

BOARD OF ZONING APPEAL

FOR THE

CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, APRIL 25, 2013

7:00 p.m.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Timothy Hughes, Vice Chair

Brendan Sullivan, Member

Thomas Scott, Member

Andrea A. Hickey, Member

Janet Green, Member

Douglas Myers, Associate, Member

Kevin Casey McAvey, Associate Member

Maria Pacheco, Zoning Secretary

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P R O C E E D I N G S

(7:00 p.m.)

(Sitting Members: Constantine Alexander,
Timothy Hughes, Brendan Sullivan, Thomas Scott,
Andrea A. Hickey.)

CONSTANTINE ALEXANDER: The Chairman
will call this meeting to order. And the first
case we're going to hear, our custom is to start
with the continued cases, and the first continued
case is 10401, 2-4 Sedgewick Road.

Anyone here wishing to be heard on
this matter?

HANK REISEN: Hello. Thank you for your
continued time. Last time -

CONSTANTINE ALEXANDER: Give your name
and address.

HANK REISEN: I'm Hank Reisen,
architect, 20 Farrar Street, Cambridge,
Mass.

JOHN WELLS: I'm John Wells, 4 Sedgewick

Road.

AHMED NUR: Ahmed Nur, 2
Sedgewick Road.

HANK REISEN: So last time you heard us from what we heard is we did, we increased the spread for this too much, we went over the FAR. So what we've done is on the site plan is done the same punch out that was a two-story punch out, but in this case we're only doing it on the first floor and a little bit in the middle on the second floor. And we -- also last time we were adding --

CONSTANTINE ALEXANDER: Third floor?

HANK REISEN: We added five feet and inhabited the roof style. This time we're not increasing that height at all. So we're using the existing roof line.

So we've eliminated the entire third floor FAR. Our new FAR is now under the 0.75. It's a 0.71.

CONSTANTINE ALEXANDER: You're only real issue from a Zoning point of view is a left side setback I think.

HANK REISEN: No. What I heard last time, you mostly objected to was the FAR --

CONSTANTINE ALEXANDER: No, no, the FAR was the issue. But now tonight, now that you've complied with the FAR you're only -- you're back before us because you still have a setback issue.

HANK REISEN: Right.

AHMED NUR: Of course.

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

HANK REISEN: We're back before

you also because we were continuing the case.

This is existing conditions. This is the existing condition.

CONSTANTINE ALEXANDER: Right.

HANK REISEN: And this is, so this is the front. And we aren't increasing that setback. That's existing. That's existing. We're filling between the garage and the house, but this is also an existing issue.

The reason -- one of the reasons we were doing the design we were doing is the rooms are all very small and dark. So in this iteration we added two, two-story bays in the front which allowed us to get living room, dining room, and a bedroom that's big enough upstairs, and light in those two rooms. So that's what we heard

and that's what we did. That's the gist of our change.

CONSTANTINE ALEXANDER:

Questions from members of the Board?

I don't have a question. I, just speaking only for myself, I congratulate you. I think you heard us well. You came up with a good design, and hopefully it meets most of your needs, maybe not all, but most.

I'll open the matter up to public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

We do have letters of support in our file with regard to the old plans. I

don't think we got any letters for the new plans. I'm not going to read the letters into the file other than to say that people supported the old plan, it seems to not at all likely they would be opposed to the new plans. So I think you could take those letters of support for what you're bringing before us tonight.

With that, I'll close public testimony. Anything further that occurs to you that you want to point out to us?

HANK REISEN: Well, just to complete what we were doing to the existing. In the back, what used to be the five-foot punch out for all two stories, it's on the first floor, and in order to fit small bathrooms on the second floor, this, the punch out continues in the middle zone, but we were cognizant of

the square footage. We wanted to stay at the 0.75.

JOHN WELLS: Just want to say thank you for your guidance also, we appreciate it.

CONSTANTINE ALEXANDER: Thank you.

AHMED NUR: I second that. I appreciate the advice that the Board has given us. And also we do respect that we've gone over the FAR and it was hard to let go. We kept our own bedrooms the way that it is, you know, but the fact of the matter is that we have a newer house and we have increased the kitchen area as well which is the most important to the family as well as one of the bathrooms. So thank you so much for your comments.

I might also add in terms of the

description, I don't think we've changed it yet, the application is more accurate because we couldn't fit everything in the description. So the original application we had described, you know, all the things that we're doing in terms of basement under the garage and that didn't, I don't think we -- I think we forgot to put that on the --

CONSTANTINE ALEXANDER: You're referring to the new dimensional form?

HANK REISEN: All we submitted the second time was the revised.

CONSTANTINE ALEXANDER: No, no. We got a revised one.

AHMED NUR: Oh, I'm sorry.

CONSTANTINE ALEXANDER: We requested that.

AHMED NUR: My apologies. I

just wanted to make sure.

CONSTANTINE ALEXANDER: And from that we can see the FAR is being satisfied for example.

AHMED NUR: Thank you.

CONSTANTINE ALEXANDER: Unless people have comments I can bring it to a vote.

TIMOTHY HUGHES: I'm ready for a vote.

THOMAS SCOTT: Yes, I just want to say that I think the design is vastly improved because of the down scale modifications and that the house has a much better feel and scale to it.

AHMED NUR: Right.

THOMAS SCOTT: And not only, you know, kind of within itself, but as far as the neighborhood goes as well, I just

think that it's a great improvement and
I think you've done a great job.

HANK REISEN: Thank you.

AHMED NUR: Thanks very much.

CONSTANTINE ALEXANDER: Okay,
the Chair moves that this Board make the
following findings:

That a literal enforcement of the
provisions of the Ordinance would involve
a substantial hardship to the Petitioner.
Such hardship is being is that the current
structure is located on a very small lot
and it needs further -- for a growing
family, they need further living space.

That the hardship is owing to
basically the shape of the lot or the size
of the lot, and the size of the existing
structure which makes almost any
modification prohibited under our Zoning

Ordinance short of a Variance.

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

With regard to that, the Chair would note that this petition has unanimous neighborhood support.

And the opinion I think of all or if not all most of the Board members it is a very attractive design. It will enhance the housing stock of the City of Cambridge.

So on the basis of these findings, the Chair moves that a Variance be granted to the Petitioner to do the work that has been applied for on the condition that the work proceed in accordance with plans

submitted by the Petitioner, there are six pages in all, all of which are going to be initialed by the Chair.

Now, let me just say, just be sure, these are the final plans.

HANK REISEN: Right.

CONSTANTINE ALEXANDER: Because if you change them, you're going to have to come back.

HANK REISEN: Understood.

CONSTANTINE ALEXANDER: Okay, on this basis the Chair moves that a Variance be granted subject to the condition I just mentioned.

All those in favor say "Aye."

(Aye.)

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

(Alexander, Hughes, Sullivan,

Scott, Hickey.)

* * * * *

(7:10 p.m.)

(Sitting Members: Constantine
Alexander, Timothy Hughes, Brendan
Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The

Chair will call case No. 10398, 274-280 Brookline Street.

Is there anyone here wishing to be heard on this matter? Whoever is going to speak, please give your name and address for the stenographer. We make a stenographic transcript of the hearing and it's under oath just so you know.

ATTORNEY SUSAN ROBERTS: Thank you. My name is Susan Roberts. I'm an attorney at the law firm of Anderson Krieger, K-r-i-e-g-e-r, LLP in Cambridge.

DAVID FORD: And I'm David Ford. Said acquisition, Centerline Communications in Raynham, Mass.

ATTORNEY SUSAN ROBERTS: We're here representing AT&T. AT&T is looking for the issuance from this Board of a

Special Permit in order for them to site a facility, a wireless facility, 280 Brookline Street. The facility -- just actually, a little bit of background.

We filed our Special Permit application on January 31st of this year. After that, the Board referred the matter to the Planning Board. The Planning Board had a couple of questions and we submitted additional materials to the Planning Board and at a hearing on the 5th of May the Planning Board made several findings about our facility. And it said that our facility, which involves placement of six antennas, two antennas along a penthouse that is existing on the building already, two antennas in a faux chimney, f-a-u-x, false --

CONSTANTINE ALEXANDER: One for

each antenna? Two faux chimneys for two antennas?

DAVID FORD: Two antennas, one chimney, yes.

ATTORNEY SUSAN ROBERTS: Right.

CONSTANTINE ALEXANDER: And how big are the faux chimneys, how high are they?

ATTORNEY SUSAN ROBERTS: They are ten feet, and the penthouse is in the back of the building and the faux chimneys are more toward the middle section of the building as you can see from the pictures.

In any case, that is the basic design. We have as well, we have as well an equipment room in the basement. So the only equipment that is going to be on the roof are the antennas and the associated equipment right near those

antennas.

Based on this design, the Planning Board found on the 5th of March that concealing, and I'm quoting now, "Concealing the antennas within the faux chimneys would be a better option unless visually chaotic than mounting the antenna on ballast sleds." The chimneys are similar to other surround rooftops that also have chimneys. And the chimneys would not be prominent from either Brookline Street or Putnam Ave. public ways.

CONSTANTINE ALEXANDER: Just so you know we have a letter from the Planning Board which I'll read into the record.

ATTORNEY SUSAN ROBERTS: Okay.

CONSTANTINE ALEXANDER: Which I

assume is going to be consistent with what you just told us.

ATTORNEY SUSAN ROBERTS: Okay.

CONSTANTINE ALEXANDER: Just so you know.

And the plans that you just handed out tonight --

DAVID FORD: Yes.

CONSTANTINE ALEXANDER: -- do these reflect what you're going to do after your Planning Board meeting?

DAVID FORD: Correct. They will be turned into construction drawings and then we'll use those for construction.

CONSTANTINE ALEXANDER: And these have been in our files since Monday?

DAVID FORD: Correct.

CONSTANTINE ALEXANDER: Because we have plans. I haven't matched them

up.

DAVID FORD: Those are them, yep.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY SUSAN ROBERTS: Just a bit of background as to why we're looking for a facility at this location, we also have with us on behalf of AT&T tonight, AT&T's radio frequency engineer Depak Rathore who is available to answer any questions for you. But we've undertaken a comprehensive search of other buildings in the area, and actually over a two- to three-year period it's been that intense and focussed. And basically what we've determined is in order to provide the best wireless coverage for this area, given the ability of AT&T to enter into a lease with landlords, property owners in the area, this one will provide the best

coverage and is a building that we were able to get a lease on.

CONSTANTINE ALEXANDER: Well, let me -- I just want to pursue this a little bit if I may, I think -- here, Tom.

When you say that -- I'm going to jump a head a bit. As you know, this is in a residentially zoned district. And under our Ordinance we have to make additional findings with regard to that. And one of the things that we have to look at, if I can find the statute for a second, is the existence of alternative functionally suitable sites in non-residential locations. And I saw two different conflicting things in the file about this. I saw -- if I can find it now, your application letter.

ATTORNEY SUSAN ROBERTS: Right.

CONSTANTINE ALEXANDER: Which said that, that basically you could not find -- you couldn't find an alternative site. We have a letter from one of your -- from someone in the neighborhood who wishes to provide that site for you.

And then there's -- then we got a report, one of your reports that said that the site, 179 Sidney Street --

DAVID FORD: Correct, yes.

CONSTANTINE ALEXANDER: -- is not suitable. So I've got two different stories.

ATTORNEY SUSAN ROBERTS: So, exactly and I've got Mr. Ford and Mr. Rathore to answer those questions. It might make sense for Mr. Rathore to describe the goals of our coverage, what we're hoping to --

CONSTANTINE ALEXANDER: You can bring your seat up, too. You don't have to stand. Spell your name for the stenographer.

DEPAK RATHORE: Yeah. My name is Depak Rathore, D-e-p-a-k R-a-t-h-o-r-e. I'm AT&T engineer and I'm here to explain why we didn't able to use 179 Sidney Street.

CONSTANTINE ALEXANDER: Okay.

DEPAK RATHORE: So basically our main objective was to Cambridgeport area. And we do have customer complaints in that area, basically that's a complaint. And then I ran that propagation to see whether 179 Sidney Street is going to provide that coverage where we are having more customer complaints.

CONSTANTINE ALEXANDER: Right.

DEPAK RATHORE: And where we do need the coverage. 179 Sidney is not providing the coverage that's why.

CONSTANTINE ALEXANDER: Let me ask you, and you're talking to an absolute novice here needless to say. There are two other of your competitors have antennas on the roof of that building, 179 according to the owner.

DEPAK RATHORE: Yes.

CONSTANTINE ALEXANDER: Why does it work for them and it's not going to work for you?

DEPAK RATHORE: So it's different location. They might be at different locations whereas we --

CONSTANTINE ALEXANDER: On the rooftop you mean?

DEPAK RATHORE: No, no, no. In

the same area, but different buildings.
So it will work probably better -- their
coverage needs where (inaudible) AT&T
coverage needs.

CONSTANTINE ALEXANDER: I'm
having a little trouble following you.
Not your English.

ATTORNEY SUSAN ROBERTS: If I
might explain --

CONSTANTINE ALEXANDER: Yes.

ATTORNEY SUSAN ROBERTS: -- the
way it works is the signals link up with
each other. So if there's another
provider on this building at 179 Sidney,
that provider might actually have another
facility in a location that works quite
well with 179 Sidney, but AT&T does not.

CONSTANTINE ALEXANDER: Got it.

ATTORNEY SUSAN ROBERTS: So in

other words, it all has to link together.
It can't just be like sitting there.

CONSTANTINE ALEXANDER: Got it.

ATTORNEY SUSAN ROBERTS: It's a
link.

DAVID FORD: Just to add this,
the letter you received is actually from
Donald Grossman, he's the landlord. We
actually worked with him, AT&T worked
with him back in 2011. We saw the site.
We say T-Mobile and Verizon were existing
and so we basically did a design bid at
the site to see if we could have room to
house on top. There was room. And our
next step was to test the coverage
basically propagation from that
building. So on June 2nd of 2011, AT&T
used one of our consultants. It's called
a SAI, Site Acquisition, Inc. They did

a drive test. Which they put antennas on the rooftop. They put a responder in a car and they drive around the area, and based on that drive test is whether they, you know, decide to keep the site and they could work for AT&T's coverage needs or they need to go drop it and move on to the next site. The drive test results came back poorly. As you can see from the propagation map underneath the C candidate, the Cambridgeport area where we're trying to fill, they're not getting in-building coverage or in-car coverage that we're trying to hit. So if you compare the propagation map of 179 Sidney Street to the one we actually have, it's on the report, I can give you a bigger version of it here. The 280 Brookline Street provides a much better in-building

coverage in the Cambridgeport area.
Green is in-building coverage.

CONSTANTINE ALEXANDER: I saw
that in your report.

DAVID FORD: And that's -- yeah,
so we tried to go on this rooftop and it
didn't turn out for our coverage needs.

CONSTANTINE ALEXANDER: Then
why, in my suspicious mind, why did you
say in your application -- letter, I can't
find it. It's buried in here, that you
didn't cite that reason for why you
couldn't go anywhere else? You just said
you couldn't find -- you had a problem
with negotiating the deal or something of
that sort if my memory is correct.

DAVID FORD: Well, let me slip
back here. It was that as well as the
fact it didn't work for coverage needs.

And we literally looked over I'd say 60 buildings in the past three years. So I mean, as you can see from the analysis you have in front of you, it's quite extensive. I mean, we don't have, you know, background knowledge to the extent we'd like to on every single site. But as the report, you know, shows we did do our due diligence at the site. We saw that it would work, the work did not work unfortunately, and we have, you know, propagation map to show that right in front of you.

CONSTANTINE ALEXANDER: Okay, thank you.

Continue, I'm sorry.

DEPAK RATHORE: And again the propagation map shows where our current location is. So as it works in

conjunction with our existing site so that we have a C-plus coverage network.

CONSTANTINE ALEXANDER: Okay.

DEPAK RATHORE: Any more questions about the coverage?

CONSTANTINE ALEXANDER: Anybody have questions?

BRENDAN SULLIVAN: Why do the faux chimneys have to be ten feet tall?

DAVID FORD: Okay. I can start off design-wise and you can get into, you know, shadowing as well to finish.

DEPAK RATHORE: Yeah, sure.

DAVID FORD: Just to, you know, abide by the Zoning Ordinance, we need to be ten-foot setback from the roof edge. And they're four-foot panel antennas. So in order for the panel antennas to clear the roof edge, the roof edge is at

45 feet with a three feet parapet, 48 feet. Top of the chimneys is 55 feet. So in order for the four-foot panel antennas to clear the three-foot parapet wall, we need that ten-foot chimney height in order to do so.

CONSTANTINE ALEXANDER: If you had no faux chimney would you have a 10-foot antenna, is that what you're saying?

DAVID FORD: It would be ballast-mounted ten feet. It's only a four-foot antenna --

CONSTANTINE ALEXANDER: Right.

DAVID FORD: -- but it has to be ten feet up to clear the roof edge because we need to be pushed back ten feet and to free the parapet wall. If there was no parapet wall there, it would be a

different story. But because of the existing parapet wall, that's the main reason.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY SUSAN ROBERTS: In addition to our radio frequency coverage goals the -- just a couple of other points that I wanted to make with regard to visuals, although I think the Planning Board did a good job in presenting its findings with respect to the visuals. We have not invited a structural report because to do so would require penetration of the roof, and the owner of the building has asked us to hold off on doing a structural report until we hear what this Board is going to do. So....

CONSTANTINE ALEXANDER: You realize that if after you do the

structural study and you have to change the location of the antenna, you're going to come back and see us again.

ATTORNEY SUSAN ROBERTS:

Correct, we do understand that. But we're trying to accommodate the owner of the building, and so we would -- we are suggesting at this point that if the Board does issue a Special Permit as we are hoping, that we would go to the Building Department and obtain a building permit subject to the structural report being satisfactory.

DAVID FORD: And the letter you have in front of you is the retaining letter from Dewberry Engineers. They did the design. They will be carrying out a full structure analysis, and they do need to cut through the unfortunately.

And, yes, respectfully the landlord asked us, you know --

CONSTANTINE ALEXANDER: We're going to tie -- if we were to grant relief tonight, we're going to tie it to this mobility, this study. So this is where you're going to locate the chimneys and they're going to be ten feet?

DAVID FORD: Correct.

CONSTANTINE ALEXANDER: They've got to go to 11 feet, we'll see you again.

DAVID FORD: Yes.

ATTORNEY SUSAN ROBERTS: So I'm prepared if the Board would like to go through each of the criteria for the --

CONSTANTINE ALEXANDER: Please.

ATTORNEY SUSAN ROBERTS: -- for the Special Permit which I can direct you to the application beginning on page 6.

