

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, JULY 26, 2018

7:05 p.m.

in

Senior Center

806 Massachusetts Avenue

First Floor

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Vice Chair

Janet Green, Member

Andrea A. Hickey, Associate Member

Alison Hammer, Associate Member

Sisia Daglian, Assistant Zoning Commissioner

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(7:05 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, George S. Best.)

CONSTANTINE ALEXANDER: The Chair will call this

Zoning Board of Appeals to order, and at the outset let me read a statement.

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

And I wish to advise that actually two, at least two recordings are being made. A citizen of the city is recording, and our stenographer records the meeting to assist her in preparing the transcript for the meeting.

So, is there anyone else in the audience recording this

meeting?

(No Response.)

CONSTANTINE ALEXANDER: None. Okay, everybody should be advised.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I'll have a recording device but just during our portion.

CONSTANTINE ALEXANDER: Whatever. You're here for the Arnold Circle?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Yes.

CONSTANTINE ALEXANDER: We're not taking that case at this second. Before we start, you can bring that up when we call the case.

* * * * *

(7:10 p.m.)

(Sitting Members Case No. BZA-016194-2018: Constantine Alexander,
Brendan Sullivan, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: The Chair will call case
016194, 955 Massachusetts Avenue.

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

You want to be heard?

JEFFREY LONGNECKER: Should I sit?

CONSTANTINE ALEXANDER: Please. Name and address

to the stenographer.

JEFFREY LONGNECKER: I'm the petitioner. Jeffrey Longnecker. My address is 16 Tremont Street, Charlestown, Mass.

CONSTANTINE ALEXANDER: And it's my understanding that you're here tonight to request a continuance?

JEFFREY LONGNECKER: Yes.

CONSTANTINE ALEXANDER: Further continuance. Which is fine. We generally do that, but let me say at the outset. This will be your second continuance. We don't like to continue cases more than twice. So absent very compelling circumstances, the next time we have this case it's going to be heard. Okay?

JEFFREY LONGNECKER: Yes.

CONSTANTINE ALEXANDER: Understood?

JEFFREY LONGNECKER: Yes.

CONSTANTINE ALEXANDER: When would you like to continue this case to?

JEFFREY LONGNECKER: Is there a meeting September 13th?

SISIA DAGLIAN: Yes. There's only one case on that day so far.

CONSTANTINE ALEXANDER: Okay. Let me see if there are members of the -- neighbors in the audience.

JEFFREY LONGNECKER: Yes.

CONSTANTINE ALEXANDER: September 13th work for you folks? It will be at seven p.m.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Yes.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this case be continued as a case not heard, which means any five members of the Board can sit, subject to -- continued to seven p.m. on September 13th subject to the following conditions:

First, that you sign a waiver of time for a decision. And Sisia will have that for you. That's just a formality, because otherwise by state law we'll be forced to hear the case tonight, and I don't think you would want us to do that. I don't think relief would be favorable. So you sign the waiver before you leave.

Second, that you must maintain a posting sign like you did for the original hearing. You've got that from the clerk's office.

JEFFREY LONGNECKER: Yes.

CONSTANTINE ALEXANDER: Or from the Inspectional Services Department office. That sign has to say the date, September 13th, and the time, seven p.m. And that sign must be maintained for the 14 days -- right? As with the original?

JEFFREY LONGNECKER: Yes.

CONSTANTINE ALEXANDER: Fourteen days before the hearing.

If you don't do that, we won't hear the case and that will be -- you would have lost the second continuance.

And the third is that to the extent that you're going to modify -- you're intending in results in modification of your plans that you submitted with your filing, your dimensional form, any of that information must be in our files no later than five p.m. on the Monday before September 13th. That's to allow us, us being the members of the Board, between then and the hearing, to read the files and it allows the citizens of

the city likewise to read the files. So there will be -- everybody will be on the same page. Got it?

JEFFREY LONGNECKER: That's Monday the 9th or the full week before?

CONSTANTINE ALEXANDER: No, no, it would be the Monday before.

JANET GREEN: Monday before the Thursday.

CONSTANTINE ALEXANDER: So it would be the 9th. And by five p.m. that day.

JEFFREY LONGNECKER: The 10th.

CONSTANTINE ALEXANDER: I'm sorry?

JEFFREY LONGNECKER: I'm sorry, I'm trying to do the calendar dates in my head. But that Monday, week of the hearing?

CONSTANTINE ALEXANDER: Yes.

JEFFREY LONGNECKER: Understood.

CONSTANTINE ALEXANDER: And the office of -- the city offices are open from eight p.m. on those nights. So five gives you the time to get there and file it. You must do that, that's very important.

ANDREA HICKEY: And Monday is the 10th.

JEFFREY LONGNECKER: The 10th, yeah.

CONSTANTINE ALEXANDER: Okay. You got it?

JEFFREY LONGNECKER: Got it.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Sullivan, Green, Hickey.)

* * * * *

(7:30 p.m.)

(Sitting Members Case No. BZA-016211-2018: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: I'm going to resume this meeting if I may. We still don't have our fifth member for the continued case. I can call the case. Mr. Hope, do you want to proceed with four or not?

ATTORNEY SEAN HOPE: No.

CONSTANTINE ALEXANDER: No. Okay. Understood.
What date would you like?

ATTORNEY SEAN HOPE: So I think the next available date --

CONSTANTINE ALEXANDER: 23rd of August would be the next available date. I'm not even sure the missing member will be available though, either. Whatever date we pick, it's going to be a little

squishy.

ATTORNEY SEAN HOPE: September 13th.

CONSTANTINE ALEXANDER: We have room on our
agenda for September 13th?

SISIA DAGLIAN: We have two already.

CONSTANTINE ALEXANDER: One is 955 Mass. Ave.

SISIA DAGLIAN: Yeah. And the other one is 254 Franklin
Street.

CONSTANTINE ALEXANDER: I don't remember. But,
okay. I don't remember.

Okay.

ATTORNEY SEAN HOPE: Were you going to call that first
case?

CONSTANTINE ALEXANDER: The Harvard case?

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: You want to wait?

ATTORNEY SEAN HOPE: Yes, we want to wait holding up
hope.

CONSTANTINE ALEXANDER: That's fine.

We'll finally get to the regular agenda. Again, I apologize.

We're not going to call your case right now.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I know.

I just would like to say for the record, that these delays are causing us substantial hardships.

CONSTANTINE ALEXANDER: Sir, I mean, you know, enough. Enough.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Enough of what?

CONSTANTINE ALEXANDER: I'm sorry about the substantial hardship. A member of the Board for some reason is not here tonight. And the person who you're working with wants to continue the case. We could hear it tonight with four people. Do you want to do that?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: No, because the voting would --

CONSTANTINE ALEXANDER: Well, then thank you very much.

(Case recessed.)

* * * * *

(7:30 p.m.)

(Sitting Members Case No. BZA-016637-2018: Brendan Sullivan, Janet Green, Andrea A. Hickey, Alison Hammer.)

CONSTANTINE ALEXANDER: Now the Chair will call the first case on our regular agenda, case No. 016637, 63 Mt. Auburn Street.

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

BRENDAN SULLIVAN: Hi, welcome.

ALEXANDRA OFFIONG: Good evening.

BRENDAN SULLIVAN: Introduce yourself for the record,
Alexandra.

ALEXANDRA OFFIONG: Good evening. My name is
Alexandra Offiong from Harvard University.

AARON LAMPORT: And I'm Aaron Lamport from Beyer,
Blinder, Belle, the architect for the project.

BRENDAN SULLIVAN: Just for the record, let me state that
you have the right to be heard by five members and you would have to
receive four affirmative votes in order for relief to be granted. You'd have
the option to be heard by four. And you would need four affirmative
votes. So you have the option to be heard by five or to go forward with
four.

ALEXANDRA OFFIONG: We would like to go forward with
four.

BRENDAN SULLIVAN: Okay. Let the record show, then,

that the petitioner opts to go forward with four sitting members.

Okay.

ALEXANDRA OFFIONG: So, good evening. We're here tonight to discuss a project that we are planning at Claverly Hall which is an undergraduate dormitory at 63 Mt. Auburn Street. Claverly Hall is a part of the larger Adams House, which is one of the 12 Harvard houses. It's located in Harvard Square. It's in the Harvard Square Overlay District and the Harvard Square Conservation District. It was built in the late 19th century and it was acquired by the university in 1920 and it's been a dorm since it's founding.

So among the goals of the renovation project that we have planned, one of the key ones is to address code compliance for the building. And that's the nature of the zoning requests for this evening. So to create a code compliant egress path, we are proposing a very small in-fill addition of a notch, a light well in the rear of the building. So this is a very small addition that's about eleven feet by six-and-a-half feet, it's distributed. It's on five different floors of the building. And you can see it's, it's that little notch. You can see that it's facing a parking lot and it's

facing the rear of four Harvard buildings and it's not visible from a public way. And so this, this would represent an addition of about 335 new square feet of GFA. And so the nature of the relief that we are requesting is an FAR Variance.

The overall project will actually reduce FAR for the building from 3.97 to 3.56. This is in the BB District in the Harvard Square Overlay which allows only a 3.0 for dwellings. All other uses in the district are allowed at 4.0. So if this were any other use, this would actually be an as-of-right project.

The building is also non-conforming for height by about a half a foot, and that is not going to be changed through the project.

So the project has already received its Certificate of Appropriateness from the Cambridge Historical Commission. I think in the file there's a note from the Harvard Square Advisory Committee that has seen the case but has not commented because there's really no impact to the public realm.

And so I will hand it over to Aaron Lamport to describe the technical details of the request.

AARON LAMPORT: So as Alexandra mentioned, the red areas you see here are the areas --

JANET GREEN: Can you hear in the back? Okay.

AARON LAMPORT: -- are the areas that are being in-filled. While we show five rectangles, only four of them are actually built space. And at the lowest level it's just the overhang in the fact that an open area is being covered, it still counts towards the GFA. But it's four floors where we're actually producing the space. This is a photo of the area from within the parking lot. Again, not visible from the public way. And it's just that niche area that would be in-filled.

And the reason why we are requesting permission to do this has to do with the life safety. It is a code mandate, we must provide two means of egress from all of the units within the building. Going forward as part of the renovation, it is not acceptable to continue to use fire escapes and other methods of going out of the building.

So how does this affect it? There's the two squares here are the two squares of the stairs within the building. But the units that are in this corner down here only can enter currently directly into that staircase.

So to get to the second stair, they would have to pass through the first stair. And that is not considered an acceptable second means. If there were a fire in that first stair, they would not be able to exit their unit.

So, what we have proposed is that this space, which is roughly six-and-a-half feet by eleven feet with that in-fill and that it allows us to create a second corridor, that we bypass the stair, reconnect with the existing historical way here, and then reach that second stair.

We examined, too, to see where there are other options, ones that didn't require us to go outside the building. And so there is a possibility to do a second path around the stair going the other direction. But the impact to the program and use of the space is very substantial. Not only is the lot more area required, it also makes the travel path to get around longer. It's actually, you know, decreasing the safety for the occupants to leave. And on the first floor of the building there's a double height space. Actually, you may view it as the second floor. We're talking with it the ground to the first floor. We cannot even get passed there. So there you would then have to build an additional staircase in the building to get down.

So what's allowed by virtue of this in-fill is that it meets our code life safety needs with a shorter path while maintaining the program. And the importance of the program is trying to get as many possible beds out of this building to minimize the impact on housing in general and to sort of reduce Harvard's footprint by maximizing the beds that they can provide within the buildings and not having to look outside for additional bed space.

BRENDAN SULLIVAN: Where is the reduction in square footage?

AARON LAMPORT: So the reduction is happening because currently the building has no insulation at all. So it's all around the entire perimeter. We're removing just what is a thin couple inch plaster furring and moving that wall in six inches to insulate the entire building for energy compliance. And then additionally because of the modern systems that are going in, we are adding additional mechanical area. So those act as FAR.

BRENDAN SULLIVAN: So it reduces the number?

AARON LAMPORT: Yeah. So the net reduction is a fairly

significant reduction of -- it's a little over I believe -- 5,000?

ALEXANDRA OFFIONG: Yeah, it's about that.

AARON LAMPORT: Sorry, a little over 5,000 square feet as compared to even taking the addition which is 335 square feet.

ALEXANDRA OFFIONG: Yeah.

AARON LAMPORT: But it's a net total reduction and that's why the FAR would go from just under 4.0 to going almost down to 3.5.

BRENDAN SULLIVAN: Yeah.

AARON LAMPORT: So the mechanical in the basement is the other spaces plus a couple of the mechanical shafts.

BRENDAN SULLIVAN: Yeah, okay.

AARON LAMPORT: And it's virtually no mechanical systems in the building.

BRENDAN SULLIVAN: It's a realignment of the chairs on the deck in some sense, and it's also bringing the building up to somewhat modern standards, code compliant, and energy efficiency.

ALEXANDRA OFFIONG: Exactly.

BRENDAN SULLIVAN: So, okay.

Anything else?

AARON LAMPORT: No.

BRENDAN SULLIVAN: No? Okay.

AARON LAMPORT: More for any questions you may have.

BRENDAN SULLIVAN: Any questions from the Board at all?

JANET GREEN: No.

ANDREA HICKEY: No questions.

BRENDAN SULLIVAN: No.

Let me, let me open it to public comment.

Is there anybody here who would like to speak on the matter
of 63 Mt. Auburn Street?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance.

There is correspondence from the Cambridge Historical
Commission.

The Harvard Square Conservation District has issued a
Certificate of Appropriateness. Was approved by the Historical
Commission on June 7, 2018.

There is also correspondence from the Harvard Square Advisory Committee. The Harvard Square Advisory Committee reviewed the application by e-mail and declined to comment on the application as the proposed change would not appear to have an impact on any of the standards for appropriate development in the square that are the Harvard Square Advisory Committee areas of responsibility.

And that is the sum substance of any correspondence.

Okay, anything else that you want to add or say?

ALEXANDRA OFFIONG: That covers it.

BRENDAN SULLIVAN: Any questions?

JANET GREEN: No.

ANDREA HICKEY: No questions.

BRENDAN SULLIVAN: Ready for a motion?

JANET GREEN: Yes, ready.

BRENDAN SULLIVAN: All right, let me make a motion, then, to grant the relief as requested.

The Board finds that after accepting the supporting materials and an in-depth presentation by the petitioner's representative, we'll make

a motion to grant the relief from the Ordinance as requested to allow the petitioner to construct an addition to the building which exceeds the allowable maximum floor area to lot area to an existing non-conforming structure.

The Board finds that a literal enforcement of the provisions of the Ordinance 5.31 would involve a substantial hardship to the petitioner because it would preclude the petitioner from making the desirable and very necessary modifications to a legally non-conforming building built in 1892 without reducing the existing building by approximately 1400 square feet. This reduction would eliminate student living space, which would be contrary to establish city stated desire to encourage institutions such as Harvard, to provide more student housing and living space.

The Board further finds that the addition of 335 square feet, an actual reduction of FAR from 3.97 to 3.56, is a fair and reasonable request given the total benefits to the occupants and visitors to the building.

The hardship is due to the fact that the building was constructed in 1892 prior to the enactment of the Zoning Enabling Act, and

the current governing ordinances which constrains the ability to modify and update the functionality of the building without the owner's requirement to reduce the size of the building, which would have no appreciable benefit to the program, safety, or liveability to the building.

The Board finds that desirable relief may be granted without either substantial detriment to the public good for the following reasons:

This project responds to the Cambridge Growth Policy 52, which states that major educational institutions should be encouraged to provide housing for their students through effective use of existing land holdings in the core campus.

Claverly Hall has been used as a Harvard dorm since 1920.

A proposed renewal of the subject property will result in benefits in terms of investing in the university stock of student housing, improving the building's life safety and accessibility, and investing in the historic resources of the city.

The project will replace exterior fire escapes within interior code compliant secondary means of egress. Modified entrances and elevators will make the building accessible for persons with disabilities.

Through this project Harvard is preserving a national registered building in historic Harvard Square.

The Board finds that relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance for the following reasons:

Both the Mass. Zoning Enabling Act and the Cambridge Zoning Ordinance allow non-conforming buildings to remain in place, even to be expanded, so long as the change, extension, or alteration is not substantially more detrimental to the neighborhood.

The proposed addition to the subject property can be readily accommodated on the site in a manner that does not impact the overall physical character of the lot. As noted, the existing FAR will be reduced. The addition will not be seen from the public way, and does not extend the building footprint. As represented, the proposal will result in no adverse impacts in terms of traffic or shadow -- shadowing.

Granting the requested relief will permit a preservation of a non-conforming historic structure which will significantly improve its life, safety, and accessibility.

I will further grant the relief based on the presentation by the petitioner's representative, the supporting documents, and compliance with the drawings contained therein and initialled by the Chair.

Any other additions?

ANDREA HICKEY: Yes. Excuse me, before you conclude and ask for the vote. I believe you referenced 5.31 and it should be 5.33.

BRENDAN SULLIVAN: Possibly. Yeah.

ANDREA HICKEY: Yeah. So I think we need to incorporate that.

BRENDAN SULLIVAN: 5.33. That be a change. Good catch.

ANDREA HICKEY: It wasn't mine. It was Ranjit.

BRENDAN SULLIVAN: Initialled by the Chair.

Okay, all those in favor of granting the relief requested?

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Green, Hickey, Hammer.)

ALEXANDRA OFFIONG: Thank you very much.

* * * * *

(7:45 p.m.)

(Sitting Members Case No. BZA-016211-2018: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey.)

CONSTANTINE ALEXANDER: The Chair will now call this long continued case -- I don't want to make light of it, case No. 016211, 12 Arnold Circle.

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

And at the outset I want to apologize to you and your client and to the city officials for the fact that we only have four members of the Board. I don't know what happened to our fifth. Hopefully it's just oversight and nothing more serious than that.

