background by the business experience, restaurant experience.

TAD HEUER: There are a number of things we need to find to grant you a Special Permit and they're miscellaneous but extensive. Do you want to go through what those are?

ATTORNEY MICHAEL BOZZA: Sure.

TAD HEUER: Okay. Do you know what they are?

ATTORNEY MICHAEL BOZZA: If you want to go through the --

BRENDAN SULLIVAN: Well, let's see. In considering the application, the Board shall find in addition to other criteria specified in 10.40 that the following requirements are met:

The operation of the establishment

shall not create traffic problems. And your presentation is that you would not.

TAD HEUER: And you would not -- I mean, we need to make some finding other than reading the Ordinance.

So you're located --

ATTORNEY MICHAEL BOZZA: In the Kendall Square complex on, you know, where the -- is it the Friendly Toast is the place?

PATRICK LYNCH: Yeah, it's right next to Friendly Toast.

ATTORNEY MICHAEL BOZZA: It's within that complex. There's no parking that fronts right on the opening to the store. There's outdoor seating and indoor seating.

CONSTANTINE ALEXANDER: Plus it's fair to say this is going to be mostly -- your patrons are going to be walk-ins from the surrounding complex. People on a Saturday night are not going to drive from Newton to have a dinner at your place. No offense.

But that's not the kind of operation you're running.

PATRICK LYNCH: Right.

ATTORNEY MICHAEL BOZZA: It's more of a -- there's some seating inside but it's probably going to be more of a take-out location.

CONSTANTINE ALEXANDER: Okay.

DOUGLAS MYERS: And your hours of operation?

ATTORNEY MICHAEL BOZZA: Right now we haven't opened with the landlord, we haven't settled. But we're looking at eight in the morning to eight at night?

PATRICK LYNCH: Well, I think currently we're open for lunch and dinner, and our trucks generally operate from around eleven to eight. I think that will probably hold reasonably similar hours, although we'll have to see how business goes. There might be a theatre there, we might push it a

little later to get people coming out of the movie.

CONSTANTINE ALEXANDER: It's fair to say with the other food establishments that are in the immediate vicinity are eight and beyond, so you're not going to be creating traffic in an area where there was none before?

ATTORNEY MICHAEL BOZZA: Yeah.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY MICHAEL BOZZA: And also the two establishments in the -- actually three in the complex serve drinks and alcohol, and this is not going to have any provisions for alcohol or anything like that.

CONSTANTINE ALEXANDER: Okay. The one thing that interests me, because we have to make a finding, is we have to find that your establishment will comply with all state and local requirements applicable to the ingress, egress, and use of all facilities on

the premises for handicapped and disabled persons. Do you have to step up, walk up a flight of stairs to get in the restaurant or is it street plaza level?

ATTORNEY MICHAEL BOZZA: I think there's access to -- so there's a plaza level, which is lower than the actual entrance to the restaurant, but there's a -- there's about six or eight feet wide sidewalk that's level with the entrance of the restaurant where there's outdoor seating and there's access from both sides, so you can --

CONSTANTINE ALEXANDER: If someone wanted to order food, do they have to go up a flight of stairs?

ATTORNEY MICHAEL BOZZA: No. I think you can get to that level from either end of the complex into that main kind of concourse area.

CONSTANTINE ALEXANDER: You then

believe and you would represent to us, because we don't have any way of doing it without your representation, that you will comply with the handicap and disability provisions of our state laws.

ATTORNEY MICHAEL BOZZA:

Absolutely. And I mean there's two other eating establishments and there's a hair salon right next-door.

PATRICK LYNCH: Yep.

ATTORNEY MICHAEL BOZZA: You know, they're currently operating.

CONSTANTINE ALEXANDER: I'm not sure they have to be handicap accessible. You do because of what our Ordinance says. And you're representing that it will?

ATTORNEY MICHAEL BOZZA: Yes.

CONSTANTINE ALEXANDER: Fine.