CONSTANTINE ALEXANDER: We've got -- go ahead, go through it.

ATTORNEY SUSAN ROBERTS: So where AT&T complies with the Special Permit criteria set forth in Section 10.43 of the Ordinance. Basically Special Permits will be granted --

CONSTANTINE ALEXANDER: You're a licensed FCC carrier in good standing?

ATTORNEY SUSAN ROBERTS: We are.

CONSTANTINE ALEXANDER: You satisfy that condition.

ATTORNEY SUSAN ROBERTS: We do. And we also say that granting the Special Permit would not be a detriment in the public interest, to the public interest rather, because we've met the requirements. With respect to traffic patterns generated, there will not be

more traffic as a result of this facility. It won't cause congestion or a hazard or substantial change to the neighborhood. In fact, it will blend in with the neighborhood, this facility.

The continued operation or development of adjacent units would not be adversely affected by this facility on the roof.

There's no visual impacts. We have a noise study that we also had done which --

CONSTANTINE ALEXANDER: What kind of noise would you be generating?

DAVID FORD: We have an equipment area that's 12-by-20 in the basement, and the landlord was concerned that first floor tenants, you know, would be hearing this facility. So we actually got

acoustic-sounding walls part of our design. It's Note 10 on those (inaudible) in front of you. And basically we're putting an acoustic wall and a firewall around the equipment. And we did a noise study, and the decibel level meets all requirements of the Cambridge Ordinances.

ATTORNEY SUSAN ROBERTS: And there would be noise hoods, sound hoods on the accessories as well and that's part of the report, so we'll be doing that as part of our design.

There will be no nuisance or hazard created to the detriment of the health, safety, and welfare of the occupant or the citizens of the city. Obviously the citizens of the city are going to benefit by having wireless coverage, especially

in emergency situations.

And the proposed installation will not impair the integrity of the district or the adjoining district or otherwise derogate from the intent and purpose of the Ordinance because the facility is not going to cause pollution. It's not going to, as we said, generate any kind of congestion or nuisance. It's going to help the city.

CONSTANTINE ALEXANDER: I take it, people that service the antenna may be once or twice a month, somebody is up on the roof?

DAVID FORD: On average it's once a month, that's it. And in, you know, emergency cases, situations it's maybe more than that.

CONSTANTINE ALEXANDER: Oh, no,

of course for emergency.

DAVID FORD: Yeah.

CONSTANTINE ALEXANDER: But
you're not going to create traffic --

DAVID FORD: Nope.

CONSTANTINE
ALEXANDER: -- somebody isn't going to
come by everyday getting up on the roof,
that's the kind of thing that we're
getting at. And most carriers tell us
no, once or twice a month absent the
emergencies.

ATTORNEY SUSAN ROBERTS: That's
correct. And a lot of the monitoring
that's done is done remotely as well.

And so that's it.

CONSTANTINE ALEXANDER: No,
that's not it. You didn't deal with the
most important thing we have to deal with.

ATTORNEY SUSAN ROBERTS: Which is?

CONSTANTINE ALEXANDER: And that is this is going to be located in a residentially-zoned district.

ATTORNEY SUSAN ROBERTS: It is.

CONSTANTINE ALEXANDER: And under Footnote 49 to the Table of Uses section says: Where it is proposed to erect, what you want to do --

ATTORNEY SUSAN ROBERTS: Yes, I have it.

CONSTANTINE ALEXANDER: You got it? Okay, go ahead.

ATTORNEY SUSAN ROBERTS: That's on page 4.

CONSTANTINE ALEXANDER: Now you've dealt with some of it already. Is there a demonstrated public need for the

facility? You've said about the coverage lapses.

The existence of alternative function, suitable sites in non-residential locations. You've said you've done 60 -- you've checked 60 over three years 60 sites and there's nothing worked.

DAVID FORD: As you can see in the report, yeah, it dictates the majority of the sites we looked at.

ATTORNEY SUSAN ROBERTS: And that there's visual -- that there's a lack of visual impact of the facility in terms of the --

CONSTANTINE ALEXANDER: Well, that's a judgment call we have to make. In any event, you're going to, by the color of the faux chimney and the nature

of the stereo, you're going to minimize the visual impact.

ATTORNEY SUSAN ROBERTS: It is, right. And it is -- the faux chimneys are going to look like brick chimneys. And the penthouse will be unchanged. The antennas will actually be painted the color of the penthouse as well.

CONSTANTINE ALEXANDER: Okay.

Now under the section -- Footnote 49 I will read to you: The Board of Zoning Appeal shall grant a Special Permit to erect such a facility in a residential zoned district only upon a finding that non-residential uses predominate -- non-residential uses predominant in the vicinity of the proposed facility's location.

And, going to No. 2, that the

telecommunication facility is not inconsistent with the character that does prevail in the surrounding neighborhood. Different word.

My, and I visited the site, and I got to tell you, this is not exactly a commercial district. It is a true residential district. So tell me why we have to -- we can make the finding that non-residential uses predominant in the vicinity of the proposed facility?

DAVID FORD: I can speak to this really quick and then let Sue take over. I mean, I've been to the site now a countless amount of times. And across the street there's multiple commercial businesses --

CONSTANTINE ALEXANDER: Well, there are a few restaurants, that's

right.

DAVID FORD: Restaurants, pizzas or convenience stores, etcetera. And I realize that the residential neighborhood is on the cusp of a commercial district as well, behind it, along Memorial Drive. And I mean -- yes, she can basically take over from here, but there is some commercial essence in the area.

ATTORNEY SUSAN ROBERTS: I think the neighborhood as well accommodates, as we say on page 5 of the application, the neighborhood accommodates or may accommodate a host of non-residential uses, it may; including manufacturing, processing, retail, and other commercial establishments. It's also close to Memorial Drive.

CONSTANTINE ALEXANDER: Not that close. I mean, it's at least a quarter of a mile or a half mile away from there. To Memorial Drive?

ATTORNEY SUSAN ROBERTS: From -- I thought it was closer.

CONSTANTINE ALEXANDER: At least.

ATTORNEY SUSAN ROBERTS: And given the fact that it's visually unobtrusive, we think that it blends in and that the Board should find that non-residential uses do predominate in the vicinity, and it's not inconsistent with the prevailing character found in the neighborhood.

CONSTANTINE ALEXANDER: That's the hardest part of your case frankly.

ATTORNEY SUSAN ROBERTS: We

understand that.

CONSTANTINE ALEXANDER: To me it's not readily apparent that non-residential uses, what's the word? Predominate? Predominate. Yes, there are some commercial establishments, storefronts, but I wouldn't say that those storefronts predominate in the vicinity.

ATTORNEY SUSAN ROBERTS: But what we're suggesting is how large an area you consider the neighborhood as well.

CONSTANTINE ALEXANDER: In this case it's a vicinity. The word that's used vicinity. Finding that non-residential uses predominate in the vicinity of the proposed facility's location.

DAVID FORD: In the vicinity

there's at least six that I know of, commercial businesses using -- across the street so I mean that's the city.

CONSTANTINE ALEXANDER: We've approved -- as a matter fact tonight later on we're going to have a case of one of your competitors on Main Street and they, they're going to be in a residentially-zoned district, but it's clear there that why it's zoned residential is beyond me, but the non-residential uses predominate. Not as clear. Not prejudging it, but I'm telling you that's -- you're on the cusp on this issue.

JANET GREEN: I have a question. So is this the area that would be covered within this circle?

DAVID FORD: The propagation

maps show that basically, but that's the search range. That's what we were given, you know --

JANET GREEN: That's where you looked?

DAVID FORD: That's where we looked. And all the candidates that we looked at are within that range, correct. And if you look again, yeah, the next map below after that shows the actual candidates we looked at in that range.

JANET GREEN: These are the ones that you looked at. What I was looking for was whether these businesses, which are all in the ring, would be considered the businesses in the area?

DAVID FORD: You mean that I was speaking towards?

JANET GREEN: Yes.

DAVID FORD: No, actually
directly -- see where that red dot is?

JANET GREEN: Yes.

DAVID FORD: That's where our
site is. And directly across the street
from that red dot is where the --

JANET GREEN: No, I've been to
the site, too.

DAVID FORD: Okay.

JANET GREEN: But I'm just trying
to figure out if -- I don't think there's
much here that would be --

ATTORNEY SUSAN ROBERTS: Right.
And that's what --

JANET GREEN: But are these
businesses served by that?

CONSTANTINE ALEXANDER: The
vicinity is a very loose word.

ATTORNEY SUSAN ROBERTS: Right.

So that's what I was trying to suggest is defining the vicinity, quote, unquote, to be bigger than just, you know, the neighboring adjacent streets but to be the vicinity, to be the area of our coverage.

JANET GREEN: Well, that's what I'm trying to decide, that area of coverage.

ATTORNEY SUSAN ROBERTS: Of our coverage.

DAVID FORD: Correct, yes.

JANET GREEN: Okay.

DAVID FORD: Per the -- if you look at the coverage map, the proposed coverage, it would be hitting all along Memorial Drive, in-building coverage and in-car coverage. I could put the map up again and show you right here. So the

businesses we were just talking about directly along Memorial Drive, right here, they're beginning, you know, increased coverage. You can see the gap we have right here, completes that zoned only out-of-building coverage, especially along Memorial Drive here. And after we're done, you know, this is -- green is in-building, in-car and outside as well. So we would be doing a benefit to the businesses located in the general vicinity of the property as well as the businesses located along Memorial Drive.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY SUSAN ROBERTS: I don't have anything else to add unless the Board has questions. We've gone through the

criteria.

CONSTANTINE ALEXANDER: That's what we're going to find out.

Does anybody on the Board have any questions?

BRENDAN SULLIVAN: Well, if you go to the sketches here, and it would be Sheet Z3, something that caught my attention was the proposed 18-inch wide vertical cable tray on the exterior wall. And I'm wondering where that is on the photo simulations and --

DAVID FORD: Seeing exactly where on the photo simulations?

BRENDAN SULLIVAN: Well, yes.

DAVID FORD: I'll show you where. And this is basically --

BRENDAN SULLIVAN: I'm going to tell you I'm not in favor of anything on

the exterior wall 18 inches wide going up, and I'm just wondering if -- why it has to be there, No. 1. And why it has to be exterior? Why it has to be there? And why it can't be interior in a -- running up in a closet or some interior chase?

DAVID FORD: Yep. So to speak first, whenever we try to do these sites --

BRENDAN SULLIVAN: Because I fully understand that we have a very willing vendor and a very willing customer --

DAVID FORD: Right.

BRENDAN SULLIVAN: Who likes to get that monthly disbursement from AT&T. And AT&T, as it is with all the other carriers, want to get the installation done as inexpensively at possible. And

as I go around to different communities, and I think one thing we pride ourselves on here is that from the very get-go we have been very much attuned to the aesthetics. And as we go around to different communities and I stop and look at -- stop at red lights and I look at buildings, and I say that looks awful, that looks awful, that looks awful, and we would never allow it. So this got my attention and not a favorable attention, but anyhow, I'll let you explain as to why.

DAVID FORD: Okay. So per our design visit that happened in August of last year, myself, Depak's colleague Jobeth Mariano (phonetic), as well as the engineers at Dewberry, they re-visited the site with the building's foreman, you

know, sites were (inaudible) out. And we tried to find some sort of chase from the our equipment area in the basement to get to the top to run our power and telephone feeds from the basement to the roof.

Unfortunately because it's a condo building, there is no vertical chase that exists. There's no, you know, stack electrical closets. There's no stacked regular closets on top of each other that we would be willing -- the landlord would be willing and tenant existing at the facility would be willing to, you know, have conduits running up through their apartment. So we actually did try to find a road that would be in-building but that wasn't an option. We even tried staircases, etcetera, and there is no straight chase from the basement to

getting to the roof. So in that frame of mind, we were trying to find an area of the building that, again, house the cable tray, which is going to be painted to match the brick as well. So as you were saying they are, you know, you can see them at times, but when they're painted to match, they're a lot harder to see. And basically --

BRENDAN SULLIVAN: At night.

DAVID FORD: We're trying to put it right in the back of the property so it won't be visible from any of the streets, and run it up along the side. You can't see it from this photo simulation, but basically up the side of the chase here and then on to the actual rooftop cable tray.

CONSTANTINE ALEXANDER: Why, I

want to follow up on Brendan's question. I look at the photo simulations, the before and after, I don't see this. And you should be able to see it. We're basically concerned about the accuracy of the photo simulations, the after.

DAVID FORD: Right, right. I would -- just from where the Dewberry Engineers did the photo simulations as well and just related to the photos, the cable tray is not shown so that's basically per the photos we were given for the view analysis.

CONSTANTINE ALEXANDER: But the purpose of the photo simulations is to allow us to see the visual impact, and if something's going to have a visual impact and you don't show it, and you give us photo sims but don't show that, it doesn't

make us TOO happy as a Board.

DAVID FORD: Understood.

ATTORNEY SUSAN ROBERTS: Would you like us to submit additional photo sims that would show that? I mean, we would be happy to do that.

CONSTANTINE ALEXANDER: We would have to continue the case.

ATTORNEY SUSAN ROBERTS: Yes, I realize that.

THOMAS SCOTT: Can I make a point, though, if you look at the plan, I think it's Z2, it's actually set back in almost in like an alleyway between the adjacent building and their building. It's kind of in a corner.

DAVID FORD: Yeah, that's what I was trying to show you.

THOMAS SCOTT: It would be very

hard to see from the street at all I think unless it rises up above the roof of the adjacent building which --

DAVID FORD: So just to show you there's a tree here that runs along right here, and a building right here. And then literally just maybe a four-foot alleyway that you were speaking to that runs directly behind here. So we literally walked around the entire building and tried to find the best, you know, spot to house this cable tray and that seemed like the best option.

THOMAS SCOTT: The best concealed spot option for an exposed element.

DAVID FORD: Correct.

ATTORNEY SUSAN ROBERTS: Doing it this way, obviates the need for an

equipment shelter on the roof. I mean, it's got to go somewhere. We've got to have an equipment area, and so putting it in the basement for us was best way to conceal that, best way to contain the noise, and so forth. So if we're gonna do it in the basement and there's nothing interior that is going to work, it seems to me that the -- sticking it in sort of a corner alley up the building would definitely address Mr. Sullivan's interest as, you know, seeing it on the street as a driver in a car, you're not gonna see it in all likelihood. So it's not as unobtrusive as we could suggest.

THOMAS SCOTT: There's one other point I would make, though. I would not like to see the cable tray go up the building and then run up and over the top

of the parapet and then down on to the roof. It would have to come up. And before it reaches this cornus, turn in to the roof so that it doesn't rise above or around the cornus because I think that would be offensive.

DAVID FORD: Yeah. Basically if the -- are you saying to go underneath the parapet? Because the parapet's three feet above the roof.

THOMAS SCOTT: Through.

CONSTANTINE ALEXANDER: Drill a hole.

DAVID FORD: Yeah, yeah. I mean --

THOMAS SCOTT: I don't want to see this go up and over the parapet.

DAVID FORD: Over. Okay. That's understood.

THOMAS SCOTT: I think that would be offensive.

CONSTANTINE ALEXANDER: Will the landlord allow you to draw holes --

TIMOTHY HUGHES: Now, does the parapet go all the around or is the back of the parapet nonexistent? Is the parapet only in conjunction with the cornus or does it circle -- navigate the whole building?

DAVID FORD: Honestly, actually as you can see from the back, there's no parapet in the back, but I don't remember if the parapet goes in that alleyway or not honestly. I haven't been back in that alleyway in a few months.

CONSTANTINE ALEXANDER: The parapet seems to be on the side that face streets.

DAVID FORD: Correct. That's correct. So then -- it actually does not look like the parapet wraps completely around, meaning that it wouldn't be going over the parapet.

TIMOTHY HUGHES: All right.

ATTORNEY SUSAN ROBERTS: It's not shown. Actually on Z2 it's not shown. You're right. I mean, the parapet is shown on Brookline Street and on Putnam.

TIMOTHY HUGHES: Then I have a couple other questions to go along with that.

Are these two, the back side of the photo sim of these two facade-mounted, are they being replaced -- are those going in a faux chimney, too, or are those staying where they are?

DAVID FORD: Those are staying where they are. We tried to put a faux chimney back there. Basically there's no room for us to do so in order to get our orientation that we're trying to hit, our azimuth per the RF needs in the area. And --

TIMOTHY HUGHES: That's too bad because if there wasn't a parapet wall, you could actually put a lower chimney, faux chimney in there. And you're certain that there's no place on the back of this building that you can place a faux chimney?

DAVID FORD: I'm not an engineer, but per the engineer's visit, they've been to the site multiple times and no, there's not.

TIMOTHY HUGHES: And the biggest

problem I have with this, other than the fact that I still haven't gotten passed the fact that non-residential uses predominate. The other problem I have is that the two faux chimneys are lumped together, you know, right there, they're huge and they're lumped together. That doesn't look like a faux chimney when you have two of them in that kind of vicinity. If you can't disburse those, you know, across the roof somewhat, it doesn't look faux because you wouldn't have two chimneys right there lumped together.

JANET GREEN: It does look faux. It doesn't look real.

TIMOTHY HUGHES: And it creates a massing that you might as well have a big head house up there if you're going to have these two this close together. I

need to know that that's the only place that these can sit. That they have to be this close together.

DAVID FORD: It's all because the rooftop loading. Basically we're using a ballast-mounted sled, more or less, and there's no rooftop penetration. There's going to be a sled. It's going to be a 10-by-10 sled.

TIMOTHY HUGHES: Rooftop loading would be better if they were disbursed.

DAVID FORD: The way the beams run per the design visit with our architectural engineer rather, they said that, you know, there would only be room to load in that one corner. And if we put another ballast mount which is weighed down by weight, it would be adding too much weight to the rooftop which would

then not allow us to house the ballast mounts up there. That was the original plan.

TIMOTHY HUGHES: All right. So not only do I have a problem with the non-residential uses predominating, now I have a problem with it not having a visual impact that, you know, makes it -- I think this visual impact is inconsistent with the neighborhood. So you haven't sold me on that one either. So I have two problems now.

ATTORNEY SUSAN ROBERTS: I've seen buildings where there are double chimneys that are next to each other. I mean, I'm sure there are examples in Cambridge.

TIMOTHY HUGHES: There might be. But on this building it doesn't make any

sense.

ATTORNEY SUSAN ROBERTS: I mean it could make sense. Do you think really that people are going to notice it?

TIMOTHY HUGHES: That's for people who don't know any better. It doesn't make any sense to me, and I'm the one sitting on the Board not the rest of the city. I need some help here.