ATTORNEY SEAN HOPE: That's right.

CONSTANTINE ALEXANDER: But we don't have five.

ATTORNEY SEAN HOPE: Okay. I understand.

CONSTANTINE ALEXANDER: And I think you indicated to us that you would prefer to continue the case?

ATTORNEY SEAN HOPE: Yes, I would.

CONSTANTINE ALEXANDER: September 13th?

ATTORNEY SEAN HOPE: That's right.

CONSTANTINE ALEXANDER: Ranjit. September 13th work for you? We're going to continue the case until September 13th.

RANJIT SINGANAYAGAM: Yes, that's fine.

CONSTANTINE ALEXANDER: All right.

The Chair moves that we further continue this case as a case heard to seven p.m. on September 13th subject to the following conditions:

You've already signed a waiver for a time of notice. That's okay. There's no posting. This is an appeal, so that's okay.

The only condition is that if you have any new plans -- I don't think there are any plans in the files as there is now. But if you decide you want to submit plans or drawings or what have you, as you know, they have to be in our files no later than five p.m. on the Monday before

September 13th.

ATTORNEY SEAN HOPE: Just a question.

CONSTANTINE ALEXANDER: Sure.

ATTORNEY SEAN HOPE: Last hearing we had a timeline for certain briefs. Is that now cut off? I know for --

CONSTANTINE ALEXANDER: Yeah, I think so.

ATTORNEY SEAN HOPE: -- the public can do --

CONSTANTINE ALEXANDER: Let me -- I'm glad you raised that. If something comes up that -- a new development, however it is, please feel free to submit briefs or materials on that. There's no question. But I, I want to tell you on September 13th --

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: -- assuming that doesn't happen, it is my intention that I'm going to have very limited public presentations. We've heard this case a lot, and we've got very detailed and very good brief from you and from the city. So my intention, and if you don't like it, tell me, is that at the hearing, we'll allow, I'll allow five minutes for you, no more than five minutes, and five minutes for the City if

they wish to use it. And then we'll move on to discussion of the case.

ATTORNEY SEAN HOPE: That's fine. I just for the record, we don't intend on submitting any additional documentation. I just wanted to make sure that if there was something submitted, we would respond.

CONSTANTINE ALEXANDER: Absolutely. And you should be notified if something comes in. I assume you have a system set up with Maria that you get notified. And you can send over more information. But if it's plans or drawings, what have you, five p.m. on the Monday before.

ATTORNEY SEAN HOPE: Understood.

JANET GREEN: So, Gus, can I ask a question? When you say that you're going to limit the comments about it, that's from the people in the audience that come to speak or you mean the actual representatives of the case?

CONSTANTINE ALEXANDER: I'm thinking about the appellant, Mr. Hope, and the City. As to people in the audience, I'm going to play it by ear when the time comes. I don't know how I'll do that. Last time there was only one person who spoke, if my memory is correct.

That person has written a long letter. He spoke. He's written an even longer letter this time. I don't know what more he would have to say that's new and different. But I'll -- if he doesn't --

ATTORNEY SEAN HOPE: As a pleasure of the Chair, would you consider ten minutes only because we have -- I have counsel, but I also have additional comments.

CONSTANTINE ALEXANDER: Ten minutes is fine.

ATTORNEY SEAN HOPE: Okay.

CONSTANTINE ALEXANDER: Whatever works for you. I just don't want to have an hour and a half going over the same things we've heard before.

ATTORNEY SEAN HOPE: Understood.

CONSTANTINE ALEXANDER: Sure. When we come to the hearing that night, I'll give you ten minutes and give the City the same amount of time.

ATTORNEY SEAN HOPE: Okay, thank you.

CONSTANTINE ALEXANDER: Okay?

All those in favor of continuing the case on this basis, please

say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Sullivan, Green, Hickey.)

* * * * *

(7:50 p.m.)

(Sitting Members Case No. BZA-016703-2018: Constantine Alexander,
Brendan Sullivan, Janet Green, Andrea A. Hickey, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case No.
016703, 85 Gore Street.

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

ATTORNEY SARAH RHATIGAN: Hello. Good evening.

CONSTANTINE ALEXANDER: Good evening.

ATTORNEY SARAH RHATIGAN: Hello, again, members of the Board. I'm Sarah Rhatigan from Trilogy Law, LLC. And my client.

JONATHAN SCALERA: I'm Jonathan Scalera. I live at 85 Gore Street.

BARRY GANEK: Barry Ganek, Ganek Architects.
G-A-N-E-K.

CONSTANTINE ALEXANDER: Floor is yours.

ATTORNEY SARAH RHATIGAN: Thank you for hearing us this evening, and I'm glad you that you have microphones now. It's really helpful. As a member of the audience, I often had difficulty hearing what was happening at the table.

CONSTANTINE ALEXANDER: It's catches catch can if the microphones work. Tonight you're here on a good night.

ATTORNEY SARAH RHATIGAN: This is good.

We are before you with both of Variance and a Special Permit petition related to Doctor Scalera and his wife's planned renovations of their home on Gore Street. And the property's a bit unique in that it was -- it's a portion of historic homes that were row houses or sort of

single homes that were double homes. When you drive up Gore Street, can you see a number of them all sort of matched together. And the city actually took the property in a tax foreclosure and it was in terrible, terrible shape and it had to be demolished and then rebuilt. And because of the historic nature of the property, the city, the Historic Commission imposed some restrictions on the redesign of the new structure that was put in its place.

CONSTANTINE ALEXANDER: And those --

ATTORNEY SARAH RHATIGAN: This is all back -- this is all old history, right.

CONSTANTINE ALEXANDER: No, but what you're proposing now will they be in any way inconsistent with those restrictions?

ATTORNEY SARAH RHATIGAN: They are not. And they don't affect the front facade of the house or the front of the roof line.

The Historic Commission obviously was also formally notified, but I also went to the desk and spoke to them about the project to be sure they didn't have any concerns. Which they said this is now new construction, so we don't have jurisdiction. But incidentally, the owners

are very sensitive to the historic nature of the house and their addition is really I think lovely, you know, addition in keeping with that.

Mr. Ganek was also the architect at the time of the Variance, so to the extent that the old restrictions come into play here, which I don't think they do, he can answer those questions.

So the proposal is really a small third-story addition that would just be tucked over the rear L-portion of the house and a roof deck on top. And the purpose for the addition, you can't see this easily by looking at paper plans and not necessarily from the pictures of the outside of the house, but if you physically walk into the home, you'll see that in order to keep the Historic Commission's restrictions in place in terms of the level of the windows, there's actually sort of an interesting kind of two level living within the structure. So Mr. Ganek designed it so that when you walk in, the front rooms are sort of depressed a bit because the old home had very, very low ceilings. So the new home has normal ceilings, not high ceilings, but normal size ceilings. Except what ended up happening with this sort of two-step approach, is that the rear of the house, the upper stories are -- the ceiling heights are quite low.

This is all to say that the structure inside is a little challenging and the use of rooms has been a little challenging for the family who's growing in terms of number of children, and both of them work as consultants.

Is it consulting, right? They're both physicians but do consulting work needing some, some private space to work within their, within their house. So the design is planned to, again, to build out the rear. To allow for essentially a reconfiguration of rooms on the top floor that now will have essentially a proper ceiling height. I think the ceiling heights are just --

JONATHAN SCALERA: Eight feet.

ATTORNEY SARAH RHATIGAN: Eight feet?

JONATHAN SCALERA: Yes.

ATTORNEY SARAH RHATIGAN: And the desire for a roof deck is that there's not much usable outdoor space. They have a very small kind of corner that when it's not wintertime, they close a gate and put some chairs out there, but it's under a tree. There's all shade. There's no gardening possibilities. And his wife gardens, so the hope is put a

garden up on the roof, be able to actually get some sunlight which they currently can't get.

CONSTANTINE ALEXANDER: That roof deck counts as FAR?

ATTORNEY SARAH RHATIGAN: It does.

CONSTANTINE ALEXANDER: How much of the -- you're looking for -- to add under the statistics 557 feet of FAR. How much of that 557 is roof deck roughly?

ATTORNEY SARAH RHATIGAN: So 247 is the addition, is the interior space. And then the roof deck is 410 square feet. And the dimensions of the roof deck are approximately -- I wrote this down on my pad of paper. 26 by 16.

CONSTANTINE ALEXANDER: Let me give you my problems with the case.

ATTORNEY SARAH RHATIGAN: Yeah.

CONSTANTINE ALEXANDER: The FAR under our Ordinance for this area 0.75. Your right now at 1.4, and if we grant you the relief including the roof deck, you go to 1.8. That's almost two and a

half times more than what's permitted under our Ordinance. And much, as you point -- as in response to my question, much of that additional FAR is roof deck. You knew when you bought the property there was no rear yard. The roof -- the fact that you need a place to garden, is not a hardship to justify the granting of a roof deck. Just not. Legally it doesn't make -- so my problem -- and roof decks, to round out my views anyway, roof decks are not looked upon with favor by this Board. Doesn't mean that we don't grant them. But this is a very large roof deck on a very relatively small house. And the legal justification for that roof deck to me is nil. I don't think you meet the requirements of substantial hardship. Gardening is wonderful, but the fact you can't garden in your backyard is not a substantial hardship that justifies a 400-foot roof deck. So I can't -- personally, I'm going to be frank, I can't vote in favor of this proposal as put forth. I'm in favor of granting you additional living space in the house. I don't have a problem, myself, have a problem with that, but I'm not going to vote in favor because of a roof deck.

ATTORNEY SARAH RHATIGAN: Well, I don't know if as a matter of law one can say the existence, the lack of a roof deck is a

hardship, I agree with you. I would challenge a little bit the notion that not having outdoor space with the sun is a hardship. Yes, they did buy the property in its current condition, but the, you know, the Ordinance requires open space, and so this is an improvement that's bringing it in some ways into compliance by providing open space.

The other thing that we submitted that I'm sure you have in your packet, it's a kind of a graphic that we apologize, it's a little busy. But if you drive around the neighborhood, there are roof decks throughout this neighborhood.

CONSTANTINE ALEXANDER: Right.

ATTORNEY SARAH RHATIGAN: And really the reason for it, I understand, you know, Variances are granted as a discretionary matter. We're not entitled to it, we realize that. But there are Variances that have been granted. There was one on Gore Street that I just, you know, I was trying to search for decisions, which is a little tricky on the Registry site, but I did find one that was a 24-by-20 roof deck in a similar situation. I think it was at 100 Gore Street.

CONSTANTINE ALEXANDER: Do you remember when the

case was decided?

ATTORNEY SARAH RHATIGAN: You were not on the Board, Mr. Chairman.

I have the decision in my file.

CONSTANTINE ALEXANDER: That's all right.

ATTORNEY SARAH RHATIGAN: I will point it out to you. I think it was about 1990.

CONSTANTINE ALEXANDER: So a good number of years ago?

ATTORNEY SARAH RHATIGAN: Yeah, there are roof decks around. We were driving around. It's a little difficult to see from the street. That's the other point, which is that these roof decks that currently exist in the neighborhood and that would exist in this location, are quite unobtrusive in the sense that they're not people who can really see those roof decks.

CONSTANTINE ALEXANDER: But here your roof deck, the topography of your structure slopes downward in the back. So people on the roof deck are going to look right into the windows of the house that

abuts you to your, I guess it would be to your rear.

ANDREA HICKEY: And you can see the roof deck right from standing in front of the house looking up.

CONSTANTINE ALEXANDER: I know. It's an enormous roof deck.

ATTORNEY SARAH RHATIGAN: We have the visuals. I don't think that you will be able to see the deck from the street. But I assume you probably all drove by I'm sure, you often do.

JANET GREEN: Yeah.

ATTORNEY SARAH RHATIGAN: When I stood on the sidewalk trying to take a picture of the home, I think maybe you could see the front railing.

But one other point about the location of the roof deck, and Mr. Ganek can probably speak to this, but they wanted it as far back from the street as it could be, but there's interior stairs. And the location of the stairs in order to get stairs up, the -- essentially the exit point of the stairs had to be at the -- essentially at the front railing for code compliance.

ANDREA HICKEY: So you can't push the front of it back?

ATTORNEY SARAH RHATIGAN: You can't push the front of it back. If we do, then they have to have a roof pull entry. And he's got children. And it just doesn't seem like a safe access.

CONSTANTINE ALEXANDER: Why can't you have a much smaller deck? Maybe you won't be able to garden on the deck, but you could have outdoor living space.

ANDREA HICKEY: Yeah, pull the back mount in.

ATTORNEY SARAH RHATIGAN: So that is something that, I mean, if the Board felt that, you know, that was an important decision to make, we can certainly talk about it.

CONSTANTINE ALEXANDER: It is for me, but I am only one of five.

ATTORNEY SARAH RHATIGAN: Right.

CONSTANTINE ALEXANDER: I don't know if other members want to speak.

JANET GREEN: When you said there were other, including particularly have an effect on Gore Street, was it the same height as this one was? Was it all top of the third floor?

ATTORNEY SARAH RHATIGAN: Yes.

JONATHAN SCALERA: There are a number of them.

There's a building here that has six roof decks. I believe it was built in the 2000s, early 2006, 2000, something like that.

ATTORNEY SARAH RHATIGAN: Yeah.

JANET GREEN: I had a little trouble reading your --

ATTORNEY SARAH RHATIGAN: I know this is really difficult. I'm sorry.

JANET GREEN: I hate to say it. I tried.

ATTORNEY SARAH RHATIGAN: Yeah. So this --

JONATHAN SCALERA: So I was going to suggest there are a number of them around. The overwhelming number of arrows suggest how many there are, you know? Not that we're trying to --

JANET GREEN: Well, I was looking for a real comparable, not just a roof deck.

JONATHAN SCALERA: Sure.

ATTORNEY SARAH RHATIGAN: Right, right.

There are examples of -- my personal experience of sort of wandering the vicinity was seeing evidence of roof decks. So this isn't just from a view down, but seeing evidence of railings and roof decks on similarly old structures, including the one that we're referring to as one that we actually look out at. If we look out to the rear, which as you said the topography goes down, there's a home that you're looking at that has multiple levels of roof decks. Not exactly sure --

JANET GREEN: Including one on the fourth floor or above that?

ATTORNEY SARAH RHATIGAN: One on the top of the building which is at least a --

CONSTANTINE ALEXANDER: There is a roof deck there? I don't remember seeing a roof deck. I must have missed it.

ATTORNEY SARAH RHATIGAN: It's on -- it's the one that's shown here.

JONATHAN SCALERA: It's on Winter and Sciarappa. The corner of Winter and Sciarappa. It looks like it was an old auto body shop that subsequently been turned into a residential space. There are a

number of roof decks on that. I think four in total of that.

JANET GREEN: There were a lot of returned, you know, return information things from that. I think it was from that street or the street behind.

ALISON HAMMER: Which property are you talking about?

JONATHAN SCALERA: I'm sorry, the one that was actually --

ALISON HAMMER: No, the one you're discussing right now.

JONATHAN SCALERA: It's on Winter and Sciarappa, the corner. I'm not sure of the exact address, I apologize. I can Google it on my phone.

CONSTANTINE ALEXANDER: Where is Winter? Is that parallel to Gore?

JONATHAN SCALERA: Winter is the parallel street to Gore, exactly. The one closer to McGrath Highway.

And the other property that we were talking about was further up Gore Street. It's down closer to Fifth Street. That's the one that was more recently approved in the 2000, I think, time frames.

ATTORNEY SARAH RHATIGAN: The, just in terms of, you know, unique neighborhoods and our situation, so obviously neighbors and abutters received notices, but Doctor Scalera also walked around to neighbors, has support from the adjoining homeowner.

CONSTANTINE ALEXANDER: That's -- we have nothing in writing, but your representation to us is that you've spoken to some neighbors.

JONATHAN SCALERA: I've spoken to two neighbors directly that I was able to get in touch with. One is 87 Gore Street and also 83 Gore Street. 83 Gore Street we share a common party wall as you know. And she was in support. She's seen the renderings and everything and said that's fine by me.

ATTORNEY SARAH RHATIGAN: And then we -- sorry.

JONATHAN SCALERA: She just mentioned as long there are no problems in her own home in terms of water and something like that. I said of course we wouldn't damage her home in the process.

ATTORNEY SARAH RHATIGAN: And the -- there was a general letter that he sent out to all the folks who were on the notice didn't

get any responses back. There are also, there are a fair number of --

JANET GREEN: There were a lot that came back.

CONSTANTINE ALEXANDER: Yeah, a lot came back.

JANET GREEN: There were a lot of people that would be directly abutting in the back --

CONSTANTINE ALEXANDER: These are letters sent out to people --

ATTORNEY SARAH RHATIGAN: Oh, yeah.

JANET GREEN: That little courtyard on Court Street, whatever that is.

CONSTANTINE ALEXANDER: They didn't take the mail.

JANET GREEN: Those are almost all from that area.

JONATHAN SCALERA: You mean the responses from neighbors or return to sender?

JANET GREEN: Return to sender.

CONSTANTINE ALEXANDER: No responses from neighbors one way or another in our files.

ATTORNEY SARAH RHATIGAN: And there's -- at least the

property that's right to the rear of us, as far as we understand, we believe that's a rental property.

The folks to the right of the house -- or I'm sorry, as you're looking at the house, the folks to the left -- it's also a rental building but he knows the owner and has been in touch with him and spoke to him.

Should I address the Special Permit?

CONSTANTINE ALEXANDER: Let's finish the Variance.

ATTORNEY SARAH RHATIGAN: Okay.

CONSTANTINE ALEXANDER: Questions from members of the Board at this point?

(No Response.)