Are you going to use biodegradable materials in packaging your food?

PATRICK LYNCH: Yes, we do

currently.

CONSTANTINE ALEXANDER: And you're going to have well marked waste receptacles to encourage patrons to properly dispose of all packaging materials, etcetera?

PATRICK LYNCH: Yes, of course.

CONSTANTINE ALEXANDER: These are findings we have to make that's the reason we're going through this.

PATRICK LYNCH: Yes.

CONSTANTINE ALEXANDER: Just so you understand.

BRENDAN SULLIVAN: And the famous one, the establishment fulfills a need for such a service in the neighborhood? >

ATTORNEY MICHAEL BOZZA: I believe so.

TAD HEUER: Can you give us -- just so you know, we're making a record because we need to make all these findings because if we don't, you get overturned in an appeal. And

as an attorney, I hate getting overturned on appeal. So the reason we're asking questions is because we need to make a finding. We can't just read it out loud. We actually need to have some evidence which a Court can look at and not find plausibly laughable which is why we're asking these things and we need more of an answer than "I think so." Just some substantive meat that we can tie a decision to.

ATTORNEY MICHAEL BOZZA: The restaurant will provide variety with a different theme of food and fast service than the others that are occurring in the area in the neighborhood.

BRENDAN SULLIVAN: Are there any other Vietnamese restaurants in the area?

PATRICK LYNCH: No.

ATTORNEY MICHAEL BOZZA: Not in the immediate area.

CONSTANTINE ALEXANDER: What about

Thai, the Chinese?

ATTORNEY MICHAEL BOZZA: It's a Vietnamese inspired cuisine.

BRENDAN SULLIVAN: I'm not sure if there is. And you are unique.

ATTORNEY MICHAEL BOZZA: In the One Kendall Square complex.

BRENDAN SULLIVAN: Right.

CONSTANTINE ALEXANDER: I was referring to Asian type not just Vietnamese. There are no other Asian inspired cuisine restaurants in that neighborhood.

PATRICK LYNCH: I think there's an Asian restaurant in the neighborhood.

CONSTANTINE ALEXANDER: Where?

PATRICK LYNCH: Where is Mulan? That's a Chinese restaurant.

ALLISON FONG: Yeah, but it's not in the One Kendall Square.

ATTORNEY MICHAEL BOZZA: In the actual complex there's not.

CONSTANTINE ALEXANDER: I'm not aware of any. I'm familiar with the complex.

BRENDAN SULLIVAN: And if there is, then it needs some competition to improve their product.

Okay, so we have found that you will not create any traffic problems.

You're not going to reduce available parking.

That your trade will be mostly walk-up servicing the business and fast growing residential community in the area.

That the physical design including culinary use of materials shall be compatible with and sensitive to the visual and physical characteristics of other building, public spaces, and uses in this particular location. And your visuals show that you are tastefully doing over the inside and that the outside will not change at all because it's a very large building and the landlord will

not -- are there going to be any outside or signs showing your establishment at all?

PATRICK LYNCH: Yeah, we'll have a sign on the service of the building.

BRENDAN SULLIVAN: On the window.

ATTORNEY MICHAEL BOZZA: Not anything in the complex itself.

CONSTANTINE ALEXANDER: You're aware of our Zoning requirements for signage?

PATRICK LYNCH: Yes.

CONSTANTINE ALEXANDER: And you believe your signs will comply with that?

PATRICK LYNCH: Yeah, we don't intend to apply for a Variance for signs.

DOUGLAS MYERS: What about deliveries?

PATRICK LYNCH: Well.

DOUGLAS MYERS: Trucks and just delivery of your food stuff and materials.

ALLISON FONG: There's a service entrance for deliveries and where trucks can

load up in the back and pull straight up.

CONSTANTINE ALEXANDER: Well, there are restaurants on either side of you, so they must have a service entrance in the back.

ALLISON FONG: Yes.

