

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, APRIL 14, 2016

7:30 p.m.

in

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

Constantine Alexander, Chair
Brendan Sullivan, Vice Chair
Thomas Scott, Member
Douglas Myers, Associate Member
Slater W. Anderson, Associate Member

Sean O'Grady, Zoning Specialist

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(7:30 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Thomas Scott, Douglas Myers, Slater W. Anderson.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Board of Appeals to order. Before we start on our regular agenda, I would make an announcement:

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

And I wish to inform people that a recording is being made, actually two. There's recording here, an attendee wants to record our session. And in addition, as you will note, we have a stenographer to keep -- makes a

transcript of our hearing, and to assist herself in preparing that transcript, she also records. And then uses that to fill in the gaps when she does her transcript. So everybody be aware that you're on, you're live on tape.

Okay.

* * * * *

(7:35 p.m.)

(Sitting Members Case BZA-009634-2016: Constantine

Alexander, Brendan Sullivan, Thomas Scott, Douglas Myers,

Slater W. Anderson.)

CONSTANTINE ALEXANDER: With that, I'll turn to the first case, case No. 009634, 1702 Massachusetts Avenue.

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

KRISTEN RUMMEL: My name is --

CONSTANTINE ALEXANDER: Please come forward, give your name and address to the stenographer for the record anybody who is going to speak. You can sit, unless you want

to stand, it's up to you. You don't have to stand. You don't even have to kneel.

KRISTEN RUMMEL: My name is Kristen Rummel, K-R-I-S-T-E-N R-U-M-M-E-L and I live at 57 Main Street in Somerville, 02145.

RORY HANLON: And my name is Rory, R-O-R-Y Hanlon H-A-N-L-O-N, and I also live at 57 Main Street in Somerville, Massachusetts, 02145.

CONSTANTINE ALEXANDER: Okay, thank you.

And you want to establish what our Zoning Ordinance calls a fast order food establishment?

KRISTEN RUMMEL: Yes. We would like to open an ice cream shop. A small batch, completely made from scratch, ice cream shop using locally sourced and seasonal ingredients. We would also like to sell waffle cones that we would make in-house as well as a select assortment of pastries such as cookies and brownies and serve coffee and tea.

CONSTANTINE ALEXANDER: Okay. And this pains me a great deal, and I mean this seriously, but we've got a very serious problem here in terms of our ability to grant you the relief you're seeking.

The City Council, in its infinite wisdom, has decided that this strip of Massachusetts Avenue where your store will be located or your cafe, does not -- cannot have, should not have any fast order food establishments. We can grant a Variance for that, that's why you're here, but the problem is that the Variance request is almost impossible to satisfy for what is called a Use Variance. You have to show us -- not you, really, the owner of the property, has to show a substantial hardship if relief is not granted. And here, at least speaking for myself, there's no real hardship. There are a lot of other businesses that can go in there as a matter of right. It's just your business the City Council says can't go in here.

Furthermore, you have to demonstrate or the owner

has to demonstrate that there are special circumstances involving the soil conditions, the shape of the building, etcetera, that require relief. And, again, I don't see it anyway. It's just a regular storefront. So, you don't meet the requirements for a Variance and we're stuck -- City Council is the person you have to go to, I guess, to get the Zoning changed. And this is not a unique -- I have to tell you this is not a unique to you. About a year maybe, a year and a half ago, down the street, actually a Dunkin' Donuts wanted to go in, and they asked for a Variance and we had to deny it because we don't -- you just don't meet the requirements for a Variance.

I mean I really would like you to have that business in there, speaking personally. Everyone makes their own decision, but speaking for myself, I have to apply the law as it is. And there we are. I mean, I don't know how I can find -- we can grant a Variance to operate a fast food -- FOFE in this location.

KRISTEN RUMMEL: Okay.

CONSTANTINE ALEXANDER: But I've said my piece.
Others might want to speak to it.

DOUGLAS MYERS: Could you explain perhaps to the applicant what Ordinance it is that requires a Use Variance instead of the usual fast food ordinance?

CONSTANTINE ALEXANDER: Yeah, it's really the zoning map. The zoning map allows fast order --

DOUGLAS MYERS: Certain storefronts in this part of Mass. Ave.?

CONSTANTINE ALEXANDER: Then they allow it in Harvard Square. They allow it, I don't know where else, a couple of places in the City. But for this business district which is?

KRISTEN RUMMEL: A-2.

CONSTANTINE ALEXANDER: A-2, no fast order food establishments are permitted. Now why? I have no idea. But that's what the City Council did when it created the

zoning map and changed it. And that's where we are today. So I don't know what to do, frankly. Because I really am serious -- I'm sincere in feeling that you should be able to operate your business there, but it's not, in my judgment anyway, we don't have the ability to do it, to let you do it.

BRENDAN SULLIVAN: Well, it's a little remiss in not looking at the previous relief that we granted to Evelyn and Angel. Do you remember, Sean, what that was?

CONSTANTINE ALEXANDER: It wasn't a fast order food --

BRENDAN SULLIVAN: It was not?

KRISTEN RUMMEL: It wasn't.

CONSTANTINE ALEXANDER: There were no tables inside. There were no --

BRENDAN SULLIVAN: Was it a Special Permit?

KRISTEN RUMMEL: Well, there were tables inside and she did serve ice cream. Unfortunately, she did not get

the proper permitting to do that.

CONSTANTINE ALEXANDER: I guess that's your answer.

RORY HANLON: She needed a Special Permit to sell the chocolates, but she didn't --

CONSTANTINE ALEXANDER: I don't know -- we didn't grant a Variance.

BRENDAN SULLIVAN: We granted some relief. It must have been a Special Permit then.

CONSTANTINE ALEXANDER: Well, if FOFE were permitted in this district, then the Special Permit would have been the relief.

BRENDAN SULLIVAN: She was the one manufacturing the chocolates there and there was something to do with food manufacturer or something that was not permitted in that district, in that zone.

SEAN O'GRADY: What's the name of the business?

BRENDAN SULLIVAN: Evelyn and Angel.

CONSTANTINE ALEXANDER: Evelyn and Angel. The store that's closed in which is the space these folks want to move into.

SEAN O'GRADY: It's not ringing a bell.

CONSTANTINE ALEXANDER: Oh, my God, I remember the case very well. I remember someone came up from Long Island to testify. But in any event, we did grant relief, whatever relief was sought, but it couldn't have been a Variance I don't think.

BRENDAN SULLIVAN: My feeling on this, and I know it's sort of caught in somewhat of a trap here, and I don't know why because in a business district that you would, I would think that you would -- it would sort of be allowed a lot of food establishments. Business people have to eat. The other conundrum that we run into is what to do with the storefront. What to do with these types of locations. And if you go up and down Mass. Avenue, there seems to be a lot that survive and there's also a lot that don't survive. And

the reason is why don't they survive? I don't know. Maybe, and again, I think it has to do probably with need. We go back to the whole need thing, to be I think that the marketplace dictates the need. If there is a need, it will survive. But a lot of these places are -- tend to be small little storefront retail stores or whatever, who I think whose time has passed. I mean they just can't survive anymore. They can't survive with the rent. They can't survive because there's lack of foot traffic, they can't survive because of a whole lot of things, what have you. And that's too bad, because the last thing I want to see is "For Rent." And I think we've heard enough -- a lot of testimony over the past few years every time something is trying to open up someplace is that landlords come down and say I finally got somebody who will rent the space from me, because otherwise it's just going to sit there, which doesn't do well for the community, for the neighborhood. So, even though all Variances are an exceptional form of

relief, Use Variances are the most exceptional form of relief, and should be done very, very sparingly. But in the -- in balancing the streetscape, the need of the neighborhood, the -- you know, lack of places to open up businesses, I kind of tip the scales towards if somebody wants to open up a business, unless it's really objectionable, I would tend to allow it myself.

CONSTANTINE ALEXANDER: How do you square that in our vote when we denied the Dunkin' Donuts down the street? You'll have time later.

I mean, the trouble, I think it would be --

DOUGLAS MYERS: Let me add something without -- being sympathetic to what Brendan is saying. Didn't we approve a Berry Line or a Yogurt Land --

KRISTEN RUMMEL: Yes.

DOUGLAS MYERS: -- storefront, store operation in this area? And I don't remember if it was under the fast food ordinance or not.

KRISTEN RUMMEL: It was.

DOUGLAS MYERS: And I recall doing that three years ago, four years ago. I think I remember sitting on that panel. That certainly wasn't approved as a Use Variance. At least I don't think so. I think it was just a straightforward --

KRISTEN RUMMEL: I did look at their case hearing in doing research for ours, and it was a fast order food use variance that they --

DOUGLAS MYERS: It was a Use Variance?

KRISTEN RUMMEL: Yeah.

SLATER ANDERSON: What was there before, do you remember?

KRISTEN RUMMEL: You know what, I'm not sure. At least according to their documents it was empty. They didn't list a previous store. They just said it was empty.

DOUGLAS MYERS: In terms of precedent, and it's hard, because we are a Board with shifting membership that

doesn't have recorded decisions, that doesn't keep track of our precedence, but as much as we can piece together our precedent from the collective memory of the people who are here, to me that strengthens your case. I mean, in fact, if we've granted an Ordinance to a very similar type of food establishment, not in particulars, but in a little bit of a broad overview, it's a similar food establishment, to me I really want to give a hard look at trying to find the -- the Variance for you.

KRISTEN RUMMEL: If I -- and so I was also thinking back to, you mentioned the need of the neighborhood. We did meet with a lot of the residents. We actually held an open house, and approximately 50 to 75 immediate residents came and spoke to us and asked us questions and expressed concerns that they had about trash or parking, and, you know, with the answers that we gave, which I can certainly repeat those answers, they seemed satisfied, and even some of them wrote letters of support.

CONSTANTINE ALEXANDER: Yes, so there are a number of letters of support which I'll get to in a bit.

KRISTEN RUMMEL: Yeah, so I just wanted to also mention that as well.

BRENDAN SULLIVAN: And, again, it need not be a popularity contest where you've got, you know, a bunch of people coming down and saying yeah, you know, we're all for this, and a bunch of people coming up and saying no, we don't want this. It's not a show of hands. But I also think that it's, it's when a neighborhood comes down and says no, we don't need any more coffee bar type things or what have you. We have Starbucks. We have this, we have that, so on and so forth. And that's not what we're looking for. We're looking for some variety in the neighborhood. So how can we say no to Dunkin' Donuts? Well, maybe because that need has been satisfied and the neighbors can tell us that they don't want that as opposed to, gee, yeah, this would be a nice addition to the neighborhood. It adds to

the flavor, no pun intended, but to the flavor, to the
ambiance, to the whole thing. And I think that's when I can
tip the scales to saying, yeah, why not?