CONSTANTINE ALEXANDER: I'm going to open the matter up to public testimony. This is with regard to the Variance to build the roof deck and the increased living space, not the relocation of the windows.

Is there anyone here wishing to be heard on this matter? Ms. Hoffman, do you want to be heard? No, okay. I just thought that's why you were here.

I'll close public testimony on the Variance portion of the case.

Discussion? As I indicated, I'm going to vote against. And that's only one vote. But if there is another vote, you may -- I think it would be fair to let these folks know so they can reconsider their plans.

ANDREA HICKEY: I mean, the deck as proposed, I really cannot support. I just think it's too big. I think the neighborhood is really tight.

CONSTANTINE ALEXANDER: That's my feeling exactly.

ANDREA HICKEY: I don't know that a roof deck is necessary and the lack of a roof deck causes a hardship. I might be willing to consider something on a smaller scale. It's just, it's a big deck and I have an issue with it from that perspective.

CONSTANTINE ALEXANDER: That's my problem as well.

JANET GREEN: I feel the same way. That it -- certainly there are a lot of other decks that are easy to understand why people would want a deck in that neighborhood. But the City doesn't really like decks above the third -- above the third floor. So take into consideration, and they've actually expressed that in the past. It's not in the Ordinance,

but that's what I was told when I was in Inspectional Services, that they had asked about that. Not this one, but others. So I took that into consideration. I agree, that I think that it's a very large ask as far as the deck is concerned, but that I would be more inclined to support a smaller deck just because of the nature of the neighborhood and the fact that really the light and air is significantly impacted with the crowding in that neighborhood. So -- but I do feel that it's a very large ask as now drawn.

CONSTANTINE ALEXANDER: Alison.

ALISON HAMMER: Yeah. I think, you know, obviously the roof deck question has already been addressed. I don't think I necessarily have a problem with the addition itself. I did find there to be a little bit of a maybe a discontinuity between the narrative explaining why you needed it and what I see on the page, right? What I see on the page in front of me is a lovely master suite with a giant bathroom and walk-in closet. And what I read in the narrative is like, oh, our growing family and our in-laws. Are your in-laws going to sleep in your closet? So, I mean --

ATTORNEY SARAH RHATIGAN: That will be addressed in

part in the Special Permit relief which I'll explain a little bit better.

ALISON HAMMER: Oh, okay. Because, you know, what I see here is a lovely master bedroom addition. And I'm not saying you don't deserve that, but I would like one, too. But so I just wanted to bring that up.

CONSTANTINE ALEXANDER: Brendan, do you want to say anything?

BRENDAN SULLIVAN: No, no, I think I concur with the sense of the Board.

CONSTANTINE ALEXANDER: I think you can read the tea leaves.

BRENDAN SULLIVAN: We have had some pushback in that area on -- because it's so congested. And sometimes we -- they think it would be fear of the unknown is that you may outgrow the house in a few years from now, and decide to move on to Swellesley or Concord or wherever you may go, and then it's the next owner that has this enormous deck and then, you know, will they become a problem? We don't know that, you know. But it's the possibility is there in that very tight

neighborhood.

CONSTANTINE ALEXANDER: I think this is a case that should be continued, give you a chance to reconsider your plans. I think what you've heard is that we're not opposed to relief. We're even not opposed to a deck, but not this deck on these plans. So this would be a case heard. We have to continue it to a time when all five of us can be present. And I'm not sure we have -- we already have three cases on September 13th, right?

SISIA DAGLIAN: Yes, we do. We have August 23rd.

CONSTANTINE ALEXANDER: We have room on the 23rd?

SISIA DAGLIAN: We don't have anything on the 23rd.

CONSTANTINE ALEXANDER: Will that give you time to -- well, first, can everybody make the 23rd?

ALISON HAMMER: Maybe.

JANET GREEN: August 25th?

CONSTANTINE ALEXANDER: 23rd.

JANET GREEN: We already have --

ATTORNEY SARAH RHATIGAN: And then we can work on

the plans in the meantime.

CONSTANTINE ALEXANDER: Yeah, keep in mind --

ATTORNEY SARAH RHATIGAN: I think that's okay. I hope it's okay. If you're okay with that.

CONSTANTINE ALEXANDER: You're going to have to have new plans in our files by five p.m. on the Monday before. So it's running a little short than the 23rd. Can you make it is my question?

The 23rd works for you?

ATTORNEY SARAH RHATIGAN: Does that work for you?

JONATHAN SCALERA: Let me check my calendar as well, but I'm sure I can make it.

CONSTANTINE ALEXANDER: I'll make a motion while he's checking it out.

And we won't take up the Special Permit case tonight. We'll take it up on the 23rd.

ATTORNEY SARAH RHATIGAN: Could we take it up this time in case there are any concerns?

CONSTANTINE ALEXANDER: I would rather not. I want to

do everything at one time. The windows and the new deck, all at one time.

ALISON HAMMER: May I make one more comment about the deck? Sorry.

CONSTANTINE ALEXANDER: By all means, yes.

ALISON HAMMER: Again, I don't know if Ranjit is still in the back, maybe he can weigh in on it. You're saying you want to do gardening up there. I wonder if there's an opportunity to do a functional green roof up there as part of this. You know, not necessarily count as area for some portion of it, and, you know, make a, you know, a benefit from an ecological perspective as well as minimizing the need for relief.

JONATHAN SCALERA: And I will express, we're not opposed. We actually -- the size is pretty much dictated by where the staircase goes out in the front, and it was just extended to the rear of the home. If it's appropriate, if you think a smaller deck. Unfortunately, I think with the configuration, I think it may still be closer to the street line. I don't know if we can come up with something creative than that. However, I'll let Barry speak to that. If we pull it back on the rear line, if

that would be pleasing to the Board, I'm not sure.

BARRY GANEK: The access to the roof is stacking stair on top of the existing stair, and by doing that, that's the most efficient way and for space and for construction. But it brings the stair towards the street right behind the existing ridge of the house, and so it pushes construction towards the street. That's the main issue. You know, and once you come up out of the stair, you're standing in the middle of the lot, not towards the back. Now we can constrict the size of the deck, but it would be by bringing it from the rear towards the street. So if that's --

JANET GREEN: I didn't hear people concerned as much about being at the front as they were about the size of the deck.

CONSTANTINE ALEXANDER: The size of the deck.

JANET GREEN: And also one thing you might want to do is like say what the railing is going to look like if it's toward the front.

CONSTANTINE ALEXANDER: When you come back on the 23rd of August, if you still like what you have or you think that's what the best, make your case. But we want to hear -- I want you to also look at a smaller deck.

JONATHAN SCALERA: Absolutely.

CONSTANTINE ALEXANDER: Okay. The Chair moves that we continue this case as a case heard until seven p.m. on August 23rd, subject to the following conditions:

That petitioner sign a waiver of time for a decision.

Ms. Rhatigan's familiar with our Board and knows what that's about.

Sisia over here has the waiver.

Second, that the posting sign that you have there now, it has to be modified, whether you do it yourself with a magic marker, get a new sign, to reflect the new date, August 23rd, and the new time, seven p.m. And that that sign be maintained for the 14 days prior to the 23rd just as you did for this hearing.

And lastly, and we talked about, to the extent that there will be, presumably there will be, new plans, modifications, dimensional changes to the dimensional form, they must be in our files no later than five p.m. on the Monday before August 23rd.

That's to give us time to read them and the citizens of the city as well.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor, case
continued.

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

(8:15 p.m.)

(Sitting Members Case No. BZA-016801-2018: Constantine Alexander,
Brendan Sullivan, Janet Green, Andrea A. Hickey, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case No.
016801, 19-23 Creighton Street.

Is anyone here wishing to be heard on this matter?

Good evening.

ATTORNEY JAMES RAFFERTY: Good evening. Mr. Chair,
members of the Board, for the record, my name is James Rafferty. I am
an attorney with offices at 675 Massachusetts Avenue in Cambridge
appearing this evening on behalf of the owners of the property at 19-23
Creighton Street. Seated to my right is Mark Kon, K-O-N. Mr. Kon owns
this property with his sister, Elizabeth Kon and her husband Bryan Cook,

B-R-Y-A-N Cook.

If you had an opportunity to see the house and review the plans, which I'm sure you have, it is a side by side duplex. And Ms. Kon and her husband Mr. Cook have moved in. They're intending to -- they've purchased the property within the past year. So they've done some renovation. They've moved in.

Mr. Kon intends to do the same thing. He is engaged to be married and will be making that his marital home.

CONSTANTINE ALEXANDER: Congratulations.

ATTORNEY JAMES RAFFERTY: So the application, frankly, is quite modest. A term that I sometimes get criticized for overusing, but we're talking about 40 square feet here in the context of the addition of some dormers.

There is liveable space on the third floor. The attic floor. But it's very marginal and its utility is compromised by the slope of the roof.

So Mr. Kon, we have him sitting here because this is on his side of the house.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: So even though it's jointly owned. So we thought that we would have him be prepared to address it. But if you take an opportunity to see the floor plans on the third floor, the introduction of the deck will provide light and air to have bedrooms there and also an expanded bathroom on that floor.

So there is a single dormer on this side of the house. And what the proposal is, you can see in the below image, is to put essentially a matching dormer on either side. Candidly the dormer, the dormers are a little closer to the roof edge than the guidelines would suggest, but given the existence and the location of this dormer, it was the feeling on the part of the designer that symmetry called for these two dormers to be similarly situated on the roof.

CONSTANTINE ALEXANDER: What's the lengths of the three dormers combined? More than 15 feet?

ATTORNEY JAMES RAFFERTY: No, no.

CONSTANTINE ALEXANDER: I want to get confirmation, that's all.

ATTORNEY JAMES RAFFERTY: Yeah. Because we were very attentive to that issue.

MARK KON: I think it's 15 feet, 8 inches actually.

CONSTANTINE ALEXANDER: I thought it was a little bit more. I was surprised. But Mr. Rafferty rashly said no.

ATTORNEY JAMES RAFFERTY: Rashly? What's eight inches among friends?

The dormers are five feet, eleven and a half -- well, that's the existing one. And then we're adding four feet nine, and four feet zero. I didn't do that. I know we paid close attention to that.

CONSTANTINE ALEXANDER: Anyway, it's a very slight variation from the dormer guidelines.

MARK KON: So we've got five, eleven. And then five feet -- that's ten feet, eleven and then four feet. That's 14 and then 15.8.

ATTORNEY JAMES RAFFERTY: 15.8. My apologies.

BRENDAN SULLIVAN: What I found a little odd that close attention led to three different size dormers. And I'm just wondering why they couldn't all be the same size?

MARK KON: I think there's an issue with getting too close to the roof line if they're longer.

BRENDAN SULLIVAN: I'm just wondering if aesthetically, you know, it's not going to look a little odd.

ATTORNEY JAMES RAFFERTY: Well, in one case it's a three-inch differential. I think it would be hard to discern the difference. One -- the one closest to the street is four feet, nine. That's a new one proposed. This one is five feet, zero. And we felt that if we --

BRENDAN SULLIVAN: Was the attempt to really get as close to that 15 foot as --

ATTORNEY JAMES RAFFERTY: It was. And also we talked about the other aspects of the guidelines and setting them back from the edge. So that, that image right there has a dimension. So the easy thing -- if they were equally sized, we would be even another foot or so beyond the 15 beyond where we are now. So it's 4.9. Existing is 5.11 1/2, almost six. And five for the one in the year. So they're -- as I said, I think GFA increase goes exceptionally modest. It goes from --

CONSTANTINE ALEXANDER: You said 44 feet.

ATTORNEY JAMES RAFFERTY: Yeah. 36.11 to 36.55.

CONSTANTINE ALEXANDER: You're going to go 0.707 to 0.716 in a 0.5 district. So slight increase. You're non-conforming already.

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: But slightly increasing.

ATTORNEY JAMES RAFFERTY: Correct. But there was -- there was an attempt -- I can only say there were other dormers that were, that are not here tonight that would not -- so much of our effort focussed on trying to achieve functionality and stay within the guidelines and work with the existing conditions. So the idea was to closely, not exactly, mirror the other dormer that's on that side.

Mr. Kon did write a letter and distribute it to his neighbors. Explained to them what the hearing was. He has not received any feedback.

CONSTANTINE ALEXANDER: They've ignored you so far.

MARK KON: They were actually very supportive. We

knocked on doors before and they were very positive.

CONSTANTINE ALEXANDER: Nothing in our files.

ATTORNEY JAMES RAFFERTY: Exactly. I explained to Mr. Kon that in some circles there's an inference that a lack of opposition -- I advised him, and he did an effective job of reaching out to his neighbors before the legal notice went out, gave him his phone number and e-mail, and that of his sister and brother-in-law and said if you have any questions. Ms. Kon and her husband moved in a month or two ago and they're actually living in the neighborhood now. And we haven't heard any --

CONSTANTINE ALEXANDER: Let me, for the record, did anybody express disapproval?

MARK KON: Not at all, no. There was some solid approval, though.

CONSTANTINE ALEXANDER: That's all I need to know.

MARK KON: We've been very friendly with the neighbors, maybe that's why. I'm not sure.

CONSTANTINE ALEXANDER: Questions or comments from

members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: None.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

As we've indicated, there are no letters in our files. So I'll close public testimony.

Discussion or ready for a vote?

JANET GREEN: I'm ready.

CONSTANTINE ALEXANDER: Ready?

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being is that you're unable to fully utilize the living space on the third floor without the relief you're seeking.

That the hardship is owing to the fact that this is already a non-conforming structure with a steeply pitched roof which especially affects your property.

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

In this regard the Chair would note that the relief being sought is modest in terms of square footage. That it is a familiar request from citizens of the city who do need additional living space, and the ability to utilize third floors. Which is what the purpose of this -- well, better utilized in your case, the purpose of this Variance request is.

So on the basis of these findings, the Chair moves that we grant the Variance you request on the condition that the work proceed in accordance with these plans that you've submitted, the first page of which has been initial by the Chair.

ATTORNEY JAMES RAFFERTY: Okay. Can we just confirm the date because we did have a couple.

CONSTANTINE ALEXANDER: The date I have for here is

March 14th.

ATTORNEY JAMES RAFFERTY: Thank you.

CONSTANTINE ALEXANDER: All those in favor please say

"Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

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

ATTORNEY JAMES RAFFERTY: Thank you very much.

* * * * *

(8:25 p.m.)

(Sitting Members Case No. BZA-016783-2018: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 016783, 1 Hancock Street.

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

Edrick, are you aware of the letter we've gotten from a neighbor?

EDRICK VANBEUZEKOM: I have not seen it, but I am aware of the objection.

CONSTANTINE ALEXANDER: I'll give you a copy of it so that you're aware of it. I wouldn't say it's in opposition, but it questions whether we should grant relief.

EDRICK VANBEUZEKOM: Introduce myself? My name is Edrick Vanbeuzekom. I'm the architect for the project. And my company

is EVB Design.

JANET GREEN: Can you get close to the microphone,
please, so people can hear?

EDRICK VANBEUZEKOM: Yes, and I'll say it -- do you need
me to repeat it?

JANET GREEN: She heard you but they didn't hear you.

EDRICK VANBEUZEKOM: All right.

I'm Edrick Vanbeuzekom. I'm the architect for the project.
My company's EVB Design.

The project is at 1-3 Hancock Street just down the street here,
and my clients, the owners of the property are here. I'll let them introduce
themselves.

HERMAN MAK: Good evening, my name is Herman Mak
and I guess I'm one of the owners to the property.

KATIE NG-MAK: Hi. I'm Katie Ng-Mak and I'm his wife.

CONSTANTINE ALEXANDER: Thank you.

EDRICK VANBEUZEKOM: Katie and Herman recently
purchased this property. It's a two-family currently with a unit on the first

floor and a unit on the second floor.

CONSTANTINE ALEXANDER: Which unit do you occupy, the second floor?

EDRICK VANBEUZEKOM: They haven't moved in yet.

CONSTANTINE ALEXANDER: Oh, they haven't moved in yet. Which floor were you planning to occupy? Second floor?

KATIE NG-MAK: Both.

CONSTANTINE ALEXANDER: Both floors.

HERMAN MAK: Yeah.

EDRICK VANBEUZEKOM: Basically they have two children. They want to have their family here in Cambridge. The condition of the house is very poor, the structure is inadequate. There's some issues with the foundation, particularly on one of the walls that's closest to the property line. The property's non-conforming to setbacks. It's a corner lot. It's also non-conforming -- well, it conforms to height currently. It conforms to FAR almost exactly. So --

JANET GREEN: You've got to pull it, again, a little bit closer to you. When I see people go like this in the back --

EDRICK VANBEUZEKOM: Right, I'm sorry. Let me just pull out my notes so I keep track of what I'm saying.

It's also non-conforming to private open space because there's no part of the yard except for the driveway that's currently got a dimension greater than 15 feet. So, the existing FAR is 0.75, which is the maximum allowed currently.

Basically the goal of the project was to make a family home for Herman and Katie and the two children, but also still keep a rental unit in the place to not lose another unit in the neighborhood essentially.

CONSTANTINE ALEXANDER: Sure.

EDRICK VANBEUZEKOM: So the goal is to take the first and second floors for their home and put a unit in the basement.

The ceiling heights in the existing structure are quite low. It's only about a 7.5 foot ceiling on the first floor, and about an inch or two higher on the second floor currently.

And the structure is very undersized. So the depth of the structure is quite minimal, and we're going to have to reframe the floors in any case, so that's gonna add some height to it. So what we had decided

to do was there's a parapet around the roof on three sides of the house, on the side facing Hancock Street, facing Kinnaird Street, and on the driveway side. On the back side of the house, there is no parapet. That's the side that the roof drains to. So the height of the house at the parapet is 23 feet. At the back side where there's no parapet it's 20 -- 20 feet six inches. So two and a half feet lower.