ATTORNEY MICHAEL BOZZA: Delivery of food out or are you talking about delivery of the --

DOUGLAS MYERS: Food in.

ATTORNEY MICHAEL BOZZA: Yes, actually in the back, there's a back entrance to the kitchen area that we're all the current establishments --

BRENDAN SULLIVAN: So there's a service entrance which services the building and service your establishment also.

ATTORNEY MICHAEL BOZZA: Yes. And that's also the area where the dumpster is kept. They have a dedicated dumpster of their building and commercial pick up of the garbage.

BRENDAN SULLIVAN: We have found that you will use biodegradable materials and utensils provided for consumption thereof. And that you will provide convenient, suitable, and well marked waste receptacles to encourage patrons to properly dispose of package materials both inside and exterior of your establishment. Okay.

ATTORNEY MICHAEL BOZZA: There's trash cans from the -- for the courtyard and in the courtyard already.

BRENDAN SULLIVAN: Right. And also sufficient number that have been provided by the owners of the building.

ATTORNEY MICHAEL BOZZA: Yeah.

BRENDAN SULLIVAN: Right.

Okay. So we have complied with that part of it anyhow. So now we can proceed forward.

Let me open it to public comment. Is there anybody here who would like to speak on

the matter of case No. 10303 at One Kendall Square?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance.

There is correspondence on the letterhead of the Cambridge City Council from Councillor Leland Cheung. (Reading) I'm writing in support of the application for Special Permit fast food order for Patrick Lynch and his restaurant. Mr. Lynch has submitted an application to operate a fast casual dine-in/takeout restaurant for which you're hearing. He's been involved in operations of Bon Me Foods since its inception in 2011. He has worked along with a few other partners started his endeavor with a highly successful food truck in Boston after winning last year's food truck challenge. I hope that you will give Mr. Lynch a full consideration for a fast order

food permit. As a City Councillor, I have a vested interest in the vitality and activation of the streetscape in Kendall Square and I believe that the addition of Bon Me Foods to Kendall Square will be a positive addition to the dining landscape.

On the letterhead of on the City of Cambridge, the Mayor. (Reading) I'm writing in regard to the application for a permit to establish Bon Me Foods at One Kendall Square. The Asian-inspired food that Patrick Lynch has successfully sold from his food truck in Boston would make an interesting addition to One Kendall Square. Please carefully consider Mr. Lynch's application.

On the letterhead of Timothy J. Toomey, City Councillor. (Reading) I'm writing in support of an application by Patrick Lynch and Bon Me Foods for establishing an Asian-inspired fast food order restaurant in One Kendall Square. Mr. Lynch has been very

successful in his operation Bon Me Food truck, and will be the first brick and mortar offering the same quality food as the award winning Bon Me Food truck. I feel this will be an appropriate use of the space and will complement the many food uses that currently operate in the One Kendall Square complex.

On the letterhead of the East Cambridge Business Association, Patrick McGee, President. (Reading) I'm writing on behalf of the East Cambridge Business Association to lend our support for the application of Bon Me to open a fast casual dine-in/takeout restaurant at One Kendall Square. Patrick and Allison have proven to be responsible operators of their trucks. We believe this will be a welcome addition to the neighborhood.

On the correspondence from Charles Marquardt. (Reading) Dear Members of the Cambridge Board of Zoning Appeal, I'm writing

in support of the fast order food permit requested by Bon Me Foods. I've had the opportunity to meet Mr. Lynch and discuss Bon Me's plans with him and his team. I found them to be dedicated and to delivering good healthy food at a reasonable price and committed to creating a company that not only serves great food, but also becomes a part of the community which they operate. In short, here are the reasons for my support:

They bring a healthy food operation to One Kendall Square.

They bring a different mix of food to the offers currently provided in One Kendall Square.