CONSTANTINE ALEXANDER: Okay, as I said -- I try
to make it clear and I am sympathetic, if I were sitting
there and I had my own decision to make, I would say yes,
it's a good idea. But I also have to enforce the law -- our
Board has to enforce the law that the City Council gave to
us. And for some reason, I can't explain the Berry Line
case. I don't remember if I was on the Board then. I may
not have sat that night, though. But I do remember the
Dunkin' Donuts case.

BRENDAN SULLIVAN: Oh, yeah. There's a yogurt
place down the street we granted it. Starbucks went in and
got a Use Variance. I mean, there's -- you go up and down
the Ave., I can point to a bunch of places. And, again,
because it was -- it fulfilled a void in the neighborhood
that may survive or not. Again, the marketplace will

dictate that. But I think that gives the whole, you know, what makes Observatory Hill, Observatory Hill, you can go up and do three or four different things.

Huron Village, what makes that? Because you can go and you can do a bunch of things without schlepping off to Harvard Square or Porter Square or some place like that. And that adds to the whole ambiance of it.

DOUGLAS MYERS: If I can address the Use Variance question, I mean it seems to me there are Use Variances and there are Use Variances. I have argued against Use Variances sitting on this Board when they introduce a use into an area into which the use is incompatible. Introducing a unit by creating -- changing a home into a university building in a residential neighborhood. Arguable but clearly the use has an impact on the neighborhood.

Here, the use is admittedly fast food, but in its essence a commercial use in a string of commercial storefronts. I mean, I do respect our Ordinance, but taking

a step back from the Ordinance, I don't see anything that is
flagrant about looking hard to find a Use Variance when
we're talking about one commercial establishment in a string
of many commercial establishments.

SLATER ANDERSON: I'll weigh in.

JOHN HAWKINSON: Does the Board intend to
deliberate before public comment?

CONSTANTINE ALEXANDER: Say it again?

JOHN HAWKINSON: Does the Board intend to
deliberate before public comment?

CONSTANTINE ALEXANDER: No --

DOUGLAS MYERS: We just got off into a little
discussion.

CONSTANTINE ALEXANDER: We're not done yet, and
you'll have your opportunity.

Go ahead, Slater.

SLATER ANDERSON: I remember the Berry Line case,
and my vague recollection of it, it was a while ago, was

that it was fairly benign. That there was not, you know, and it seemed like a suitable alternative to maybe something let's say, not to malign Dunkin' Donuts, but, you know, something that's a franchise that there are many in the city. I consider this stretch of Mass. Ave. probably to be, you know, a location like this a high pedestrian traffic location, to be important to your business. It seems like the logical place to have a business like this.

I also recall the case with Harvard House of Pizza trying to relocate to the building they owned were Stereo Jacks is and the uproar that was ensued from that from several -- from both sides, the loss of Stereo Jacks and the negative effect of the --

DOUGLAS MYERS: Although we granted a Variance in that case.

SLATER ANDERSON: No, I don't think -- now, they didn't get --

CONSTANTINE ALEXANDER: We granted relief and the

abutters filed a lawsuit.

SLATER ANDERSON: Really? I thought we did not grant that.

CONSTANTINE ALEXANDER: We did grant relief.

BRENDAN SULLIVAN: We did because they wanted to relocate and Patel I think filed a lawsuit against it.

CONSTANTINE ALEXANDER: I don't think it was Patel, but somebody did. There was a lawsuit.

SLATER ANDERSON: Well, there was, you know, there a lot of rancor about that. And I think maybe we were deferential to the property owner because they owned the property and they had an issue, but clearly haven't moved and Stereo Jacks is still there.

I don't, you know, I see this as a reasonably compatible use for the area. I don't see -- you know, this isn't, you know, Hampton Beach where there might be a dozen ice cream shops in a row, you know? I mean, I don't think this is going to threaten the diversity of the commercial

integrity of this stretch of Mass. Ave. So I would be inclined to sort of go --

CONSTANTINE ALEXANDER: I agree with all of the comments being made except that's not what the law says. But, anyway, that's okay. It's all right.

THOMAS SCOTT: Maybe the zoning is wrong for this area.

CONSTANTINE ALEXANDER: Oh, I think it is wrong.

THOMAS SCOTT: I mean, approving something as benign as this, I think sends a message that -- I mean, how often do the zoning boundaries change? Probably once every ten years or who knows.

KRISTEN RUMMEL: This certain Ordinance was put in place I believe in the 80s.

THOMAS SCOTT: Yeah.

CONSTANTINE ALEXANDER: I think the map -- we're talking about the zoning map, not the Ordinance. The map gets changed, not in this area, but citywide it's changed

frequently. People are always coming in with changes to the map right or wrong.

Anyway --

THOMAS SCOTT: There's an opportunity to change it.

CONSTANTINE ALEXANDER: I mean, the only way you get it to change -- City Council -- every time we approve things, we'll never get it changed. The only way to get things changed is to tell the City Council, point out, you're depriving legitimate businesses from moving in here. Businesses that will further the City of Cambridge. So, you know, get your act together and change the map. I mean, this fast food -- fast order food establishment stuff goes back to McDonald's wanted to go into Harvard Square in the 1980s and everybody was then concerned about oh, my God, we're going to have fast order food establishments all over Harvard Square. It's going to destroy the character of the square. Well, guess what, it did destroy the character of

the square. They passed this Ordinance. And I think the Council then, at least decided, were worried about these things proliferating throughout the City, so we're going to restrict the areas where they can be located and this is an area where it's restricted.

Anyway, I hate to debate it, because I'm very sympathetic to what everybody is saying. If I were the dictator, I would grant you the relief right out.

BRENDAN SULLIVAN: The City Council takes the easy way out.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: But pushing the responsibility and the dirty work over to the Board of Zoning Appeals on Thursday night.

CONSTANTINE ALEXANDER: And even worse than that, they requiring us basically to violate the law to do it. That's what really offends me, is the fact that, you know, the world's not going to end if we grant a Variance when we

shouldn't unless an abutter files a lawsuit, but that's not the position we should be in.

Anyway, we're having this nice debate and you're sitting here with your future business at stake.

THOMAS SCOTT: And if this is granted, the Use Variance runs with the property, is that true? Or is it specific --

KRISTEN RUMMEL: I think it's specific to our business. So once we leave --

SEAN O'GRADY: No.

THOMAS SCOTT: I don't think so.

CONSTANTINE ALEXANDER: No, no, no. And now any fast order food establishment, McDonald's, Dunkin' Donuts, if you decide to move out for any reason, could move in without any relief. Am I right?

SEAN O'GRADY: It depends on how you structure the Variance.

SLATER ANDERSON: And we put time limits on it,

right?

SEAN O'GRADY: You can do anything that --

BRENDAN SULLIVAN: You can't do any grilling.

CONSTANTINE ALEXANDER: We can put in conditions.

BRENDAN SULLIVAN: We're granting the relief
basically on their primary --

CONSTANTINE ALEXANDER: Yeah, we have to do it
that way rather than doing it -- okay.

SEAN O'GRADY: I mean, you can do time but I
think --

CONSTANTINE ALEXANDER: You can do time, you can't
get a Variance to a person.

SEAN O'GRADY: Exactly. That's the one thing you
can't do.

CONSTANTINE ALEXANDER: It runs with a land.

JOHN HAWKINSON: Is it not a Special Permit also
required?

CONSTANTINE ALEXANDER: Say it again, please?

JOHN HAWKINSON: Is it not a Special Permit also required?

BRENDAN SULLIVAN: No.

CONSTANTINE ALEXANDER: Not if we grant a Variance.

BRENDAN SULLIVAN: No. Under the Table of Uses it's either yes, that it's allowed; no, that it's not allowed; or by Special Permit. This is basically a no.

SLATER ANDERSON: It says no under the Table of Uses.

CONSTANTINE ALEXANDER: Yeah, it's a no. I know.

SLATER ANDERSON: It should be Special Permit.

CONSTANTINE ALEXANDER: That's exactly right.

SLATER ANDERSON: More appropriate classification for it.

CONSTANTINE ALEXANDER: Mr. Hawkinson has been dying to talk, so let's give him an opportunity.

JOHN HAWKINSON: Pardon me. John Hawkinson, 84

Massachusetts Avenue.

I would have I guess two comments, and the first I'll structure is a question, I recognize the Board is not in any way obliged to answer it. And that question is: How does this proposed Use Variance differ from case 8287-2015 for 273 Putnam, you may know that as Alive and Kicking Lobsters, where the Board recently granted a Use Variance for a pre-existing use quite similar, this is pre-existing ice cream, and the Board granted that Use Variance over substantial objections from abutters which are not at all present here, so it seems to me this case, you know, if you look at that recent precedent -- and I understand the Chair voted against that but the Board nevertheless granted the Variance.

CONSTANTINE ALEXANDER: I actually abstained. I didn't vote against it.

JOHN HAWKINSON: Oh, I apologize.

CONSTANTINE ALEXANDER: So, it has the same effect

as a negative vote, but I did abstain.

JOHN HAWKINSON: So, you know, I would ask the Board to think about how that precedent affects this.

And also I want to remind the Board, though, I know that you might disagree with me on this, but that you have the power to send communications to the City Council and the Planning Board. And I hope this doesn't undercut the previous, but there's a recent Zoning Petition called the Friends of MAPOCO or Kroon Petition for effecting retail in the North Mass. Ave. subdistrict south of Porter Square, which I believe covers this area, and the petition wasn't quite in final form and the City Council allowed it to expire, although the expectation is that it's coming back in another variation. And so it especially seems that a suggestion to the Planning Board or the City Council that an amendment could be in that petition, you know, changed to be maybe to address the fast order food question at the same time.

And lastly, you advised that there's no Special Permit requirement in the case where a Use Variance was granted. And I wonder if perhaps you could grant the Use Variance subject to requiring a Special Permit such that it would not run with the property; that is, anyone else coming would still have to get a Special Permit and then you could grant them a Special Permit, that way you would have the oversight of a new retailer which would seem appropriate for any neighborhood concerns.

Thank you.

CONSTANTINE ALEXANDER: Well --

JOHN HAWKINSON: Or you could do it some other way. There are lots of magic conditions.

CONSTANTINE ALEXANDER: To take your questions I think in order, I don't want to get into Alive and Kicking again. That was a completely different set of circumstances, too. There were a lot of equities in favor of granting relief there because the person believed that he

had started his business in compliance with our Ordinance.

I think that was persuasive to a lot of members of the Board. And one of the reasons why I abstained was because I believe the equities were there, but I didn't think he met the legal requirement.