CONSTANTINE ALEXANDER: So you're going to add two and a half feet?

EDRICK VANBEUZEKOM: That's what we're proposing --

CONSTANTINE ALEXANDER: Height?

EDRICK VANBEUZEKOM: -- in height, right. Which brings it up to 23 feet.

CONSTANTINE ALEXANDER: It's not a violation of our Zoning Ordinance, but it does cause your neighbors some heartburn.

EDRICK VANBEUZEKOM: Understood.

And so in addition we would be digging down the basement a bit, too, to get ceiling height on there.

The other piece of what we're proposing, currently this is the

site plan of the existing house. There's a -- two entry porches currently with roofs over them. And with the reconfiguration of the house, we wanted to add a new entrance mudroom, which is partly because -- the house is so small, it's hard to take up space inside with an entrance. And we wanted an entrance to get a thermal break, too, from the weather. You know, take your shoes off before you go in the house and that sort of thing. So that protrudes into the front yard setback.

The -- I'll pass out some photos here of the house, and we can start at this end.

CONSTANTINE ALEXANDER: Are these in our files?

EDRICK VANBEUZEKOM: Most of them are. There are some additional ones that I brought tonight which show a little bit of the context of the neighborhood. Part of what I'm showing there is if you look down Hancock Street up towards Mass. Ave., it's a very dense street. This is probably the only house that's set back from the street along there.

CONSTANTINE ALEXANDER: I saw these.

EDRICK VANBEUZEKOM: So -- and this house sort of gives a little bit of relief on the street with it being set back from the street edge.

But we felt that one-story protrusion for an entrance in the front would not encroach too much on the streetscape there. And if anything, sort of breaks up the box of the house and hopefully gives a little bit more attractive presence along the street.

So, we're asking -- we're requesting Special Permit to change all the windows openings and the door openings.

CONSTANTINE ALEXANDER: We'll deal with the Special Permit second.

EDRICK VANBEUZEKOM: Okay.

CONSTANTINE ALEXANDER: Stick with the Variance for right now.

EDRICK VANBEUZEKOM: Okay.

So I do want to say we've spoken to the Historical Commission, and they basically determined that what we proposed is okay. It's not a historically significant building.

CONSTANTINE ALEXANDER: Right.

EDRICK VANBEUZEKOM: So we have also done some shadow studies which we shared with the neighbors.

CONSTANTINE ALEXANDER: I was going to ask you that question. You have done shadow studies?

EDRICK VANBEUZEKOM: Yes, we have. And we shared that with the neighbors, and it's not to their satisfaction is my understanding.

CONSTANTINE ALEXANDER: Let's see that.

EDRICK VANBEUZEKOM: Basically the shadow studies show the house at three times of the year.

CONSTANTINE ALEXANDER: Right.

EDRICK VANBEUZEKOM: Winter solstice, the summer solstice, and the equinox. What you can see is the current and the proposed. It's really -- I mean, you have to look closely to see much of a difference, but there's a small difference in the darkest part of --

CONSTANTINE ALEXANDER: I'm terrible with these things.

EDRICK VANBEUZEKOM: So in December you can see here, here's the house, here's the existing. This is the shadow that you get on the neighbor's house. Here's what would be the change. It goes up from near the roof edge there, a little bit closer to the roof edge. At

noon, it's dropped back a little bit, but you can see here it's a little bit more coverage on their house than here.

And at three p.m. in the afternoon, it's in shadow regardless.

JANET GREEN: Have people in the neighborhood seen these?

EDRICK VANBEUZEKOM: Yes.

CONSTANTINE ALEXANDER: He showed and they didn't like what they saw.

JANET GREEN: All right.

EDRICK VANBEUZEKOM: So this is at the equinox in September. Here basically, again, you can see there's a very slight difference. It's a little bit higher on the wall at nine a.m. At noon basically there's no shadow on it anymore. And at, you know, at the end of the day there's -- it's not casting a shadow in that direction.

At the summer solstice, you can see here that the shadows in the existing just barely reaches -- not even barely reaches the basement level. In the proposed, you probably come up below the first floor windows at that time, but would be a little bit higher on the wall. At noon

you can see -- or by noon basically the sun's moved around and it's no longer in shadow and the same applies at three p.m.

CONSTANTINE ALEXANDER: Okay, thank you.

EDRICK VANBEUZEKOM: We've considered ways to try to minimize the impact.

CONSTANTINE ALEXANDER: That was my next question.

EDRICK VANBEUZEKOM: Yeah. And we looked at if we pitched the roof, it really would put us at getting ceiling heights a little bit lower than what we were hoping to have here if we couldn't drop it down much.

CONSTANTINE ALEXANDER: From what to what?

EDRICK VANBEUZEKOM: Well, to get it down to where it's existing, we would have non-conforming ceiling heights.

CONSTANTINE ALEXANDER: It doesn't work.

EDRICK VANBEUZEKOM: So it doesn't work. So, we could, you know, droop it six inches and probably still make it work, but anything more than that it starts to get pretty tight.

The other option which I'll raise which if we went this way,

would be a continuance is the possibility of the tear down of the house because it's in such bad condition.

CONSTANTINE ALEXANDER: Is that something you would entertain? You have to commit to --

EDRICK VANBEUZEKOM: We've had two contractors give us estimates on the design so far, and both are saying it's considerably less expensive to tear it down and build the same footprint back. And if we did that, we could lower the whole foundation a foot, which would get us a little bit lower with the roof. So that's a possibility. That would save time on the construction, which would impact the neighbors less, too. So there's some advantages there as well. As well as some advantages for them, too. So that's something that I want to throw out there as a possibility, maybe to get some --

CONSTANTINE ALEXANDER: Well, your clients will get a brand new house for one thing.

EDRICK VANBEUZEKOM: Yeah, it would be a better product for sure.

CONSTANTINE ALEXANDER: And hopefully the neighbors

would be happy with what you're going to do. If that's an alternative, I guess I'm, I would -- it's not -- I would throw out why not? I don't know what other members of the Board think, but I don't know why not.

EDRICK VANBEUZEKOM: Yeah.

Okay. And then let me jump to the Special Permit?

CONSTANTINE ALEXANDER: I don't think we --

EDRICK VANBEUZEKOM: It's pretty straightforward just changing windows and doors.

CONSTANTINE ALEXANDER: If you're going to go ahead and continue the case -- the Variance case because of the problem or the issues that we have, I have no need to get into the Special Permit. Because you're going to come back again and then we can deal with the Special Permit then. We have other things to do tonight.

EDRICK VANBEUZEKOM: All right. Do you want to get neighborhood feedback first?

CONSTANTINE ALEXANDER: Before I ask that, what do board members think about saying --

EDRICK VANBEUZEKOM: They've taken the time to come

here tonight.

CONSTANTINE ALEXANDER: -- to start all over again with regard to the building?

ANDREA HICKEY: I think we should hear from the public if they're here.

JANET GREEN: I do, too.

CONSTANTINE ALEXANDER: All right, I'll ask for public comment and then I'll read the letters that are in our files.

EDRICK VANBEUZEKOM: Okay.

CONSTANTINE ALEXANDER: Anyone here wishing to be heard on this matter?

EDRICK VANBEUZEKOM: Oh, actually before that.

CONSTANTINE ALEXANDER: Oh, I'm sorry, go ahead.

HERMAN MAK: Do you mind if we could just say the reason why we're moving in and stuff like that?

CONSTANTINE ALEXANDER: What's that?

HERMAN MAK: Do you mind if we could just say the reason why we're moving to the neighborhood and along those lines?

CONSTANTINE ALEXANDER: You can. I'm not sure it's relevant from a zoning point of view. Maybe it's beneficial for neighbors that are here.

HERMAN MAK: I guess lady's first.

EDRICK VANBEUZEKOM: Did you already submit this letter? Is this in the files here?

HERMAN MAK: We did e-mail to you.

EDRICK VANBEUZEKOM: To Maria. So, okay, so there's a letter that --

CONSTANTINE ALEXANDER: I have a number of letters. I'll get to them in time.

EDRICK VANBEUZEKOM: Okay.

KATIE NG-MAK: Sure.

So, you know, I think Edrick covered a lot of our plans for the house. I think one of the things we wanted to share about is why we're moving to Cambridge and why we're excited to be part of the community and part of the neighborhood. So, you know, my husband and I have two young children, and one of the reasons we are making the typical reverse

migration from Arlington to Cambridge is because we really want our children to grow up here in a diverse community and also be able to be part of the Cambridge public school systems. And, you know, one of the things we do care about is really feedback from our neighbors and the neighborhood that we're moving into, and we're just excited to be part of it.

HERMAN MAK: Yeah. And as I told you when we found this place, we were able to luckily find Edrick as the architect and we wanted a home that worked for us. And hopefully be here 15, 20 years and then hopefully when our kids graduate. And as part of that, when we got the plans, we showed it to our neighbors and aside from the concern about the roof height, I guess in general people were excited about us I guess improving the home and also I guess having us, our kids, and our family join the community.

CONSTANTINE ALEXANDER: Let me say on behalf of the Board is that we welcome people like yourselves, young couples moving into the city, and we try to do what we can within the legal restrictions imposed on us to help that happen. So I appreciate what you've said. I want you to know it's reciprocated on behalf of the city. But we have a

dilemma here if you will. We have neighbors that have a problem. I don't know if you want to move into the neighborhood and force your neighbors to be unhappy with what you want to do. Again, I'm talking for myself. Maybe I shouldn't. If you have an alternative that will make the neighbors happy, and it's acceptable to you, I would say -- my view would be go for it. But what do other members of the board say.

JANET GREEN: Let's hear from the neighbors.

CONSTANTINE ALEXANDER: What?

JANET GREEN: Some of the neighbors are here.

CONSTANTINE ALEXANDER: I asked for public comment.

Oh, you did. I'm sorry. I got interrupted.

JANET GREEN: Yeah.

CONSTANTINE ALEXANDER: Okay, I'm sorry. Please name and address to the stenographer if you would.

DAWN BAXTER: Hi. I'm Dawn Baxter, and this is my husband Spence Smith. We are at 76 Kinnaird Street. So we are abutters on the rear side of the property. And I wanted to say, first, that we are people who lived in our home for 24 years. We were welcomed

with open arms by our neighbors when we moved in, and we really feel like we want to welcome Katie and Herman. And I want to make it really clear we want to be good neighbors to you. And so that nothing is personal about what our, you know, our worries or concerns that we're expressing. We're really excited to have you and your boys here. So I really want to make that clear.

We have got a couple of handouts just so people can have the context from our perspective. I'll give that you guys. That basically we are in a situation where our homes are, you know, quite close to one another. The property at 1 Hancock is two feet off the property line, and we have our little, you know, our driveway and then our house. And so we have very limited sunlight as it is right now just because our homes are so close. And what we are concerned about is that although that parapet goes around three sides, from our property it's not there. And so that is a big change in our sunlight. The house as it exists goes -- it's 52 feet. So it comes the entire length of our house and extends into the backyard, which means it covers every single window of our home. And so what we're really concerned about is the early morning sun. We get very, very

little of it. In the winter it's particularly bad. The shadow comes over. And even though it may look like it's not that consequential, for us the difference of three or four feet of sunlight is enormous because we've got that little driveway and, you know, we've got shade in that space. And so, you know, there are a lot of different proposed, you know, changes to the house. We're very excited about it. We know it's going to be a much improved property. We're happen to have new neighbors, and, you know, we're not concerned about all those other changes, but we are really concerned about how our sunlight will be affected. That's really the only thing we want to put on the table. That's, you know, we really object to it because we think it would have a pretty meaningful impact on our quality of life, especially in the morning. I work from home. It's already dark and kind of gloomy down there, and you know, it would be even more so. So that's, you know, that's our objection just to the height.

CONSTANTINE ALEXANDER: Thank you for coming down and expressing your views. Master of the house want to speak?

JIM SPENCER: Hi. I'm Jim Spencer. Again, I've talked to Katie and Herman.

CONSTANTINE ALEXANDER: Your address?

JIM SPENCER: I'm sorry, I'm 2 Hancock Street. I'm directly across the street from them. And I'm very thrilled that they're moving into the neighborhood. They're wonderful people. I've talked to them many times. I've been there for 40 years. When I moved in there I was the youngest kid in the neighborhood, and now I'm the oldest one there. I've known Dawn and Spencer for 24 years. They are wonderful neighbors. They're trustworthy. They wouldn't say anything if they didn't think long and hard about it. They're not curmudgeons. They're not going to say oh, something they've -- I've talked to them. They're really sincere, and they've really thought this out well, and I agreed with what they are saying will impact them. But there's something else about our street, you'll find it out in the wintertime. Jay Street leads into Kinnaird at the Hancock, my street. The ice in the wintertime never melts on my side. So everybody else's ice is melted, but there's something about that corner that the ice stays there. It's the very last ice to leave the neighborhood. So you're a little bit parallel to that. There's something about the chill just stays there. And it's hard to describe, and I hope I've described it. But I'm here again

to welcome Katie and Herman. We think they're going to be wonderful neighbors. We think they're going to do wonderful things, but I am here to support Spence and Dawn.

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

Anyone else that wants to speak on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. We do have letters in the file as indicated. I'm not sure I'm going to read them yet. I mean, we do have a letter from -- and the opposition about light from Morris Tyler, 84 Kinnaird Street.

We have a letter of support from Marjorie Liu, L-I-U. She resides at 71 Jay Street, just across the street as she says.

And a letter from Carrie Saunders, S-A-U-N-D-E-R-S who was not able to attend tonight so sent a letter. And she and Aliana Partan (phonetic) reside at 81 Kinnaird Street. And a little that's submitted on behalf of both of them.

We have other letters, I'm sorry. A letter from a Joseph

Bourne, B-O-U-R-N-E who resides at 75 Kinnaird Street and supports the neighbors who have raised some objections to what you want to do.

And I won't go any further. There's one more letter from Joseph Bourne again.

So there we are. You are moving into a neighborhood. You've got lot of neighborhood uneasiness despite the fact this they want you to be neighbors. I go back to this before. I think if it's doable and you're willing to do it, I think this is a project that should have a new structure that can comply with the zoning bylaw more so than the height and light than what you have right now.

EDRICK VANBEUZEKOM: Okay, so I think we would like to request a continuance.

CONSTANTINE ALEXANDER: Okay.

EDRICK VANBEUZEKOM: Request a continuance, and we'll share the new designs with the neighbors to try to --

CONSTANTINE ALEXANDER: Yes, of course. How long do you want to go?

EDRICK VANBEUZEKOM: I would say as soon as possible.

I don't think it's going to take as long to change the drawings, because we're not changing the design of the house generally.

CONSTANTINE ALEXANDER: Okay.

EDRICK VANBEUZEKOM: It's just new foundation and dropping it down a bit.

CONSTANTINE ALEXANDER: Okay. The question as soon as possible?

SISIA DAGLIAN: August 23rd?

CONSTANTINE ALEXANDER: Does that give you enough time?

EDRICK VANBEUZEKOM: Yes.

CONSTANTINE ALEXANDER: To redesign, meet with the neighbors?

EDRICK VANBEUZEKOM: Yep. I'm around.

CONSTANTINE ALEXANDER: Okay. And you have to be here by that Monday before -- you know the drill.

EDRICK VANBEUZEKOM: Yes, I know.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that we -- want to make sure you can do it.

HERMAN MAK: Yeah. Do you mind if we check our calendar?

CONSTANTINE ALEXANDER: And your calendars as well. Does August 23rd work for you folks?

(Pause.)

CONSTANTINE ALEXANDER: Works?

EDRICK VANBEUZEKOM: Yeah.

CONSTANTINE ALEXANDER: Okay, the Chair moves that we continue this case as a case -- we call it a case heard, since we opened the case up, until seven p.m. on August 23rd subject to the following conditions. You know what these are.

One, you have to sign a waiver for a time of decision. Otherwise we have to decide tonight and you wouldn't get relief. That's just a formality. That's one.

Second, is that the posting sign that you have up there now has to be modified, or a new one obtained, to reflect the new date, August 23rd, and the new time, seven p.m. You can, you can take the existing

sign and with a magic marker make the changes.

And then lastly, this is important for you as you know, the new plans, the revised plans and dimensional forms and the like, all must be in our files no later than five p.m. on the Monday before August 23rd. And that's to allow these folks, the neighbors, and allow us to study the new plans so that we will be prepared for the hearing on the 23rd.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. We'll see you on August 23rd.

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

* * * * *

(8:50 p.m.)

(Sitting Members Case No. BZA-016803-2018: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 016803, 17 Donnell Street.

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

Floor is yours, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chair.

For the record, James Rafferty, 675 Massachusetts Avenue appearing on behalf of the applicants. Seated to my immediate right is the architect Maggie B?

MAGGIE BOOZ: O-O-Z.

ATTORNEY JAMES RAFFERTY: O-O-Z.

CONSTANTINE ALEXANDER: Make sure you pronounce it right. She will see kick you in the shins if you don't.

ATTORNEY JAMES RAFFERTY: It's funny, I'm never quite sure on that one.

MAGGIE BOOZ: You pronounced it like my children pronounce it, booze.

ATTORNEY JAMES RAFFERTY: Is that way you like it pronounced?

MAGGIE BOOZ: Booz actually.

ATTORNEY JAMES RAFFERTY: Has this come up before?

CONSTANTINE ALEXANDER: Booz.

ATTORNEY JAMES RAFFERTY: Well, the owners seated next to Ms. Booz, Jonathan Henke, H-E-N-K-E, and his wife Rachel Mosher, M-O-S-H-E-R Henke. And I'm sure the Board noticed, this is one of two cases before the Board in very close proximity to each other. So the background of this case is this is an attached single-family home that Mr. and Mrs. Henke have lived in for 17 years. They are raising three children in this house.