They are a local company with owners with long term roots in the Cambridge community looking to transition from a food truck only operation to a food truck and brick and mortar operation. This is a trend I think should be encouraged. For these

reasons I believe that the granting of the fast food Special Permit is warranted.

Thank you for your time and consideration.

Sum substance of the correspondence.

I'll close public comment.

Anything else to add, amend, change, delete?

ATTORNEY MICHAEL BOZZA: No.

BRENDAN SULLIVAN: Let me close that portion.

Tom any thoughts?

THOMAS SCOTT: I'm good.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: So am I.

DOUGLAS MYERS: Let's go.

TAD HEUER: Fine.

BRENDAN SULLIVAN: Okay, seeing how we have satisfied the requirements of 11.30, it appears that -- let me make a motion to grant the Special Permit to establish an Asian-inspired fast order food restaurant

establishment in the Kendall One complex as per the application and the visuals submitted.

The Board finds that the requirements of the Ordinance can be met.

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

The continued operation of or development of adjacent uses as permitted to the Zoning Ordinance would not be adversely affected by the nature of the proposed use. In fact, may be even enhanced by it. There would not be any nuisance or hazard created to the detriment or the health, safety, and/or welfare of the occupant of the proposed use or to the city.

The proposed use would not impair the integrity of the district or adjoining districts or otherwise derogate from the

intent and purpose of the Ordinance.

All those in favor of granting the
Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Heuer, Scott,
Myers.)

(9:20 p.m.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Tad Heuer, Thomas

Scott, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10304, 53-55 Alpine Street. Just introduce yourself for the record.

ANN ROBBART: My name is Ann Robbart. And I live at 53 Alpine Street. And I have for almost 30 years. I'm requesting approval of a Variance in order to add a porch that would be a three season porch with screens and, you know, interact as a mudroom. What I have now is simply a door that opens directly into my living room. This is a drawing of the house. It's a two-unit house. The tenants are here. I'm over here. This is where the proposed porch would be, just an open --

CONSTANTINE ALEXANDER: You're not going to touch the existing front yard? The front entry now? That's not going to be --

ANN ROBBART: This entry?

CONSTANTINE ALEXANDER: Yes.

ANN ROBBART: No, no. No, this is how it's proposed to look. And I think you should have that as part of the application? I didn't realize I should bring copies for everybody. I'm sorry.

CONSTANTINE ALEXANDER: No, you don't have to.

ANN ROBBART: Okay. So, this is the side-view.

CONSTANTINE ALEXANDER: I think this is in the file already, I think.

ANN ROBBART: Yes. It should be, yes.

CONSTANTINE ALEXANDER: Why is the word alternate written underneath?

ANN ROBBART: Oh, because Bill Simmers the architect who did the drawing who lives on the same block, gave me two versions, one with a shed roof and one with a hip roof.

CONSTANTINE ALEXANDER: Okay. All right. So this is the alternate you want to

proceed with?

ANN ROBBART: Yes, we had decided to go with a hip roof.

THOMAS SCOTT: Good decision.

ANN ROBBART: And that's what we submitted to you and it matches the house.

CONSTANTINE ALEXANDER: Right.

ANN ROBBART: I originally thought that a shed roof might be less expensive, but it turns out not to be. So I'd be happier with a hip roof anyway.

What this -- the reason I need a Variance is because it would put my building closer to my neighbors. My immediate neighbors Ylva and on Mallory Slate. They have written a letter of support which I hope is also in the file.

CONSTANTINE ALEXANDER: It is.

ANN ROBBART: Okay.

And they not only support it, they've said it's fine. Mallory would probably be

here except it's passed his bedtime.

CONSTANTINE ALEXANDER: Okay.

They appreciate the fact that right now you're, what, 10.1 feet from the side -- their yard, their lot line. Are you going to go now to 3.6 feet?

ANN ROBBART: Right.

CONSTANTINE ALEXANDER: Three feet, six inches I guess.

ANN ROBBART: I showed them the drawings. Yes.