CONSTANTINE ALEXANDER: That's a problem I have as well.

TIMOTHY HUGHES: I need you to tell me that this is the only possible way this can happen.

ATTORNEY SUSAN ROBERTS: It sounds structure -- I mean I obviously wasn't --

TIMOTHY HUGHES: The structural explanation doesn't sound, you know, it

sounds like a rationalization more than that's the only way it can happen. I'm a -- I'm in construction, you know, and it's like....

DAVID FORD: I mean, if you would like us to go back and reanalyze to see if we can space the chimneys out more. The whole point of keeping them together was keeping them on the same ballast mount. And by putting another ballast mount on the roof, it's going to increase the loading.

CONSTANTINE ALEXANDER: I would like at this point I would like to see better, more comprehensive photo simulations.

TIMOTHY HUGHES: You have two ballast mounts on the same sled is what you're talking about?

DAVID FORD: Yes.

TIMOTHY HUGHES: They're not on the same ballast mounts, then otherwise you wouldn't need two chimneys?

DAVID FORD: Yes, that's correct.

TIMOTHY HUGHES: All right. I just need to be clear on everything. I'm sorry, I didn't mean to interrupt you.

CONSTANTINE ALEXANDER: No, no, no.

And also we need to see --

TIMOTHY HUGHES: I thought I was being led down the garden path here.

CONSTANTINE ALEXANDER: You're not going over the top of the parapet. I'd like to see photo simulations that show --

DAVID FORD: But if there's no

parapet existing --

CONSTANTINE ALEXANDER: Well,
no.

DAVID FORD: Right.

CONSTANTINE ALEXANDER: Well, no
problem.

TIMOTHY HUGHES: I'd like to see
a photo sim that shows that cable tray
climbing up the side of the building and
how it gets to the top.

I'd like you to reexamine whether or
not these chimneys can be spaced farther
apart. And I would love to see one back
here where there is no parapet where you
wouldn't have to go ten feet high.
Basically you could cut three feet off of
one if it would work in the back, and you
could get rid of those facade-mounted
ones. I'd like you to -- I want to see

documented evidence that none of that, what I'm suggesting will work before I would be willing to vote for this.

ATTORNEY SUSAN ROBERTS: Okay. So you'd like to see whether the two faux chimneys can be spaced further apart?

TIMOTHY HUGHES: Correct.

ATTORNEY SUSAN ROBERTS: You'd like to see whether we can avoid the building mount -- I'm sorry, the penthouse --

TIMOTHY HUGHES: The facade-mounted in favor of the faux chimney which could then be three feet shorter than the ten foot ones because there's no parapet wall back there.

ATTORNEY SUSAN ROBERTS: No, but there is -- you realize that it's the penthouse that they're facade-mounted

to. So it's not on it's own thing.
There's a penthouse back there. And
that's what they're on.

TIMOTHY HUGHES: Well, I see on
your photo sim that it's in the same plane
as the side of the building. They're not
set back on a penthouse in this photo sim.
Now if that's wrong, I need a new photo
sim, all right?

DAVID FORD: Per the Z2, if you
look, the penthouse basically goes all
the way up to the edge of the roof.

ATTORNEY SUSAN ROBERTS: So the
penthouse --

DAVID FORD: So the edge of the
building.

TIMOTHY HUGHES: All right. So
you're calling it a penthouse, that's
fine. But it's still the same plane as

the outside wall of this building.

ATTORNEY SUSAN ROBERTS:

Understood.

TIMOTHY HUGHES: It's not like a penthouse that's sitting inside and then they're mounted on that. That would be a little easier to live with, too.

ATTORNEY SUSAN ROBERTS: Okay.

THOMAS SCOTT: One thing to consider, too, is given the symmetry of the building maybe it makes sense to space them apart, you know, could you put one over here and, you know, get rid of this one? So that it looks like they belong there. You know, they relate to something within the building, you know, architecturally.

TIMOTHY HUGHES: Yes.

ATTORNEY SUSAN ROBERTS: What

are you --

TIMOTHY HUGHES: I was trying to explain that, but that's my point.

DAVID FORD: Architecturally spacing.

THOMAS SCOTT: Instead of putting them here, get rid of that one and put one over here.

ATTORNEY SUSAN ROBERTS: I see. Yeah.

THOMAS SCOTT: It might be more believable as a chimney.

CONSTANTINE ALEXANDER: That's the idea of a faux chimney is to make you believe it's a chimney.

TIMOTHY HUGHES: Right. I mean, there's no point in having a faux chimney if it's obvious that it's housing antennas and it doesn't look anything

like a chimney. It's already going to be taller than the existing real chimney on the building.

CONSTANTINE ALEXANDER: It looks like we're going to have to continue the case to allow you to address the issues.

Are there any other issues we would like them to address? Give them a shopping list.

I would like you to address, maybe others can answer, in writing a little more argument or a little more detail as to why non-residential use is predominates in the vicinity.

ATTORNEY SUSAN ROBERTS: Okay.

CONSTANTINE ALEXANDER: All right? That really has not been addressed. And if can do that in a written statement of some sort.

ATTORNEY SUSAN ROBERTS: That's fine.

TIMOTHY HUGHES: And I think you're going to have to, you know, I'm probably giving you too much information. You're intelligent people. But you're going to have to expand your word of the vicinity in a direction that, you know, can do that for you because right now I don't see it.

ATTORNEY SUSAN ROBERTS: All right.

CONSTANTINE ALEXANDER:
Anything else?

TIMOTHY HUGHES: And I look at this circle and I don't see it.

CONSTANTINE ALEXANDER: Nothing else?

Okay, this is what we call a case

heard. So if you -- we have to have the same five people sitting on the -- when you come back.

ATTORNEY SUSAN ROBERTS: Okay.

CONSTANTINE ALEXANDER: So we've got to find a date that all five of us can make it, and a date that gives you enough time. What date would you like?

DAVID FORD: As soon as possible.

CONSTANTINE ALEXANDER: Okay. It would have to be in June. I'm not going to be here so I can't sit the second one in May. I think the first one in May is probably filled out.

MARIA PACHECO: It's not. May 9th.

CONSTANTINE ALEXANDER: Date May 9th?

MARIA PACHECO: Yeah.

CONSTANTINE ALEXANDER: You have to get your new plan, new photo sims, everything in the file on the Monday before May 9th.

DAVID FORD: Which would be when?

MARIA PACHECO: The 6th.

DAVID FORD: That's a week from today. That's next Monday.

MARIA PACHECO: The following Monday.

ATTORNEY SUSAN ROBERTS: What's the date after May 9th?

CONSTANTINE ALEXANDER: That wouldn't work for you because I can't sit.

MARIA PACHECO: June 13th. Because he's not here the 23rd.

ATTORNEY SUSAN ROBERTS: I see, okay.

CONSTANTINE ALEXANDER: I could

tell you, you could go forward on the second one in May, but you'd only have four members sitting. I wouldn't be here assuming the other four could make it. As an attorney, you know, you need an unanimous vote. It's up to you.

ATTORNEY SUSAN ROBERTS: Then it's the 13th of June?

MARIA PACHECO: Yes.

ATTORNEY SUSAN ROBERTS: Can we just have a moment just to see? June 13th or May 9th.

CONSTANTINE ALEXANDER: We can take another case and you can come back if you want, if you need more time.

DAVID FORD: Would you allow us to check in with the A&E firm to see if they can actually do this work by May 9th and then give you guys --

CONSTANTINE ALEXANDER: We have to make a decision tonight.

DAVID FORD: We'll do June 13th to give us enough time to prep and go from there.

ATTORNEY SUSAN ROBERTS: Yeah.

CONSTANTINE ALEXANDER: Does that work for everybody here, June 13th?

TIMOTHY HUGHES: Yes, good.

CONSTANTINE ALEXANDER: Okay.

All right, the Chair will move that this case be continued as a case heard until seven p.m. on June 13th on the condition that the Petitioner already having signed a waiver of time for a decision. On the further condition that the signs, which you've had a problem with before, the signs be continued to be maintained in accordance with our

Ordinance.

DAVID FORD: Yes.

CONSTANTINE ALEXANDER:

However, you have to change the date to June 13th and the time to -- now it is seven p.m., so you don't have to change the time.

And on the further condition that to the extent you're going to have to get additional submissions, new photo sims and the like, and a statement as to reasons why non-residential uses predominate. We need that in our files no later than five p.m. on the Monday before the June date.

DAVID FORD: Understood.

CONSTANTINE ALEXANDER: Okay?

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

(Aye.) .

CONSTANTINE ALEXANDER: Case
continued. We'll see you in June.

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

ATTORNEY SUSAN ROBERTS: Thank
you very much. You're very helpful.

* * * * *

(7:50 p.m.)

(Sitting Members: Constantine
Alexander, Timothy Hughes, Brendan
Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The
Chair will call case No. 10409, 341 Pearl
Street.

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

SYLVIA ROZWADOWSKA-SHAH:
Hello. Sylvia, S-y-l-v-i-a
Rozwadowska-Shah,
R-o-z-w-a-d-o-w-s-k-a-S-h-a-h. And
it's 341 Pearl Street P-e-a-r-l. And
it's Cambridge, 02139.

ANISH SHAH: My name is Anish,
A-n-i-s-h and last name Shaw. And also
341 Pearl Street.

CONSTANTINE ALEXANDER: Now, why
do you want this outlandish relief that
you're seeking tonight? I'm just
teasing you.

SYLVIA ROZWADOWSKA-SHAH: So we
would like to add the skylight to our
roof, just the one skylight, and it will
replace the window that was not up to the
code that was in the dark stairway. It
was half drop into the wall and the glass
was just the average glass, it was in the
special glass that allows you to walk
around, so it wasn't secure and it was
against the (inaudible). But the
purpose of the previous window was to give
the light to that narrow staircase. Our

house is hundred years old. So now we close the window to bring it up to the code, and instead we'd like to gain some light coming from the skylight.

CONSTANTINE ALEXANDER: The skylight would not, nobody can peer into the skylight unless they were flying a low flying plane over it. The skylight faces the sky.

ANISH SHAH: Yes.

CONSTANTINE ALEXANDER: Okay. There's no privacy issues with regard to the skylight?

SYLVIA ROZWADOWSKA-SHAH: No, no. And before we actually decided to do it we actually ask our neighbor because the two houses are very close to each other, so there's not a request of distance, and we ask what would be the

best solution. And he was hoping for closing the window that was facing right into his window and actually moving that to the skylights. And he, I attached the letter.

CONSTANTINE ALEXANDER: We have it. I'll read it into the record at some point.

SYLVIA ROZWADOWSKA-SHAH: Yes.

CONSTANTINE ALEXANDER: We do have that letter. That's it?

SYLVIA ROZWADOWSKA-SHAH:
That's it.

CONSTANTINE ALEXANDER:
Questions from the members of the Board?

BRENDAN SULLIVAN: The only comment I had was on the sketch, it showed the size of the skylight but it did not show the exact location and I asked Sean,

I don't know if he had called you --

SYLVIA ROZWADOWSKA-SHAH: Yes.

BRENDAN SULLIVAN: -- so that we could get a dimension up from the roof and also from the edge just so it makes it easier for the building inspector to define location.

SYLVIA ROZWADOWSKA-SHAH: So, yes, I talk to the Sean and explain to him already that it's three feet from the roof line.

BRENDAN SULLIVAN: In from the edge or up from the gutter?

SYLVIA ROZWADOWSKA-SHAH: It's, I think three.

ANISH SHAH: I think it's three from the peak of the --

SYLVIA ROZWADOWSKA-SHAH: No, no.

ANISH SHAH: You're talking about the fore edge?

SYLVIA ROZWADOWSKA-SHAH: Yes.

BRENDAN SULLIVAN: Well, maybe you can mark it. I'm not even sure what Sean wrote if he did anything.

THOMAS SCOTT: It's six feet from the edge this way and it looks like two feet this way.

CONSTANTINE ALEXANDER: Yes, I see. And this one has the dimensions of the skylight.

THOMAS SCOTT: Same thing.

CONSTANTINE ALEXANDER: Yes. Oh, I read that to be six feet, the dimensions of the skylight. Maybe I'm wrong.

BRENDAN SULLIVAN: I think the skylight is six-by-two.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: So it's the question of locating it from in the edge or up from the gutter line or down from the peak.

CONSTANTINE ALEXANDER: Let me test that further, Brendan, do we care where it's located on the roof?

BRENDAN SULLIVAN: I'm just trying to define it easier for the building inspector if they have that information that's all.

ANISH SHAH: Potentially within the house, we renovated the house so it's framed now.

CONSTANTINE ALEXANDER: Right.

ANISH SHAH: But it's sealed.

SYLVIA ROZWADOWSKA-SHAH: Yeah, but I talk to Sean and actually I draw it

at the front of him before I was thinking about it and then he agreed to it. So he said that it's --

CONSTANTINE ALEXANDER: My guess is that Sean would be okay with what they've submitted. We don't have him here so we can't be sure.

BRENDAN SULLIVAN: Right.

CONSTANTINE ALEXANDER: Okay?

Any other questions from members of the Board?

I'll open this up to public testimony. Anybody wishes to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. The Chair would note that we are in receipt of a letter referred to by the

Petitioner if I can find it.

Okay, it's a letter from Michael Park, P-a-r-k and Patricia Lee.

(Reading) To Whom It May Concern: This letter is regarding the exterior changes to the side of 341-343 Pearl Street's building. We are the owners of an abutting property, 335 Pearl Street, and we approve of the two changes to the exterior regarding one, the window by the stairwell, and two, adding a skylight to the roof. And that's all she wrote.

I'll close public testimony.

Anything else you want to add?

SYLVIA ROZWADOWSKA-SHAH: No.

CONSTANTINE ALEXANDER: Okay.

Questions or comments from members of the Board. Ready for a vote?

TIMOTHY HUGHES: Ready for a

vote.

THOMAS SCOTT: Good.

CONSTANTINE ALEXANDER: This is the part where I become a Druid priest and I mumble some magic incantations and after it's over you'll be able to do what you want to do. Okay?

The Chair moves that this Board make the following findings:

That what you're proposing will not be substantially more detrimental to the neighborhood than the existing situation.

That what you're proposing to do will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation or development of adjacent uses will not be

adversely affected by what you're proposing.

That no nuisance or hazard would be created to the detriment of the health, safety, and/or welfare of the occupants or the citizens of the city, and that the proposed use would will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

In this regard the Chair notes that there will be no privacy impact from the proposed change. They were talking about a non-conforming structure. That the relief being sought is rather modest in nature and not unusual in terms of the cases that we hear before our Board.

Therefore, on the basis of these findings, the Chair moves that a Special

Permit be granted to the Petitioner on the condition that the work proceed in accordance with these two plans that you submitted to us which I'm going to initial. You can't change these. If you do, you've got to come back before us. That's all.

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

(Aye.) .

CONSTANTINE ALEXANDER: Five in favor. Good luck.

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

* * * * *

(8:00 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10421, 21 Cornelius Way.

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

RICHARD FANNING: My name is Richard Fanning, F-a-n-n-i-n-g, 21 Cornelius Way, Cambridge, Mass.

CONSTANTINE ALEXANDER: Go ahead.

RICHARD FANNING: Oh.

CONSTANTINE ALEXANDER: I'm just

trying to get myself organized here. I'm listening, too.

RICHARD FANNING: I live at 21 Cornelius Way, and I'm seeking relief for -- to have an additional driveway on my property. I have a townhouse in addition to it which is previously approved by the --

CONSTANTINE ALEXANDER: What is the need for the additional driveway? Particularly front yard which is not favored by our Board. Why do you need a second driveway?

RICHARD FANNING: I have a workshop on the first floor and --

CONSTANTINE ALEXANDER: It's a hobby workshop?

RICHARD FANNING: Yes. And I can use that. I would like to have access

to that. I have twin doors at the front of them.

CONSTANTINE ALEXANDER: Okay.
You know, you've been here before us.

RICHARD FANNING: Yes, sir.

CONSTANTINE ALEXANDER: You need a Variance to do this. A Variance you've got to demonstrate a substantial hardship that's owing to special conditions; soil, shape of lot, and the like. And that the relief will not derogate from the intent and purpose of the Ordinance. Now the desire to have front yard parking, a second front yard parking --

RICHARD FANNING: Yes, sir.

CONSTANTINE ALEXANDER: -- just to satisfy, I'm going to characterize perhaps demeaningly, a hobby, your own workshop. That front yard parking will

be there forever more in terms of after you sold the house. Not a persuasive case to me certainly.

RICHARD FANNING: All right. I have, I satisfied the gross bulk of the buildings when I had the addition approved. There is a, the land on which my lot sits is -- was part of a plan unit development about 29 years ago. There was -- there are restrictive covenants which would prevent the addition of another unit on my lot.

CONSTANTINE ALEXANDER: Another what on your lot? I'm sorry.

RICHARD FANNING: Another living unit on my lot.

Those restrictive covenants have not run out but they will in, I believe, August of this year. I am retired. I

built it with the thought that the area above my workshop would be a rental unit, and that is permitted under the C-1 Zoning. The original was a PUD and now it's a --

CONSTANTINE ALEXANDER: So the reason for the relief is not because of your workshop hobby, but it's because you're anticipating creating a second -- making it a two-family house if you will.

RICHARD FANNING: Yes. But I don't, because the covenant hasn't run out, it will not be extended. The voters of the community, Linden Park Community.

CONSTANTINE ALEXANDER: When you were before us before, I remember your case.

RICHARD FANNING: Yes.

CONSTANTINE ALEXANDER: You got approval from us for a Variance to build the addition.

RICHARD FANNING: Yes, sir.

CONSTANTINE ALEXANDER: And I think the argument you gave us, and it was part of your lifestyle, you needed additional living space for your hobbies or whatever.

RICHARD FANNING: Yes.

CONSTANTINE ALEXANDER: Does this propose or contemplate a second family above the addition?

RICHARD FANNING: Yes, sir.

CONSTANTINE ALEXANDER: You came to us not telling us you were planning, you wanted an addition to be able to build a -- down the road create a second unit. That's a different story.

RICHARD FANNING: When I came to you, I thought my sister might move in with me. She broke her pelvis and is immobile.

CONSTANTINE ALEXANDER: Why can't this person whoever rents this unit, if you create it, park on the street.

RICHARD FANNING: If he did, I couldn't, you know, I need the off street parking as I understand it in order to comply with the Zoning requirements.

CONSTANTINE ALEXANDER: You need -- if you're going to have -- oh, you're right. If you're going to have two dwelling units on the property, you need two parking space.