JONATHAN HENKE: I think it's 13 years.

RACHEL MOSHER HENKE: Yeah, so 2005.

ATTORNEY JAMES RAFFERTY: 2005. That matters.

So they have three children ages 4, 7, and 10. And to their credit, they currently reside --

CONSTANTINE ALEXANDER: In 996 square feet.

ATTORNEY JAMES RAFFERTY: -- of 996 square feet of dwelling with three children and themselves. So they love the neighborhood, they love the street. They've been there a long time. Approximately two years ago an opportunity arose when their next-door neighbor, in the other half of the attached single, put the property up for

sale. So they were fortunate and they were able to acquire that, that property. So at the moment the plan after consultation with Ms. Booz, both of the properties are somewhat undistinguished, evidenced by the fact that Mr. Sullivan at the Historical Commission has authorized their removal without need for public hearing under the City's demolition delay ordinance. The way the ordinance is works is he's charged with making an administrative determination whether a structure is significant. So in this case it was found not to be.

What the applicants are attempting to do is to -- in the case -- and I should only talk about this house probably now until we get to the other case. So this is an opportunity to increase the living space obviously in this half of the house. The proposed addition will result in an FAR that's -- comes out with a 0.57 FAR in a district where 0.5 is aloud. But that number takes on a higher percentage because the lot is so small. The lot area itself. So the overall square footage of the house is 22 -- the new structure is still only 2200 square feet.

CONSTANTINE ALEXANDER: I want to get to that, but keep going.

ATTORNEY JAMES RAFFERTY: Okay.

So the hardship has to do with the fact that we've got a series of non-conforming conditions associated with the fact that it's an attached house. The most prominent being the lack of the side yard setback. We have a zero property line there. But there is, there is a certain point where the type of work and the -- programatically that's being desired does result in a footprint and a sized house that's slightly bigger than what the FAR would allow. But if you examine the floor plan, and Ms. Booz can speak to some of the programatic issues, the house is really exceptionally narrow. And it's the narrowness of the house that impacts some of the ability to layout the rooms in a way that you might think well, why can't you design a house in a way that you can achieve your program with a 0.5 FAR. You fully would anticipate that question.

And the hardship is really directly related to the narrowness of the lot and the narrowness of the house. If you've had an opportunity to see the floor plans, you'll see how that presents itself. So we could walk you through --

CONSTANTINE ALEXANDER: I do want you to do that

because, I can see the need for a Variance. They don't have a -- me speaking, have any problem with the setback relief that you're going to need.

I think there's adequate reason why you need a new house, bigger house. But you could build a house, at least by numbers, that would have 2,255 square feet and fall within the FAR that's under our Ordinance. That's not an unusually small house. And many houses in Cambridge are that size. So why, my question is going to be why can't you do that? Why does it have to be as big -- you can answer this in a second, as big as you're proposing?

ATTORNEY JAMES RAFFERTY: Okay. But, I'm sorry, I didn't understand. The premise was that you could build.

CONSTANTINE ALEXANDER: I'm sorry. You could build a place that's -- I read the wrong line. 1,185 square feet.

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: And you would not need a Variance as to FAR.

ATTORNEY JAMES RAFFERTY: That's right. That's

correct.

CONSTANTINE ALEXANDER: That's my question.

ATTORNEY JAMES RAFFERTY: And right. So in addition -- once you separate the setback issues, the issue here is the proposed house here is slightly over 270 square feet of additional GFA. So, as we looked at options and design, we did our best to try to identify what might best qualify for a modest increase, and there's a strong view that it needed to be less than 300 square feet. And then Ms. Booz can walk you through. And then started looking at well, why could we -- could we scale this back a little? Because it's a very obvious question, and it would make their life a little easier, remove some of the uncertainty in the design. But maybe, Maggie, you could kind of speak to that. Because it was a prominent feature of our analysis.

CONSTANTINE ALEXANDER: Okay.

JANET GREEN: You can pull it off and hold it, it's easier. Than lunging forward.

MAGGIE BOOZ: Thank you.

JANET GREEN: But you do have to hold it up to your mouth.

CONSTANTINE ALEXANDER: Closer to your mouth though.

MAGGIE BOOZ: Okay.

As Jim pointed out, the main hindrance in a building like this that's 12 feet wide is that we're trying to get consecutive room after consecutive room into a very narrow footprint. And so when we go to the upper floors and put a stair anywhere, without making eight and a half foot wide bedrooms, which would be extremely narrow, we have to be able to get through a space to get to another bedroom. We can't, we can't have bedrooms where you have to walk through bedrooms to get to other bedrooms. And so, that's what's leading us to make more public spaces on the upper floors. It serves the family well because without being able to have -- you know, without using up a lot of the site and without spreading the footprint of the building back into the yard, so we're trying to maintain open space as well, because we're trying to maintain a yard for three children, we're using parts of the building to make more public spaces rather than on the upper floors rather than making it all an extensive public space on the first floor and thus using up the -- and thus using up open space. So that's what's leading us to make a plan this

way. We don't have an unnecessary number of bathrooms. We don't have, we don't have a, you know, a dedicated bathroom for every bedroom by any means. We don't have, you know, extra guest spaces. We don't -- we try to pair it back, make a bedroom for each child, make a bedroom for the parents and have public space that didn't necessarily eat up open space on the first floor.

CONSTANTINE ALEXANDER: Okay. Thank you.

ALISON HAMMER: I'm sorry, if I --

CONSTANTINE ALEXANDER: No, no, go ahead.

ALISON HAMMER: So you're saying the issue is getting hallways passed bedrooms?

MAGGIE BOOZ: Right.

ALISON HAMMER: So, I'm sorry, I'm just not seeing where on the plans there are hallways going passed bedrooms.

MAGGIE BOOZ: No, we have opened the entire floor plan up so that you walk through a public space to get to another bedroom. So rather than making an eight and a half foot wide bedroom or eight-foot wide bedroom, really, once you add all the walls back in, you need to

make a corridor that was code worthy to walk passed that bedroom.

We're opening those spaces up. So you're asking well how can you, you know, why couldn't you pair back the square footage to something smaller?

ALISON HAMMER: Right. Why couldn't you make the play room shorter and just tuck things in a little?

MAGGIE BOOZ: We could. We feel like we have reasonable sized rooms. We don't feel like we made elaborately large rooms. The rooms on the first floor are basically, you know, 12-by-12 squares with some, with some expansion. You know, we tried to -- I'm serving a client who has certain needs, but we're also trying to make reasonable choices about the sizes of things that we're, that we're --

JONATHAN HENKE: Would you mind if I chime in on that?

MAGGIE BOOZ: Please.

JONATHAN HENKE: On the third floor one of the things that we were trying to avoid was a landing on top of a roof on top of -- on the basically a landing that would be a step out from one of the children's bedrooms on the third floor. That was one of the things that I would

object to in a way.

MAGGIE BOOZ: A roof deck in exterior space you mean?

JONATHAN HENKE: Yeah, exactly. If the third floor was cut back, which basically -- which would be the playroom, which would be a reasonable place to take some square footage out. Then on the back of the house you would either have a deck or a roof over the second floor, which is the type of space that I wanted to avoid for the -- I remember sitting outside smoking cigarettes on top of my -- on the roof of the house. So I'm hoping that won't be the case at our house. Anyway, that's the thought process on like if you were to shorten the third floor which would be a simple thing to do.

ATTORNEY JAMES RAFFERTY: Thank you.

ALISON HAMMER: I mean, you've been talking a lot about the narrowness of the house and that you purchased the other side, so I assume there was some sort of discussion about leaving the townhouse format and going to flats, merging the lots so you don't have a lot line issue.

ATTORNEY JAMES RAFFERTY: Well, there really wasn't

much discussion about that. They have separate financing. It was purchased as an opportunity for investment. They've enjoyed having a neighbor. They have friends who rent from them. And it's part of the scale of the neighborhood, the house has been in this configuration. So I mean it's a logical question to say well, okay so here's a thing, but that's a very expensive proposition to say okay, the house that you have. So I can't say that from my involvement here that there was much focus placed on to -- when you combine these lots, if you were to combine these lots, it would be -- it would create issues around the existing financing and they then lose the ability to have the rental unit that they have now that they appreciate.

ALISON HAMMER: They couldn't continue the use of two units on the combined lots?

ATTORNEY JAMES RAFFERTY: Well, the combined lots would -- I mean if you built a single structure, you'd have a lot here that would exceed. I'm guessing, I didn't take a close look at it. Do we get -- yeah, we get over 5,000 square feet. So you could get a second unit. But it changes the whole organization. And candidly it was a case

of, is as Mr. Henke described, when you think about the form of what this third floor would look like, if the house were to stop for those feet, there would be an opportunity to use it as outdoor space. It creates a funny kind of a geometry. And for the reasons stated by Ms. Booz and explained by the homeowner, this was seen as an opportunity to see if we could achieve a slight increase still landing at 5.7 with less than a 300 square feet exceedance of the FAR.

CONSTANTINE ALEXANDER: Okay?

ALISON HAMMER: Yeah.

CONSTANTINE ALEXANDER: Any other questions?

(No Response.)

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

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

PETER COHEN: Would you like me to sit or stand?

CONSTANTINE ALEXANDER: Whatever you prefer. You need to give your name and address to the stenographer, please.

PETER COHEN: Yeah. Good evening, esteemed members

of the Board of Zoning Appeal. For the record, my name is Peter L. Cohen. I've been living at 11 Donnell Street, right next 17 Donnell Street along with my wife Michelle and our children since July 14, 1994, 24 years ago. Thank you for considering an application for zoning relief presented by our friends and immediate next-door neighbors Jonathan and Rachel. For reasons that I'll explain shortly, we favor their desire to demolish the two existing attached single-family homes and replace those homes with newly constructed expanded housing for two families. The two attached single-family structures at 17 and 19 Donnell Street are unusual in some important respects. Their yards are unusually running approximately 155 feet from the street to the back of the property, but having a street frontage of only 25 feet. Each of these lots thus has an unusually long and narrow backyard, and a residential building that's small in terms of usable interior space and it is extremely narrow. Today from the outside standing on Donnell Street, it appears that the two properties are two sides of a typical two-family house. It was not always that way. During the 24 years that we've lived on Donnell Street there have been at least five owners of 17 Donnell Street and four different owners at 19 Donnell

Street. And although the various owners of the two properties performed maintenance on and made some improvements of the two properties, there have been periods when due to the different ownership, different economic circumstances of the different owners and different aesthetic preferences and authorities, the two structures were not always maintained in a coordinating or attractive way. Thus for many years I harbored the hope that eventually two properties would come under common control so that they can be renovated or maintained in a uniform way. Or even better, replaced entirely with new, more structurally sound and attractive modern structure. We were therefore very pleased with Jonathan and his wife Rachel purchased 19 Donnell Street from our friend and neighbor Martha Morman. We've already known Rachel and Jonathan for many years as they bought 17 Donnell Street in 2005 and have lived there ever since. When we first met them they were a young couple that could easily fit in one and a half bedrooms. Now 13 years later they have three young children whom we know and like. And having three children ourselves, we know how quickly family's needs multiply for bedrooms, for inner space and storage space for sports equipment.

To be willing to undertake a tear down of an old building that though they have their problems that still are not usable, takes a lot of gumption to be willing to replace them with newly constructed, much larger structures. It takes considerable vision, financial resources, and dedication. We applaud the efforts of Jonathan and Rachel to do this and hope that the Board will provide the zoning relief necessary to allow them to build the replacement homes that they propose to construct.

Thank you.

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

Anyone else wishing to be heard? Ms. Hoffman.

HEATHER HOFFMAN: Hello. Heather Hoffman, 213 Hurley Street, and I'm here not to talk about the aesthetic qualities of this proposal, but simply to talk about zoning. And one of my favorite subjects, being a leading case on the matter, merger.

As I discovered in taking a quick look, so this property was originally in common ownership and then it was subdivided in 1939. And it came back into common ownership in 1964. And was in common

ownership until 1985 when it was split up again. So I think that you probably want to take that into account when you're deciding what relief is needed, what relief you'd want to provide, and any conditions you want to put on it. I would also point out that with respect to Mr. Cohen's issues, there was in fact in 1985 when the property was split up again, an agreement between the two sides about keeping it looking nice together, which presumably was only enforceable by the two parties and not by the other people who would look at it. But, anyway, I wanted to give these deeds and the agreement to the Board just for your records so that you'll have that information in front of you.

CONSTANTINE ALEXANDER: Is it your suggestion that when they divided the property in 1985 I think you said, that it didn't comply with zoning because you created two undersized lots?

HEATHER HOFFMAN: My understanding from speaking with Mr. Singanayagam before he was the Commissioner, when he was the zoning specialist, is that unless you're trying to do something to change the structure on the property, the city couldn't care less if you divide it up into a thousand little ribbons of land. And you can spread the

ownership around and they don't care. They will simply prevent you from doing anything with the structures. So --

ATTORNEY JAMES RAFFERTY: I don't want to interrupt, but I mean that's a rather broad statement that the city knowingly or ignores zoning violations.

HEATHER HOFFMAN: Do you know that I asked Mr. Singanayagam that question, and he told me that I could cut my backyard into as many pieces as I wanted to and sell them off.

CONSTANTINE ALEXANDER: I don't want to go any further.

HEATHER HOFFMAN: So anyway, my point is only that as far as I understand from an enforcement point of view, the -- they do not consider it something important until you want to change the structures. And, yes, I know that for example, I have neighbors who wanted to divide a property that had two buildings on it and they came and got a Variance to subdivide. I'm just telling you what he told me and that I was surprised enough by it that I actually asked that question about dividing my backyard into slivers.

CONSTANTINE ALEXANDER: I want to get to -- I want to

make sure I understand your point. I think what you're suggesting is that if we were to grant the relief tonight, there are going to be a further zoning issue because when the buildings come down, the City will now have an interest. And when they're built up, the new structures going to be built, or structures, that the City might not grant a building permit because of the zoning issue?

ANDREA HICKEY: For two structures?

CONSTANTINE ALEXANDER: For two structures, yeah.

HEATHER HOFFMAN: That may be the case. So I just think you need to consider it. And I would point out that I am nowhere near as versed on this as other people in this room, but I believe that you -- that if the townhouse rules apply, once you build it, you can then divide it again because the -- you know, various rules do not apply when you are subdividing through the middle of the party wall between two townhouses. So I just propose that you want to make sure that you have considered this issue when you're deciding --

CONSTANTINE ALEXANDER: I don't -- that's why I'm having problems. I don't know whether we got to consider that issue. I

think Mr. Rafferty has to consider that issue. I mean, if there's an issue at all. But I think the fact of the matter is what you're suggesting is should we grant relief tonight, that there may be a problem going ahead and tearing down the existing building to build a new one because of a zoning issue. And if that's the case, either you proceed at your own peril or you continue the case tonight, get a ruling or get a better feel for what the, the further zoning issues are and we'll hear the case -- I'm not suggesting we do that. But we can hear the case at a future date. It's you're your call, Mr. Rafferty. What do you want to do in view of what Ms. Hoffman raised?

ATTORNEY JAMES RAFFERTY: Well, I certainly have high regard for Ms. Hoffman's ability to conduct a title exam. So -- and these deeds do suggest perhaps periods of common ownership. May I ask Ms. Hoffman a question then?

CONSTANTINE ALEXANDER: Go right ahead. She doesn't have to answer but you can ask her.

ATTORNEY JAMES RAFFERTY: But she seems to have done the research. The original subdivision you cited was in 19?

HEATHER HOFFMAN: '39.

ATTORNEY JAMES RAFFERTY: And how did that occur?

I know Brendan wouldn't have been sitting on that case, but my point is if the subdivision is as a result of a Variance --

HEATHER HOFFMAN: No, not that I could see.

ATTORNEY JAMES RAFFERTY: Okay. If it were subject to a Variance, then all of this would be irrelevant because the Variance would run with the land and the merger wouldn't have occurred.

HEATHER HOFFMAN: As far as I know, here let me -- although the plan, and you can see from the descriptions on these deeds, the plan refers to -- it shows one side is Joseph Leoni (phonetic) and the other side is Grace Cirelli (phonetic) but that's because it accompanied a deed.

ATTORNEY JAMES RAFFERTY: It was subdivided.

HEATHER HOFFMAN: Who have that divided it up.

CONSTANTINE ALEXANDER: Can I suggest that this issue is very important, is not before us tonight.

ATTORNEY JAMES RAFFERTY: Right, right.

CONSTANTINE ALEXANDER: I think you can go a couple of ways. You need more time, you can recess this case and you can go along with Ms. Hoffman and look at it.

ANDREA HICKEY: Unless you're confident that there is no merger issue be it in the back title or perhaps in the current title.

CONSTANTINE ALEXANDER: The point being maybe you might have to come back.

ATTORNEY JAMES RAFFERTY: True. But in and so my point is consistent with the Chair's, which is if the relief obtained here proves not to be adequate for the purposes of obtaining a building permit, than the property owner would have to possibly through the townhouse ordinance, they may have to elect a merger unilaterally. But there would be a number of options to explore, including the possibility of returning here.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: The size of the structures which is, frankly, the issue before the Board, would not change based on however this ownership issue were to get resolved.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: So I appreciate being educated by Ms. Hoffman and will certainly look into it, and it will most definitely arise. So before the house was taken down and before a building permit was issued.

JANET GREEN: Good idea.

CONSTANTINE ALEXANDER: I would hope so.

ATTORNEY JAMES RAFFERTY: First lesson I always advise people, don't take it down until you have the building permit in hand. So it's, it's an issue of some relevance worthy of exploration. But I think in terms of the issue before the Board and the size of the structures on this lot, these lots, they wouldn't change if they were combined. So we believe having nothing in the direction of my client, I think our preference would be to proceed with the case.

CONSTANTINE ALEXANDER: That's your call.