CONSTANTINE ALEXANDER: Okay. So they know you're getting much closer but they're still in support?

ANN ROBBART: Yes.

BRENDAN SULLIVAN: You have a fence there anyhow, and it's sort of heavily planted along there?

ANN ROBBART: Yes.

BRENDAN SULLIVAN: Between the two properties?

ANN ROBBART: There is -- yes, they own the side fence and they have a shed that goes right up against that fence.

BRENDAN SULLIVAN: Yes.

ANN ROBBART: On their side.

BRENDAN SULLIVAN: Yes.

TAD HEUER: I guess my question is, though, I understand -- when I originally saw this, I was doing this as a one-family and I didn't understand why you wouldn't want to put it on the right side because that would be --

ANN ROBBART: Because there's a room there, yes. That would make sense.

TAD HEUER: It's split down the middle. Not an up down?

ANN ROBBART: No, it's a duplex side by side.

TAD HEUER: Right, okay.

ANN ROBBART: All the houses on this block are very similarly designed. There's

three basic designs on this block. They're all originally duplexes. Some have been turned into one unit, some have stayed duplexes.

TAD HEUER: Right. So I understand, you know, as I looked at further why you needed to do it on the left other than the right. The way it's structured now that you're still invading your front setback as well with the stairs and the canopy. Is there any way that you could -- and I don't know if there's windows there. I mean, I've sensed where the door is. Is there any way you can push back this so that you don't end up with the stairs and the front landing in your front setback? So essentially push it back, what's that three, three, four feet.

BRENDAN SULLIVAN: Three and a half feet.

TAD HEUER: So that your front setback would be --

ANN ROBBART: It would be less enclosed space.

TAD HEUER: I'm saying move the whole thing back.

ANN ROBBART: Sorry? But then I would be up against the windows.

THOMAS SCOTT: There's two windows here. Did you see them in the plan?

TAD HEUER: No.

THOMAS SCOTT: There are two windows that would be obstructed or become encapsulated by the addition I guess.

ANN ROBBART: The idea was to have a covered entry and to have that step extended similar to the way it is extended on the front of the house.

TAD HEUER: But it's not going to be enclosed, right? Is it open?

ANN ROBBART: No, that part wouldn't be enclosed. The enclosure would start at the corner of the house.

TAD HEUER: I guess, Tom, to your point that the windows are there, if it were creating an enclosure essentially, a sun porch, I could see it. But, you know, pushing it back if you have two windows and you have an open, you know, essentially covering those windows, maybe you get a little less light. But that's on your, that's on your north side; is that right?

ANN ROBBART: I did not want to cover those windows. Yeah.

TAD HEUER: Right.

ANN ROBBART: Are you asking me not to cover the entry?

TAD HEUER: No.

CONSTANTINE ALEXANDER: He's suggesting that you push it back.

BRENDAN SULLIVAN: Push it back.

TAD HEUER: Where's the plot plan?

THOMAS SCOTT: On the cover sheet of that.

TAD HEUER: Yes. So right now, see, your 15-foot setback is essentially right across the front of your house. And your front porch is --

ANN ROBBART: Actually to tell you the truth I don't think it's -- I don't even think I meet the code the way the house is built. The current code.

TAD HEUER: Okay.

I guess my question is, you know, if you were able to pull that back, you would not have -- because right now you're always going to have a side yard violation because there's nothing you can do about it.

ANN ROBBART: Yes, exactly. This is what I'm requesting.

TAD HEUER: Right, this also creates technically under the Zoning Code a violation of your front yard setback, those steps do.

ANN ROBBART: Do I have the same problem here?

TAD HEUER: No, because this is pre-existing. So you get that grandfathered. So because that's always been there, the Zoning Code says you can keep it there. They wouldn't ask you to come and take off your porch.

ANN ROBBART: Good thing.