As to your last one, if we even -- we can write all the letters we want, we don't have a secretary to write our letters and we deal with supposedly the inbox of the City Council and maybe six months, nine months from now it would be taken out, by that time these good folks would have moved on. So I don't think it would solve their problem.

I don't remember your second. You had three points.

JOHN HAWKINSON: Just --

BRENDAN SULLIVAN: No. The answer is no. We can't grant a Special Permit --

CONSTANTINE ALEXANDER: Oh, that's right.

BRENDAN SULLIVAN: -- where a Variance is

required. That's rewriting the Ordinance. We don't do that.

JOHN HAWKINSON: You can't condition the Variance on a Special Permit?

CONSTANTINE ALEXANDER: No, I think that's exactly right.

Anyway, anyone else wishing to be heard on this matter? I'm opening up now to public testimony.

Sir.

NOAM FREEDMAN: Noam Freedman, 26 Donnell Street. I'm actually here for a later case, but I used to live on Shepard Street right around the corner, and now live at Observatory Hill. And to the point that Mr. Sullivan made, I'm, you know, up and down this area a lot, and from my perspective the business being proposed would add to the character of the neighborhood. I certainly would be going there.

CONSTANTINE ALEXANDER: Is there anyone else

wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: There is no one else who wishes to be heard. I'll close -- I'm sorry.

HEATHER SCHMIDT: I'm not a member of the neighborhood.

CONSTANTINE ALEXANDER: Give us your name, though, please.

HEATHER SCHMIDT: Heather Schmidt, I'm an owner of --

THE STENOGRAPHER: What is it?

CONSTANTINE ALEXANDER: Why don't you come forward if you don't mind.

HEATHER SCHMIDT: Union Square Doughnuts in Somerville. I just wanted to give sort --

CONSTANTINE ALEXANDER: You wrote a letter in support.

HEATHER SCHMIDT: I'm here in support for Kristen.

She's worked for me a number of years.

CONSTANTINE ALEXANDER: I've seen your letter.

HEATHER SCHMIDT: Yeah, so I just -- I know she would bring amazing character to the neighborhood and has an incredible work ethic and an incredible talent. It would be a huge win for the neighborhood in Cambridge. Just so I wanted to put that in there.

SLATER ANDERSON: And they have incredible doughnuts.

HEATHER SCHMIDT: I didn't bring any.

CONSTANTINE ALEXANDER: Is there anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: There is no one else.

We are in receipt of a number of letters. A letter from Ms. Schmidt, the first letter that's in the file. I don't need to read it since you expressed your comments.

A letter from Srin, S-R-I-N Chakravorty,
C-H-A-K-R-A-V-O-R-T-Y, Pleasant Street, Cambridge.

(Reading) I am writing in support of Ms. Kristen Rummel's proposed storefront in Cambridge, Honeycomb Creamery. I am personally invested in promoting small businesses that add to the flavor of our city, literally and figuratively in this case. Entrepreneurship endeavors that are originated by women are important in terms of gender parity and economic equity goals our city should certainly uphold. As a member of the Cambridge Women's Commission, I strongly recommend any initiative that allows women to contribute to our community's economy and social standing in a positive manner. Ice cream is a unifying food loved by many.

It goes on to speak to your qualities, but it doesn't address the issue of a Variance.

A letter from Jenny Monroe a Cambridge resident. She writes in support. And I'm just going to -- since there are a number of letters, I'm just going to summarize or

characterize the letter. She makes the point that other members of the Board have made, that this is a good business for the neighborhood. It doesn't otherwise address the zoning issue, but it's an endorsement for what you want to do.

Spindler Confections. Some members of the Board may recall we gave Mr. Spindler I think it was a Variance. Maybe a Special Permit. Do you remember?

KRISTEN RUMMEL: Special.

CONSTANTINE ALEXANDER: Was it a Special Permit?
Do you remember?

SEAN O'GRADY: If you know you can chime right in.

KRISTEN RUMMEL: Sorry.

CONSTANTINE ALEXANDER: It's a candy store up by Pemberton.

KRISTEN RUMMEL: Yes.

RORY HANLON: Special Permit.

KRISTEN RUMMEL: Special Permit.

CONSTANTINE ALEXANDER: And he writes in support. Just generally in support of another small business owner.

A letter from Joie De Vivre, a business down the street in the -- I don't know how you describe their business, chachkies.

KRISTEN RUMMEL: Unique gifts.

CONSTANTINE ALEXANDER: Thank you. That's nice, unique gifts. Anyway, she as a business owner would like to see another business come into the neighborhood.

The people who own Bagelsaurus, also writing in support, again, looking to have another business -- small business like yours in the neighborhood.

And a letter from a Nikai, N-I-K-A-I Pollard, P-O-L-L-A-R-D who just simply says I support the business.

My goodness, and we have one from the owner of Davis Square, 409 Highland Avenue, Somerville in Arlington Center. 487 Mass. Ave. in Arlington talks about the endorsement of your personal qualities, which is very nice

to see. And, again, would like to support another small owner business.

And this one we've seen before.

And we have something from the people who own Pod and Shop Fog Linen on 35 Sacramento Street. And here's where we gave a Use Variance. But this was in a residential neighborhood and it was an old storefront, and the building could not be used for anything but a store. So I think we all felt that was an appropriate case for a Use Variance.

Those are the one cases where we do give Use Variances, where you've got buildings that can only be used for one use, and that use is not permitted for some reason in our Ordinance.

Anyway, these are the letters. They're all in support, and that's about it.

I'm going to close public testimony. Ready for a vote? I think we had a lot of discussion already, but we can have further discussion if people would like.

DOUGLAS MYERS: Do we need to go through the fast food ordinance --

CONSTANTINE ALEXANDER: Well, it's a Variance.

DOUGLAS MYERS: Since it's a Variance we don't --

CONSTANTINE ALEXANDER: We can talk about the suggestions about maybe protecting the property against future fast order food establishments, talk about putting conditions on the Variance which would not restrict you, but no grilling of food, no cooking. That would keep out other kinds of businesses that people may feel is not as appropriate to the neighborhood as yours.

I think -- you're going to be cooking on premises?
The ice cream?

KRISTEN RUMMEL: Yeah, so we -- we will actually be pasteurizing and making everything from scratch. We are technically the second business in ice cream shop in all of Massachusetts to even do that.

CONSTANTINE ALEXANDER: Are you going to -- you're

going to serve sandwiches, you said?

KRISTEN RUMMEL: Ice cream sandwiches.

CONSTANTINE ALEXANDER: Oh, ice cream sandwiches?

KRISTEN RUMMEL: Yeah, not -- yeah, not actual sandwiches.

CONSTANTINE ALEXANDER: Not food sandwiches?

KRISTEN RUMMEL: Yeah, ice cream sandwiches.

DOUGLAS MYERS: You're not going to heat up sandwiches and cook sandwiches?

KRISTEN RUMMEL: No, it will all be frozen.

SLATER ANDERSON: Will you make the waffle cones?

KRISTEN RUMMEL: Yeah, the waffle cones. We make those on premise, and they use waffle -- specific waffle irons for that.

SEAN O'GRADY: It's all -- I'm sorry.

CONSTANTINE ALEXANDER: Yeah, no, no.

SEAN O'GRADY: It's all sweet? No savory?

KRISTEN RUMMEL: No, no savory. All sweet.

SEAN O'GRADY: That will cut it down pretty well.

CONSTANTINE ALEXANDER: Anybody else have any thoughts about conditions that would be suitable for this property and in order to not hamper the petitioner?

SLATER ANDERSON: No pizza oven.

CONSTANTINE ALEXANDER: No cooking of food. Other than ice cream or related items.

DOUGLAS MYERS: No meat.

KRISTEN RUMMEL: No meat.

We will have like a small convection oven. That's the --

CONSTANTINE ALEXANDER: What are you baking, pastries?

KRISTEN RUMMEL: Yeah. Like, cookies and brownies.

BRENDAN SULLIVAN: For the baked Alaska. You can restrict it to no grilling.

CONSTANTINE ALEXANDER: No cooking of food other

than the connection with the preparation of ice cream or the -- basically any related items to the preparation of ice cream.

BRENDAN SULLIVAN: Correct. The primary offering is ice cream and ice cream-based product.

KRISTEN RUMMEL: Frozen desserts is kind of like the general definition, the term that they give.

DOUGLAS MYERS: Pastries?

KRISTEN RUMMEL: Yes.

CONSTANTINE ALEXANDER: Let me try to frame a motion and help me if I get it wrong.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being that a storefront area that is really, is not by terms of its dimensions and the like, is not suitable for many businesses. Such that this type of business is one of

the few businesses that would be appropriate for these premises.

That the hardship is owing to the shape of the property. It is a relatively small storefront.

That there really as a practical matter the uses for this structure or this office space or this store space is quite limited.

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.

In this regard the Chair would note that this proposed Variance has the unanimous support of business owners and residents of the City. That in an area -- excuse me, in a commercial area that brings a welcome addition and can promote the area in terms of the business atmosphere. And, therefore, this condition has been satisfied.

So, therefore, on the basis of all of these findings, the Chair moves that we grant the Variance

requested on the condition that the only kind of business that would be -- well, that the business conducted on the premises will not involve the cooking of food other than in connection with the preparation of ice cream or items related to the sale of ice cream.

That -- what are your hours of operation?

KRISTEN RUMMEL: Twelve p.m. to ten p.m. Tuesday through Sunday.

CONSTANTINE ALEXANDER: Okay, that doesn't help. Okay. I was going to say if you had lower hours, I would tie that in, but your hours are long enough that any of the fast food would be able to live with that.

Any other thoughts besides the preparation of food?

SLATER ANDERSON: I would mention what pastries and how did you --

KRISTEN RUMMEL: Frozen dessert.

SLATER ANDERSON: Frozen desserts.

CONSTANTINE ALEXANDER: So on the property pastries and frozen desserts in terms of preparation of food to consist the preparation of food.

SEAN O'GRADY: Coffee?

KRISTEN RUMMEL: Yes, coffee.

SEAN O'GRADY: It's important that you get everything in now.

KRISTEN RUMMEL: Coffee and tea will be served.

SEAN O'GRADY: I just don't want it to be so limited that all of a sudden that, I mean if we just limited it to that, we would run into a problem with coffee and tea.

CONSTANTINE ALEXANDER: I think we're okay.

SEAN O'GRADY: All right.

KRISTEN RUMMEL: Thank you.

CONSTANTINE ALEXANDER: Therefore, all those in favor of granting the Variance on the subject to these conditions please say "Aye."

(Aye.)

(Sullivan, Scott, Myers, Anderson.)

CONSTANTINE ALEXANDER: I'm going to abstain.

Anyway, the motion is granted. You've got your relief.