ATTORNEY JAMES RAFFERTY: Is that correct?

JONATHAN HENKE: That's correct.

CONSTANTINE ALEXANDER: I forgot where we were at

this point. Public testimony. And anything further you wanted to add, Ms. Hoffman?

HEATHER HOFFMAN: I have one question because I didn't look, but I know that there are places where the FAR depends on how big the lot is, that if it gets above a certain size, additional lot area gets you less GFA permitted. And I don't know if this is such a zone, but if it is, then yes, it does matter. You -- either way, you're giving a Variance for excess FAR. But the amount of excess FAR is different if this is such a zone. And this combined lot is bigger than the point at which the FAR is reduced.

CONSTANTINE ALEXANDER: But I'm getting lost here.

HEATHER HOFFMAN: What I understand is that there are places, and I know that Mr. Rafferty has this memorized unlike me.

ATTORNEY JAMES RAFFERTY: But we can remove it from the theoretical. In the Res B district, you are correct, that the 0.5 FAR drops to 0.35 for lots in excess of 5,000 square feet. So I believe the point being made by Ms. Hoffman is that if this were to become a larger than a 5,000 square foot lot, then the delta between the allowed FAR and

the requested FAR would change. But the amount of GFA, and I believe the Variance would speak to the amount of GFA permitted on the lot regardless of whether the --

CONSTANTINE ALEXANDER: That's exactly my reaction, too.

HEATHER HOFFMAN: And I don't disagree. But once again you want to make sure that anything that you decide is written.

CONSTANTINE ALEXANDER: Well, we're deciding -- I'm sorry to interrupt you. What we are deciding as what Mr. Rafferty pointed out tonight, size, the amount of square footage this building, the new building will have. To me, whether, whether -- how much it departs from the Zoning Ordinance is not relevant in my decision. My decision is looking at the lot, looking at the size of the house, end of story. The question for Mr. Rafferty is that you've raised, as I understand it, is that we may feel that way. We may grant the Variance, but then when he goes to get a building permit, he's going to have issues. And that's his, that's your issue, not ours. We may see you again, maybe not, you'll find another solution. But I think that's it. I think if you want to go forward

tonight, I'm prepared to go forward tonight.

ATTORNEY JAMES RAFFERTY: Yeah, we would. And like I said, I don't dismiss the relevance of those issues.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: But as happens often when one is here, if the determination that the relief isn't adequate for the project, then as you say, you explore alternatives and one of those alternatives sometimes involves a return here. But I think my clients feel that the issues are before the Board, a neighbor has come out to support the application, our preference would be to go forward.

CONSTANTINE ALEXANDER: Okay. All right, thank you, Ms. Hoffman, thank you for taking the time to come down from a different part of the city from where you live.

Any other public comments? Anybody else want to speak on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

We do have letters of support as I've indicated. I'm not going

to read them. There's no letters of opposition. Letters are actually quite glowing in their support for this project.

So, unless you have any further comments, I'm going to close all public testimony and we'll decide the case.

ATTORNEY JAMES RAFFERTY: No, thank you.

CONSTANTINE ALEXANDER: Ready?

Anybody have any views on this case they want to express or I can make a motion to approve the Variance requested.

JANET GREEN: I'm good with that.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that this Board make the following findings with regard to the Variance being sought -- You have a Special Permit coming up, too.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Okay.

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Such hardship being is that the petitioner right now is faced with a structure that is, even by Cambridge

standards, woefully undersized.

That the hardship is owing to the circumstances relating to the narrowness of the lot, which affects how the building can be -- any new building can be designed.

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

In this regard the Chair would note that the project has unanimous neighborhood support, appears to have it, and that's in view in spite of the fact that there's going to be construction on the street once you tear it down. And I can tell you from past experience we get a lot of grief from people, neighbors who don't like that. But that's going to be your grief, not ours.

And that also if we grant relief, it's going to improve the housing stock of the City of Cambridge.

All those in favor of granting the -- oh, so on the basis of these findings, the Chair moves that we grant the Variance subject to the condition that the work proceed in accordance with the plans prepared by

Smart Architecture, first page of which has been initialled by the Chair.

And my eyes are not good enough to read the date.

All those in favor of granting the Variance on the basis that I proposed, please say "Aye."

(Show of hands.)

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

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

CONSTANTINE ALEXANDER: Mr. Rafferty, now the Special Permit.

ATTORNEY JAMES RAFFERTY: Well, the Special Permit is the issue that comes up from time to time. So the relief here is related to a non-conforming wall, but the non-conforming wall is covered by the Variance. So it's not clear to me.

CONSTANTINE ALEXANDER: Usually if you get a Variance, you don't need the separate Special Permit.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: So you want to withdraw

that?

ATTORNEY JAMES RAFFERTY: I always get nervous about that because --

CONSTANTINE ALEXANDER: I know you do, that's why I laughed.

ATTORNEY JAMES RAFFERTY: So I would like, to the extent the Building Department were to determine that the Special Permit was needed and we didn't have it, I would request that the -- the request is modest.

CONSTANTINE ALEXANDER: I'll tell you what, we'll continue the Special Permit part of the case. You can talk to the Building Department. If they find you need relief, you come back and you seek the Special Permit.

ATTORNEY JAMES RAFFERTY: Well, how do you write a decision and how do we file a decision if you have a portion -- I mean, it's a single petition.

CONSTANTINE ALEXANDER: You're asking for two forms of relief.

ATTORNEY JAMES RAFFERTY: No, I recognize that. But we're going to get a single written decision.

CONSTANTINE ALEXANDER: You don't have to get a single written decision.

ATTORNEY JAMES RAFFERTY: I've never seen two decisions under the same case.

CONSTANTINE ALEXANDER: We can do that.

ATTORNEY JAMES RAFFERTY: For what purpose, though? What would we have achieved at that point?

JANET GREEN: Could we just hear the Special Permit?

ATTORNEY JAMES RAFFERTY: If you grant the Special Permit and it's determined to be moot --

CONSTANTINE ALEXANDER: That's a good point. Let's go through the Special Permit. Let's assume you need it. So make your presentation.

ATTORNEY JAMES RAFFERTY: Right. And so Ms. Booz will show you the area where the affected window is located on the elevation.

MAGGIE BOOZ: On No. 19, which is the eastern most half of the building, we have a -- we have a window right here which is in a mudroom and that's the violating wall. It violates the side yard setback by 0.3 -- 0.3 feet.

JANET GREEN: So just to be clear, we're talking about 17 now?

MAGGIE BOOZ: We're talking about 19 now.

JANET GREEN: No, what we're talking about right now is 17. Just to make sure we get the right window.

ATTORNEY JAMES RAFFERTY: We are talking about 17.

JANET GREEN: Yes.

ATTORNEY JAMES RAFFERTY: 17.

MAGGIE BOOZ: 17 has no Special Permit violation.

ATTORNEY JAMES RAFFERTY: I was going to say, though, the setback on 17 is 7.9 and the required was required 7.5. So --

CONSTANTINE ALEXANDER: So then why did you seek the relief?

ATTORNEY JAMES RAFFERTY: You're even more correct

than usual. We don't even need to apply for this. So we'll move to withdraw the Special Permit.

CONSTANTINE ALEXANDER: The Chair moves that we accept the request to withdraw on the Special Permit.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Okay.
Special Permit's withdrawn.

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

CONSTANTINE ALEXANDER: Back to the Variance. I made the motion. Relief granted. Good-bye for this case anyway.

ATTORNEY JAMES RAFFERTY: We got the Variance? I'm kidding. We did.

* * * * *

(9:30 p.m.)

(Sitting Members Case No. BZA-016805-2018: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Alison Hammer.)

ATTORNEY JAMES RAFFERTY: The owner in this building is an individual ownership.

RACHEL MOSHER HENKE: No, no, no. This one is both of us.

ATTORNEY JAMES RAFFERTY: Oh, this is tenants in its entirety. The other one is individual. And this is 19 Donnell Street.

So here's the story on 19 Donnell Street, though. Same lawyer from the prior case. You don't need me to introduce myself, right? Similar applicants, same architect. So in this case, we spent a fair bit of

time, and I came close to convincing myself that this really could be a Section 6 case. Because we're rebuilding on the same footprint of the building. And this building as its proposed, the residential dwelling actually equals the allowed floor area ratio. What creates the exceedance is what used to be a garage on the property. So the building itself, the building itself has a -- is sized to meet the 2130 allowed here. But the reason -- excuse me, it's sized to meet the 1887. So we thought that it would make sense to build a conforming structure on the lot for the non-residential dwelling. And so the size of this structure equals the allowed FAR. But what complicates it is when we met and reviewed this, I learned that -- you'll see there's a driveway. What was a garage actually obtained a building permit, and it's used as storage, a studio, a toy room. It doesn't park a vehicle. So I couldn't figure out how it would qualify for the GFA exemption associated with a garage. So in some ways the more I thought about it, I said so what we're really asking the Board is not to have to tear that structure down. That the Variance, the exceeding GFA is occurring in this existing garage, it's been on the site for decades, and -- but because it's no longer a garage, that doesn't get the benefit of

the GFA exclusion.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: So what we're proposing has the same non-conforming condition. So the setbacks on the building are unchanged. The square footage equals what is allowed under the FAR for a lot of this size. But the square footage of the garage is creating the exceedance.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: The former garage.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: So that's the background and that's the functionally what's happening.

CONSTANTINE ALEXANDER: Right. And that results in your dimensional form showing that you're -- you need zoning relief?

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: Yeah, okay, I get it.

ATTORNEY JAMES RAFFERTY: Yeah, on the GFA.

CONSTANTINE ALEXANDER: On the GFA.

ALISON HAMMER: Are there any images of the garage?

Or is it shown on any of the drawings or the plans or anything like that?

ATTORNEY JAMES RAFFERTY: It's on the plan. Do you have the site plan? I know it's on the site plan.

MAGGIE BOOZ: It's on the site plan. I don't have a photograph of it. It's a concrete block structure.

ATTORNEY JAMES RAFFERTY: You can see it on the Assessor's map. Do you have a site plan?

MAGGIE BOOZ: I do.

At some point it had a garage door on it that the previous owner boarded up and made a pedestrian door out of.

ATTORNEY JAMES RAFFERTY: And I was asking -- you can see how -- I believe the driveway stops well short of it now; isn't that correct? Does it go right to it?

JONATHAN HENKE: No, the driveway goes right through that structure.

MAGGIE BOOZ: But in our proposal we have constructed that mudroom off to the side which blocks access even if you want to

make it back into a garage.

ALISON HAMMER: And you said officially by building permit at some point changed from a garage to a non-garage?

RACHEL MOSHER HENKE: The previous owner.

ATTORNEY JAMES RAFFERTY: Yeah, there was a building permit that allowed the alteration to the garage.

ALISON HAMMER: Right.

ATTORNEY JAMES RAFFERTY: So it's clearly not a garage.

ALISON HAMMER: Right, okay.

ATTORNEY JAMES RAFFERTY: It's not being used to store vehicles. It doesn't have an overhead door.

ALISON HAMMER: Right, okay.

ATTORNEY JAMES RAFFERTY: Without alteration. So it became a subject that we have to disclose in the dimensional form what the existing conditions are, I think we have to count that in our GFA because it doesn't qualify any longer as a garage.

CONSTANTINE ALEXANDER: What's going to happen with

the garage if we grant relief?

ATTORNEY JAMES RAFFERTY: I think it's unchanged. I think it stays right where it is.

CONSTANTINE ALEXANDER: But you won't be able to use it for a car anyway?

ATTORNEY JAMES RAFFERTY: You can't do that now. The condition will remain as is.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: But it's functional. It's a catch all. So they prefer not to take it down.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: Is that fair to say?

MAGGIE BOOZ: Yeah.

RACHEL MOSHER HENKE: There are some Legos in there.

CONSTANTINE ALEXANDER: Questions from members of the Board?

ATTORNEY JAMES RAFFERTY: I caught a glimpse of it in the photo. You can see it.

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

Is there anyone wishing to be heard? Can we keep it in the file?

ATTORNEY JAMES RAFFERTY: Sure.

CONSTANTINE ALEXANDER: Anyone wishing to be heard in this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. We have letters of support as we did with 17. I'm going to close public testimony.

Ready for a vote?

JANET GREEN: Yes.

CONSTANTINE ALEXANDER: The Chair moves that we make the following findings with regard to the relief being sought. In fact, it would be the same findings we made with regard to 17. And on the basis of these findings, the Chair moves that we grant the Variance requested on the condition that the work proceed accordance with plans initialled by the Chair -- first page of which has been initialled by the Chair

prepared by Smart Architecture.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

CONSTANTINE ALEXANDER: Special Permit.

JANET GREEN: Now the windows.

ATTORNEY JAMES RAFFERTY: Now we have a non-conforming setback less by a few inches which was just addressed in the context of the Variance.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: But to the extent, and since we've applied for it, rather than learn later on that the Special Permit was needed --

BRENDAN SULLIVAN: What was explained to me is that if you are seeking a Variance in addition, and that addition contained windows in a side yard setback, the granting of the Variance would cover

those windows. If you were putting an addition on and it had windows, but then you also move windows say on another wall somewhere that was not subject to a Variance, that would require a separate Special Permit. So the Variance will cover any other violation, a lesser violation.

ATTORNEY JAMES RAFFERTY: Yeah. I wouldn't disagree with that.

BRENDAN SULLIVAN: And if you were doing something else over another area, that then requires separate relief.

ATTORNEY JAMES RAFFERTY: So we -- and I'm not putting words in your mouth, but who knows I may need this transcript some day when we go to get a building -- so it's the view of the Board that the Special Permit relief isn't necessary because the vote granting the Variance --

BRENDAN SULLIVAN: Is covered by the Variance.

ATTORNEY JAMES RAFFERTY: -- allows for the windows.

BRENDAN SULLIVAN: As part of the Variance.

ATTORNEY JAMES RAFFERTY: I think it's perfectly logical. Because that's what allowing for the non-conforming setback. Well, in

that case once again.

BRENDAN SULLIVAN: Unless you want to have that ticket in hand, it would take another 30 seconds to grant it.

ATTORNEY JAMES RAFFERTY: Well, perhaps we should put an end to this. Maybe we should be the bold ones and say we don't need it. That's a risky strategy. But the flip side of all of this if we got it and then we could get a definitive ruling from ISD in the future when we file the application, we'll review it with the staff and say, you know what, do I need this relief? And if I -- because historically there have been scenarios where we were found to have needed them.

BRENDAN SULLIVAN: You could also use my name in vain and say Mr. Sullivan said.

CONSTANTINE ALEXANDER: I can remember at least one case in the last several months where we had this very issue, where someone sought a Variance for an addition and then they asked for a Special Permit. And we said no, you don't need a Special Permit because the Variance covers this -- what the Special Permit would cover. And the architect or in this case withdrew the request for a Special Permit.

As far as I know, they got their building permit.

ATTORNEY JAMES RAFFERTY: Right. I still lose sleep at night, though, over a case that I brought to the Board once appealing a decision by Mr. Singanayagam when I applied for a dormer on a non-conforming wall or a second floor addition, which is an allowed exception under Article 8, and I was told, well, you can't have a window in your dormer. And I said wait a minute, how do you have a dormer without a window? And I said I never appeal determinations because the Board has high regard for the Commissioner and the Board is not eager, sometimes reluctant to overturn him. But in this case I was so convinced, I made an exception and came here.

CONSTANTINE ALEXANDER: You got turned down.

ATTORNEY JAMES RAFFERTY: I got turned down.

CONSTANTINE ALEXANDER: I remember the case.

ATTORNEY JAMES RAFFERTY: Yes. You don't lose of same sleep over it that I do.

CONSTANTINE ALEXANDER: No, not at all.

ATTORNEY JAMES RAFFERTY: And I said to my client,

who sat here nervously, I don't care if we have to go to the Supreme Court, we're not -- because I was being told just apply for the Special Permit. I said, no, I won't. We'll go to the Supreme Court before we applied for the Special Permit. We applied for the Special Permit and got it. But having said all of that, in light of that history in the somewhat uncertainty, but I would request that the --

CONSTANTINE ALEXANDER: Special Permit.

ATTORNEY JAMES RAFFERTY: -- request for the Special Permit be voted on.

CONSTANTINE ALEXANDER: All right. Got to make a big motion on that.

The Chair moves that we make the following findings with regard to the Special Permit reluctantly being requested by the petitioner.

That the requirements of the Ordinance cannot be met, at least the petitioner fears that is it cannot be met without the Special Permit.

That traffic generated or patterns of access or egress resulting from this relocation of the windows in the setback will not cause

congestion, hazard, or substantial change in established neighborhood character.

That the continued operation or development of adjacent uses will not be adversely affected by what is proposed. And in this regard I should note, and for purposes of all of these Special Permit findings, the persons most directly affected by the relocation of the windows are not objecting to the relief being sought.

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

And that generally what you're proposing 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 grant the Special Permit requested on the condition that the work proceed again in accordance with the plans referred to with regard to the Variance we just granted.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

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

* * * * *

(9:45 p.m.)

(Sitting Members Case No. BZA-016757-2018: Constantine Alexander,

Brendan Sullivan, Janet Green, Andrea A. Hickey, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 016757, 212 Western Avenue.

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

ATTORNEY JACK MILGRAM: Good evening, Mr. Chairman, honorable members. For the record, my name is attorney Jack P. Milgram and I represent the applicant Su Du. To my right is Mr. Joe Chen who is the project architect. Miss Du is with us this evening in the back of the room. I have before the Board this evening my client's application for a Variance for a change of use existing commercial unit at 212 Western Avenue here in Cambridge. 212 Western Avenue is a four-unit mixed use building. There's three residential units, and the existing commercial unit. It's my understanding that the existing commercial unit was previously a pizza establishment. It closed approximately a year ago. Apparently the use code for that pizza parlor was only for dine-in. My client's proposal is to open an Asian food restaurant in that unit. However, for that restaurant to be competitive, we want to be able to have takeout and have delivery, which is the basis for the change of use.