TAD HEUER: Here where you're asking to put something new on, it would be a violation into this front setback. So what I was asking is, you know, if you pushed it back, you could keep this out of the front setback, and you would still get the same amount of space you need, but you'd only have one violation which is the side yard setback. You'd be asking us to give you relief for not two. And we tend just historically to not want to do things in the front yard setbacks. We want to keep that as clean as possible. Which is why I was saying, you know, if you pushed it back, whatever it is, the three and

a half feet this way, you can end up with just one violation instead of two violations.

ANN ROBBART: I see. Part of my -- I'll just tell you my thinking.

CONSTANTINE ALEXANDER: Oh, yes, please.

ANN ROBBART: One, I did not want to cover these windows.

Two, I did want to have as much enclosed area as practical here and the front door's right there.

TAD HEUER: Right.

ANN ROBBART: I thought it would be nice to have a bit of a landing here so I could actually sit here in nicer weather. And also sit here and read and see the street and see the neighbors. I actually prefer sitting out here rather than sitting in the back. I want to, I would like to have screens though for the --

TAD HEUER: Sides?

ANN ROBBART: Yeah, to not have insects and then to be able to put glass up for the winter to shut out cold and wind. And this was -- sorry, go ahead.

TAD HEUER: How do you get to the door that's there now? Do you go around the back or do you go through the front?

ANN ROBBART: No, I have a path here. This is a photograph.

TAD HEUER: Right.

ANN ROBBART: This has -- this is the existing path.

TAD HEUER: Right, okay.

ANN ROBBART: And there is a step here. A couple -- actually two or three steps, I forget. And an open porch, a deck and the side door. My front door. Side door to the house is there.

TAD HEUER: Okay.

Well, so I guess my question is are those stairs that are in the front setback

grandfathered then?

SEAN O'GRADY: Do they exist?

ANN ROBBART: Yeah, there are steps that exist here.

SEAN O'GRADY: Yes.

ANN ROBBART: And this is -- this does not exist, but there are steps, I think they begin here. And then this is a stone path.

DOUGLAS MYERS: A small little wooden landing with some steps?

ANN ROBBART: Yes, that's it, that's it. Yes.

SEAN O'GRADY: Presumably that would be grandfathered, yes.

TAD HEUER: Just depending on where we're talking about exactly where it is.

Are those steps and where this landing and steps --

ANN ROBBART: No, they don't come out this far. This part is a stone path.

TAD HEUER: Right. Where do the steps start at the moment?

ANN ROBBART: I think that they probably start at the corner.

TAD HEUER: So they're flush with the front of the house?

ANN ROBBART: I think so. I'd have to check. I'm not sure, but I think so.

TAD HEUER: Okay, all right.

ANN ROBBART: Yeah.

BRENDAN SULLIVAN: So, are you all set?

TAD HEUER: At least I know what I'm talking about.

ANN ROBBART: The other point, I'm sorry, I neglected to include one thing.

TAD HEUER: That's okay.

ANN ROBBART: The other reason we had this come out a bit because this would allow me to have the door open out rather than the door opening in.

TAD HEUER: Okay, right.

ANN ROBBART: So.... that's the other reason.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: Okay, let me open it to public comment.

Is there anybody here who wishes to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: And there's nobody in attendance.

There's correspondence in the file from Mallory and Ylva Slate, Y-l-v-a S-l-a-t-e, 279 Alpine Street. (Reading) Dear Mr. Alexander -- must have gotten that from Mr. Hope -- regarding the application of Ann Robbart, 55 Alpine Street for a Zoning Variance to allow her to build a porch addition to her house/home, Mallory and Ylva Slate fully approve and support Ms. Robbart's plans noting that as Ann

thought of this improvement and William Simmers, S-i-m-m-e-r-s AIA did the design. It's designed to be a neighborhood enhancement. Thank you very much for your consideration.

And that is the substance of the --

ANN ROBBART: I did also speak with other neighbors and showed people who were interested, the plans. Most people said oh, nice idea. And some people loved the plans. Some people didn't even care to look at them.