RICHARD FANNING: Yes, sir.

CONSTANTINE ALEXANDER:

Unless -- you can get relief from us for the parking requirements. There is a provision that allows us to reduce the amount of required parking. So it's not, you're not completely precluded, but the petition would have to be you come before us, having made a definite decision to have a second unit, coming before us and perhaps saying we don't need two parking spaces. The person who is going to rent is going to walk to work or doesn't have a car, and there's good public transportation, allow me by Special Permit to not have two on-site parking places for my two dwelling units in the property. That's the case that we can consider. But for us to grant a Variance now for front yard parking, I'm speaking for myself by the way, front yard parking

maybe down the road, you're going to create a second family, second unit in the property, maybe you'll need one. I think it's premature and this is the wrong case frankly. I, the Variance requirement is very difficult to satisfy and in particular with regard to front yard parking. We turn down many people, many persons in the past.

RICHARD FANNING: I understand. What the planned unit development all has front yard parking.

CONSTANTINE ALEXANDER: Yes.

RICHARD FANNING: I would -- there are other units that have two driveways that are side by side on one lot in an 80-foot distance or 88-foot distance. There are four parking, four parking spaces. You know, two here and

two here. So, all I'm asking is that the -- I designed this.

CONSTANTINE ALEXANDER: I know that. You told us that last time.

RICHARD FANNING: You know, I can read the answers to the questions here if that would.

CONSTANTINE ALEXANDER: In the file? We've read them.

RICHARD FANNING: Yes, sir.

CONSTANTINE ALEXANDER: I mean, you can. You can assume we've read them and know what you've said.

RICHARD FANNING: Well, you know, I'm at your mercy. That's all. I mean, it seems to me that if it was good 30 years ago it's not been detrimental, there are no through streets here, it only affects the 54 units. And it's on the

travel lane side of the road so the people approaching or backing out got a clear view which on the other side of the road there's parking.

CONSTANTINE ALEXANDER: See if you had no parking at all on your property and you came before us and said I need one parking space in my front yard so I'm like everybody else, I understand that. I think our Board would be very understandable. You want -- you have that now. You have front yard parking for one site for a single-family. You want us now to create a second one on the theory that you may --

RICHARD FANNING: I want to do the same thing that this guy already did.

CONSTANTINE ALEXANDER: Is it a single-family unit and he's got two front

yard parking spaces?

RICHARD FANNING:

Single-family. He has two front parking. And you can see --

BRENDAN SULLIVAN: So what if we allow for a proliferation of this? Everybody comes down and says we want to do it. And that takes away all the open space. That totally disregards the front yard setback because somebody else did it.

RICHARD FANNING: Sir, I have a large lot. The minimum lot to have a --

BRENDAN SULLIVAN: I have absolutely no sympathy for the granting of any relief for this. I think somehow, and I don't mean to disparage you, but I think it's somewhat of a back door attempt to creating a two-family here. You know,

you came down two years ago you said you needed more room. Now all of a sudden you have excess room because you want to rent out space.

CONSTANTINE ALEXANDER: And you started off by saying you needed this second parking place because -- for your woodworking hobby. Now it comes out that you want it because you may want to create a second family. You know the story doesn't hang together frankly. I would suggest to you -- I don't think we're going to grant relief. I'm not going to vote in favor of relief. If you do want to create a second family on the property and the only thing that's holding you back is the fact that you don't have two parking spaces on the site as required by our Ordinance --

RICHARD FANNING: Yes.

CONSTANTINE ALEXANDER: As I pointed out, you come back to us seeking a Special Permit under Section 6.32.1 and give us all the specific facts and the reasons tied to -- not a hypothetical, maybe I'm going to have somebody come in here, but make a case for why you don't need two on-site parking places. One will do. Because as I said, the people don't have a car, the people -- you're close to public transportation, blah, blah, blah. There are reasons. We have granted that kind of relief before, but not this kind of relief for front yard parking.

RICHARD FANNING: Even though it's totally within -- you've done it before and it is totally in context with

the rest of the project?

CONSTANTINE ALEXANDER: You've cited us one example.

JANET GREEN: Can I ask a question?

RICHARD FANNING: Well, I understand. What's wrong with me what was good for him?

JANET GREEN: But do most of the houses in the development have two parking spaces, two parking driveways?

RICHARD FANNING: No, they don't. They have side-by-side parking.

JANET GREEN: But is it a double side by side?

RICHARD FANNING: Yes.

JANET GREEN: Or is it single?

RICHARD FANNING: You have pictures here.

JANET GREEN: That's just the one, but I mean all of them?

BRENDAN SULLIVAN: It's one for each unit. There has to be two front doors and two parking spaces, and that's the way it was designed.

JANET GREEN: So there's one for each unit?

BRENDAN SULLIVAN: Yes.

RICHARD FANNING: Yeah.

JANET GREEN: So, you know, I would have to agree, I don't think you've made a case for why you need two.

RICHARD FANNING: No. 1, I work would like to be able to access my workshop.

No. 2, it makes it, it makes more sense. It takes an additional parking space that would otherwise be there on the

street and puts it off street.

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

TIMOTHY HUGHES: No.

CONSTANTINE ALEXANDER: I'll open it to public testimony.

Is there anyone here wishing to be heard on this matter? Sir, please come forward and give your name and address to the stenographer.

JOSE LUIS ROJAS: Jose Luis Rojas, R-o-j-a-s, 19 Cornelius Way.

RICHARD FANNING: He's next-door to me.

JOSE LUIS ROJAS: I'm next-door to Dick. I'm going to say what Dick is proposing to me seems very sensible. It's just adding a spot to a new building

that was created in the area that would make it look like any other existing building so it would just be making it conform to everybody else. And as Dick said, it would just take one potential spot from the street and put it in the road. Our roads only have parking on one side. So even though there's housing on two sides, so by that we have less parking on the streets because we can only park on one side.

CONSTANTINE ALEXANDER: Thank you. Thank you for coming down.

Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one else wishes to be heard.

We are in receipt of a memo from the

Planning Board with regard to this property. (Reading) The Planning Board reviewed the Special Permit to install a second driveway and the Variance to park in the front yard setback, and while the Board does not support front yard parking or two driveways, there exists a pattern of this type of parking at this development, and the Planning Board leaves this to the Board of Zoning Appeal without comment or recommendation. So a neutral statement.

I will close public testimony.
Anything further you want to add at this point?

RICHARD FANNING: No, other than obviously I believe that my request is reasonable.

CONSTANTINE ALEXANDER: Ready

for a vote?

The Chair moves that -- I'm just going to take the Variance vote first. The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of this Ordinance would involve a substantial hardship to the Petitioner.

That the hardship is owing to circumstances relating to the, I guess, the size of the lot. It's not -- it doesn't relate to soil conditions or topography, and that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of this Ordinance.

On the basis of these findings, that

a Variance be granted the Petitioner to permit front yard parking in accordance with the plans submitted by the Petitioner.

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

(No Response.)

CONSTANTINE ALEXANDER: None in favor. Therefore, the motion does not carry.

The Chair moves that this Board make the following findings:

That the Variance was not granted because there was no substantial hardship demonstrated by the Petitioner within the requirements of the law.

That the hardship is not owing to any circumstances relating to the soil

conditions, shape, or topography of the land or structures. And that relief cannot be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of this Ordinance.

With regard to the latter, it has been the consistent policy of this Board and of the Planning Board to discourage front yard parking absent a compelling case such as substantial hardship and that has not been demonstrated by the Petitioner.

All those in favor of making these findings say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Those findings have been made.

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

RICHARD FANNING: Thank you.

* * * * *

(8:15 p.m.)

(Sitting Members: Constantine
Alexander, Thomas Scott, Janet Green,
Douglas Myers, Kevin Casey McAvey.)

CONSTANTINE ALEXANDER: The
Chair will call case No. 10386, 158
Cushing Street.

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

MAGGIE BOOZ: My name is Maggie
Booz, B-o-o-z, I'm the architect for the
Borelli family at 158 Cushing Street, and
we're here to resubmit a design to you for
a new three-family house at the site of
the existing three-family house.

CONSTANTINE ALEXANDER: It's going to remain a three-family house under your new plan?

MAGGIE BOOZ: It is, it is in this proposal. We, we have redesigned the house so that it is less square feet than the existing house. The proposal that we came with the last time was for a house with an FAR of I think 1.5.

CONSTANTINE ALEXANDER: Something like that.

MAGGIE BOOZ: The existing is 1.3, 1.31, and the new proposal is for a house with an FAR of 1.26. The way we were able to reduce it was first by reducing the size of the --

CONSTANTINE ALEXANDER: I'm sorry, before getting into the -- we are going to get into the redesign plans.

But at the last hearing we made -- a number of members made a second request for continuing the case, and that was we wanted more specific information about the cost or the feasibility of just reconstructing the foundation and not having to tear the house down.

MAGGIE BOOZ: Oh, okay. Well, actually --

CONSTANTINE ALEXANDER: And two members of the Board specifically requested this and I didn't see anything in the file on this.

MAGGIE BOOZ: Well, actually, I had a discussion with Sean O'Grady about this and I said, you know, do you think that we should bring in the financial information about, you know, construction costs? And he said well,

that could be looked at as well. I mean, he said that could be looked at as you would find the builder who said that it would cost as much to rebuild the house as to renovate the house. And so I didn't.

CONSTANTINE ALEXANDER: That's always a risk. We would have to take that into account, but you're not going to present anything -- any information to us about the cost of reconstructing the foundation?

MAGGIE BOOZ: I'm sorry, I really didn't understand that you wanted specific cost estimates from us.

CONSTANTINE ALEXANDER: I thought it was quite clear. I think Kevin and Tom were quite clear on it. I reread the transcript and it's quite

clear in the transcript we wanted this information.

ANTHONY BORELLI: We spoke to staff and apparently that conversation wasn't exactly clear that's exactly what you wanted.

MAGGIE BOOZ: I don't think it was clear.

ANTHONY BORELLI: We did follow up on that issue as well as the request for more information.

CONSTANTINE ALEXANDER: I'm just looking for the transcript.

MAGGIE BOOZ: So the specific cost information that you'd like to have is the cost of a renovation versus a new construction or the cost of a new foundation and renovation versus new construction?

CONSTANTINE ALEXANDER: Yes.

I'm trying to see exactly what we talked about last time. Keep going, I'm listening believe me.

MAGGIE BOOZ: You know, I have a tremendous amount of experience in construction, I do it, you know, for a living. I'm an architect and I go through construction estimates, you know, pretty much on a weekly basis. And part of the reason for the proposal is that the cost of the, of raising that building up, removing the failing foundation, stripping it entirely, which is exactly what would have to happen in order to straighten the building and renovate it and remove the systems, because the systems are all attached to systems in the basement, and then put a

new foundation in underneath, underneath a building that we had propped up in the air versus taking the building down and building a new foundation of construction. I can say is pretty much the same. I mean, we wouldn't be here asking for a, you know, for a new building if it weren't financially viable. So I don't -- I really --

CONSTANTINE ALEXANDER: Well, I'll defer to other members of the Board who specifically requested this information. Is this satisfactory to you or --

MAGGIE BOOZ: I mean I think you can take that explanation with a great deal of credibility. I am, you know, constantly in contact with builders. I reviewed an estimate today -- three

estimates from builders today. I can compare costs. I know the cost of subcontractors. I know the cost of foundation subcontractors and excavators. I -- you know.

THOMAS SCOTT: I mean, that's fine but I think we did ask for that information and it hasn't been provided.

MAGGIE BOOZ: You know, I would have to say that I didn't find it that -- I didn't not understand that it was a clear request from you that we needed cost estimates. I'm really sorry. I just really didn't understand that. And I specifically did mention it to Sean thinking, do they actually want cost estimates? I was trying to get a clarification. And I, what I heard him tell me was that that sort of

information -- well, and the other thing that I talked to him about was reducing the FAR through not having a full height basement. And he said to me that he did not think that that was a reasonable way to reduce FAR because subterranean FAR was not as important as the overall mass and, you know, the overall cubic footage of a building above ground. Even though obviously below ground floor area is counted in our Zoning Ordinance.

So I had a conversation about -- with him about those two things, and I preceded by means of saying well, okay, let's go, let's look at a redesign of the building in which we reduce the overall square footage on the living floors and not, not in the basement.

CONSTANTINE ALEXANDER: I'm

just, I'm looking at the transcript and I'm -- there were questions both from Tom and Kevin requesting that information.

MAGGIE BOOZ: I remember that there were questions.

CONSTANTINE ALEXANDER: And well, and they were specific requests. And then I said in summing it up, you've heard -- we're talking about whether to continue the case. (Reading) You've heard some of the comments already. Addressing -- whether you can reduce the size of the structure. And you attempted to do that with your new plans.

MAGGIE BOOZ: We have done that through the plans.

CONSTANTINE ALEXANDER: Whether you could give us information about more information that we now have about what

it really would take to repair the foundation rather than build a new building.

So the issue is that we have to make a, as you know, to grant the Variance, we've got to find substantial hardship. And the hardship turns seems to me in your case, on this foundation issue. If you can repair the foundation --

MAGGIE BOOZ: The foundation cannot be repaired. We've already examined that. Because the soil condition is improper. The --

CONSTANTINE ALEXANDER: How can you build a new building on there?

MAGGIE BOOZ: With helical piers on a new grade beam. It can't be done on the existing foundation. It's rubble. It can't be -- helical piers can't be

attached to rubble in a brick foundation. It was built in 1890. So we have a, you know, we have an improper soil condition which we did a full soil analysis on. I'm not trying to be evasive or not give you the information that you have requested. I didn't know that you wanted us to go to a builder and get prices. I did not -- we did not go to that extent, no. But I really feel that as an architect representing a client that my word about knowledge of construction costs ought to be worth something.

CONSTANTINE ALEXANDER: Well, we have an architect on the Board.

MAGGIE BOOZ: Yeah.

CONSTANTINE ALEXANDER: And he was one of the ones that requested the information because he was somewhat

skeptical about the fact that you couldn't, that the foundation is --

MAGGIE BOOZ: It isn't a reputable foundation, that is absolutely true.

CONSTANTINE ALEXANDER: Well, I'll defer to other members of the Board. Do we want to hear this case tonight or do we want to ask them to come back with the information that we've asked for this time? What's the people's pleasure?

I'm disappointed but, you know, I'll defer to the other members of the Board.

DOUGLAS MYERS: I would just say that under the circumstances it's a little bit of a delicate personal situation to ask Tom and Kevin to stand up and say, yes, I want it now. And speaking as a board member who did not

specifically make this request, I would say that I think the, that I would certainly support, and even if it were put to a vote, I would vote for a continuance until this information is provided.

MAGGIE BOOZ: Oh, my goodness.

JANET GREEN: I guess I have a question about it because it seems to me to get a builder to come in and do this kind of estimate is quite costly, and I don't quite understand exactly what your point of it is.

MAGGIE BOOZ: It's not only costly, but I would say that the foundation would have to be designed in order to be actually priced.

KEVIN CASEY McAVEY: I think, and this is pulling from my memory the last time, and I notice you said my goodness

here. But you knew what we asked for, that's why you talked to Sean about it. I mean, so you did have some acknowledgement of what we were, what we were talking about.

MAGGIE BOOZ: Yes.

KEVIN CASEY McAVEY: And I do respect your professional opinion and I do want that to be known. But in terms of the details of this case, I mean, the very small things, like, we were supposed to be heard at seven o'clock and that was a small minor change. And like the Board requested certain items to be presented with today that we are, we're not being presented with. I think for me, I would like to hear the rest of the conversation as it goes forth, because I do remember that my biggest issue with this case was

with the FAR. And I think for me that's what this, what this really pivots about. I would have loved to hear more about the hardship that you guys are facing right now. And I think that was where we were going with what is this hardship? You have to rebuild this. You have an estimate out there because you have to incur this cost to rebuild this foundation and instead of doing that you are going to build a beautiful new facility. And I think, at least speaking for myself, and speaking for myself, I wanted to hear a little bit more about that and have a little bit more in front of me to see and for you to present. And so that's where I'm coming from.

MAGGIE BOOZ: So I'll tell you, one thing I advise all my clients about

when I'm talking to them about pricing, is that the most valuable pricing comes with most information having been presented to the builder. Like any builder can ballpark anything. And any foundation excavator and any guy who installs helical piers can estimate pricing in a very vague and ballpark way that is meaningless in the long run. So when I go about pricing my projects, I do it with as much information as I can with a set of drawings with a builder. I --

KEVIN CASEY McAVEY: That's fair.

MAGGIE BOOZ: I don't feel that that's fair to ask my clients to have designed this building two ways, both in new construction and in a renovation, and give accurate pricing that you Board

could actually use to make your decision. When I can tell you from experience, having done both things, having taken buildings down and having lifted buildings and prepared foundations like we did at Walden Street two years ago, that the pricing is so similar that it isn't, it isn't even a measure of how you would make your decision.

ANTHONY BORELLI: And if it's as, if the cost is more or less the same, and if the complexity is less with new construction and the product is better in new construction and the land use conditions is essentially the same after new construction, how much of a consideration in the overall scheme of things is the money question? The hardship has been established with the

soil conditions. The building is failing. It is not withstood the test of time very well. Structurally it has problems within the building itself not just the foundation. We're gonna spend a lot -- a lot of our family's money on this project. This is our home. We're going to have it forever. This is a gigantic investment for us. We want the best thing possible for our family and for the block. And it is a -- we believe it's new construction. It's this beautiful house. It's essentially an updated version of what we have now and what we've always had. Our family's been there for 60 years and we want to be there for at least another 60 years. A new house will help us do that. A renovated house, it's just, it may avoid certain Zoning issues,

but the -- at the end of the day it's no different than what we're proposing under new construction.

CONSTANTINE ALEXANDER: You really -- and I'm not certainly looking to argue with you because your comments are heartfelt and I appreciate it. But the issue for us as a Zoning Board, if you can solve the problem, the substantial hardship has got to be, is that you've got a problem and there's no way of solving it without incurring a substantial hardship. The hardship can be financial. A zillion dollars to restore the foundation or rebuild the foundation or whatever. But if it's just a matter of trying to improve your property in a modern house, certainly a noteworthy goal, but that principle if applied

throughout the city, would mean everybody who sits on a non-conforming lot, a non-conforming structure will have a right to tear down -- if they have the money, they want to do it, tear the building down and end up building a new building. When that building -- if the lot had been empty at the time, the person couldn't build that. That's what our role is.

MAGGIE BOOZ: Right, right.

ANTHONY BORELLI: But our site is not without -- it's a problematic location because of the soil conditions so it's not like any other site.