Good luck.

KRISTEN RUMMEL: Thank you.

CONSTANTINE ALEXANDER: Sorry to put you through this.

KRISTEN RUMMEL: That's all right.

(8:05 p.m.)

(Sitting Members Case BZA-009647-2016: Constantine Alexander, Brendan Sullivan, Thomas Scott, Douglas Myers, Slater W. Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 009647, 23 Griswold Street.

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

PAMELA SHAEFER: Yes. My name is Pamela Shaefer and I live at 23 Griswold Street in Cambridge.

ETHAN CORLISS: Ethan Corliss, C-O-R-L-I-S-S at 23 Griswold Street.

CONSTANTINE ALEXANDER: One thing to say at the outset -- how do I do this? The plans that were submitted are rather inadequate frankly. We expect more just because Mr. O'Grady has to interpret our opinion afterwards. We expect more detailed drawings, usually architectural plans that we can see the dimensions and the like. This is rather sketchy.

PAMELA SHAEFER: I apologize.

ETHAN CORLISS: What I did was I took the original plan and photocopied it.

CONSTANTINE ALEXANDER: I know. That doesn't work.

ETHAN CORLISS: Sorry, I didn't --

DOUGLAS MYERS: I have to chime in and say I really felt they were unsatisfactory. Really unsatisfactory as the basis on which for this Board to operate. No

existing plan and proposed plan contrast. No, nothing like an elevation is kind of an sketch of the exterior. It's unlike -- I've never seen plans that were so de--

ETHAN CORLISS: Okay.

DOUGLAS MYERS: -- lacking in the type of things we usually act on.

ETHAN CORLISS: When I spoke to -- I won't get his name right. Saji?

CONSTANTINE ALEXANDER: Ranjit.

ETHAN CORLISS: Ranjit. I asked him if I could draw them myself, and he said sure. I didn't realize you needed architectural plans because I didn't -- I was just trying to show that we were moving the building four feet towards the property line. I wasn't trying to -- I wasn't under the impression that I needed to have the true building plans with the whole, you know, construction drawings. In case we didn't get the permit, I didn't want to engage an architect if we didn't have to.

CONSTANTINE ALEXANDER: Well, let's assess the Board. One thing we could ask you to do is just continue the case and have you give us the plans that you should have had the first time at least in my opinion. I don't --

ETHAN CORLISS: The basis of the whole thing, I don't know if you read it, but --

CONSTANTINE ALEXANDER: I think we've all read it. I can assure you that.

ETHAN CORLISS: You never know.

The building was built attached to the house next-door so there's zero setback --

CONSTANTINE ALEXANDER: Right.

ETHAN CORLISS: -- on that side.

On the side that we're looking to move it or to extend part of the wall, we're extending it four feet which were we not at zero on the other side, we would be in compliance. So the whole problem stems from the other side of the house being a townhome attached to that one.

PAMELA SHAEFER: And it's -- the expectation would be that, you know, it would be consistent with the way it's built now. So we weren't -- I apologize that we weren't as detailed as you would expect, but I think it stemmed from that. That it's really -- what our hope to do is to just extend out four feet from that one side of the house and just on one level of the house. So it would just be the first four.

ETHAN CORLISS: And not even the full depth of the house, the living room area.

PAMELA SHAEFER: Right. It would be about 20 feet.

CONSTANTINE ALEXANDER: Speaking for myself, I clearly understand what you want to do and the concept. The fact of the matter is that's not the way we do business here.

PAMELA SHAEFER: Sorry about that.

CONSTANTINE ALEXANDER: But other members of the

Board, particularly, Tom, do you have any views on this?

THOMAS SCOTT: I agree. No, I agree. We really do need plans. It's very hard to judge what's going on without it.

DOUGLAS MYERS: This is like a picture instead of a plan.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: The other problem, too, is that, you know, we have to hand off to the building inspector whatever we approve.

CONSTANTINE ALEXANDER: That's the point.

PAMELA SHAEFER: And it's very specific.

BRENDAN SULLIVAN: And that has to be very legible to him. The top e-mail, I don't know if the issues have been addressed.

CONSTANTINE ALEXANDER: The subdivision?

BRENDAN SULLIVAN: No, no the one in your left hand.

CONSTANTINE ALEXANDER: Well, it is an e-mail from Maria saying we need photos, plot plan, floor plans, elevations that are scalable with dimensions and original, not copies, as soon as you can. The plans you sent us are very hard to read. This was Monday, March 14th.

Did you ever respond to this? Obviously you didn't.

ETHAN CORLISS: No, I -- I drew those as best I could. I didn't realize --

CONSTANTINE ALEXANDER: This case has to be continued, I'm sorry.

ETHAN CORLISS: Okay.

CONSTANTINE ALEXANDER: I don't want to proceed tonight.

ETHAN CORLISS: Can I ask a casual question?

CONSTANTINE ALEXANDER: Go ahead.

ETHAN CORLISS: Is -- I mean, I'm happy to do whatever needs to be done in the hopes of getting approval.

Is this a likely type of thing that would -- is worth my while pursuing?

CONSTANTINE ALEXANDER: You want us to --

ETHAN CORLISS: I don't want you to say yes, but it's got a reasonable possibility.

CONSTANTINE ALEXANDER: You can make your own judgement on that. You're looking to extend four feet on a living room. It's not a major addition you're putting on, so you can draw your own conclusions as to what we're likely to do.

SLATER ANDERSON: What is your neighbor's state of mind about all of this?

ETHAN CORLISS: Yeah, they don't care.

CONSTANTINE ALEXANDER: Last time I looked, one way or another --

DOUGLAS MYERS: Nobody here is bristling with opposition to the project.

THOMAS SCOTT: Right.

PAMELA SHAEFER: Yeah, we appreciate that.

ETHAN CORLISS: Yeah, I get.

THOMAS SCOTT: But a letter or two from your abutters might be helpful.

ETHAN CORLISS: We're friendly with them.

PAMELA SHAEFER: Yeah, and they don't have a problem with it.

CONSTANTINE ALEXANDER: How long would it take you to put the plans together?

ETHAN CORLISS: Well, it doesn't seem like it's something that I can draw that would satisfy you, so I don't know. I haven't dealt with an architect myself. So I don't -- maybe you guys --

CONSTANTINE ALEXANDER: I'm just trying to figure out when to continue the case to.

ETHAN CORLISS: You guys might have a better idea of how long it normally takes to engage in something like this. Is a month realistic to find someone to do that?

CONSTANTINE ALEXANDER: I would think so. You have to have it in -- let me point out, the plans --

PAMELA SHAEFER: In advance.

CONSTANTINE ALEXANDER: -- have to be in our files on the Monday -- by five p.m. on the Monday before the day we continue the case to. So you've got maybe, a month from now, roughly three weeks from now if we were to continue the case for a month. I was really moving towards whether you could do it in two weeks. Two weeks to get the new -- you know, a week to get the new plans in. But if you don't -- you don't have an architect at all?

ETHAN CORLISS: No.

CONSTANTINE ALEXANDER: You couldn't get it done I don't think that quickly.

SLATER ANDERSON: So they need a plot plan, too. So a surveyor.

ETHAN CORLISS: Can we use the existing one that was done when they built the house 12 years ago?

CONSTANTINE ALEXANDER: Yeah.

PAMELA SHAEFER: We don't need a new one, right?

SLATER ANDERSON: If it's legible.

BRENDAN SULLIVAN: It has to be a certified plot plan.

DOUGLAS MYERS: Let the architect decide.

BRENDAN SULLIVAN: I don't know what the level of what's been submitted for a plot plan. I think, Sean, you have to be the arbiter on that.

PAMELA SHAEFER: I think it was certified because it was a brand new building.

SEAN O'GRADY: If they would like me to, sure.

SLATER ANDERSON: If it's a new building, there's probably something suitable.

PAMELA SHAEFER: Yeah, it was built 12 years ago so it should be certified.

CONSTANTINE ALEXANDER: It was built 2003 or something like that?

PAMELA SHAEFER: Yeah, it should be.

CONSTANTINE ALEXANDER: Well, I'm sure you want to move ahead as quickly as you can. We don't want to hold you up unnecessarily.

PAMELA SHAEFER: We appreciate that.

CONSTANTINE ALEXANDER: Do you think you can get it done in a month, and if you can't we can continue it again. Or we can do it six weeks from now. That will give you a little bit more time.

PAMELA SHAEFER: Why don't we say a month. I think -- I'm motivated to do that.

ETHAN CORLISS: Can we continue it with a phone call or do we need to come --

CONSTANTINE ALEXANDER: We're going to do it right now.

ETHAN CORLISS: No, if a month doesn't work --

CONSTANTINE ALEXANDER: Oh, yeah, yeah, sure. Or drop a note or an e-mail saying we want to continue the case

further. You wouldn't have to come back down.

ETHAN CORLISS: Okay. I didn't want to waste meeting time.

CONSTANTINE ALEXANDER: No, that wouldn't be a problem.

PAMELA SHAEFER: Yes.

CONSTANTINE ALEXANDER: When's the next -- roughly a month, two meeting from now, when's that?

SEAN O'GRADY: May 12th.

CONSTANTINE ALEXANDER: May 12th? So that's just about a month. And the next one after that is May 26th?

SEAN O'GRADY: Is May 26th, yes.

DOUGLAS MYERS: Is this a case heard?

CONSTANTINE ALEXANDER: No.

DOUGLAS MYERS: No. That makes it easy.

BRENDAN SULLIVAN: I think you would be safer with the 26th than with the 12th.

SEAN O'GRADY: I would, too, that's my feeling.

CONSTANTINE ALEXANDER: The only thing that made me pause, I know we'll have a case we're going to have on the 26th involving the -- off Prospect Street. This gentleman knows all about that case and that may be a long night.

ATTORNEY SEAN HOPE: I believe that's on the 12th.

CONSTANTINE ALEXANDER: You're on the 12th? I'm wrong.

ETHAN CORLISS: So the 26th might be better?

CONSTANTINE ALEXANDER: Definitely the 26th.

ETHAN CORLISS: Okay. All right, thank you for your time.

PAMELA SHAEFER: We appreciate that.

CONSTANTINE ALEXANDER: I have to make the motion.

The Chair moves that we continue this case as a case not heard until seven p.m. on May 26th subject to the following conditions:

This is important. One, you've got to sign a

waiver of time for decision. Mr. O'Grady has it right here.
Just to deal with the legal requirements.

Two, the posting sign that's there now --

PAMELA SHAEFER: Yes.

CONSTANTINE ALEXANDER: -- which by the way, came
down when I drove by.

ETHAN CORLISS: We had the windstorm and then it
was all wet. It's up now.