BRENDAN SULLIVAN: Yes.

Okay. I don't know, I guess my thought is that it is not as -- I mean, it sort of lines up with the front -- well, it's actually even the back of the front porch. It sort of mirrors that a little bit and it seems to work. This way is not incongruous nor does it sort of stick out as not being consistent, I think, with the rest of it anyhow. So I have no problem with the way it is proposed

and designed.

THOMAS SCOTT: Architecturally I think it -- I mean, it's defining the entrance, right, to your home? The other entrances specific to the other unit?

ANN ROBBART: Uh-huh.

TAD HEUER: And where's the front porch entrance, the center, is that you or --

ANN ROBBART: That's the tenant currently.

THOMAS SCOTT: It kind of defines a specific entrance for your unit which you don't have right now really. Your entrance is on the side of the house.

ANN ROBBART: Yes, I do always have to -- if someone is coming for the first time, I have to say left side.

THOMAS SCOTT: And now you'll have a front door essentially on the street.

BRENDAN SULLIVAN: I think it's a little bit more inviting.

THOMAS SCOTT: It is more inviting. I think -- I know it's invading the front setback. It's just an overhang and it's not any further into the front yard than the one that exists which is another defining element for an entrance. So I kind of see the two as the same, and --

TAD HEUER: So they're -- and the landing.

THOMAS SCOTT: And the landing. And if the overhang was not there, would the landing still count? I thought below a certain elevation it didn't count towards the infringement on the setback.

SEAN O'GRADY: Only if the wall it projects from is itself not in the setback. And I'm not sure that that's the case here.

BRENDAN SULLIVAN: The wall would be in the setback.

SEAN O'GRADY: Yes, so if it is in the setback -- the rule doesn't say that

incidentally. So you're reading is correct, but the interpretation is that it has to spring from it.

THOMAS SCOTT: Okay. I'm still okay with it.

TAD HEUER: On your drawing it says -- is it the handrail is optional? I would presume you want a handrail. Is that -- is it not --

BRENDAN SULLIVAN: It may not be, no.

ANN ROBBART: It may not be necessary. It depends how high it is.

BRENDAN SULLIVAN: Anything less than 20 inches does not require a handrail.

ANN ROBBART: If you notice there isn't one on the front.

BRENDAN SULLIVAN: Are they two steps?

TAD HEUER: It looks like the balusters -- the newel posts are written in

as there, but it looks like just the rail across the top is optional.

ANN ROBBART: Oh, no.

TAD HEUER: I presume if you're in for a penny you're in for a pound, right?

ANN ROBBART: I guess we'll have to chat with Bill about that. I think he was -- I think he drew this as the whole thing was optional. I'm not sure.

BRENDAN SULLIVAN: Well, the building inspector will have a say in that.

THOMAS SCOTT: Oh, yes.

ANN ROBBART: Certainly, I'm sure he will. Anyway, the front entry does not have railings.

TAD HEUER: Okay.

DOUGLAS MYERS: I'm not troubled by the intrusion into the front setback. I think it's a good idea, and it will definitely dress-up the entrance to the house on that side over presently what's there.

ANN ROBBART: Thank you.

DOUGLAS MYERS: I don't think it will have any impact on the neighborhood or upset the tone or scale of the neighborhood.

BRENDAN SULLIVAN: Anything else to add?

TAD HEUER: No.

BRENDAN SULLIVAN: We'll send this lady on her way.

Let me make a motion, then, to grant the Variance to construct the covered and enclosed single-story entry mudroom, three season porch as per the application, the plans and the dimensional form.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude her from having a covered entryway to protect her, people to the residence, and also interior spaces from the elements. It

will also greatly enhance the energy efficiency of the residential structure and also provide a safe area and covering during inclement weather.

The Board finds that the hardship is owing to the present non-conforming nature of the structure, and that any addition of this nature would require some relief from this Board.