THOMAS SCOTT: Aren't you building a new building on helical piles?

MAGGIE BOOZ: Yeah.

THOMAS SCOTT: Didn't you say

that?

MAGGIE BOOZ: Yes.

THOMAS SCOTT: So I guess that's the question. If you're using the same product to do the same thing, why -- the question is why couldn't you have done it under the existing building? I think the answer is you can, and you're saying that financially it doesn't make sense because it's about to same the cost.

MAGGIE BOOZ: No, no, I'm not saying -- we can't use helical piles on a brick and rubble foundation.

THOMAS SCOTT: No, I know that. But you could, you could support the building and remove the foundation and put the helical piles in and then build a new foundation walls. That's possible. I guess that's what I was

asking.

MAGGIE BOOZ: Oh, but in order to do that -- in order to renovate this -- so this building has -- this building is five degrees out of plumb. It's two and a half feet, you know, its top is two and a half feet further over to the property line than its bottom. And so in order to straighten it and in order to renovate it, we'd be stripping everything off that building, interior and exterior, which is exactly what we did on Walden Street. We took everything off the building interior and exterior, and the windows and the windows all crack and the doors all crack and everything goes to pieces when you straighten a building. So you lift it up, you strip everything off of it, and you essentially, all you're keeping is

the sticks. That's all you're keeping.

THOMAS SCOTT: But we didn't ask the question just to be a pain.

MAGGIE BOOZ: No, I know.

THOMAS SCOTT: I think we asked the question because we thought it would help us make this decision a little bit more easier.

MAGGIE BOOZ: And that's why I'm trying to explain what the process would be.

THOMAS SCOTT: I know, but we have nothing other than your word as an architect, which I value.

MAGGIE BOOZ: That's why I'm here.

THOMAS SCOTT: You know --

MAGGIE BOOZ: I'm not doing it out of the goodness of my heart.

THOMAS SCOTT: -- we asked for, you know, something in writing and I guess we didn't get that.

ANTHONY BORELLI: We did take this up with your staff. We did have a -- we took, we knew this was an issue. We did raise it with your staff. We had a conversation about it, and as a result of that conversation, Maggie felt that this was a better way to handle it.

MAGGIE BOOZ: And Anthony actually asked me about it.

CONSTANTINE ALEXANDER: That's exactly the point. You felt that.

MAGGIE BOOZ: Yeah.

CONSTANTINE ALEXANDER: I'm getting a little annoyed about the staff told us, took us on the wrong path. The staff, I know Sean, he wouldn't do that,

No. 1. Very circumspect. But No. 2, we were very clear. It's not the question of going to staff. We laid it out. I mean what made you go to the staff and say do we really need to comply with --

MAGGIE BOOZ: Because you didn't lay it out.

CONSTANTINE ALEXANDER: I'm sorry, I just read the transcript.

MAGGIE BOOZ: Could you read it again?

CONSTANTINE ALEXANDER: It will take me 50 minutes to find it again. You can keep going by the way.

DOUGLAS MYERS: I'll fill up the gap while you're looking. It seems to me if there was a misunderstanding between --

MAGGIE BOOZ: Clearly.

DOUGLAS MYERS: -- you and staff.

If there was a misunderstanding between you and staff, but if board members, I trust you don't deny their original expression was serious, and it remains serious tonight, then it seems to me the misunderstanding should not control the resolution of those issues, but in fact we should address the issues. And if that means another hearing, then as I said before, I'm, I'm willing to entertain that. I just don't see how we can sweep it under the carpet based on everything that's been said to this point tonight.

MAGGIE BOOZ: Okay, okay. Well, that's, I guess that's up to you to decide.

DOUGLAS MYERS: I understand. I'm just stating that point of view so at

least that point of view is present as part of the discussion. So we don't have to say who said what. As long as it's a serious issue and if it was a misunderstanding, to me that's sufficient grounds.

MAGGIE BOOZ: I guess we would need specific instructions as to what you want.

DOUGLAS MYERS: If the case is not heard to a conclusion tonight, I'm confident there will be specific instructions.

CONSTANTINE ALEXANDER: I could read -- there are several pages if you would like, and then I can read the conclusion which I read before. I didn't read the back and forth before that where it makes the same points. But we talked

about continuing the case. Talking about you're not going to get the vote tonight. Again, quote, me: You've heard some of the comments already. Whether you can reduce the size of the structure. Whether you can give us information about more information that we now have about what it really would take to repair the foundation rather than build a new building.

That's what we said we need to have. And I'm seeing if there's anything else after that.

No, I don't see it. It's not a quick read. I can read the earlier stuff where both Kevin and Tom pushed you a bit about these foundation issues, we don't have any numbers and the like.

But anyway that's -- it's he said,

she said. I think we're back to where we started. Do you want to -- I'll ask my fellow board members, do you want to hear the case tonight based on what we heard so far going on the plans or we want to say no, we want more information about the foundation issue before we can proceed? I think you've already expressed your view.

DOUGLAS MYERS: I've expressed my opinion twice.

CONSTANTINE ALEXANDER: Right, you have.

Kevin?

KEVIN CASEY McAVEY: I'm not happy. I, I really do appreciate you bringing down the FAR. I think that was the main issue for me. And if we do proceed, which I would be willing to do

tonight, I have to say, like, I am not often put off by many cases. I really do -- the reason I came to this Board is because I want to help people get the relief they need. And we had some very specific requests multiple times at the last meeting, and I do find it's a worrisome precedent for us to make specific requests of people and for them to then not carry those through or at least not entertain them, knowing that us five up here are the ones who have to at the end of the day vote and live with those votes. And I do think we did provide a little bit of a road map to get you there. The FAR thing was my primary issue as I said before, and so I would entertain the case tonight but I really, I'm just a little disappointed.

CONSTANTINE ALEXANDER: Janet, anything you want to say?

JANET GREEN: I felt like when we looked at it before, I didn't see it as an attempt to build out a new McMansion style of house. I thought it was very in keeping with the existing house and it's keeping with the neighborhood. And I felt that the soil condition was compelling. I didn't feel like I needed more about that especially maybe it's because I live in 120-year-old house that's out of plumb and I know, I know all the different problems that that causes, so for me it made sense. So, I could hear the case tonight and I feel, you know, the same way I did before.

CONSTANTINE ALEXANDER: Tom, what's your view?

THOMAS SCOTT: I mean, I guess I would be willing to hear the case. Again, I was only asking for the information to I think bolster your case in terms of the hardship. I live in a house with a rubble foundation, too, and it's falling apart. We definitely wouldn't tear our house down, though. We would come up with a method or means to support the house and probably take the rubble out and replace it with something, you know, more substantial, but, you know, again, I've worked on similar cases in Cambridge where we have taken the foundation out and replaced it. I know it's possible. I guess I was just looking for, you know, some dollars to help me --

THERESA BORELLI: How much money

it would cost, exactly.

THOMAS SCOTT: I think that would help your case, not hurt your case. And that's the only reason why I asked for it.

KEVIN CASEY McAVEY: And one thought that did run through my mind last time is what happens to the next individuals who come in here. I mean, you say there's a crack in the foundation. We know the soil quality is poor. We're going to knock this house down and build a new one. I mean, what sets your case apart so that we have a standard going forward? What's the hardship here that's unique and particular to this property?

CONSTANTINE ALEXANDER: I think Kevin said it very well.

MAGGIE BOOZ: We're not hearing

the case right now? You're debating whether to hear the case?

CONSTANTINE ALEXANDER: We have three members -- I haven't expressed my view yet -- who said they want to -- that will hear the case tonight. Not that they want to, but they're willing to hear the case tonight. That would mean that any motion to continue would be defeated. So it makes no difference what I feel. We'll hear the case tonight. I will share, however, want to share, I want to endorse, Kevin said it as well as I could say it, one, our disappointment. We were very clear on what we wanted. And two, our dilemma, you've got to demonstrate to us a hardship. And what I'm worried about is what Kevin's worried about. Anybody that has a house and they have the

money and the desire to rebuild, they'll use, they'll come up with all, oh, you know, the crack in the foundation, there's a problem here, a problem there, and, therefore, give us a Variance to rebuild. You have to demonstrate to us -- your case is different from all these other only hypothetical cases, that you really have a major problem. And the way you would have gotten there would have given us some specifics, not just from my experience as such that we have to tear it down, we can't repair the foundation. If you come in and said, it would cost \$50,000 or whatever, pick a number, to do this. And even if we did that, it wouldn't work. Then we can get comfortable with the hardship. You're not making it easy for us to decide the

case, and you're leaving us with a risk of setting a bad precedent and that's the concern and that's the dismay that you've heard being expressed tonight.

JANET GREEN: So I guess after we all discuss whether we think we would go ahead with hearing it, then do they get the opportunity to say whether they want to continue or go ahead?

CONSTANTINE ALEXANDER: Oh, sure. At any time they can request a continuance.

JANET GREEN: They can request that.

CONSTANTINE ALEXANDER: You want to hear the case tonight? I think I know you do.

JANET GREEN: You may want to hear what the rest of the people say.

CONSTANTINE ALEXANDER: Right. Yes, you don't have to make the decision now. We can go through the plans, the revised plans that we haven't gotten to yet. And after hearing that you can make a decision. But I think we've said all we're going to be able to say on the foundation issue.

THOMAS SCOTT: Just one more thing.

CONSTANTINE ALEXANDER: Go ahead.

THOMAS SCOTT: I think there are a lot of Zoning irregularities, I guess, that you're basically, you know, recreating by putting the house back up. Once you take it down, you know, our Zoning says you really should build it according to the setbacks, the height

limit, and so on.

MAGGIE BOOZ: Right.

THOMAS SCOTT: So you're putting us in an awkward situation and all we're asking for is, you know, give us a clear understanding of the hardship. And I think, you know, we've asked you for that and we didn't get everything we were hoping for.

DOUGLAS MYERS: I would not like to threshold straw about the continuance, but I would like to second what Tom just said. We have not paid, in this general discussion, I don't think we have paid in our willingness to be grateful for reduction in FAR, I don't think we've paid sufficient attention to the fact that indeed to allow the recreation of a building of even substantially similar

FAR on this site, following the demolition of the original non-conforming use completely, is -- I won't -- maybe not an enormous, but there's extremely significant concession by this Board that already stretches our Zoning Ordinance to the limits. And so I think that's part of the equation here, is that, is not that the Board is doing you a favor, but you've already achieved something that in terms of the Ordinance is an unusually favorable result, I think, if the Board approves the reduction in FAR you're proposing because you are recreating on the site a building that is, as Tom indicated, very substantially non-conforming. I think, I think the Board has every reason to think twice and three times before

approving that on any set of plans.

CONSTANTINE ALEXANDER: Why don't we turn to the actual revised plans at this point. I think we should in any event, it's useful for us to hear, go over them, hear you out. I have some questions about what you submitted, too, but why don't you make your presentation.

MAGGIE BOOZ: Okay.

All right. So at the same time, the same day I spoke to Sean, I also spoke to Michael Glover because I wanted to get clear about the requirements and three-family buildings. As we know, the Building Code is divided into one and two-family buildings and then three-families, three-unit building and above. So I wanted to be clear about sprinkler rooms, firemen access, depth of

basements, just general requirements.

So I sat down with Michael as well that day. I didn't sit down with Sean. I had a conversation with him at the desk.

And, you know, I have to say, too, that it is possible that the way I phrased the question to Sean may have made him answer in a particular way, I don't know. But, you know, there's no reason for -- there is no reason for me in my thoroughness to have ignored something that you requested. I just was under the impression that it wasn't a specific request and that it seemed --

JANET GREEN: I think we know that. Let's move on to the plans. We're good.

CONSTANTINE ALEXANDER: We hear you.

MAGGIE BOOZ: Okay.

So when I spoke to Michael Glover, he said -- I said, yeah, I explained the circumstances of what I was talking about, the building I was talking about. And he said, oh, you know, Maggie, there is something in the Building Code maybe that you don't know about. He just learned about it two years ago or something when he was working on the buildings over at -- across from Bonnie's Nursery on Bay State Road, the units that went in there. That unit, that buildings of, I believe, up to five units don't necessarily need a second stair in them, a second means of egress stair, if you can prove that your distance, that your travel distance from the farthest point of the farthest unit to the street door

is no more than 50 feet. And so I looked at our plans, and the way we had designed the building, the principal stair of the building, the main stair coming off the street, lands on the third floor at the middle of the plan. That's how we designed the building coincidentally. And when it lands at the middle of the plan, obviously the travel distance in any direction from the farthest point of the unit is shorter because the stair is in the middle. And so you can't calculate this by as the bird flies, it's -- as the crow flies. It has to be with furniture in the room, and you know what would it be like if you had to travel around beds and around sofas and things like that. You know, then if you have reached 50 feet, no more than 50 feet,

you're okay. So I was really surprised by the news. I mean, I had no idea that you could build a building, a three-unit building with one stair in it. And so I went back to the office, I looked at the plans, and I did the calculations and realized that we made it. And it includes the vertical distance. It's not just floor distance, floor travel.

So, I realized that we could take the second stair away, which was a big deal because it saved us a lot of space. And so that was the sort of first stage of getting the floor area ratio down. Then I spoke to Anthony and Theresa and said, okay, you know, and Anthony had always been interested in making outdoor space. Can, you know, can we have balconies? Can we have porches? Can we do things to

make this building have more of an association with the air?

And so I, we started to look at having a back porch, like, removing the rear bedroom of the third floor. Making that third floor unit, just make it smaller. And then we said, well, why don't we take some off the front, too, and then the living spaces of the building could also have a balcony, and so that's how we wound up redesigning the building. We also reduced the size of the bathrooms and just generally just tried to pull the, pull the overall dimensions down.

So this is a board just representing the existing elevations that are, that are existing now. The new elevations of the new proposed building.

CONSTANTINE ALEXANDER: Wait a

minute. There's my question. I'm sorry to interrupt you.

DOUGLAS MYERS: Same as mine.

CONSTANTINE ALEXANDER: And there is a third row, again, proposed elevations that are different from the ones above. Which are your new proposed elevations?

MAGGIE BOOZ: These four are the new proposed elevations and these are existing.

CONSTANTINE ALEXANDER: It says east.

DOUGLAS MYERS: This is correct. This is from what's in the file.

CONSTANTINE ALEXANDER: Our file says east/east, that's what we couldn't figure out.

MAGGIE BOOZ: Oh, I'm sorry.

Okay. There's a mistake on your drawing, yes.

Okay, so this is --

CONSTANTINE ALEXANDER: The other one says north/north. So that's what was confusing.

MAGGIE BOOZ: Okay, sorry.

The east elevation is facing the street.

CONSTANTINE ALEXANDER: Okay, now I can see it. Thank you.

MAGGIE BOOZ: Sorry.

CONSTANTINE ALEXANDER: I'm sorry. I interrupted you. East is facing the street.

MAGGIE BOOZ: Yeah.

CONSTANTINE ALEXANDER: So if you're on Cushing, you're looking at the house, that's what you see?

MAGGIE BOOZ: That's correct.

And the other short elevation obviously is west, that's facing the other way. The driveway elevation has the handicap accessibility on it. And that's the south. And the north is on the other side.

CONSTANTINE ALEXANDER: Got it.

MAGGIE BOOZ: North is the side where we have, the north side of the site halfway through is where we have the soil conditions which you saw the report on, which are inadequate to support the foundation.

This is a rendering that we did of the building in its new, in its new form from the street.

CONSTANTINE ALEXANDER: We didn't have that before. That's not in

our file.

MAGGIE BOOZ: No, right, you didn't have it before. That was requested information.

CONSTANTINE ALEXANDER: Why didn't you put it on the plans that you gave us then? Why didn't you submit that with this?

MAGGIE BOOZ: Because the requirement for the submittal in the application form is plans and elevations. It doesn't say perspectives, and I thought I should --

CONSTANTINE ALEXANDER: Okay.

MAGGIE BOOZ: That's on the application form.

CONSTANTINE ALEXANDER: I know that. But, you know, I don't mean to be exasperated but it's not fair to us to

bring new information down tonight cold. If you're going to show that to us, show it to us in the plans you submitted to us on Monday and five o'clock. And you come down here and now we have to absorb this after looking at plans that were mislabelled, I must say, that added to the confusion. I'm sorry, I've vented and I'll move on and I apologize to the extent that I chastise you, but that's not the way to do it. If you're going to show us these renderings, show it to us in the file and not cold the night of the hearing. Continue.

MAGGIE BOOZ: These are diagrams demonstrating the change in the plot plan, the orientation of the building. The overall square footages of the building on each floor and then the floor

plans themselves of the new building.

CONSTANTINE ALEXANDER: Were you able to -- just help me, were you able to retain the porches that you wanted on the last plans?

MAGGIE BOOZ: Uh-huh.

CONSTANTINE ALEXANDER: And one of the issues before was the size of the bathrooms. Where are you on that?

MAGGIE BOOZ: We reduced the size of both of the bathrooms so that they would be -- so that they would help us with the floor area ratio.

CONSTANTINE ALEXANDER: Okay.

MAGGIE BOOZ: And we eliminated the second bathroom on the third floor because we were overall trying to make that a smaller unit.

THOMAS SCOTT: And the basement

is included in the FAR?

MAGGIE BOOZ: It is included in the FAR.

THOMAS SCOTT: And what's in the basement? I'm sorry, I didn't see the basement plan.

MAGGIE BOOZ: We have a sprinkler room and mechanical. We have a laundry room for the first floor unit, and then we have the storage area that would be dedicated to different tenants. Yeah.

ANTHONY BORELLI: We have letters of support from our neighbors.

CONSTANTINE ALEXANDER: These are for the new plans? Because we have them for the old plans.

MAGGIE BOOZ: These are for the new plans.

ANTHONY BORELLI: We circulated

these as soon as they were completed last week, and we offered to meet with all of the neighbors. We either met with them or spoke with them one way or another, but we've got letters from our immediate neighbors and triple decker to the north of us.

MAGGIE BOOZ: Yeah.

ANTHONY BORELLI: The abutter to the rear of the building. And my uncle is across the street right in front. And they all support the project in general, but also specifically the design.

CONSTANTINE ALEXANDER: Could I have those letters to put them in the file? I'll read them into the public record.

MAGGIE BOOZ: This is from the triple decker.

CONSTANTINE ALEXANDER: So I
have one? Two?

ANTHONY BORELLI: This is from
the rear. And I forgot to mention this
one. This is from the owners of property
one house away.

CONSTANTINE ALEXANDER: Okay,
thank you.

ANTHONY BORELLI: On the same
side of the street.