CONSTANTINE ALEXANDER: You have to post it again
with the new date. You can take a magic marker, change the
date that's on the poster now to May 26th.

ETHAN CORLISS: At seven.

CONSTANTINE ALEXANDER: At seven p.m. make sure
you do both. Seven p.m. and May 26th. And it has to be
maintained for the 14 days before the 26th just as it is
now.

PAMELA SHAEFER: Okay.

CONSTANTINE ALEXANDER: And if your sign is in bad

condition, go see Maria and get a new one.

ETHAN CORLISS: Okay.

CONSTANTINE ALEXANDER: And then lastly, as I mentioned before, the plans that we're looking for must be in our files no later than five p.m. on the Monday before May 26th.

ETHAN CORLISS: Okay.

CONSTANTINE ALEXANDER: Okay? Because if not, we have to continue the case again.

ETHAN CORLISS: Okay.

CONSTANTINE ALEXANDER: Because the purpose of that is to allow us to study the plans in advance of the hearing, and also any neighbors or interested citizens of the City can get a look at it. And that's the reason for that requirement.

SLATER ANDERSON: Quick question.

CONSTANTINE ALEXANDER: Yeah.

SLATER ANDERSON: Is there a need for a Special

Permit for windows in the side yard here? Because that's where the --

CONSTANTINE ALEXANDER: If they're getting a Variance, usually you don't need a Special Permit if you're moving windows in an area where you're getting a Variance.

SEAN O'GRADY: Yeah, but if you build a wall by Variance --

SLATER ANDERSON: If it's a new wall. Not an existing wall. Got it.

CONSTANTINE ALEXANDER: Okay.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: Case continued. Sorry, but we'll see you in May.

PAMELA SHAEFER: Sorry we weren't as prepared as

we should have been.

Thank you.

* * * * *

(8:20 p.m.)

(Sitting Members Case BZA-009598-2016: Constantine

Alexander, Brendan Sullivan, Thomas Scott, Douglas Myers,

Slater W. Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case
No. 009598, 26 Donnell Street.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chairman,
members of the Board. For the record, attorney Sean Hope,
Hope Legal Offices. I'm here with Noam Freedman, he's the
owner of 26 Donnell Street. This is an application
requesting variance relief to cover and enclose and existing

porch on the right side of a property, triggering both FAR and side yard setback relief on the property's located in the Res. B District.

Mr. Freedman and his wife purchased the house in 2008. At the time they did not have any children. I think one of the things that attracted them to the house was that it had an open floor plan with bedrooms -- an open bedroom on the second floor.

Fast forward about seven years. Now, they have two children under five, and the open floor plan which was once a very attractive feature has now become somewhat of a dysfunction, primarily because when you enter the house, you are essentially walking into the main living area. And so what is a nice feature in terms of side yard porch, it's not as functional when you have children. And so part of the idea of enclosing this porch that's covered by a pergola is to be able to create an entryway, a mudroom. As you see in the floor plans, they're looking to put a half bath, a play

area, and a mudroom of sorts. This is to allow them to separate what would be the living area from the functional area which is now the open floor plan.

They have reached out to the abutters. There's a main abutter on the right-hand side who would be most impacted by enclosing this covered porch, and there's a letter of support in the file as well.

The FAR relief is modest in nature, but we are within the setback, and so we did reach out to the neighbor as well.

Just in terms of the function, we do recognize that this is a Variance request, and so I do feel that although this is a hardship because of their children, I do think that any other family that would have this house really positioned by the where the front door is and the bedrooms are actually closer to the street than the actual entrance which is abnormal. Normally you would have your front entrance, bedrooms in the back, because of the

orientation of the house this has been a hardship to the petitioner and by granting relief you would relieve this hardship.

CONSTANTINE ALEXANDER: This is my night to be ornery, and I just have a comment I can't resist making. The second floor is entirely one master bedroom. Why didn't you create additional space for your family by carving up all of the second floor?

NOAM FREEDMAN: We certainly thought about it, but it's challenging because we spend all of our time, you know, in the kitchen and living room area. And so the, for a playroom it would be challenging for it to be not near where my wife will be preparing food or where we would likely be. Plus it's still has the issue of the mudroom that we kind of -- I have a picture sort of showing what it -- my wife just cleaned it up even. What it normally looks like right when you come in, you know, the -- as Mr. Hope said, you know, we have the -- we bought the house without -- yeah,

this is the slightly cleaned-up version of what our entryway looks like normally.

You know, we bought the house when it was just my wife and I, and we weren't quite prepared for all the equipment that comes with children and strollers and --

CONSTANTINE ALEXANDER: Yeah, most people come before us to construct just a mudroom for the kids and the kids can hang up their coats and boots and the like. You want to do beyond that.

NOAM FREEDMAN: Yeah, exactly. The mudroom and the playroom. Because the living room -- I didn't take a picture of the living room is basically the playroom. We have everything you imagine kids would have.

ATTORNEY SEAN HOPE: And I'd also like to add, too, I think part of the reason why they're actually looking is because there is an existing porch. I think if there was an existing porch, they could maybe just add a covering on. But essentially what they're doing is they're taking this

porch area, although it's not FAR in terms of --

CONSTANTINE ALEXANDER: Right.

ATTORNEY SEAN HOPE: -- for zoning. They really took that footprint of the house and be able to cover that area. So there was a logic to it. As you said, this is more than just a mudroom. I'd also add anecdotally Mr. Freedman's wife's mother is from Australia and she comes for extended stays to stay with the family. Although that's going to be the playroom, most of the time that could also functionally serve as a guest room for when she comes and stays and supporting the children that are now under five. So, again, that's an area that would have a multifunction for them as well.

DOUGLAS MYERS: I could look at the plans, but you can tell me how many bedrooms on the second floor?

NOAM FREEDMAN: Just one.

CONSTANTINE ALEXANDER: One.

DOUGLAS MYERS: In connection with the master

bedroom?

CONSTANTINE ALEXANDER: It is the master bedroom.

NOAM FREEDMAN: It is the master. You come up the stairs, and you're in the master bedroom.

SLATER ANDERSON: It's a small house. What's the total square footage of the house?

ATTORNEY SEAN HOPE: Two-thousand....

NOAM FREEDMAN: 21.

ATTORNEY SEAN HOPE: Yeah.

CONSTANTINE ALEXANDER: 2,222.

NOAM FREEDMAN: Yeah, the master bedroom is I think 830 square feet.

CONSTANTINE ALEXANDER: And there are two bedrooms on the first floor. It's a three-bedroom house.

ATTORNEY SEAN HOPE: And you're facing the street, which is a little awkward. But the entrance is mid-house. You actually come into the kitchen open plan, living, dining.

SLATER ANDERSON: And was this a new house? When was this house built?

NOAM FREEDMAN: It was built in either 2007 or 2008 and we bought it in 2009.

SLATER ANDERSON: And it was built as a conforming house, right?

ATTORNEY SEAN HOPE: That's right. I mean, it wasn't --

NOAM FREEDMAN: I wasn't involved in the building of it.

SLATER ANDERSON: No, I understand.

BRENDAN SULLIVAN: One thing I always -- first thing I look for is the supporting statements, the pleadings. And then hardship is always circumstances relating to the soil conditions, shape topography, so on and so forth. This is a first. The hardship is owing to the interior -- your words I guess -- the hardship is owing to the interior layout of the property that has a large master

bedroom suite of the top floor, thereby relegating all of the additional common area to the first floor and the basement.

I read that ten times and I'm saying that's the first time that I've ever heard that we have a very large master suite --

CONSTANTINE ALEXANDER: That's the hardship.

BRENDAN SULLIVAN: And that's our hardship and so consequentially we have to add on to the house.

CONSTANTINE ALEXANDER: That's where I was going.

BRENDAN SULLIVAN: Again, not a criticism, a critique.

NOAM FREEDMAN: I mean, living there, it is actually accurate. If I could easily have a smaller master bedroom -- and the master bedroom, it wasn't built for us. The master bedroom is larger than it needs to be. And so, you know, if I -- if we had had the house built, we would not have a big master bedroom. We would have put more

space, you know, down where it would be used. But obviously --

BRENDAN SULLIVAN: But I mean that really has to do with just taking down interior walls and rearranging the deck chairs to me. But --

NOAM FREEDMAN: You wouldn't be able to get a mudroom then.

BRENDAN SULLIVAN: To me, I think the real need here would be to have a mudroom. That acts as a -- allows the house to be a little more energy efficient, protection from the weather. Yadda, yadda, yadda. I would not have mentioned the master bedroom at all in my pleadings.

CONSTANTINE ALEXANDER: No.

BRENDAN SULLIVAN: But they are what they are.

CONSTANTINE ALEXANDER: You didn't help your case by that statement. I agree with Brendan. And it caused me to make the remark I did make.

Anyway, any comments or questions I should say

from members of the Board?

SLATER ANDERSON: Can I see those plans?

THOMAS SCOTT: There's no elevations? Are there elevations in the file?

SLATER ANDERSON: Yes.

CONSTANTINE ALEXANDER: They're right here.

While you're looking at those, I'm going to open it up to public testimony.

Is there anybody here wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I don't have the file.

DOUGLAS MYERS: The Board Members are looking at the file. I will just interject that I did find the computer-assisted design portrayal of the new construction, I found that to be very helpful, in its own way persuasive that it was replacing somewhat an outdoor structure that had lived its usefulness but was not adding to the bulk of the

house. It seemed well thought out and fit into that niche.

NOAM FREEDMAN: Thanks.

DOUGLAS MYERS: So I found that helpful.

CONSTANTINE ALEXANDER: I think speaking personally and as a non-architect certainly, I'm architecturally handicapped, I thought it was attractive to what you were doing. Fits the structure itself.

DOUGLAS MYERS: Yeah, that's what I was trying to say.

CONSTANTINE ALEXANDER: There is a letter in the file. I'll read it into the public record. It is from Steve Willis, W-I-L-L-I-S and an Elissa, E-L-I-S-S-A Freud who reside at 22 Donnell Street. (Reading) I'm writing this letter in support of -- your petition. We have lived next to Noam and Samantha since we moved here five years ago. We are the principal abutters to their property and would be most affected by their proposed changes. We have reviewed the plans with Noam, and from the windows of our house

carefully looked at the site and placement of their proposed changes. In our opinion it will be an excellent modification to the property, and it will fit nicely into the neighborhood. On a personal note we value having them as neighbors and friends and hope they continue to live and raise their children next-door to us.

Nice comment.

And that's it for public comments.

Further discussion or ready for a vote? I think we're ready for a vote.

Okay, the Chair moves that we make the following findings with regard to the relief being sought.