It's my understanding that there are two parking spaces in the rear of the building so that the takeout vehicle will be able to park in the rear. It will load and unload from the rear so it won't be interfering with traffic on street. And that's really the basis of our proposal. That's the only relief that we're seeking here this evening.

CONSTANTINE ALEXANDER: Okay.

Nice brief description.

Any questions from members of the Board?

ANDREA HICKEY: No.

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

Come forward so we can hear you. And also give us your name and address for the stenographer, please.

PATRECIA BRADSHAW: Oh, yeah, Patricia

P-A-T-R-E-C-I-A Bradshaw, 208 Western Ave. A couple of questions:

What date schedule are you guys thinking of opening?

JOE CHEN: The construction is probably going to take three,

four months. So once we get the permit, building permit, will be four months after that.

CONSTANTINE ALEXANDER: And assuming we grant relief tonight, it will be three months or so before they get the permit. So then at that point the three to four months will begin.

PATRECIA BRADSHAW: Okay, December.

Will there be available parking for you guys? So I know outside of the restaurant there is loading parking. Are you guys going to use that space for loading?

JOE CHEN: No.

ATTORNEY JACK MILGRAM: No.

PATRECIA BRADSHAW: No? Okay.

And what are your time of operations?

JOE CHEN: I think the owner of the property can answer that question. From eleven in the morning to eight o'clock.

JANET GREEN: Can you use the microphone.

JOE CHEN: From eleven a.m. to eight p.m.

PATRECIA BRADSHAW: From eleven a.m., Monday

through Friday?

JOE CHEN: Seven days a week.

PATRECIA BRADSHAW: Say it again?

CONSTANTINE ALEXANDER: Seven days a week.

JOE CHEN: Seven days a week.

PATRECIA BRADSHAW: Eleven a.m. to --

CONSTANTINE ALEXANDER: Eight, eight p.m.

PATRECIA BRADSHAW: The kind of food would be
Chinese food?

ATTORNEY JACK MILGRAM: Asian food.

PATRECIA BRADSHAW: Say it again.

ATTORNEY JACK MILGRAM: Asian food restaurant.

Chinese food.

PATRECIA BRADSHAW: Asian food.

And you just said it would be a takeout and delivery. No
dine-in?

ATTORNEY JACK MILGRAM: No. It's going to be dine-in
and we're adding takeout delivery.

CONSTANTINE ALEXANDER: They're here tonight because they, they need zoning approval to do the takeout. Dine-in they can do.

PATRECIA BRADSHAW: Okay.

CONSTANTINE ALEXANDER: It's only about the takeout element that they're adding to the restaurant.

PATRECIA BRADSHAW: Got it.

Those are my only questions.

ATTORNEY JACK MILGRAM: Thank you.

CONSTANTINE ALEXANDER: Anyone else wishes to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. We're not in any receipt of any letters.

Any final questions or comments?

ANDREA HICKEY: No.

CONSTANTINE ALEXANDER: Ready for a vote.

JANET GREEN: Ready.

ANDREA HICKEY: Ready.

CONSTANTINE ALEXANDER: The Chair moves that we grant the -- that we make the following findings with regard to the relief being sought to the Variance that is:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. Substantial hardship being is that these premises can be used for restaurant purposes and current practice is such that it's essential for Chinese or Asian food, that you have a takeout component to your restaurant and that's why you need relief. Because today you can't do that.

That the hardship is owing to the circumstances of contemporary restaurant activities, where it's important to have takeout as well as dine-in facilities.

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 is what's being proposed is an adjunct to an already existing legal use, i.e, a restaurant on these premises.

So on the basis of all of these findings, the Chair moves that

we grant the Variance requested.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance
granted.

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

ATTORNEY JACK MILGRAM: Thank you.

* * * * *

(9:50 p.m.)

(Sitting Members Case No. BZA-016793-2018: Constantine Alexander, Brendan Sullivan, Janet Green, Andrea A. Hickey, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair calls case 016793, 20 Sidney Street.

Is there anyone here wishing to be heard on this matter? Name and address, please, for the stenographer.

ATTORNEY SIMON BRIGHENTI: I'm attorney Simon Brighenti, B-R-I-G-H-E-N-T-I, and I'm with Satellite Communications and I've got Aidan Griffin here. Aidan is our site acquisition specialist for Center Line.

CONSTANTINE ALEXANDER: Okay. This is a 6409 case?

ATTORNEY SIMON BRIGHENTI: Yes.

And what we're doing is we're here representing Sprint. Basically the business entity, we're calling it Sprint. It is Clearwire, but they do business as Sprint. And right now there is a facility at 20 Sidney

Street which is just back here. It is consisting right now of several antennas on the rooftop, and an enclosed equipment shelter on top of this. I think it's the seventh floor of the garage there. And with some new technology that's come along, what's happening is that Sprint is looking at just swapping out existing antennas. There's antennas here and here, and this is kind of the bird's eye view of it what's existing here. And you see this is the kind of the blow up of the existing equipment building, a shelter. What we're looking to do is put a new cabinet inside that shelter. There are existing cabinets here, but there will be a new cabinet here. And then several of the antennas, six of them that are existing now will be removed and they'll be -- there will be the same number replacing them, just a different higher quality, better more capacity antenna is going to replace those existing antenna. There is constructed there a facade which is shown in the photo simulations we've presented. And you can also see it here or what we call a camouflage wall. And since all these antenna are behind the camouflage wall, there will be literally no impact -- there will be no impact on the existing view shed.

If we turn to the other side, the -- there is one antenna that

does show, that is outside, that was previously approved and that's, that is.

CONSTANTINE ALEXANDER: The battery is getting low.

ATTORNEY SIMON BRIGHENTI: Okay.

That is going to be replaced with a similar antenna as well.

So, again, there will be no difference in the current appearance there because we're just going to have a new antenna.

Again, this is, as you stated, a 6409. We believe it's an eligible facility, and that it is a pre-existing base station. And that the change is within that significant or insignificant range sufficient to approve under 6409.

Again, as far as, you know, hitting the words on the Special Permit, there's no pollution, no smoke, no noise that's going to be added. No additional traffic. And other than --

JAMES WILLIAMSON: He can probably hold it further away because it's loud.

CONSTANTINE ALEXANDER: Thank you, James.

ATTORNEY SIMON BRIGHENTI: Try to get the -- other

than, you know, some slight disruption to the traffic when they're installing and removing the antennas, but other than that there will be no disruption.

And as far as the public good, these new antennas do provide better capacity or -- I'm sorry, more capacity, better service. And so this building is owned by MIT. So the students that are there, the faculty that are there, the visitors, people that are in that building, people in the neighborhood, people driving through this neighborhood, and that neighborhood will be better served both in emergency and non-emergency situations and being able to access the Sprint network. So that is what we're looking to do.

CONSTANTINE ALEXANDER: Okay, thank you.

Questions from members of the Board?

(No Response.)

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

Is there anybody wishing to be heard on this matter? I hope you don't want to be heard.

JAMES WILLIAMSON: Just briefly. James Williamson,

1000 Jackson Place. As far as you know, is MIT planning to do anything to improve T-Mobile service on their properties?

CONSTANTINE ALEXANDER: You don't have to answer that.

ATTORNEY SIMON BRIGHENTI: I'll give you two words -- maybe it's one word antitrust. Is that one word or two words? I can't really talk about T-Mobile at this point.

CONSTANTINE ALEXANDER: Anyone else wishes to be heard besides Mr. Williamson?

(No Response.)

CONSTANTINE ALEXANDER: I guess not. I think we're ready for a vote.

I would just point out, I don't think you appeared before us before. Maybe you have.

ATTORNEY SIMON BRIGHENTI: No, I have not.

CONSTANTINE ALEXANDER: Okay. You'll see when we get to the vote, we impose a lot of conditions. These are conditions that are not just for you folks. All the telecom carriers come before us --

ATTORNEY SIMON BRIGHENTI: That's typical. I've been to about 150 towns so far and that's very typical. I understand that.

CONSTANTINE ALEXANDER: All right.

The Chair moves that we make the following findings with regard to the relief being sought:

That the requirements of the Ordinance cannot be met without the Special Permit you're seeking. At least in the opinion of our Legal Department.

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

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

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

And generally 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.

Further, the Board finds that the modification of its existing telecommunication facility at the site proposed by the petitioner does not substantially change the physical dimensions of the existing wireless tower or base station at such facility within the meaning of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 also known as The Spectrum Act.

Based on these findings, the Board moves that the petitioner be granted the Special Permit it is seeking subject to the following conditions:

One, that the work proceed in accordance with the plans submitted by the petitioner, first page of which has been initialled by the Chair.

Two, that upon completion of the work the physical appearances and visual impact of the proposed work will be consistent with the photo simulations submitted by the petitioner and initialed by the Chair.

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

Four, that should the petitioner cease to utilize the equipment approved tonight for a continuous period of six months or more, it shall promptly thereafter remove such equipment and restore the building on which it is located to its prior condition and appearance to the extent reasonably practicable.

And five, that the petitioner is in compliance with and will continue to comply with in all respects the conditions imposed by this Board with respect to previous Special Permits granted to the petitioner with regard to the site in question.

Further, inasmuch as the health effects of the transmission of electromagnetic energy waves as a matter of ongoing societal concern and scientific study, the Special Permit is also subject to the following conditions:

A, that the petitioner shall file with the Inspectional Services Department each report it files with the federal authorities regarding the

electromagnetic energy waves emissions emanating from all the petitioner's equipment on the site. Each such report shall be filed with the Inspectional Services Department no later than ten business days after the report has been filed with the federal authorities. Failure to timely file any such report with the Inspectional Services Department shall ipso facto terminate the Special Permit granted tonight.

B, that in the event that at any time federal authorities notify the petitioner that it's equipment on the site, including but not limited to the Special Permit granted tonight, fails to comply with the requirements of law or governmental regulations, whether with regard to the emissions of electromagnetic energy waves or otherwise, the petitioner, within ten business days of receipt of such notification of such failure, shall file with the Inspectional Services Department a report disclosing in reasonable detail that such failure has occurred and the basis for such claimed failure. The Special Permit granted tonight shall ipso facto terminate if any of the petitioner's federal licenses are suspended, revoked, or terminated.

C, that to the extent that a Special Permit has been terminated pursuant to the foregoing paragraphs A and B, the petitioner

may apply to this Board for a new Special Permit provided that the public notice concerning such application discloses in reasonable detail that the application has been filed because of a termination of Special Permit pursuant to the paragraphs that I've previously cited. Any such new application shall not be deemed a repetitive petition and therefore will not be subject to the two-year period during which repetitive petitions may not be filed.

And lastly, that within ten business days after receipt of a building permit for the installation of the equipment subject to the petition, the petitioner shall file with the Inspectional Services Department a sworn Affidavit of the person in charge of the installation of equipment by the petitioner with the geographical area that includes Cambridge stating that A, he or she has such responsibility; and B, that the equipment be installed pursuant to the Special Permit we are granting tonight will comply with all federal safety rules and will be situated and maintained in locations with appropriate barricades and other protections such that individuals, including nearby residents and occupants of nearby structures, will be sufficiently protected from excessive radio frequency radiation under

federal law.

All those in favor of granting the Special Permit subject to
these conditions say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Special Permit granted.

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

* * * * *

(10:00 p.m.)

(Sitting Members Case No. BZA-016906-2018: Constantine Alexander,
Brendan Sullivan, Janet Green, Andrea A. Hickey, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 016906, 15 Lambert Street.

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

While they're setting up, this case is a Comprehensive Permit case which is different, far different than Variances and Special Permits which is what we usually deal with. There are special rules with regard to that, and if anyone in the audience would like me to briefly review them, what the ground rules are, I'd be happy to do that. If not, we can proceed with the case as soon as they're ready to go.

So does anyone want to -- James?

JAMES WILLIAMSON: I would appreciate it.

CONSTANTINE ALEXANDER: Comprehensive Permit is a pursuant to a statute adopted by the Commonwealth Section 40B, designed to encourage affordable housing. The state legislator, this was a good number of years ago, became concerned that another, a lot of towns were -- you could not have affordable housing because of the zoning laws. Take Weston, for example, had one acre zoning. You're not going to get much in the way of affordable housing if you've got to

comply with one acre zoning.

So the procedure is designed, frankly, to reflect a strong public policy in favor of waiving local restrictions, mainly zoning, where appropriate to facilitate affordable housing. And so, the process goes as follows:

Rather than having the person who wants to construct affordable housing having to get permits from various boards throughout the city, which prolongs the process and increases the expense, there's only one permit, that's us. We solicit, and we have, views of all the other boards who would otherwise be voting on this, and they've expressed their views or in this case, you'll see, no opposition or no concerns. So if we do that, that's No. 1. It's a streamline process.

No. 2, most of the requirements of the zoning and other city rules do not apply to a project that's subject to a Comprehensive Permit. We can put conditions and even turn down a request for a Comprehensive Permit, but it's more difficult per the state for us to do that. But if there are environmental or planning concerns that we consider to be serious, we can deny the Comprehensive Permit.

The last and important thing to note is that when we consider cases before us for Variances and Special Permits, the vote that's required is a super majority. So four of us have to vote in favor of it. Which means that if two vote against it, the Variance or Special Permit is denied. For a Comprehensive Permit it's a majority vote. So the vote requirement has been lowered. As you can see from what I've just said, there is a -- going back to where I started, there is a policy in favor of approving Comprehensive Permits. But it's not an absolute right. It's not a complete rubber stamp. And we listen to the neighborhood, neighbors, and we try to deal with their concerns to the extent we can deal with them given the way Comprehensive Permits work.

And with that, I think that's it.

BRENDAN SULLIVAN: Well, that the design and --

JANET GREEN: Brendan, can we give you a microphone because there are a couple of people in the back who are trying to hear.

BRENDAN SULLIVAN: Yeah.

The design and the level of detail adds some flexibility.

CONSTANTINE ALEXANDER: Yes. Thank you, thank you,

Brendan. We will, usually when we approve say a Variance, petitioner comes in with plans and we -- if we grant the Variance, it's subject to compliance with those plans. And it's locked in.

With a Comprehensive Permit case, given its complex nature of the projects and the process, we only approve preliminary plans. And with the condition that the final plans that have to be signed off by the Inspectional Services Department are consistent with those preliminary plans. It can't be a bait and switch when completely something new comes before us. Again, it's a different process. So as Brendan has asked me to remind you. Is that it?

Okay, you guys ready? And I should say there's certain jurisdictional requirements that we'll touch upon during the presentation that have to be satisfied before we can grant a Comprehensive Permit. You know what they are. Maybe you want to save me time and everybody the time by dealing with them.

JANET GREEN: And let me just say that the whole room is full of people who are interested in this, so be sure you're using the microphones so that everybody can hear you.

CLARA FRADEN: Okay.

JANET GREEN: You can take that out if you want to take it out.

CLARA FRADEN: It's okay. Is this -- does this count as using the microphone? Yes?

CONSTANTINE ALEXANDER: As long as people can hear.

CLARA FRADEN: Okay.

So good evening. My name is Clara Fraden. I work at the Cambridge Housing Authority. I'm the project manager for the revitalization of Millers River Apartments. I'm here tonight with other members of our team. We have Mike Johnston, the Executive Director of CHA. Sue Cohen, the general counsel of CHA. Margaret Donnelly Moran, the director of Planning and Development. Diana Puideaux-Brune, the Deputy Director of Planning and Development. Hannah Stilson, outside counsel to the CHA. Kerry Dietz of Dietz and Company Architects, the architects on the project. Gary Forst, Pressley Associates landscape architect. And Goran and Garrett from our construction side of the Planning and Development Department.

So we are all here tonight on behalf of the petitioner, the Cambridge Affordable Housing Corporation, which is a Massachusetts non-profit.

CONSTANTINE ALEXANDER: Which is one of the conditions. You've covered that.

CLARA FRADEN: Exactly.

And whose Board includes all directors of the Cambridge Housing Authority -- or includes the directors of the Cambridge Housing Authority.

The Cambridge Affordable Housing Corporation controls Millers River Holding, LLC who is the long-term ground tenant of the property under a 99 year ground lease from the Cambridge Housing Authority.

We are requesting approval tonight of a Comprehensive Permit pursuant to Chapter 40B.

CONSTANTINE ALEXANDER: Another thing you should mention, have you received a written communication that the project is financeable?

CLARA FRADEN: Yes. So we have -- the Massachusetts Financing Agency commonly known as Mass. Housing as issued a preliminary site eligibility letter. They are also the state subsidizing agency that is providing assistance to the project for tax exempt bond financing. And we have a commitment letter from them.

CONSTANTINE ALEXANDER: Okay. So you've covered the jurisdictional requirements. And then we have jurisdiction to consider your request.

Now, let's turn to the -- let's talk to the reach out to the other boards and who has replied and what are the deviations from the zoning that are covered by the Comprehensive Permit?

CLARA FRADEN: So we have had a series of meetings with the city throughout this process. We've met with the Community Development Department, the Department of Public Works, the Cambridge Water Department, and the tree arborist. And we're continuing to meet with various city departments. We have a meeting with ISD and the fire department on August 6th. We have -- I don't -- did anybody submit a letter?

CONSTANTINE ALEXANDER: We have a letter -- a memo from the Planning Board.

CLARA FRADEN: From the Planning Board?

CONSTANTINE ALEXANDER: Which I'll address in due course. Other than that, as far as I know no one else has commented to us in writing.

CLARA FRADEN: Okay.

So, you know, we have been reviewing our plans with the city departments. Should I run through the relief?