MAGGIE BOOZ: The real hardship
here is in the soil conditions at the
north side of the building. The --

CONSTANTINE ALEXANDER: The
hardship really is the cost of dealing
with soil conditions. Just to be clear,
you've got to have a substantial hardship
owing to soil conditions. So you have
the soil conditions.

MAGGIE BOOZ: True.

CONSTANTINE ALEXANDER: We accept that. You provided plenty of support for that. But your hardship is to deal with those soil conditions it requires you a financial expenditure that you might as well build a new house which is your point to us.

MAGGIE BOOZ: It is my point, yeah.

CONSTANTINE ALEXANDER: Okay.

MAGGIE BOOZ: I have personally been through projects where we did demolition of buildings, not necessarily due to soil conditions or anything else, but because, you know, because that was the choice of the client. And I've been through, I've been through projects where we -- I've been through one particular

project where we stripped a building completely, put in a new foundation, and set the building down. And the cost is certainly comparable, no question about it. The idea of repairing the foundation is, in this situation, is not, it's not viable, because we need to use a helical pier system and we could not attach it to the foundation that exists there.

CONSTANTINE ALEXANDER: Is it not viable or not prohibitively expensive?

MAGGIE BOOZ: It wouldn't be physically possible. Well, no that's not true. It could be physically possible if you poured a beam below the foundation that exists. But I mean to do that, you would have to do it, you would have to do, you know, what they call,

underpinning. Which is basically a situation where you're taking about two to three feet of wall and you're pouring below that two to three feet of wall in two to three-foot sections all the way along sequentially.

CONSTANTINE ALEXANDER: So the point is it is physically possible but financially prohibitive?

MAGGIE BOOZ: Absolutely.

What you would be doing up above is taking everything out of the building, which you would need to do in a renovation of the building anyway. I mean, you would take all those things out of the building and put them back in. And so, you know, so the relative -- you know, I'd be hard pressed to say that it was even equal. I would venture to say that it

would -- certainly be equal or more to do the renovation under those circumstances. We also have a very narrow lot, and that was part of the argument the first time I was here. So what you have to do to support the building while you take the foundation out from underneath it and pour the new foundation or do the under pinning two feet at a time around, you know, around talking about the hundred and, you know, 30 feet or so of perimeter, would be to, to set up crib walls on either side of the site and literally lift the building on to beams. And we have very little room to maneuver on that site then. So then we would be trying to pour, underpin and pour -- you wouldn't even do it. I mean, it would be a silly thing to do. You

definitely take the foundation out if you were going to do a project like that. I mean, definitely take that out and re pour your foundation. And so -- and then we would, then we would renovate the building and we would have a building that would have a 1.31 FAR. And this has a 1.26 FAR. And we would have a building that didn't have some of the attributes of this building. That is a relationship to the street, a better relationship to the rear yard. I think these porches, I think, really is a great improvement over the existing building.

If you look at the rear, this photo right here, which is the photo of the west side of the building, shortened of the building facing the yard, you can see that. That's what faces the neighbors

right now. There's a, you know, a series of windows and it's very abrupt and it's tall and it's close, you know, close proximity to the neighbors. And so what we feel like this new building is doing is reducing that overall height and that imposition of wall on neighbors. So we felt like that was a big improvement.

So, yeah.

CONSTANTINE ALEXANDER: Okay.

Just for the record, you pointed out the FAR issue. And as you point out, reducing the FAR from the existing 1.31 to 1.26, but of course we're talking about a 0.5 district. So you're better than you are now or you will be better than you are now, you're still substantially non-conforming. And you also have setback issues. Although -- my notes say

except for your left yard setback, although you still have setback issues, you're better off now. You're farther away from the lot lines than the existing structure.

MAGGIE BOOZ: We are.

CONSTANTINE ALEXANDER: You've improved the structure.

MAGGIE BOOZ: Yes.

CONSTANTINE ALEXANDER: Except for the rear. You're getting closer to the rear lot line but because that's you repositioned the structure on the site.

MAGGIE BOOZ: Exactly.

I'd also point out that when we went to the Historic Commission with this proposal, you know, they did vote that the building was preferably preserved. They make two votes as you know. They make it

preferably preserved but then is it -- or I'm sorry, they vote whether it's a significant building and then preferably preserved.

CONSTANTINE ALEXANDER: Right.

MAGGIE BOOZ: They did find it significant as they often do, and -- but they did not find it preferably preserved, and I think that should hold some weight.

CONSTANTINE ALEXANDER: And we did read that into the record the last time around and that is part of the record. And you --

THOMAS SCOTT: What's the age of the building?

MAGGIE BOOZ: 1894? 1897 or 1894.

ANTHONY BORELLI: It's three,

four, something.

THOMAS SCOTT: Is the house on the right the same age or do you know?

MAGGIE BOOZ: We don't know. And the Historic Commission had a question about that. You know, they -- at first they thought it was some sort of twin.

ANTHONY BORELLI: They're not twins.

MAGGIE BOOZ: They're not at all twins, and they came to that conclusion as well. So I don't know what the age of the building is. And they have some settling on their left side. Their building is wider. It's generally a larger building.

CONSTANTINE ALEXANDER: I could open it to public testimony. You'll have

one more opportunity to conclude.

MAGGIE BOOZ: Okay.

CONSTANTINE ALEXANDER: Maybe you want to collect your thoughts while we see if anybody wants to speak on this.

Well, first, any questions from members of the Board at this juncture?

(No Response.)

CONSTANTINE ALEXANDER: No questions.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that there's no one wishing to be heard. There are three letters.

JANET GREEN: There is somebody.

SAM BORELLI: I live at 153 Cushing Street. Sam Borelli. Directly

across from that house. It's an eyesore. And apparently from the structure 35 feet tall, is from the top to the bottom, it's about 14 inches out of plumb. 14 inches. The southern bearing wall is off by nine inches, like this, and like this. So to take that down to rebuild is almost impossible, and I've been in construction for 30 years. It's almost impossible. And you can't raise a house and move it. There's no room to do that. So when people say they live in a settled house, this is extremely settled. You can't put a ball down without the thing rolling away.

CONSTANTINE ALEXANDER: Thank you.

Anyone else? I'm sorry, I didn't mean to disregard you.

As I indicated before we are in receipt of three letters submitted by the Petitioner which I will read into the record. One letter is from Vincent E. Marchio, M-a-r-c-h-i-o and Mario and Maria Marchio. (Reading) We, the owners and residents at 166 Cushing Street, Cambridge, Mass., are in full support for the proposed project to demolish and build the property at 156-158 Cushing Street, Cambridge, Mass. We are excited for this project. It will make a great improvement to our neighborhood. Therefore, we are in full support for this project.

There's a letter from Abby and Alex Steinberg, S-t-e-i-n-b-e-r-g, who live on 15 Vineyard Street. (Reading) We are writing in support of case number -- this

case. We are abutters to the property and are Cambridge natives who moved back to the city two years ago in search of a solid neighborhood with friendly, diverse neighbors. We have found both in our neighborhood. We both welcome and fully support the proposed changes to 158 Cushing Street. The Borellis are wonderful neighbors and have kept us informed of their plan for more than a year. They have continuously shared architectural drawings and sought our opinions. We are in full support of the plans. The letter is dated April 24th. So they're referring to the current plans. We are in full support of the plans. We think the new plans are fitting for the neighborhood, and would be an improvement over the current

structure. We would be at the hearing tonight if we did not have a conflict. We stood up and verbalized our support of the previous plans at the last hearing, and are even more enthusiastic about these new revised plans.

And last we have a letter from Cushing Estates Condominium Trust. It's signed by the secretary, Douglas Flandro, F-l-a-n-d-r-o. The letter is also dated April 24th. (Reading) Our three-family condominium building is next-door to 158 on Cushing Street in Cambridge, Mass. The Borellis have been good neighbors to us for many years. We understand that their existing building is in serious need of repairs. Although we do have some concerns about the construction, we generally feel that a new building based

on the latest designs will be an improvement to our neighborhood. We appreciate that Ms. Booz and the Borellis have been straight forward with us about their plans and have been responsive to our concerns.

And those are the three letters that we have.

Any final comments?

MAGGIE BOOZ: Maybe I should address what Doug Flandro said in that letter about their concerns about construction because it's something he said to me. And that was because of the narrowness of our site, he said, what's going to happen when foundation work goes on? You know, how do you, how do you retain the earth so that no -- nothing is affected? Because this whole area

between the two buildings is this organic soil that is really damaging both buildings. And I said that I don't know. I'm not sure, because I haven't really encountered that problem before. But what I'm imagining is that a wall would need to be built, you know, some sort of a timber retaining wall during the course of the construction. I'm not sure. It would be certainly we'll be talking to a builder about were we to pursue this project. And that's what he is referring to.

CONSTANTINE ALEXANDER: Well, often in cases we have before us the neighbors are concerned about the construction, the noise and potential for damage.

MAGGIE BOOZ: Yeah.

CONSTANTINE ALEXANDER:

Construction is construction. And to the extent that you do inadvertently create problems for him than you're going to have a legal fight on your hands.

MAGGIE BOOZ: Oh, yeah, definitely.

CONSTANTINE ALEXANDER: But that's not a Zoning issue for us. We're not going to tie something down because there might be a problem when you start to construct.

MAGGIE BOOZ: Yeah, yeah, right. I understand.

CONSTANTINE ALEXANDER: I just want to make the record clear.

ANTHONY BORELLI: I would like to make something clear about the Zoning that's there now and how this building as

rightfully you pointed out that it's not conforming to the existing Zoning. The Zoning that -- first of all, the building predates the existing Zoning by many, many, many decades. And the rezoning was contemplated in the 80's, I believe, was primarily to address in-fill development on large lots with small buildings on them. And the discussions around the rezoning what was good for the neighborhood, we were part of those discussions actually. Houses like ours were recognized as part of the -- a desirable part of neighborhood character. Certainly speaking, and also just in terms of what houses like three deckers provide diversity of housing options and the like, not to mention the iconic style. So I don't think that what

we're proposing in terms of the new construction undermines anything with the intent of the Zoning, because the intent of the Zoning was primarily about something else. And I also think that the -- in terms of the public benefits that this provides, I mean, you've heard about what some of our neighbors think about it, I've mentioned the diversity of housing options, I think that's important. It's always been amidst a tenure neighborhood. And this would help maintain that as well as maintain the level of housing in general. So I think those are desirable things from a public policy perspective.

And the other findings about the hardship, I think we talked about that enough so I just wanted to -- oh, and

lastly, the non-conforming status of this building I don't think is an undesirable non-conforming. It's not an undesirable condition. So that's it.

CONSTANTINE ALEXANDER: Thank you.

Okay, I'm going to close public testimony and we can now go into deliberations.

Anybody wishes to be heard on this? If we -- a lot of this has said a lot so far or go right to a vote or people want to express their views?

KEVIN CASEY McAVEY: Tom, if I may put you on the spot for a second, I would love to hear your thoughts on just the hardship and just your expertise perspective.

THOMAS SCOTT: You know.

KEVIN CASEY McAVEY: Do you have any?

THOMAS SCOTT: Yes, I mean I certainly understand the hardship, especially where it's owing to the condition of the soil. I mean, that's something that has been there obviously since Day 1. And so I think the hardship is real and I think, again, it would have been nice to understand, you know, how that played out in terms of what it was going to cost you to fix it versus what it's going to cost you to build a new house. But I think in terms of the project, the building, its context relative to the rest of the neighborhood. I think architecturally, you know, it's a good solution, and I'm certainly not opposed to it. I was just looking for

more, you know, confirmation that, you know, we were giving you the relief for a real reason that had everything to do with the hardship. So....

KEVIN CASEY McAVEY: Thank you.

CONSTANTINE ALEXANDER: And, again, if I can just interject, soil conditions are clearly an issue here. But what we have to do is get beyond, okay, the soil conditions, but does that create a substantial hardship? It could be just easily remedied the problems they have because of the soil conditions. What we heard tonight and some representations to us is that's not the case. You just can't do it. Or if you can, it would be so expensive and therefore you might as well build a new building. That's what it comes down to. That's what we're trying

to get at to add more information so we can substantiate the case with a substantial hardship. We got what we got.

JANET GREEN: I'd like to say, too, that I appreciate a lot of things in the new design. I think the way the third floor is set back reduces the massing of that building. I can imagine that your back side neighbors are pleased to see that. I think it creates more outdoor space from the inside with the porches and things. The, you know, it is hard to put the basement in the FAR and have it be a mechanical room and storage and yet you just, you kept that that way and managed to find other ways to reduce the FAR and even improve the setback status except for the one, the rear setback. So, the

Historical Commission was in favor or felt that this was an okay way to proceed then they said --

CONSTANTINE ALEXANDER: I think all that Historical said was it was okay to demolish the existing structure. They didn't make a judgment that you have to just demolish it.

JANET GREEN: Yes, I know. They said it was okay. So they weren't trying to work around that.

MAGGIE BOOZ: And they make their decision in light of the proposal.

CONSTANTINE ALEXANDER: Yes.

JANET GREEN: So in general I felt really positive about the things that had been addressed. I do think that I came away understanding last time, too, that there were going to be numbers

connected to it so it was clear for the people on the Board. And I'm sorry there weren't, but I didn't feel that the lack of it was a serious reservation that would stop me from evaluating the project on all three other merits.

CONSTANTINE ALEXANDER: Okay.

Anything else? Anybody else want to add anything or we ready for a vote? I guess we're ready for a vote.

As you know, we're going to tie, as we always do when grant a Variance for construction, tie it to the plans that have been submitted to us.

MAGGIE BOOZ: Right.

CONSTANTINE ALEXANDER: I've corrected the mislabelling of the elevations.

MAGGIE BOOZ: Okay.

CONSTANTINE ALEXANDER: There are two pages. These are the final plans. You know --

MAGGIE BOOZ: I certainly do.

CONSTANTINE ALEXANDER: If you're going to change, the worst thing in the world is you have to come back to see us again. Which I don't think you want to do.

The Chair makes the following motion that this Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the work necessary to make this building continue to be a habitable building required, if possible at all, by repairing the

foundation, would be prohibitively expensive.

That the hardship is owing to soil conditions that affect the lands and especially affecting such land but not affecting generally the Zoning District in which it is located. My assumption is, and I'm not going to go farther than this, is that the soil condition is not rampant throughout the whole area, just in your general area.

MAGGIE BOOZ: Okay.

CONSTANTINE ALEXANDER: And the desirable relief may be granted without ease of substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of this Ordinance.

The structure that will be built

will be more conforming in terms of our Zoning Ordinance than what exists now, although not in conformance.

And that there appears to be no opposition, neighborhood opposition to the project.

And that we are clearly going to upgrade the quality of the housing stock of the City of Cambridge by replacing 125 year old building with a new building with new -- well, with a new building.

So on the basis of these findings, the Chair moves that a Variance be granted to the Petitioner to proceed with the work requested on the condition that the work proceed in accordance with the plans and elevations submitted by the Petitioner. There are two pages, prepared by Smart Architecture. Both pages of which have

become initialed by the
Chair.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in
favor?

(Alexander, Green, Myers,
McAvey.)

CONSTANTINE ALEXANDER:
Opposed.

Motion still carries. Good luck.

MAGGIE BOOZ: Thank you, very,
very much.

* * * * *

(9:15 p.m.)

(Sitting Members: Timothy Hughes,
Brendan Sullivan, Thomas Scott, Slater
Anderson, Janet Green.)

TIMOTHY HUGHES: The Board will
hear case No. 10427, 1 Oxford Street.

Is there anyone here?

GARY HAMMER: Yes.

TIMOTHY HUGHES: How you doing?

GARY HAMMER: I'm Gary Hammer with Harvard Planning and Project Management and Louisa Denison.

LOUISA DENISON: Louisa Denison, D-e-n-i-s-o-n.

TIMOTHY HUGHES: Want to lay out it for us?

GARY HAMMER: Absolutely. So we are here with a request to amend our existing Variance. The Board granted a Variance back in 2006 to allow the establishment of an open air farmer's market adjacent to Memorial Hall. The market operated successfully there for the next five years. And then last year at about this time we came and requested a Variance to allow a temporary relocation of the market up to 26 Oxford Street in front of the Harvard Museum of

Natural History while the Cambridge Street tunnel and the overpass area on top were under construction. That construction is now essentially complete, and the proposal has always been, once the construction was complete, for the market to relocate back to the overpass plaza area which is directly adjacent to the site that the market operate and for the first five years. And there's no proposal for change in the market hours. Everything's going to remain the same; the same type market, the same vendors. And it's really -- it's been very successful. And so our request is essentially is just to, I think, I believe this was included in your packet, but this kind of shows you the original location, the temporary 2012 location and

the proposed location.

And so we're still within the Residence C Zoning District directly adjacent to the site surrounded on all sides by the Harvard property.

TIMOTHY HUGHES: Can you, just for the record, tell us what the hours of operation are and the weeks in the calendar year that it goes on?

LOUISA DENISON: So it starts June 11th, runs until October 29th.

TIMOTHY HUGHES: If you're going to do this generally, you're going to have to put that in the context of first Saturday or second Saturday.

LOUISA DENISON: Sure, sure. Second Tuesday of June.

TIMOTHY HUGHES: Oh, whatever it is, right.

LOUISA DENISON: Goes to the last Tuesday of October. So it's a total of 21 market days, and it runs from 12:00 to 6:00.

TIMOTHY HUGHES: 12:00 to 6:00 is the entire time of retail sales or the entire time of set up and tear down?

LOUISA DENISON: Set up begins at about 10:00. The bigger vendors come in then. Smaller vendors right around noon, you know, 11:30. And tear down is much shorter. So tear down is over by about 6:30.

TIMOTHY HUGHES: All right, so between --

LOUISA DENISON: So total.

TIMOTHY HUGHES: 10:00 and 6:30 is the time that the space is occupied?

LOUISA DENISON: Yeah.

TIMOTHY HUGHES: Any questions?

BRENDAN SULLIVAN: Just a point of information. Does Harvard police have control of the site? I'm just trying to think of crowd control, people coming and going and traffic and stuff like that.

GARY HAMMER: Right.

BRENDAN SULLIVAN: Is it Harvard police?

GARY HAMMER: Harvard police monitors the market, right.

BRENDAN SULLIVAN: Yes, okay.

TIMOTHY HUGHES: Any other questions from the Board?

(No Response.)

TIMOTHY HUGHES: I'm going to open this up to public testimony.

Is there anybody who wants to be

heard on this case?

(No Response.)

TIMOTHY HUGHES: Seeing no one,
I'll close public testimony.