That a literal enforcement of the Ordinance would involve a substantial hardship. Such hardship that giving the configuration of the house on the ground floor, that there is a need for additional living space for families who would occupy the structure, and in this structure it's likely to attract family, in other words, of people with

children and/or elderly parents.

That the hardship is owing to the shape of the structure and its location on the lot, too. And as especially affecting this lot and not the district generally.

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

In this regard the relief being sought is modest in nature. It has the support of the abutter most directly affected by what is being proposed.

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

There are two sets, a short set and a long set. I'll initial both sets.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: Sorry to make you go through this.

* * * * *

(8:30 p.m.)

(Sitting Members Case BZA-009650-2016: Constantine Alexander, Brendan Sullivan, Thomas Scott, Douglas Myers, Slater W. Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 009650, 150 CambridgePark Drive.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair would report that we are in receipt of a letter from the petitioner, Batten Brothers Signs.

The letters says: Batten Brothers Signs would like to formally withdraw the sign variance application for 150 CambridgePark Drive and cancel any scheduled meetings that relate to this variance application.

The Chair moves that we accept this requested withdrawal.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case withdrawn.

(Alexander, Sullivan, Scott, Myers, Anderson)

* * * * *

(8:30 p.m.)

(Sitting Members Case BZA-009658-2016: Constantine Alexander, Brendan Sullivan, Thomas Scott, Douglas Myers, Slater W. Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 009658, 211 Green Street.

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

ATTORNEY SEAN HOPE: Good evening, Mr. Chair, members of the Board. For the record, attorney Sean Hope, Hope Legal Offices in Cambridge. I'm here tonight on behalf of the owner Mr. Ray Acevedo of 211 Green Street. This is an application requesting Variance relief to locate a rear deck that is on --

CONSTANTINE ALEXANDER: Thank you. You used porch in your advertisement. It's a deck.

ATTORNEY SEAN HOPE: Rear --

CONSTANTINE ALEXANDER: It is a deck. I agree with you.

ATTORNEY SEAN HOPE: Rear deck. Exactly. I did have a conversation with the Commissioner about that.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY SEAN HOPE: And though that's within the side yard setback. This is a row house on the series of row

houses and the lots are very narrow. We actually are using the footprint of the one-story element in the rear. And so because it's below the third story, it's not FAR. But we are actually using the footprint of the deck which is going to be located partially within the side yard setback.

Also there is an opening to enter the deck and there are also windows that will be located within that side yard setback. Although they are not facing the side, so it's not a privacy area, it's actually facing the rear yard. The setbacks are such that any really window or any size of a deck that would be built, that would be functional, would be within the setback.

Also, too, there is a narrow and limited rear yard area. It's a series of those, but specifically for this lot but because of the one-story element, so this would provide reasonable outdoor space for the occupant of the building. We believe that, you know, outdoor space is at a premium. Oftentimes in this area you'll have decks you may have

privacy issues. You'll see from the letters in the file there hasn't been any objections. This is a property that has been --

CONSTANTINE ALEXANDER: Are there letters in the file?

ATTORNEY SEAN HOPE: Yeah, I mean there's no letters in the file.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY SEAN HOPE: Usually, though, there's an issue when you have something so close, but there hasn't been any objection, really not much response. I think a lot of these row houses are in poor conditions. I think this one in particular as well had an owner that owned it for a very long time and it wasn't in great condition, so the property is in need of restoration.

CONSTANTINE ALEXANDER: The -- as you say, and obviously like a row of like five row houses.

ATTORNEY SEAN HOPE: That's right, all connected.

CONSTANTINE ALEXANDER: Are the row houses in the backyard, they all have these one-story projections?

RAY ACEVEDO: Yes, they do.

CONSTANTINE ALEXANDER: So everybody has basically the same configuration. Do any of them have decks?

RAY ACEVEDO: Yeah, the one text door has a deck.

CONSTANTINE ALEXANDER: On one side has a deck?

RAY ACEVEDO: On the one side.

CONSTANTINE ALEXANDER: Okay.

The reason I ask is one, because when it comes to decks, the issue, and Mr. Hope knows, that we worry about is questions of privacy and noise. Decks, you know, can -- people congregate and you can look into other people's windows, etcetera, etcetera. And my concern would be initially is that we approve yours, how many others are going to come marching in afterwards and is there going to be a problem.

Now, you point out correctly so that nobody has

written a letter or come down, I don't think this letter is here to complain, so apparently people are not worried about that. But I am heartened to hear that there is at least one other deck.

RAY ACEVEDO: 213 the building next door has a deck.

CONSTANTINE ALEXANDER: Same thing you want to do?

RAY ACEVEDO: Yes. I mean, I don't know if it's conforming, but it's there. It's probably been there for a long time.

CONSTANTINE ALEXANDER: It's probably built illegally but that's not for us to worry about.

RAY ACEVEDO: No, I know.

DOUGLAS MYERS: What's the size of the neighbor's deck? It's going to be the same.

RAY ACEVEDO: So it's the same -- yeah, same footprint.

CONSTANTINE ALEXANDER: It's a good size. It's

11-by-14 is the size of the deck you want to put roughly.

RAY ACEVEDO: Yeah, it's the same thing.

CONSTANTINE ALEXANDER: So it's a good size deck.
I mean, you could have a big party out there if you want.

DOUGLAS MYERS: Is the building presently
occupied?

RAY ACEVEDO: No. No. It's under demolition. We
got the permit for the demo.

CONSTANTINE ALEXANDER: What are you demolishing?

RAY ACEVEDO: We're just basically gutting it out.

CONSTANTINE ALEXANDER: Oh, inside?

ATTORNEY SEAN HOPE: The whole row house is being
demoed and it's all interior.

DOUGLAS MYERS: Is it your intention to sell the
property?

RAY ACEVEDO: Right. It's been delapidated and
hasn't been taken care of.

CONSTANTINE ALEXANDER: Do you own the properties

on either side?

RAY ACEVEDO: No, no. Trying to acquire the one at 209 but not yet.

DOUGLAS MYERS: What is the argument for hardship in terms of constructing this deck?

ATTORNEY SEAN HOPE: So I think, you know, because it's a three-story townhouse, I think to be able to access the rear yard, I think that having that outdoor space on the second floor would alleviate what would be a very narrow confines of a rear yard space. Also because of the lot is very narrow, that to have a functional deck, any functional deck would like be partially within the setback. I think it's also relevant that the deck is not FAR. So a deck could be built. And if you were going to build a functional deck, you could build a very narrow deck that wouldn't be functional. So I would say that any addition of a deck or outdoor use of that space would require relief even if you had done an addition or anything you would do because of the

side yard setbacks. I think the hardship is really about access to reasonable --

CONSTANTINE ALEXANDER: People at unit 1, the ground floor unit, do have access to the backyard? The second floor unit, unit 2 I guess, doesn't have access?

ATTORNEY SEAN HOPE: Right. Right.

And to be more specific, the second floor unit that has a second and third floor, is that how it's laid out?

CONSTANTINE ALEXANDER: That's how it works.

ATTORNEY SEAN HOPE: Would have a challenge to get to the rear yard space.

The first floor unit would have direct access. It almost provides the means of outdoor space. It's really a very dense environment. Light and air is at a premium when you have a series of row houses that really abutting Mass. Ave. and Central Square. So there is a lot of noise and congestion generally, and I think a little outdoor space

this would provide. And so I think the hardship is really the shortage of outdoor space. And so by having this deck within the setback, would be able to alleviate the congestion and really the lack of outdoor space because of the narrowness of the lot.

CONSTANTINE ALEXANDER: As an abstract matter, actually, all of those points argued for not granting the deck because you got a tight area, a lot of people living there, and if you got decks with people congregating and having a good time, it's going to really detract.

ATTORNEY SEAN HOPE: That would be maybe for an abutter issue, but speaking for the petitioner, I think that those speak to directly what the hardship would alleviate.

CONSTANTINE ALEXANDER: No, no, I know that. But in terms of derogating from the intent of the Ordinance. This does derogate in that sense. I'm not saying that's where we're going to come out. But there is an argument not to allow this kind of thing.

ATTORNEY SEAN HOPE: And I would say to the Chair's point, there are certain situations where this wouldn't be appropriate. I think there are certain neighborhoods and there's a certain history and certain expectation for privacy and that would have this same issue and there would be letters in the file. I think this is uniquely one of those situations where there is a history of decks, but I also I think the structure it double lends itself to really taking that area and building what would be an appropriate --

CONSTANTINE ALEXANDER: The moral is if you succeed in getting 209, we're going to see you again.

RAY ACEVEDO: Right.

SLATER ANDERSON: What's the width of the lot?

ATTORNEY SEAN HOPE: It's really the width of the building.

SLATER ANDERSON: Width of the lot.

THOMAS SCOTT: 15, 8.

SLATER ANDERSON: 15, 8. Is that right?

And Res. B so you're --

ATTORNEY SEAN HOPE: Yeah, so it's -- yeah, 15, 8 approximately.

THOMAS SCOTT: Slightly bigger than that.

CONSTANTINE ALEXANDER: Tight and narrow. I've seen it. I haven't been inside.

SLATER ANDERSON: So your setbacks are sum of 15, seven-and-a-half on the side.

ATTORNEY SEAN HOPE: Yeah, this is actually the Business B.

SLATER ANDERSON: Oh, it's Business B?

ATTORNEY SEAN HOPE: But for residential use it goes down to Res -- not Res. B but it, I think the sum of seven-and-a-half, sum of 20 is correct, and so actually the right side setback is deck is on the property line.

SLATER ANDERSON: Zero. I know that.

DOUGLAS MYERS: With regard, I had -- I mean I

tried to look at the property today and I had difficulty getting a clear view into the rear courtyard, if you will, speaking of the whole space inside. I could get a view down one alley, but I did see the rear part of the buildings that fronts on Mass. Avenue, and they would be the -- that rear section would be the opposite side of the courtyard behind 211 if I'm making myself clear. It seemed, who -- and those seem to be on the upper stories above ground level residential uses, are they?

RAY ACEVEDO: On the Mass. Ave. side?

DOUGLAS MYERS: Yes.

RAY ACEVEDO: No, that's the dance studio.

DOUGLAS MYERS: But above the first floor.

RAY ACEVEDO: No.

DOUGLAS MYERS: Are those -- because there were a lot of windows.

RAY ACEVEDO: That's a dance studio have an office and stuff there.

ATTORNEY SEAN HOPE: Dance complex, right?

RAY ACEVEDO: The dance complex. That's the big dance -- I think they renovated that.

ATTORNEY SEAN HOPE: They did. But they did internally.

And actually there are some photos and some are in the file.

CONSTANTINE ALEXANDER: Are these the same in the files?

ATTORNEY SEAN HOPE: Yeah.