The Board finds that the requested relief is a fair and reasonable one.

And the Board finds that desirable relief may be granted without substantial detriment to the public good and would not nullify or substantially derogate from the intent and purpose of the Ordinance.

Anything else to add to that?

All those in favor of granting the relief.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Heuer, Scott, Myers.)

ANN ROBBART: Thank you very much. Good night. I will receive something in the mail?

SEAN O'GRADY: You will. It's six to eight weeks away.

ANN ROBBART: Okay. Thank you. You can tell even though I've lived there a long time, I've never done -- had a Variance before. Thank you very much.

(9:40 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Tad Heuer, Thomas

Scott, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10305, 61 Sparks Street.

The Board is in receipt of correspondence from Mr. Arch Horst. (Reading) Please grant my client at 61 Sparks Street a continuation for case No. 10305 until -- as soon as possible.

SEAN O'GRADY: October 11th is your first opening.

BRENDAN SULLIVAN: Until October 11, 2012, on the condition that the Petitioner change the posting sign to October 11, 2012, at seven p.m. That the posting sign comply with the requirements as spelled out in 10.421 regarding the notification requirements of the sign.

That the sign be located at the subject address at 61 Sparks Street and be clearly visible and be maintained for a period of not less than 14 days prior to the date of the

public hearing of October 11th.

Any changes to the application be in the file by five p.m. on the Monday prior to the October 11, 2012 hearing.

TAD HEUER: I have a question. So this is a 61 Sparks Street where the addition is being proposed on Brewster Street?

BRENDAN SULLIVAN: Correct.

TAD HEUER: Is there merit in having the sign or a sign at the location where the proposed change is going to be made as opposed to --

CONSTANTINE ALEXANDER: There is one now.

TAD HEUER: On Brewster Street?

CONSTANTINE ALEXANDER: They don't have it on Sparks Street, that's the problem.

TAD HEUER: Oh, okay.

BRENDAN SULLIVAN: So the question is I think Tad is asking should be there two signs?

TAD HEUER: I prefer they have two, not move the one on Brewster over to Sparks Street.

CONSTANTINE ALEXANDER: Yes, I agree.

BRENDAN SULLIVAN: And also that the Board will provide or the Inspectional Service Department will provide the Petitioner one additional sign to be mounted at the 61 Sparks Street location so that there will be two signs at 61 -- one sign at 61 Sparks Street and the other one around the corner at the Brewster Street location. And both signs to conform with the requirements of the Ordinance.

Anything else to add?

CONSTANTINE ALEXANDER: No.

BRENDAN SULLIVAN: All those in favor of continuing this matter until October 11th.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Heuer, Scott,
Myers.)

DOUGLAS MYERS: Case not heard?

BRENDAN SULLIVAN: Case not heard.

(Whereupon, at 9:40 p.m., the
Board of Zoning Appeals
Adjourned.)

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original of the Errata Sheet has been delivered to Inspectional Services Department.

When the Errata Sheet has been completed and signed, a copy thereof should be delivered to each party of record and the **ORIGINAL** delivered to Inspectional Services Department, to whom the original transcript was delivered.

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After reading this volume of the transcript, indicate any corrections or changes and the reasons therefor on the Errata Sheet supplied to you and sign it. **DO NOT** make marks or notations on the transcript volume itself.

REPLACE THIS PAGE OF THE TRANSCRIPT WITH THE COMPLETED AND SIGNED ERRATA SHEET WHEN RECEIVED.

ATTACH TO ZONING BOARD OF APPEALS

DATE: 08/09/12

REP: CAZ

ERRATA SHEET

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I have read the foregoing transcript, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made.

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:

I am not related to any of the parties in this matter by blood or marriage and that I am in no way interested in the outcome of this matter.

I further certify that the testimony hereinbefore set forth is a true and accurate transcription of my stenographic notes to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of August 2012.

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

My Commission Expires:
April 23, 2015

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