I'll read into the record the
Planning Board's letter. (Reading) The
Planning Board supports amending the
existing Use Variance for the farmer's
market to be relocated to the newly
constructed pedestrian overpass. This
use is lively and public activity with a
long history of success providing an
active marketplace.

And that appears to be the sum total
of correspondence on this particular
case.

Any other further comments or
questions? We'll put this to a vote.

Okay, I thought I could just rewrite

the last one, last time we granted the Variance but that was shifted because of the construction. So now I have to edit while I go.

The Board finds that a literal enforcement of the provisions of the Ordinance -- well, the Chair moves that the Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship not only to the Petitioner, Harvard University -- is this still attached to the, you know, Harvard's Food Literacy Project? But also to the Harvard's Food Literacy Project, a project between Harvard University Dining Services. Tell me if I get something wrong here. Harvard School of Public Health, University Health

Services, and Harvard College. And also the general public would also be at a hardship if the literal enforcement were enforced.

The Chair moves that the hardship and the reason that the existing site which was used as a temporary site while the bridge over Cambridge Street was under construction, and now that that construction is finished, that the new site adjacent to the old original site has become the most suitable and easiest site for operation.

The Chair finds that the desirable relief may be granted without substantial detriment to the public good. And in fact, it will enhance the public good as all the farmer's markets in the city have, as it contributes to the health and

welfare of the residents of the city.

And relief may be granted without nullifying or substantially derogating from the intent of the Ordinance.

All those in favor?

(Show of hands.)

TIMOTHY HUGHES: Five in favor.

Thank you.

(Hughes, Sullivan, Scott, Green,
Anderson.)

* * * * *

(9:20 p.m.)

(Sitting Members: Constantine
Alexander, Timothy Hughes, Brendan
Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The
Chair is going to call -- don't get too
excited -- case No. 10424, 1-11 Marney
Street. The reason for the Chair calling
this case now is we are in receipt of a
letter, I don't know if there's anyone
here for that case, but I don't want to
keep people around because we're not
going to hear the case.

We have a letter from the Hope Legal
Offices dated April 24th. (Reading)
Please accept this request on behalf of
the Petitioner to continue BZA case No.

10424. The application as submitted does not contain the necessary elevations to allow the Board to fully evaluate the Petition. Granting the request a continuance would allow the Petitioner to supply a full set of drawings. It illustrates existing and proposed changes. We apologize for the delay and look forward to presenting the Special Permit application at the next Board Meeting of the Board on May 9th or a date that is convenient for the Board. Thank you for your attention to this matter.

I assume, Maria, that May 9th is available?

MARIA PACHECO: Yes.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued as a case not heard until seven p.m. on

May 9th on the condition that the Petitioner sign a waiver of time for a decision. Maria, we don't have a waiver?

MARIA PACHECO: Not yet.

CONSTANTINE ALEXANDER: Sign such a waiver.

That the Petitioner continue to comply with the posting requirements of our Zoning Ordinance. And that the sign that is existing there now, which is there, be modified to reflect the new date and the new time of seven p.m. If they don't change the time, as we learned from Cushing Street for two times in a row, we will not be able to hear the case until 8:15 that night. So I urge Mr. Hope to change the sign to reflect seven p.m.

And on the further condition that the plans and elevations identified in

Mr. Hope's letter be in our files no later than five p.m. than the Monday before May 9th.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

* * * * *

(9:25 p.m.)

(Sitting Members: Constantine
Alexander, Timothy Hughes, Brendan
Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The
Chair will call case No. 10422, 47-49
Brattle Street.

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

ATTORNEY JAMES RAFFERTY: Good
evening, Mr. Chairman, Members of the
Board. For the record, my name is James
Rafferty. I'm an attorney with offices
at 130 Bishop Allen Drive in Cambridge

appearing this evening on behalf of the Applicant, Just Crust, LLC. Seated to my right is Ms. Shannon Liss-Riordan, R-i-o-r-d-a-n and Kevin Liss-Riordan, Ms. Riordan's husband.

CONSTANTINE ALEXANDER: I trust the name doesn't reflect the fact that it's just going to be bread on the pizza. No cheese.

SHANNON

LISS-RIORDAN: Technically it's The Just Crust as opposed to --

ATTORNEY JAMES RAFFERTY: Yes. I do think that it's fair to say --

TIMOTHY HUGHES: Which is better than Justice Crustice. You know what I mean?

ATTORNEY JAMES RAFFERTY: There is a double meaning to the name, the

history --

CONSTANTINE ALEXANDER: Yes, we know the history.

ATTORNEY JAMES RAFFERTY: Well, we were at the License Commission on Tuesday night and the Chairman missed it when I said that the name carries implications with it. And he said oh, I just got that. I'm happy to report that the Chair of the Zoning Board is a little quicker than the Chair of the License Commission, but there's no need to write that.

CONSTANTINE ALEXANDER: Yes, there is for the record.

ATTORNEY JAMES RAFFERTY: This could be the last positive thing I say about the Chair given this is a fast food application in Harvard Square. But

nonetheless, this location, I'm sure, is known to the Board. It's actually been before the Board on two separate occasions; first in 2008 when Upper Crust received a fast food Special Permit to operate at this location in the Business A Zone on Brattle Street. And Upper Crust had a successful operation there, but that Special Permit had a time constraint on it and it necessitated a second Special Permit where the Applicant returned to the Board in September of 2011, and the time limitation associated with the original Special Permit was increased. So on two occasions now the Board has seen fit to find the criteria set forth at 11.30 had been met, and we're hoping that in this case we'll be able to persuade the Board that the conditions

that were present both in 2008 and 2011 remain tonight in 2013.

What's different about this location and this operation, you may be familiar with it, the prior operator ran into some financial difficulties and ultimately filed a bankruptcy. But there were a series of issues related to its operation, particularly its employment practices, that led to some allegations both on the civil side and the criminal side. Ms. Liss-Riordan actually is an attorney who is representing workers associated with the former employer, and as she became familiar with the situation, she and her husband decided that they would bid in the bankruptcy court for this location. So not withstanding the fact that she's an

attorney by training and trade, she decided to take this on. And one of the unique aspects of this operation is that the workers, many of whom were former establishments, will be working here. But the ownership structure is going to allow the workers to participate in equitas, some form of equity in the business. So it's that approach that has motivated the Applicant, frankly, to get into a business where they are particularly -- we have a long history in. But I think the relevance for the Board is the fact that the use proved to be quite compatible with surrounding uses in that location. I can report to you that the License Commission, which is really the repository of complaints associated with food service establishments, there was

never a complaint here. So as we noted Tuesday night at the License Commission, this operation intends to very much mirror the prior operation in all respects except its employment practices. And the distinction is a significant one, but on the issues that are set forth in the criteria and the impact issues associated with the operation, frankly, the prior operation was a success at that level. It proved to be quite popular. It met a need in the neighborhood. It relied fairly on walk-in trade. It had a delivery operation, worked largely out of bicycles, which this operator would intend to keep. So if the prior operation sees business around October, the store is basically been closed at that

time but the ovens, the layout, the infrastructure is all there and ready to go. On Tuesday night the License Commission did vote to approve a common victualer and a beer and wine license. We're here tonight to allow for the fast food component of that. As you know, the cafe or restaurant can operate there as of right, but given the nature of this product and the business, it can clearly would anticipate having takeout sales beyond the 20 percent threshold. So for that reason, like their predecessor, we're here tonight requesting the Special Permit. The file contains a significant number of letters.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: Some might suggest they aren't particularly

directly associated with the issues associated with 11.30, but there is one letter of note from a Farwell Street resident who was in active opposition. I recall the case in 2008, the Special Permit was granted over the objections of some abutters, including that person. I don't -- my understanding is there are no objections in the file, and I'm not aware tonight that there are any objections because I do think the use proved to be satisfactory. It had not been a food use prior to the pizza, Upper Crust Pizza going in there. I think it was more of a dried good use. I know there was concern expressed about how compatible it might be on that stretch. But the good news is that the -- this is a case where the Board, I think, can look to the

history of the location and the prior operator and be able to take some confidence that they can continue, that this use can continue as the prior use did. So we're requesting the Special Permit on that basis.

CONSTANTINE ALEXANDER: When this Board granted the Special Permit before and renewed it the second time, both as you've identified, there were a number of conditions proposed.

ATTORNEY JAMES RAFFERTY: That's right.

CONSTANTINE ALEXANDER: One of which was a time frame of 20 months which got eliminated the second time around. But the other conditions, maybe it's eight in number, continued. Are there any reason not to continue them in this

case?

ATTORNEY JAMES RAFFERTY: Thank you, yes. I would suggest there are two conditions that are slightly problematic. The first is a condition that our understanding is -- probably wasn't adhered to, and it's a little difficult to enforce, that there be no more than three deliveries per week. That's condition No. 1 in the original.

CONSTANTINE ALEXANDER: Yes. Makes no sense.

ATTORNEY JAMES RAFFERTY: Yes. We have it on good authority from some former employees that that probably wasn't being adhered to. It's one of those conditions, too, that I don't think you could reasonably expect Inspectional Services to monitor it. And most

significantly this is going to be a very locally sourced operation, and Ms. Liss-Riordan tells me that they would anticipate that they probably would have -- every day they might get a delivery because they're using produce and product from local vendors. That would prove to be problematic.

Secondly, No. 7 limits the hours of operation. And I know in many cases the Board has shown some deference to the License Commission on hours of operation. And we would ask that similar deference be applied here. The issues around -- associated with hours opening and closing and all of that, they're -- I think as we noted in 2008, there was a high level of concern by residents that this was going to conflict primarily with the

residential use. I know Ms. Gifford was here and actively opposed it, but I think having now seen the operation, we would ask the Board to consider deferring the hour of restriction to the License Commission. The CV license limits the capacity in the restaurant, it also regulates the hours. And one can apply for modifications to those hours through the License Commission through a public hearing process, and we would respectfully suggest that that might be a better forum to analyze those issues.

CONSTANTINE ALEXANDER: Just for the benefit of the Board Members, the other conditions that were imposed back in 2008 and which you have not, I guess you can live with.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Are that biodegradable materials be used.

That patrons will be encouraged to properly dispose of all packaging materials; utensils and other items provided.

That trash receptacles will be provided at the door.

That all trash will be removed on a daily basis, first thing in the morning. And that's one you'll comply with?

That there will be no odors emitting from the premises that would be objectionable.

And that the Special Permit be limited to, in that case, that operator at the time, The Upper Crust.

And so I would propose, unless the Board Members feel otherwise, that we

would, in the motion to grant the relief being sought, that we would continue to impose these conditions. Anybody feel otherwise?

(No Response.)

CONSTANTINE ALEXANDER: Okay. Anything further?

ATTORNEY JAMES RAFFERTY: No, thank you.

CONSTANTINE ALEXANDER: I'll open this up to public testimony. Is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard.

The Chair would further note as the Petitioner has pointed out, that there are numerous letters of support. I don't

want to go through every one of them. I don't think we've got a negative letter. At least we didn't as of a couple days ago.

ATTORNEY JAMES RAFFERTY: As of 4:30 there wasn't.

CONSTANTINE ALEXANDER: Okay, thank you. That saves me the bother of going through this. I guess I would observe just a little bit of poetic justice. We just granted relief to Harvard on another case, and now most of the Harvard community supports this one. So it's a Harvard night at the Board of Zoning Appeals.

ATTORNEY JAMES RAFFERTY: Mr. Chair, as required by the Ordinance there's also commentary from the Harvard Square Advisory Committee.

CONSTANTINE ALEXANDER: Well, I

think we disregarded that because that committee has basically disbanded.

TIMOTHY HUGHES: I think -- isn't there something in the file there?

ATTORNEY JAMES RAFFERTY: Well, there is a communication because I have now, in the practice --

CONSTANTINE ALEXANDER: It's in the file, but I thought we couldn't get anybody together to give us an opinion so we just sort of threw up our hands. I'm glad you did.

ATTORNEY JAMES RAFFERTY: Well, only because I have been here and I made the case. I can't find any members. But there is a memo from Ms. Paden, and she did poll, by telephone I guess, and I guess that's the way it's functioning, so I think theoretically --

CONSTANTINE ALEXANDER: You're right. You're absolutely right.

ATTORNEY JAMES RAFFERTY: -- the committee exists in some form.

BRENDAN SULLIVAN: She calls John Divoni (phonetic) and John takes it upon himself to poll whoever he can reach and then gets back to Liza.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: I will read into the record that letter that you identified. It is on the letterhead from the Harvard Square Advisory Committee from Liza Paden, P-a-d-e-n on behalf of the Harvard Square Advisory Committee. Very simply it says: (Reading) I have polled the advisory committee members who support the application if the new operator is bound to similar terms and

conditions as the existing
establishment.

And that's what I've heard is
that -- not exactly the same terms because
you want a few of the conditions waived,
but otherwise generally the terms.

ATTORNEY JAMES RAFFERTY: We
meet the similar test.

CONSTANTINE ALEXANDER:
Similar, correct. That's the point I was
trying to make. You made it better than
I did.

Questions? Comments? Ready for a
vote?

TIMOTHY HUGHES: Ready for a
vote.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this Board make
the following findings with regard to the

application to --

JANET GREEN: You didn't bring us any food?

CONSTANTINE ALEXANDER: You didn't bring any food.

ATTORNEY JAMES RAFFERTY: They're going to have a breakfast pizza they tell me now.

CONSTANTINE ALEXANDER: Really?

ATTORNEY JAMES RAFFERTY: And cup of coffee and ham of eggs on a --

CONSTANTINE ALEXANDER: What are your hours of operations going to be then in the morning?

ATTORNEY JAMES RAFFERTY: Probably seven or eight in the morning.

CONSTANTINE ALEXANDER: Really? So you're going to be open a good amount of time. Pizza with white farm eggs.

SHANNON LISS-RIORDAN: Whole farm eggs.

CONSTANTINE ALEXANDER: Whole farm eggs.

ATTORNEY JAMES RAFFERTY: Armando's is groaning.

CONSTANTINE ALEXANDER: Plus if we approved the original application, there were no Otto's in Harvard Square. There is now. It's popular but a better location than perhaps you can. You can still --

ATTORNEY JAMES RAFFERTY: I'm not familiar with that operation.

CONSTANTINE ALEXANDER: Yeah, right.

The record should show the Chair expressed skepticism at that last comment.

ATTORNEY JAMES RAFFERTY:

Perhaps we could -- I represented them in their Special Permit case.

CONSTANTINE ALEXANDER: Did you?

ATTORNEY JAMES RAFFERTY: Yes.

I brought four gift certificates, I remember distinctly. I didn't bring five.

TIMOTHY HUGHES: I think Tad took all four of them.

CONSTANTINE ALEXANDER: All right. The Chair moves that the Board makes the following findings with regard to the application to operate this fast food establishment at the site identified in the petition.

That the traffic generated by your operation your operation, or patterns of access will not cause congestion, hazard,

or substantial change in established neighborhood character.

That the continued operation of or development of adjacent uses as permitted in the Zoning Ordinance will not be adversely affected by what you're proposing to do.

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

The proposed use will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

As we're required under our Ordinance we have to make further findings with regard to a fast food

establishment, but I would propose that we've made these findings before, and since you propose to operate the facility as is consistent with passed practice, we can just incorporate those findings as part and parcel of those decisions.

There's no -- so on the basis of this incorporation by reference on the basis of for the findings I've just outlined, the Chair moves that a Special Permit be granted to the Petitioner to operate The Just Crust subject to the following conditions:

That biodegradable materials will be used.

That patrons will be encouraged to properly dispose of all packaging materials, utensils, and other items provided.

That trash receptacles will be provided at the door.

That all trash will be removed on a daily basis, first thing in the morning.

That there will be no odors emitting from the premises that would be objectionable.

And that the Special Permit is limited to you as operator. So if you were to transfer this operation, the new folks would also have to come in and see us. Because you have to do because of the old folks.

Okay, on the basis of this motion, all those in favor of granting this --

TIMOTHY HUGHES: Do you want to include the hours of operation will be deferred to the License Commission?

CONSTANTINE ALEXANDER: I think

we don't say anything at all and by definition, in my judgment, it's deferred to the License Commission.

TIMOTHY HUGHES: Okay, fine.

CONSTANTINE ALEXANDER: In fact the hours here won't be satisfactory to them because they want to view breakfast pizza.

ATTORNEY JAMES RAFFERTY: Right.

BRENDAN SULLIVAN: I think we can be silent on that.

CONSTANTINE ALEXANDER: I think we should be silent on that. I agree. I think hours of operation generally, except in residential districts, probably defer to the License Commission.

TIMOTHY HUGHES: Okay.

CONSTANTINE ALEXANDER: That's my view anyway.

All those in favor of granting the Special Permit on the basis so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Hughes, Sullivan, Scott, Green.)

CONSTANTINE ALEXANDER: I abstain.

(9:40 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10423, 400 Main Street.

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

yours.

ATTORNEY BRIAN GROSSMAN: Thank you, Mr. Chairman. Brian Grossman, Prince, Lobel on behalf of the Applicant, Sprint Spectrum, LLP. Attorney Sousa sends his regrets.

CONSTANTINE ALEXANDER: I'm sure he does.

ATTORNEY BRIAN GROSSMAN: Sprint is proposing, as it has on a number of occasions, to modify its existing wireless communication installation at the building at 400 Main Street. This is probably one of the more simple in terms of general impact applications that Sprint has had. The facility has three sectors. It's most due two of them have faux flues. And three antennas in total will be replaced across the three

sectors. Two of those antennas are located within the faux flues. There will be no need to expand or change out the existing faux flues. So the antenna within those faux flues is changing, but the size of the faux and actually those existing --

CONSTANTINE ALEXANDER: Is that why you didn't submitted the photo sims before and after, because the before and after are the same?

ATTORNEY BRIAN GROSSMAN: There are photographic simulations, and in one of them they say it's site not visible, and there is an arrow that says proposed antenna to be housed within existing stuffed cannister. So that view shed won't change. What's existing there today will be existing there after

construction because the faux flue will stay the same. It won't be an increase, as a matter of fact, it will change it out. So for those two sectors that have the faux, there will be no change visually whatsoever to the existing installation.

There is one antenna that is currently facade mounted. And Sprint proposes to change that out, as you know, the antenna's a little longer. It won't stick up above the existing penthouse. Each sector will have two remote radio heads added to it for the two faux flue sectors. Those will be mounted to the existing frame. And for the facade-mounted one, it will be located around the corner of the penthouse, low near the roof so that they won't be visible from the street.

CONSTANTINE ALEXANDER: As you know, this is in a residentially-zoned district, don't ask me why, but it is. We have to find certain findings. We made them once before.