CONSTANTINE ALEXANDER: Okay. You can give them out. I have them here in the file.

ATTORNEY SEAN HOPE: This is maybe a shot looking from --

CONSTANTINE ALEXANDER: I've seen the photos.

ATTORNEY SEAN HOPE: That shows another deck. And this is not helpful. And this shows the one-story element.

BRENDAN SULLIVAN: How many units are in the

building?

CONSTANTINE ALEXANDER: Two.

RAY ACEVEDO: Two.

BRENDAN SULLIVAN: So the first floor, how are you -- and you're going to sell them as two condos?

RAY ACEVEDO: Yes.

BRENDAN SULLIVAN: How are you going to dedicate the rear yard?

RAY ACEVEDO: To the first unit.

BRENDAN SULLIVAN: So they will have exclusive use to that?

CONSTANTINE ALEXANDER: Who are? Unit 1 or unit 2?

RAY ACEVEDO: Unit 1 will have the first -- will have the yard.

CONSTANTINE ALEXANDER: Yes.

RAY ACEVEDO: And I think that you see there.

And then unit No. 2 will be consist of the second

and third floor, they'll have the deck.

CONSTANTINE ALEXANDER: Just the deck? They won't use the yard? I wanted to ask that question and I had forgotten it.

Thank you.

RAY ACEVEDO: Yeah.

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

(No Response.)

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

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard, and I don't think we have any letters in the file that I can see. No. So that's it.

Any final comments Mr. Hope before we close?

ATTORNEY SEAN HOPE: No comments.

CONSTANTINE ALEXANDER: Okay.

Discussion? Ready for a vote? What's the sense?

ATTORNEY SEAN HOPE: Oh, I also wanted to just point out so that we are -- we have the Variance request but we also have --

CONSTANTINE ALEXANDER: The Special Permit. I haven't forgotten it. I probably would have forgotten but you just reminded me.

Ready for a vote? We're not through with the Variance, we'll take that vote first and then the Special Permit. We didn't even mention the Special Permit, but for the benefit of the members of the Board, why don't you just briefly describe that.

ATTORNEY SEAN HOPE: Yeah, and so part of access to the deck is windows and opening within the setback. And based on the orientation of the house, we have an window and opening within the setback and per Article 8 as a non-conforming building, we would need a Special Permit to

be able to alter that and add an opening with a window and a doorway. And so to access the deck from the second floor, we have that. Again, it's because of the site lines. In terms of the Special Permit criteria, again, the window opening is not going to cause any of the negative elements that would be, that would cause the Board to have pause to grant the Special Permit. And as a functional matter, we do need this to access the outdoor deck.

CONSTANTINE ALEXANDER: This is all related to the deck should we grant you the Variance for the deck.

ATTORNEY SEAN HOPE: That's right. And row houses have light and air that is very vital, and having that entryway and as well the window as well.

RAY ACEVEDO: And the window.

CONSTANTINE ALEXANDER: I'm completely unsympathetic to the light and air argument. Light and air, you got the deck. I mean the windows are the windows.

Right?

ATTORNEY SEAN HOPE: Yeah, I guess my point is that the room that is adjacent to the deck --

CONSTANTINE ALEXANDER: Right.

ATTORNEY SEAN HOPE: -- adding a window because each of the row houses you don't have any windows coming in from the side. So you have a particularly dark area. That was the only point.

CONSTANTINE ALEXANDER: Okay.

DOUGLAS MYERS: I'd like to speak, not that I expect to come out strong here as my fellow Board Members. I'm inclined to vote against this and I just feel that I should just explain rather than just stick my hand up. I'm not strongly against this, but I'm enough against it that I just feel to have a deck -- this is a congested area behind buildings. Kind of the courtyard itself is -- leaves something to be desired in terms of its aesthetic appeal. And I understand the reasons why the deck here is going to be good sized because it's going to fit on top of an

existing space, but it is going to be a good sized deck, 11-by-15 in a confined space in an area that I would call congested, and if the intention is to put in more and more decks in other buildings, I can't speak for the deck that's there. I can't say whether it's oppressive or not, but I think that we are -- I would regard it as unfortunate and I would think that we're making a -- we're worsening the situation in the space behind the building by making it congested, by importing the source of sound and possible aggravation and inconvenience. And I'll accept the fact that maybe the building's fronting on Mass.

Avenue's -- Mass. Avenue are unoccupied at the higher stories. There are many, many, windows there. And I did see from the Mass. Avenue side some store ways and entrances that had mailboxes, and I'm not in a position to question what you said. I'll accept it. But there were a lot, there were a lot of upstairs premises, a lot of upstairs premises behind 10, 12 windows on the facing those buildings. So all

in all, although I don't want to say, I -- sometimes I'm really strongly against decks, but there's enough here I feel comfortable for this deck, I don't think it's right for this area on the ground that it derogates from the Ordinance and it's too congested in an internal area.

CONSTANTINE ALEXANDER: My observation of that, and I went through the same thought process, Doug. If there was not another deck next-door, I would vote against it as well. But since there is one already, it seems to me a little bit unfair not to allow this person who has the exact same structure not to have a deck as well. And if there's a proliferation of decks, as I think there are going to be, the people who live in them will have to deal with the noise. And at the end of the day it will affect the property values. And so as a developer, you'll have to take that into consideration. You may be shooting yourself in the foot by having all these decks out here which at the end of the day detract from the inhabitability of the

structures, not add to it, but that's my view. I'm amenable of granting relief on this case because of we have a precedent already here. That's how I feel.

Anybody else want to comment?

BRENDAN SULLIVAN: Well, property value, and even though we're not here to, you know, foster somebody making a dollar or a million dollars or somewhere in between, that the building is in disrepair. And in order to save the building, and I'm not blinded by the -- this is not affordable housing nor will it be affordable housing, but in order to save the building and to make it -- restore it to -- and to again add to the surrounding buildings and the ambiance and so on and so forth, it's going to take an awful lot of blood, sweat, and tears but a lot of money. And then at the end of the day to make it marketable, to make it attractive, that the only way that you do that and to bring this building to save it and bring it up many notches, is that the first floor condo has the exclusive use of the

backyard which makes it worthwhile for that unit as opposed to shared. Yes, it's going to add to the cost. I mean, it's going to add to the marketability which adds to the price and so on and so forth. But that's a whole other issue. And then, then what do you do with the rest of it? And then to allow for some outdoor space for the second unit, I think is fair and reasonable. And, again, it allows the building to be revitalized and to be restored. And those are the amenities that make it --

CONSTANTINE ALEXANDER: I agree with that.

BRENDAN SULLIVAN: -- saleable. And brings up, I think, the surrounding. I mean, we have a deck at our house and really except for a couple of grandchildren running around once in a while, a lot of noise doesn't emit. Other people have decks. And, yes, maybe an occasional party, but I think the 360 days of the year it's really a quiet space. Maybe the 4th of July, but then everybody's 4th of July is what it is.

So, I would tip, again, the balance towards I think it's a nice amenity to have which will restore the building.

CONSTANTINE ALEXANDER: What I'm going to suggest, and those are my thoughts as well, what I'm going to suggest that we put a condition on is that the occupant of unit No. 2 does not have access to the backyard. I want it in writing that it's going to be exclusively for the people on the first floor, and the second floor they have their deck.

RAY ACEVEDO: Yes.

CONSTANTINE ALEXANDER: And we do that, and I don't know if the City will be able to enforce it, or at least monitor it, but I think that closes the loop in terms of where we're at.

Anything further? Or ready for a vote?

THOMAS SCOTT: I'll just say I'm generally inclined to vote against large decks like this, I think. But where there's no opposition from abutters, there's a

building below that kind of dictates the size of the deck and it is an amenity to that unit, you know, I can, I can find myself to vote for this.

CONSTANTINE ALEXANDER: Okay.

SLATER ANDERSON: You know, I think that practically if we don't grant it, I think people might still go out on the roof and use it.

CONSTANTINE ALEXANDER: Climb out the window, right? Some people do.

SLATER ANDERSON: And it is, you know, we are in a -- it's a seasonal climate where it isn't going to get used probably for more than three or four months of the year. Maybe, maybe six on a good year. So, you know, without opposition, it's a tricky site there. I am a little leery of having this conversation again about the building next-door if, you know, that comes along. And maybe the new abutters will show up in opposition. But I'm, I'm amenable to it.

CONSTANTINE ALEXANDER: You should have in mind, I think, if we do grant relief and the deck is built and someone else, you or the person who buys 209 come in, I think we would have a hard time from a precedent point of view denying relief there although we haven't -- go back to the donut shop, we don't necessarily have to be -- apply the law.

ATTORNEY SEAN HOPE: And I just wanted to add one thing. You know, I do think that all decks are probably not created equal in all areas of the city.

CONSTANTINE ALEXANDER: That's true.

ATTORNEY SEAN HOPE: I do think culturally there are certain environments and certain neighborhoods where there is closer proximity and there is this idea that you're not going to have a six-foot fence between your neighbors and this expectation that you're going to have your piece of Nirvana in the backyard. I do think Central Square has a lot of houses, that are not all row houses, but are very

tight yards. It's an area that I grew up in, and I think the idea of even looking at a deck and thinking about congestion the way you would in West Cambridge or other parts of Cambridge, is not always I think appropriate. So I think -- and maybe instead of looking at the size of the deck and, you know, maybe interpreting it a certain way, I think this is where feedback from neighbors and residents really can play into it, or the lack of opposition can really sometimes give the context of whether something is congested or whether it's appropriate. I think also the fact that you're so close to Mass. Ave., and people living there, and even future occupants of the building are going to have a different expectation. So I just want to say as we come forward with different decks or different open space, which is a premium and is value to a property, I do think we should maybe look at them in the context of what they are. I mean, I also think in a precedential neighbor a notion that this is not case law so that you're not bound by

that. And it's true that this row house could change. You have two owners that come here that the third deck that may be the deck that doesn't get it, because, you know, if it is certain changes in the culture and what people look at. So I think this is appropriate now. It may not be appropriate for the next people based on an abutter. And if we happen to inherit an abutter who expected a different thing and wanted to oppose and were asking for a Variance, then we probably wouldn't even be here, because I would counsel him and say, look, you have a direct abutter. So I just want to -- I just feel like sometimes we paint all decks within this round brush and I do think that they are different, cultural norms in different parts of the city that also play into whether or not something is congested or appropriate.

CONSTANTINE ALEXANDER: Well said.

DOUGLAS MYERS: I'll just say, I don't want to argue the case. I was completely sincere when I said that in the beginning, I do think the argument could be

prolonged. There are counter-veiling arguments that could be raised, and I don't want to do it, because I don't -- as I said in the beginning, I don't feel this deck in this context breaches that class where I want to keep on arguing and actively persuade people. So that's fine.