This is the -- originally to put the original antennas up there you had to get relief from us and we granted the relief. So I think those findings have already been made. Why don't you briefly touch on the fact that we have to make a finding that non-residential uses predominate in the vicinity of the proposed facilities location, and we have to also make a finding that the telecommunication facility is not inconsistent with the character that does prevail in the surrounding neighborhood.

ATTORNEY BRIAN GROSSMAN: Before

I do that I just want to make sure I do address there's an existing equipment shelter on the roof. There will be a cabinet change out within that shelter and replaced within the shelter. So there won't be any change there. And there will be some additional cabling run and the existing cabling.

As you know, to allow the installation of the original facility, the Board needed to make those findings in terms with the overall character of the area. There hasn't been significant change --

CONSTANTINE ALEXANDER: That's the point.

ATTORNEY BRIAN GROSSMAN: -- in the surrounding uses of the area. The use is still -- I'll call it institutional

for MIT. I don't believe this is, I don't even think this is a MIT dorm. I think it's institutional use.

CONSTANTINE ALEXANDER: I don't know what it is, but there's certainly plenty of office buildings around. There aren't exactly a bunch of single-family houses.

ATTORNEY BRIAN GROSSMAN: Right. And you can actually see that. You can see that in the photographic simulations. You can see the other buildings, and you can say the partner of the MIT campus and the office buildings, and you can actually see that generally in the overview as well. The Kendall Hotel is adjacent. The Black Sheep Restaurant is right there. There are a number of number of restaurant uses in the area as

well. Rebecca's Cafe, the MBTA stop is right there. The Residence Inn is just up the block there. The Marriott Hotel is just across the street up a block and off Broadway. So there are a fair number of non-residential uses that predominate throughout the area.

TIMOTHY HUGHES: It's hard to find one that is residential. The apartment building on Amherst Street, is that the only residential unit in the area?

CONSTANTINE ALEXANDER: I think one of MIT is residential. We had the same issue on a different point of the campus, remember? Vassar Street.

TIMOTHY HUGHES: Yes, on Vassar Street also residential. On the other side of the tracks I guess.

CONSTANTINE ALEXANDER:

Questions? Any questions from members of the Board at this point?

I'll open it to public testimony.
Anyone wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The
Chair notes no one wishes to be heard.
The Chair will note we are in receipt of
a memo from the Planning Board.

(Reading) The Planning Board
reviewed the Special Permit application
for the replacement of existing antennas
using faux chimneys and facade-mounted
brackets. The Applicant has presented
an orderly and well-planned proposal for
this installation, and the Planning Board
supports the request no additional
recommendation or comment. And that's

what we have.

Anything further you wanted to add at this point?

ATTORNEY BRIAN GROSSMAN: No.

CONSTANTINE ALEXANDER: I'll close public testimony. Anybody any comments, questions at this point. Ready for a vote?

TIMOTHY HUGHES: Okay.

CONSTANTINE ALEXANDER: The Chair moves that this Board make the following findings:

That the Petitioner has submitted evidence to demonstrate compliance with Footnote 49 of the section of the use requirement for this area.

That the Petitioner is a licensed federal carrier, telecommunications carrier in good standing.

That the extent to which they have minimized the visual impact of what they're proposing to do. And that although it's going to be located in a residential district, we find that non-residential uses predominate in the vicinity of the proposed facility's location, and that the telecommunications facility is not inconsistent with the character that does prevail in the surrounding neighborhood.

In this regard the Chair would note that in 2009 we granted relief to the Petitioner for the original installation, and that we made findings at Footnote 49 has been complied with, and there have been no material changes to the area that would make those findings no longer applicable. And therefore we

incorporate those as part of our decision today.

And further, the other findings we have to make with regard to granting the Special Permits, to save time I will point out, we made those findings in 2009. Again, because what is being proposed the neighborhood is not changed. What is being proposed is a substantially what was there before, just an upgrade on the facility.

We will note further that the Planning Board is in support. That there's no letters or commentary in opposition.

And then lastly that allowing this upgrade will improve telecommunication within the City of Cambridge which is a desirable goal.

On the basis of these findings the Chair moves that a Special Permit be granted to the Petitioner to proceed in accordance on the condition to proceed in accordance with what is being requested on the condition that the work proceed in accordance with the plans submitted by the Petitioner. They're multiple pages. Cover page is T-1 and initialed by the Chair.

And on the further condition that the work be in compliance or as represented in photo simulations submitted by the Petitioner, the first page of which has been also initialed by the Chair.

All those in favor of granting the Special Permit, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

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

ATTORNEY BRIAN GROSSMAN: Thank you.

* * * * *

(9:50 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: The

Chair will call case No. 10425, 124-126 Magazine Street.

Is there anyone here wishing to be heard on this matter? You know you have to give your name and address for the record.

RITA TARLOW: I'm Rita Tarlow, 126 Magazine Street.

SUSAN TARLOW: Susan Tarlow, 124 Magazine Street.

CONSTANTINE ALEXANDER: And you want to do what?

RITA TARLOW: We want to extend our front halls over a portion of our front deck.

CONSTANTINE ALEXANDER: And your problem is you've got a setback issue.

RITA TARLOW: I think we have a --

CONSTANTINE ALEXANDER: You're

non-conforming structure because you --

RITA TARLOW: Yes, that's correct.

CONSTANTINE ALEXANDER: I'm sorry, I didn't express it well. You're a non-conforming structure because you're too close to the rear lot line. And in fact, what you want to do is the front yard which is miles from the street.

RITA TARLOW: Yes.

CONSTANTINE ALEXANDER: And certainly well within the front yard setback requirements. Okay. And you're adding basically 32 feet to the structure by my calculations?

RITA TARLOW: If that's what I said there, I think, yeah.

CONSTANTINE ALEXANDER: From your table, dimensional form.

Seems like a pretty straight forward case. Nothing you want to add at this point?

The Chair will now -- questions at this point? No.

The Chair will open this matter to public testimony. Mr. Rafferty, do you want to be heard?

ATTORNEY JAMES RAFFERTY: No, thank you.

CONSTANTINE ALEXANDER: The Chair will close public testimony. I don't believe we have any letters one way or another in our files.

Commentary or are we ready for a vote?

Ready for a vote I hope.

The Chair moves that this Board make the following findings: This is my, as

I said, my Druid where I'm doing magical incantations following what you want to do.

That traffic generated or patterns of access -- if we grant the relief, that will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of or development of adjacent uses will not be adversely affected by what you're proposing to do.

That no nuisance or hazard will be created to the detriment of the health, safety, and welfare of the occupant or the citizens of the city. And that what you want to do will not impair the integrity of the district or adjoining districts, or otherwise derogate from the intent and

purpose of this Ordinance.

The Chair would not that in regard to these, that the relief being sought is rather modest in nature. It's a slight alteration to the front of the building. That the building is non-conforming, as I mentioned earlier, only because of rear yard setbacks, and so it's not going to exacerbate the non-conformance of the structure.

And clearly you will still be after the relief you are seeking, you'll still be in, well comply with the front yard setbacks.

So on the basis of these findings, a Special Permit will be granted the Petitioner on the condition that the work proceed in accordance with the plans submitted by the Petitioner which have

been initialed by the Chair. Which
delineate the current situation and the
proposed situation. Four pages that
have been initialed.

All those in favor of granting the
Special Permit say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: All in
favor. Good luck.

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

* * * * *

(9:55 p.m.)

(Sitting Members: Constantine
Alexander, Timothy Hughes, Brendan
Sullivan, Thomas Scott, Janet Green.)

CONSTANTINE ALEXANDER: And last
but not least, the most difficult case of
the evening, case No. 10426, One
Broadway.

ATTORNEY JAMES RAFFERTY: James
Rafferty, for the record, on behalf of the
Applicant Riverside Management, LLC.
Seated to my right, David Carvalho,
C-a-r-v-a-l-h-o. Mr. Carvalho and his
family own and operate several Dunkin'

Donuts establishments in the City of Cambridge. And this is a location on the ground floor at One Broadway in Kendall Square. And Mr. Carvalho was contacted by his landlord, MIT, and asked if he would be willing to relocate, to move down two storefronts to a location that was previously occupied by Dominos. And when he first contacted me about what would be involved with that? I said oh, you'll be fine, because the fast food Special Permit you can move within 300 feet provided that the establishment isn't bigger. And he's going from 1900 square feet to just under 1200 square feet. So I said, in fact, you don't need to get any Zoning approval. What I failed to remember when I gave him that initial advice was that this location is

an office district, and for reasons that continue to elude me, retail uses are not allowed in the office district. So notwithstanding the fact that we seem to have this big public policy discussion about creating active uses at the ground floor and buildings like this are designed to create opportunities, and there are a range of retail uses; restaurants, pizza, Dunkin' Donuts a few years ago, all of them are there by virtue of Variance. So we're asking that the Board find -- may find this consistent with the findings that were made in case 8456 in 2002 when there was a Variance granted to allow for a fast food use here.

CONSTANTINE ALEXANDER: This is a Use Variance case.

ATTORNEY JAMES RAFFERTY: It's a

Use Variance, that's right. As it was in that case. And it's going into a location that also contains a Use Variance, and that's a Variance that was granted in 2004 by the Board for a Dominos Pizza. So Dominos Pizza is out. Had a little interesting discussion with the Department about when uses -- when Variances run with the land and it's the same address, do we really need to go down and do this again? And we're here and we're always happy to be here. Although sometimes I come here and I'm told I don't need to be here, and I'm happy to hear that, too. But if that were to be the case tonight, we'd be happy. I note that the applicant here was One Broadway Doughnuts, LLC. And I think I named the parent company just to be clear.

So it's -- if people are familiar with the ground floor, there's restaurant there called Firebrand Saints. There is a Zigo, which is kind of prepared food takeout. There's been Dominos. There was a restaurant in this location before the Dunkin' Donuts. So there has been a pattern of findings that suggest that activating the ground floor of this building with retail uses, it's a very active building. The home of the highly successful Cambridge Innovation Center is at One Broadway. It's really a ground zero of all the technology companies and all the excitement and innovation that's taking place in Kendall Square. And Mr. Carvalho and his family have been serving that population now since 2002. They'd like the opportunity to continue

to do that. It will be, as I said, a slightly smaller footprint, and I would suggest that the impacts, the compatibility issues with other allowable uses, like an earlier case you had tonight, is that there's a track record here that the Board could acknowledge and make a finding that this would not derogate from the intent of the Ordinance.

CONSTANTINE ALEXANDER: I have a question for you. In your public advertisement I assume and in your application, you cite Section 6.35.1 which is the one that's a Special Permit to allow us to reduce parking. Just out of curiosity, why was that cited? There's no required parking for fast food.

ATTORNEY JAMES RAFFERTY: Right. I think we -- it had come up earlier as to whether or not in -- that the -- the short answer is that it probably isn't necessary.

CONSTANTINE ALEXANDER: You're right. That is a short answer.

ATTORNEY JAMES RAFFERTY: Yes, but it's been suggested that that's, that's an oversight. That the restaurant, the table requirements of restaurants should apply, and years ago we had cases that took that position that this is --

CONSTANTINE ALEXANDER: Article 6 is quite clear, fast food establishments there's no parking requirement. Although the footnote, it grants the Board the discretion to impose

requirements.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: But that's (inaudible). It's not a Variance procedure. We don't want to exercise the discretion and we never have.

ATTORNEY JAMES RAFFERTY: No, I agree. And it was, it was kind of a belt and suspenders. It's a Special Permit. There is parking in the building. So some patrons do rely upon the parking, but you're right. In fact, it's probably unneeded. I think frankly, it was contained in the prior Variance and we --

CONSTANTINE ALEXANDER: Well, the prior Variance there was the big -- the Traffic Department weighed in. They were concerned about double parking and people causing traffic problems.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: Now the Traffic Department has turned a new leaf as you well now from the Monsignor O'Brien Highway.

ATTORNEY JAMES RAFFERTY: Right. But in fairness to the traffic problem, the geometry of the road has changed. It used to have a very extended sidewalk and it was quite narrow. They've added a travel lane on the right now, and there is now on-street parking, metered parking in this location. That wasn't the case. This application had a very -- there was this really extended sidewalk, and that's what they were referring to. And it was part of the change. And so now there's actually metered parking in front of the building. That was not the case in 2002.

And they were concerned that if a car were to stop and go in, it would be stopping in the travel lane and that was the objection of the Traffic Department.

CONSTANTINE ALEXANDER: Got it. Okay.

I'll open it up to public testimony. Is there anyone here wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard. There are no letters in the file. I think the Planning Board commented. I think there's nothing. So I'll close public testimony.

Any concluding remarks?

ATTORNEY JAMES RAFFERTY: No, other than I would note that this is not Harvard Square.

CONSTANTINE ALEXANDER: You're

right. I would -- I was going to point that out but you did it first.

I would point out, by the way, in the last -- on the original Special Permit that was granted the Board imposed three conditions:

One is that the work proceed in accordance with the drawings at that time. I don't know why that was required because for a Use Variance it makes no difference what the drawings are. It's a use, not the structural components of it. I don't think that condition needs to be repeated in this time in my judgment.

There was one that there be at least one trash receptacle outside the building. I assume there's no objection in continuing that condition.

ATTORNEY JAMES RAFFERTY: That's fine.

CONSTANTINE ALEXANDER: And the last is the Variance runs with this particular fast food use and should the fast food use change, the owner of the establishment will require to seek a Special Permit on -- well, a Special Permit under 11.30 to change the fast food use there. It doesn't make sense. This is a Variance case.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: There is no Special Permit involved or it would be for Harvard Square for example but not here.

ATTORNEY JAMES RAFFERTY: Yes. I noticed that as well. Of course, I think that what was intended at that point

was the Special Permit requirements, as you know under 11.30 for the fast food, are limited to a particular operators. And I think the attempt by the prior Board was to have the same type of restriction on the Variance that would attach the Special Permit, because in theory --

CONSTANTINE ALEXANDER: You can't do that. I mean, you know, legally you can't have a Variance tied to the owner of the property. It runs with the land if we grant it.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: All right. We got it wrong.

ATTORNEY JAMES RAFFERTY: That's why I said I don't need to be here because Dominos had a fast food Variance and why can't the Dominos' Variance apply here?

CONSTANTINE ALEXANDER: I'm not getting into that.

ATTORNEY JAMES RAFFERTY: No, I agree with you. I agree. And I think that's -- I recall the case. I think that was the attempt then to say well, we shouldn't have a higher standard, but I agree the enforceability of that may be questionable in terms of --

CONSTANTINE ALEXANDER: Anyway, I don't propose to make the same conditions, that condition in this case unless other members of the Board feel otherwise.

Okay, ready for a motion.

The Chair moves --

BRENDAN SULLIVAN: Will the facade of the new establishment be the same as the existing one?

DAVID CARVALHO: Yes.

BRENDAN SULLIVAN: It will look exactly the same?

DAVID CARVALHO: Exact same logo, but our store frontage will be narrower so everything will be shrunk down --

CONSTANTINE ALEXANDER: So the signage will be smaller?

DAVID CARVALHO: Correct. We're not moving it over, but we're going to scale it down to the --

BRENDAN SULLIVAN: What I'm trying to avoid is a coffee cup.

CONSTANTINE ALEXANDER: I know. I was going to get to the same thing. You're not going to put a coffee cup.

ATTORNEY JAMES RAFFERTY: Well, we're not seeking signage relief.

CONSTANTINE ALEXANDER: I know you're not.

ATTORNEY JAMES RAFFERTY: Right.

BRENDAN SULLIVAN: Before we give you any relief, I just want to see what the front of it looks like. And one of the things that we can delve into is aesthetics. And I want to make sure that the new location is going to be an identical representation of the previous location. But as you say, a bit smaller.

ATTORNEY JAMES RAFFERTY: Yes. Would consistent meet that standard? I mean, the scale will be reduced, but it will be consistent and it will not --

BRENDAN SULLIVAN: Right, correct. And no other apertures attached to the front of the building.

ATTORNEY JAMES RAFFERTY: That

suggests to a keen mind that there may be some lack of enthusiasm for the cup, but I'll leave that.

CONSTANTINE ALEXANDER: You're right about that.

BRENDAN SULLIVAN: The Board might have had a second thought on Church Street had it known there was going to be a coffee cup attached to the --

CONSTANTINE ALEXANDER: If the Board had listened to my wisdom, it wouldn't have approved the Special Permit in the first place.

ATTORNEY JAMES RAFFERTY: No, no, the Board does great work. You're being too hard on the Board.

BRENDAN SULLIVAN: And you were correct. For the wrong reason, but you were correct.

ATTORNEY JAMES RAFFERTY: I believe he had stopped traffic twice a day.

CONSTANTINE ALEXANDER: Okay, let's get to a motion.

The Chair moves that this Board make the following findings with regard to the requests for a Use Variance to operate a Dunkin' Donuts, a storefront or so away from the original Dunkin' Donuts that we approved back in, I think you said back in 2002.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: That the location will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of adjacent uses will not be adversely

affected by the nature which you're proposing to do.

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

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

The relief being sought obviously is quite modest in nature.

And the Board made various findings when it granted the original Variance to, I'm sorry, I'm reading the requirements for a Special Permit. We're talking about a Variance. I take it back. I'll have to start again, sorry.

That a literal enforcement of the provisions of the Ordinance will involve a substantial hardship to the Petitioner. The hardship being is that they will not be able to relocate ab otherwise approved use on that site to a more desirable location.

That the hardship is owing to the fact that the nature of the -- well, we made this -- you know, we made this finding before, so I'm going to just incorporate the finding with regard to the special circumstances relating to the hardship.

ATTORNEY JAMES RAFFERTY: The language talked about the suitability of the ground floor of the building to uses of this type in the prior finding.

CONSTANTINE ALEXANDER: Okay.

I'm not sure it complies with the statute. But those findings we made before are incorporated into this case.

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

As indicated, the relief being sought is rather modest in nature. And in fact, it may not even be necessary, but prudent to seek. And, therefore, the Variance will be granted subject to the following conditions:

That the Petitioner maintain one trash receptacle outside the structure as you were required the last time.

And further, with regard to the exterior appearance of the structure of

your site, including signage, that it be consistent with what you have on your existing storefront and not changed in any material respect. I think that addresses your issue which I think should be addressed.

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

(Aye.)

CONSTANTINE ALEXANDER:

Variance granted. Five in favor.

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

(Whereupon, at 10:10 p.m., Zoning

Board of Appeals Adjourned.)

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BRISTOL, SS.**

I, Catherine Lawson Zelinski, a

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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 20th day of May 2013.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
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My Commission Expires:
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