CONSTANTINE ALEXANDER: You can keep arguing because we can't hear the next case for another five minutes anyway.

DOUGLAS MYERS: That's not a reason. I'm sorry. Although it's tempting.

CONSTANTINE ALEXANDER: Anything further are we ready for a motion? The first motion, we have two to make.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being is that the -- given the nature of this row

house, there is no access to the backyard or to any outdoor space for unit 2. And, therefore, there is a need for a deck to provide some light and space for the owner or the occupant of unit 2.

That the hardship is owing to the shape of the structure. It is a row house, very narrow lot, no, just no other way of getting access to the outside other than through a deck.

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

In this regard the Chair would note that there is a deck in a house nearby or abutting, identical if you will, to what is being proposed.

That as the petitioner's counsel has pointed out, that this area of the city, decks are not -- can be looked at in a different form, in a different way than other parts of the city in terms of its impact on the neighborhood and

on the city.

So on the basis of all of these findings the Chair moves that we grant the Variance requested on the condition that the work proceed in accordance with plans, two pages of plans, prepared by Choo and Company C-H-O-O and Company. Both pages of which have been initialed by the Chair.

All those in favor, please say "Aye."

DOUGLAS MYERS: You wanted to mention the condition about the exclusive use.

CONSTANTINE ALEXANDER: Oh, thank you. I knew there was something going through my mind, I couldn't remember what it was.

Yes, thank you.

And on the further condition that the, that the owner of unit 2 who will have access to the deck that we're approving tonight may not have any right to use the backyard of the premises. That the backyard would be exclusive for the occupant of unit No. 1.

Thank you.

All those in favor, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

DOUGLAS MYERS: On opposed.

CONSTANTINE ALEXANDER: Oh, I'm sorry. Four in favor.

(Alexander, Sullivan, Scott, Anderson.)

CONSTANTINE ALEXANDER: One opposed.

(Myers.)

CONSTANTINE ALEXANDER: Sorry. Nevertheless, the Variance is granted.

Now turn to the Special Permit.

With regard to the -- is it relocation or you're really cutting --

RAY ACEVEDO: We're cutting out, putting in new windows and putting in a door.

CONSTANTINE ALEXANDER: But the existing window is

going to be relocated as part of it? Just curious.

RAY ACEVEDO: No, we have to basically in the basement we have to do window wells to be able to have access for a legal unit for the bedroom.

ATTORNEY SEAN HOPE: For the second.

RAY ACEVEDO: One for the second floor. We're going to put a door there.

CONSTANTINE ALEXANDER: Yes, I saw that. And go to the deck.

RAY ACEVEDO: There's no door there. And then in the basement right here.

ATTORNEY SEAN HOPE: Yeah, so they're both --

CONSTANTINE ALEXANDER: New windows.

ATTORNEY SEAN HOPE: -- new windows.

CONSTANTINE ALEXANDER: And a door.

ATTORNEY SEAN HOPE: And a door.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this Board make the following

findings with regard to the Special Permit being sought:

That the requirements of the Ordinance cannot be met unless we grant a Special Permit.

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

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

In this regard the Chair would note that there is already a deck in a structure nearby.

And, further, that there have been no neighborhood comment or opposition to what is being proposed.

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

And that what is being proposed will not impair

the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

So on the basis of all of these findings, the Chair moves that we grant the Special Permit requested on the condition that the work proceed in accordance with the plans referred to with regard to the Variance, and also subject to the conditions regarding occupancy of the rear yard that was in connection with the Variance.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor on this one.

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

* * * * *

(9:00 p.m.)

(Sitting Members Case BZA-009695-2016: Constantine

Alexander, Brendan Sullivan, Thomas Scott, Douglas Myers,

Slater W. Anderson.)

CONSTANTINE ALEXANDER: Come forward give your name and address to the stenographer and let me explain our problem.

ATTORNEY IAN URQUHART: My name is Ian Urquhart, U-R-Q-U-H-A-R-T. I'm here from Prince Lobel and I'm representing T-Mobile.

CONSTANTINE ALEXANDER: Let me explain, sir, what our problem is if I can find the section. This area, One Brattle Square is in the Harvard Square Overlay District under our Ordinance.

ATTORNEY IAN URQUHART: Okay.

CONSTANTINE ALEXANDER: The provisions of our Ordinance dealing with that say, if I can find it. They say -- do you know where it is, Sean, by any chance?

SEAN O'GRADY: It's in....

CONSTANTINE ALEXANDER: Sum and substance is that we're not supposed to take any action on a case in this area

unless we hear from the something called the Harvard Square Advisory Committee. And for some reason they haven't commented. Therefore -- if I can find the specific section to be sure I'm not --

BRENDAN SULLIVAN: That's too bad, because Liza over there usually spearheads that.

CONSTANTINE ALEXANDER: I know. And on Wednesday I reminded Maria to remind Liza to get something over here.

Like, for example, the case for the Citizens Bank the sign case, they commented.

We had a telecom case on Arrow Street, they commented. For some reason they didn't comment now.

Have you found where it is now.

SEAN O'GRADY: I'm closing in on it.

THOMAS SCOTT: Gus, you didn't announce the case.

CONSTANTINE ALEXANDER: I will. Thank you.

THOMAS SCOTT: For Cathy.

CONSTANTINE ALEXANDER: Thank you.

The Chair will call case No. 009695, One Brattle Square. And you've already told us who you are.

ATTORNEY IAN URQUHART: Yes.

CONSTANTINE ALEXANDER: And the Chair is suggesting that this case has to be continued because we don't have this advice from the Harvard Square Advisory Committee.

SEAN O'GRADY: 20.53.2.

CONSTANTINE ALEXANDER: 20.53.2. Here it is.

SEAN O'GRADY: That may not be it.

CONSTANTINE ALEXANDER: Here it is. That's something else.

Yes. I'm reading from 20.53.2 just for your benefit and for the benefit of the record.

(Reading) In reviewing applications for Variances, Special Permits, or development consultation, blah, blah, blah, the special permitting granting authority, or the Harvard Square Committee, shall be guided by the objections

and criteria contained in the Harvard Square Development guidelines. But there's something other -- there's more than that, Sean, there's something that we can't proceed.

BRENDAN SULLIVAN: We can't proceed until we get an advisory.

CONSTANTINE ALEXANDER: Or we have to hear from them.

Here it is. Harvard Square Advisory Committee. It's 20.54.1 which creates the Harvard Square Advisory Committee.

ATTORNEY IAN URQUHART: I'm sorry, what was that?
20?

CONSTANTINE ALEXANDER: 20.54.1.

ATTORNEY IAN URQUHART: Okay.

SEAN O'GRADY: Yes, so that's the responsible --

CONSTANTINE ALEXANDER: Yeah. It says, the committee is supposed to prepare a written report with regard to the relief being sought.

SLATER ANDERSON: D, the reports will be forwarded, through the applicant, it shall be included with any application for a Building Permit, Special Permit, or a Variance.

CONSTANTINE ALEXANDER: Yeah. I thought there was something that says you can't decide at all. I can't find it.

The long and short of it is we can't hear the case tonight, bottom line, because the Harvard Square Advisory Committee hasn't done its job. I would hope we can do it in two weeks.

SEAN O'GRADY: No, you're pretty clogged up.

CONSTANTINE ALEXANDER: Clogged up. Okay.

ATTORNEY IAN URQUHART: So how does that process generally work? Would we have to connect with them directly --

CONSTANTINE ALEXANDER: Probably --

ATTORNEY IAN URQUHART: -- or go through the

Planning Board?

CONSTANTINE ALEXANDER: Probably -- I don't think the Planning Board would. Inspectional Services tried. They did already at my request a couple of days ago. I think it would help if you contacted them directly as well.

So we have to do it a month from now?

SEAN O'GRADY: 5/12.

CONSTANTINE ALEXANDER: 5/12. Sorry to say.

ATTORNEY IAN URQUHART: Well, I apologize -- yeah, this is news to me.

DOUGLAS MYERS: You lose time but hopefully not money. You'll be compensated for your time.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued as a case not heard until seven p.m. That means you'll get heard earlier on May 12th, subject to the following conditions:

That the -- you have to sign a waiver of time for decision to avoid any technical problems. And Mr. O'Grady

will give that to you.

Two, that the posting sign that's there now needs to be modified to reflect the new date and the new time. So do it with a magic marker.

And then that modified sign must be maintained for the 14 days that is required in our Ordinance just as it is right now. You comply with it now. I think it's for 14 days before the hearing.

And then lastly, that to the extent that you're going to modify the plans or photo simulations that are in the files, I doubt you will, that those modified plans with photo sims must be in our files no later than five p.m. on the Monday before May 12th. So if you don't do that, then we'll have to further continue the case.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor case

continued.

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

BRENDAN SULLIVAN: You call Liza Paden at Community Development and tell her that you're being a given a penalty lap basically because you didn't have an advisory opinion from the Harvard Square. She'll know all about it.

ATTORNEY IAN URQUHART: Okay.

BRENDAN SULLIVAN: And then at that point she can probably get the ball rolling to the members of that -- I don't know if they call in to her or however they do it. But at some point, then, she says that she has contacted them, advised, and so on and so forth, and they have reviewed it and they have no objections or they have an objection or whatever. You know, then there will be a little comment. But she's the person, she's the point person.

CONSTANTINE ALEXANDER: The problem is this group is sort of semi -- it's sort of half disbanded and half not.

So they don't have discipline. They tend to just -- would appear to me anyway, act on an ad hoc basis. So if somebody pushes them to have a meeting to say yes or no or whatever they're going to say -- nothing happens.

ATTORNEY IAN URQUHART: But they have a specific authority under the Ordinance?

CONSTANTINE ALEXANDER: Oh, yes. We have to make sure we hear from them before we can decide the case. They don't decide it. They make a recommendation.

ATTORNEY IAN URQUHART: Right. Same with Historical Commission or anyone else would.

CONSTANTINE ALEXANDER: Yes, yes. We need to hear -- Historical is more advisory. We have to hear from them. It's built into the Ordinance and that's why we can't go tonight.

This is a case not heard so we don't need the same five of us here for that case.

ATTORNEY IAN URQUHART: All right. My first time

before you guys and I got --

CONSTANTINE ALEXANDER: If I had known, I would have told you earlier so you don't have to stay until nine o'clock to find out.

(At 9:10 p.m., Board of Zoning Appeal Adjourned.)

ERRATA SHEET AND SIGNATURE INSTRUCTIONS.

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

INSTRUCTIONS

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

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

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

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

That the hearing herein before set forth is a true and accurate record of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of April, 2016.

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

My Commission Expires:
April 29, 2022

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