CONSTANTINE ALEXANDER: Yes, please. Briefly.

CLARA FRADEN: Briefly?

So in summary, we are requesting relief from nine, for nine items. So the first --

CONSTANTINE ALEXANDER: You should start -- what you're doing, you're taking a building that has 297 units --

CLARA FRADEN: Yes.

CONSTANTINE ALEXANDER: And you're adding three units.

CLARA FRADEN: Yes. So we are proposing to --

CONSTANTINE ALEXANDER: And so -- (inaudible).

CLARA FRADEN: So we are proposing to renovate 297 existing apartments. We purpose one apartment and add three units of -- that's currently non-housing use and convert it to a housing use. So this will total 300 units of deeply affordable housing after construction.

CONSTANTINE ALEXANDER: That's a very modest addition to the amount of dwelling units on the property.

CLARA FRADEN: A net addition of two.

CONSTANTINE ALEXANDER: Yeah.

CLARA FRADEN: Yeah.

CONSTANTINE ALEXANDER: And other modifications to the site that you're going to do?

CLARA FRADEN: Yeah. So the scope of work for the renovations can really be divided into three segments.

The first is landscape and site design improvements. We are proposing to keep the existing building on Cambridge Street. So you can see that building. Maybe put it up there and the landscape plans, too,

Garrett.

So if you look on the left of this landscape plan here, that's Cambridge Street. So the existing community building is proposed to remain. So as a result, the landscape and site improvements are centered on Lambert and Gore Street on the right-hand side of this Board.

The improvements are mostly centered around accessibility improvements for vehicle traffic and for bike parking and for our pedestrians coming in and out of the building.

The second component is the addition of the new community center. So you can see that is here. You can also see the new community center pictured on this rendering here.

I should say that the addition of a new community center, we really hope to be able to accomplish this because it will provide for an expansion of programmed and services that we can offer to our residents. It will also allow us to move the management office which is currently in the tower into the new community center addition which will allow us to convert those three apartments and to add two new units at Millers. However, we've got cost estimates in for the new community center on

Friday and they range from 5.9 to 6.6 million dollars. And so we're not sure we will be able to afford it. We're having to look at our budget and see what we can absorb.

CONSTANTINE ALEXANDER: So you may not proceed with the community center at all?

CLARA FRADEN: So the community center right now is what's called an add-alternate in our budget. We do not want to sacrifice the renovations to the tower, which are really the priority of the Housing Authority, but it will be the first thing that is added into our project when it comes to the financial closing, when we get all of our bids in from the different trades and we can see if we can afford it or not. We really hope we can be able to.

CONSTANTINE ALEXANDER: What puzzles me is it sounds like an all or nothing proposal. Can't you scale it back so you have some community center?

CLARA FRADEN: Garrett, do you want to speak to that?

GARRETT ANDERSON: I'm sorry, I'll speak to that.

CONSTANTINE ALEXANDER: Yes, give your name.

GARRETT ANDERSON: So I'm Garrett Anderson. I've worked on the construction side of this project.

So Massachusetts General Law were subject to the procurement requirements. Any nature of a building like this where there's various file trades that are engaged; HVAC, plumbing, and the like, you can't negotiate with them prior to bids. It's a design bid build process with the contractors. So unlike a, you know, a CDC or a non-profit entity not subject to those rules we can't negotiate. We offer up our bid and they -- or we offer up the design, they bid on it, and we can afford it or we can't.

CONSTANTINE ALEXANDER: You can't put a second design in if you can't afford the design that?

GARRETT ANDERSON: So another interesting and unique element of Massachusetts General Law is no. You take alternates in the sequence that you propose them.

CONSTANTINE ALEXANDER: Okay. Just curious.

GARRETT ANDERSON: Yeah, no, the law is designed that warranting authorities prepare equally designed set of plans and specs

and then you build the designs and specs. So prenegotiation, you know, discussing alternates with them, coming up with some solution that we come up with our budget is simply not allowed under Mass. General Law.

CONSTANTINE ALEXANDER: Thank you for the information.

CLARA FRADEN: So that covers the second component with the new community center.

The third is the modernization of the tower, which as I've said before is the priority of the Housing Authority. So on those two boards over there that you can see interior renderings of the apartments --

CONSTANTINE ALEXANDER: The two on the right?

CLARA FRADEN: The two on the right, yeah.

So we will be doing complete renovation of all of the apartments in the building. The building is really suffering from design deficiencies and building system failures across the board. So we will be doing all new windows, all new kitchens, bedrooms, bathrooms, which many which haven't been renovated since they were built in the 70s and are falling apart.

We will also be converting the 229 -- well, we'll be converting -- we'll be enclosing all of the balconies at Millers River. The main reason for this is to enclose -- is to convert the 229 studios at Millers River into larger one-bedroom apartments.

CONSTANTINE ALEXANDER: Are you going to do anything about creating three-bedroom apartments?

CLARA FRADEN: We will not have any three-bedroom apartments at Millers River.

CONSTANTINE ALEXANDER: Oh, okay.

CLARA FRADEN: We will be able to add two new two-bedroom apartments to Millers River. Convert two existing one bedrooms to two bedrooms.

CONSTANTINE ALEXANDER: Okay.

CLARA FRADEN: Which is a -- we do not have very lengthy wait list for our two-bedroom apartments for elderly. However, they're very, very long. It takes -- at Roosevelt Towers the wait list for a two-bedroom for elderly is about five years long. So we're very excited to be able to gain those. Even though, again, it's not a big number in the

scheme of things, it does a lot for our wait list.

CONSTANTINE ALEXANDER: Okay.

CLARA FRADEN: So turning to the relief that we need to complete this work. Millers River is located on two zoning districts. Let me -- maybe just on the first board there, Kerry.

So Millers River is located across two zoning districts in Cambridge.

CONSTANTINE ALEXANDER: It's also partly in Somerville, right?

CLARA FRADEN: Exactly. So we have the BA district here, the residence C-3, and then a 510 square foot parcel of land in Somerville.

CONSTANTINE ALEXANDER: Will you have to seek zoning relief from Somerville?

CLARA FRADEN: So we will not. However, we did have to submit to them a copy of our comp permit application. So they are aware, but we will not have to seek relief there. We have no development plans for that little corner.

So, in 1971 when Millers River was built, it received a Special

Permit for construction. So in this application tonight, the CHA is carrying over relief granted by the conditions of the 1971 Special Permit and requesting the following additional relief that I'll go through here tonight.

We have copies of the dimensional forms. I'll ask Kerry -- okay.

So, again, this is a brief summary of the nine requested relief items:

We have three minimum setbacks in a C-3 district. One for the side yard along the railroad.

JANET GREEN: Can you point to it?

CLARA FRADEN: Yes, of course.

So one here for the side yard along the railroad.

One here for the front yard on Gore Street.

And another for the front yard on Lambert Street.

The second is a reduction in vehicle parking.

The third is a reduction in long-term bike parking.

The fourth is relief in the Cambridge noise ordinance for roughly 20 minutes a week.

CONSTANTINE ALEXANDER: Go back a little bit on the reduction of vehicle parking.

CLARA FRADEN: Yes.

CONSTANTINE ALEXANDER: How many -- what's the bid and ask on this one?

CLARA FRADEN: So in 1971 we were granted relief for 76 parking spaces.

CONSTANTINE ALEXANDER: Right.

CLARA FRADEN: After taking into account re-striping to allow for handicap spaces and also the addition of the new community center which will encroach a bit on the parking lot, we're requesting relief to 70 spaces.

CONSTANTINE ALEXANDER: Just one less space.

CLARA FRADEN: So from 76 to 70.

CONSTANTINE ALEXANDER: You said six, I'm sorry.

CLARA FRADEN: Yes.

So we have 50 residents at Millers River that have parking permits for the lot and the rest of the spaces are used by our staff. There

are numerous nurses and other healthcare professionals that have to come in and visit with our residents. Also, there's a headquarters for our operation staff is here.

CONSTANTINE ALEXANDER: Have you experienced any issues with regard to a lack of availability in parking with the 76 you have now? Sorry.

CLARA FRADEN: No. It's a -- it is often you go by and you see anywhere from five to ten spaces available. And there's other times when the lot is -- I've been there and the lot is full but it's, you know, the lot is well sized.

CONSTANTINE ALEXANDER: Okay.

CLARA FRADEN: The next is reduction in long-term bike parking. Relief from the Cambridge noise ordinance, again, like I said, for roughly 20 minutes each week.

Two curb cut applications for a curb cut.

JANET GREEN: And the noise, can you go to the noise for 20 minute --

CLARA FRADEN: Sure.

JANET GREEN: What's that?

CLARA FRADEN: The request for the noise ordinance is right now -- if I can actually point to this. So right now we have a, right now we have a generator that's right very close to the street. We are proposing to move the generator back, however, we need to increase the size. Right now the generator is not up to code. So we increase the size to bring it up to code and we also size it to make Millers River a place of refuge in the case of an extended power outage or an emergency. So the generator is going to be sized to accommodate residents' medical equipment, keep the heating, cooling, hot water, etcetera, at the time of an emergency.

This question came up at the Planning Board. We use a diesel generator. They said why don't you use a natural gas or a gas powered generator? The reason is that we can store diesel on-site. And so whereas the gas would be connected through a utility line, and we feel that a diesel generator with the storage really is the only way to make it a true generator in the case of an emergency. So we do cover the generator with hospital grade sound attenuation. And after conversations

with the Community Development Department, they suggested to us that we run this generator for the 20 minutes a week that it's needed to, you know, keep it operational during rush hour to minimize the impact of the noise. So we will take, we will take those two steps. But during those 20 minutes a week, we anticipate and we ask for relief to be allowed to go up to 75 decibels which is about the sound of a vacuum cleaner versus the 60 decibels in the Ordinance which is about the sound of my talking voice.

We are also asking for relief for phosphorous removal guidelines and the Department of Public Works land disturbance regulations. So we have reviewed our storm water plans with the DPW. We will have storm water mitigation tanks that are sized to fit their standards, and we believe that we can meet the 65 percent phosphorus reduction, however, these calculations are still in the review process with DPW and we're not -- we haven't confirmed with them yet that we will be able to meet that 65 percent. We have reviewed our plans and they, you know, they are on board with our strategy. But in the case that we are not -- in the unlikely chance that we are not able to meet the 65 percent reduction in phosphorous, we ask for relief from that section.

And then the last is relief from Article 22, the sustainable design and development section of the Ordinance. This is not to say that we're stepping away from sustainable design and development. We will be using Enterprise Green Communities criteria whereas the Ordinance states to use the LEED criteria. We actually do a point-by-point comparison between Enterprise Green Communities and LEED on our Millers River project, we scored LEED Gold. But we're not going for LEED certification, it's quite an expensive process and instead we'll be getting certification under the Enterprise Green Communities criteria.

Finally in our application we did request a waiver from the proposed Brown petition. However, since we submitted our application, we have received guidance -- or the City Solicitor has clarified that the BZA is not able to grant relief unless a local regulation is in effect at the time of the application. So we applied with ten items of relief, we're now coming to you tonight with nine.

And so would you like to talk about the Brown petition briefly? There are some issues that also came up and we're not asking relief for, but we were not asking for relief but they came up in the Planning Board

process so I think we should address those. The first is trees.

CONSTANTINE ALEXANDER: Yeah.

CLARA FRADEN: So we have, I think we -- most people in this room would agree that the most unfortunate result of these renovations are the loss of 24 existing trees at Millers River. We have -- however, we put forward to the Planning Board last week a tree replacement plan to replant 29 new trees. An important thing to note about these trees is that they are six and eight inch caliper trees. They are not the kind of three inch saplings that you often see on construction projects. So the Planning Board and others in the audience really applauded our effort to retain existing trees. We're keeping 17 existing trees on-site, but also our robust tree replacement plan. However, they did ask us to look at if there are other instances where we could save existing trees; namely, one tree here to the left of the proposed curb cut. This is a sycamore. So we did look at that tree. However, in order to save that tree, we would either have to make our curb cut narrower, which we don't want to do because the curb cut right now is sized to accommodate an MBTA ride van or an other form of handicap accessible

van. That's really the prime -- the most common mode of transport for our residents.

The other option would be sliding the curb cut three or four feet to the right.

CONSTANTINE ALEXANDER: Excuse me --

CLARA FRADEN: Yeah.

CONSTANTINE ALEXANDER: -- I don't mean to interrupt you. But the Planning Board has suggested, and I think it's a good idea, that if we grant relief, it's up to the condition that you continue to work with the Planning Board to deal with the tree issue. And so I don't think it's a -- at least not for me, a concern of this Board. I mean, it's an ongoing thing. We're not going to resolve it tonight I don't think.

ATTORNEY HANNAH KILSON: Right. I think one of the things that we were proposing -- excuse me, let me formally introduce myself. I'm Hannah Kilson. As Ms. Fraden said, I'm outside counsel to CHA from the law firm of Nolan, Sheehan, Patten.

On the tree replacement, the Planning Board had requested that CHA engage in kind of further investigation of what was

possible -- sorry, about what was possible on the site. What trees, particularly the tree located by the -- that was going to be removed because of the new driveway. And to see whether it was possible for them to be able to keep that existing tree. So in fact, CHA since that meeting has engaged in that process with their landscape architect and evaluating under what circumstances could we retain it. So one of the things we are actually asking the BZA to consider is that the very thing that the CHA was asked to do by the Planning Board, evaluate. In fact, Ms. Fraden went out, walked the site, looked at the trees, some of those that will need to be removed because of the construction and the new facade that needs to be built on, and the process for putting them on requires some of those trees removal, they have engaged that process. So we're hoping with further information if we need to provide it now, that the BZA could be comfortable that we actually have in fact done that and reached an evaluation.

CONSTANTINE ALEXANDER: What we want at the BZA, speaking for myself, what we want you to do is continue your dialogue with the Planning Board. I mean, it could be a condition regarding the

trees so that we don't -- I don't expect it to be resolved tonight. But you're being directed to keep working with the Planning Board and come up with a solution that works for you and the Planning Board.

ATTORNEY HANNAH KILSON: Okay.

CONSTANTINE ALEXANDER: And that's it.

ATTORNEY HANNAH KILSON: Okay.

CLARA FRADEN: So the second component that has come up a lot in this application is the question of the setback along the railroad. So there are two components to the setback along the railroad.

CONSTANTINE ALEXANDER: The Planning Board did not identify that. So I'm puzzled.

CLARA FRADEN: Oh, this is the issue of the Grand Junction.

CONSTANTINE ALEXANDER: Oh, the Grand Junction, okay. Now I know.

CLARA FRADEN: Yes.

So there are two components to our -- to this discussion. The first is that you'll see on the dimensional table we are asking relief for

a zero foot setback. This is related to the existing community building.

So the existing tower is with -- completely within the C-3 District.

However, the existing community building here is mostly in the Business A district. However, there's about a 100 square foot piece of it that goes into the C-3 District. So this is an existing non-conforming use that we wish to correct tonight with this application.

The second component relates to the addition of this new community center. So that's shown here in this hatch and it's also shown there on the rendering.

CONSTANTINE ALEXANDER: You can't see because it's blocked, but that's okay.

CLARA FRADEN: Maybe bring that one closer.

So we have been in extensive discussions with the Community Development Department since we have submitted our Comprehensive Permit application regarding the setback issue. And both parties believe that we'll be able to -- that we are on a productive path forward, and that we'll meet everyone's needs. But it's certainly not an easy path. So due to the lack of buildable land at Millers River due to the

Cambridge Housing Authority's desire for future development on the property, and due to the need to keep the existing parking both for our residents and their visitors but also for the new and expanded uses we hope to have on-site in the future, we have designed the new community center with a five-foot, six-inch setback. So that's what's shown here.

There was a lot of discussion, however, over the setback. So the worry that we've heard, that the five-foot, six-inch setback is not wide enough for the City's proposed Grand Junction path. This assumes that the path must pass on the eastern side of the railroad tracks and not on the western side of the railroad tracks where there were a series of smaller private lots. And it also assumes that the Grand Junction path has to be accommodated entirely in private property and not at all in the railroad. So, again, we are currently in discussions with the Community Development Department and working towards a solution about this. We are also talking with the Community Development Department about accommodating a ten-foot setback at the new community center, which the city has said is a setback that would allow for the Grand Junction Path to pass. These conversations will continue tonight even if we do receive

approval for our plans as is.

CONSTANTINE ALEXANDER: Right.

CLARA FRADEN: And of course alternate designs for the community center to accommodate a ten-foot setback are possible, but they do come at a cost. They come at a financial cost. First off, the narrower the community center gets, the less efficient it is to build. Also it comes at a cost in terms of our operating income and how much debt we can take out on the property. Going from a five-and-a-half or five-foot, six-inch setback to a ten-foot setback means that we will lose two new apartments of affordable housing, which we will receive increased operating income from. And that translates to a loss in about \$400,000 of debt that we can take out that we need to put towards these renovations. Much more importantly, however, the ten-foot setback comes at a problematic cost. So it may seem like just to shave off, you know, four-feet, five-inches is not that significant. However, it means that we have to lose two program spaces in our community center. Which means, you know, choosing between is it a fitness room? Is it expanded services for, you know, to provide for mental health

professionals and social workers. Is it a commercial kitchen. We have to choose between those two uses or as I mentioned, we have to locate those uses and then lose those two new units of affordable housing.

I know two units is not going to, you know, move the needle for the housing crisis we have in Cambridge, we do have 14,000 distinct households on CHA's wait list, 6,000 distinct households on our elderly and disabled wait list. So we really celebrate all of the new units we can get no matter what.

So city staff and the Planning Board have both commented on how this particular parcel make the path or pose constraints on the bike path that maybe don't exist at other points of the path.

And furthermore, although massDOT has not agreed to let the Grand Junction Path exist on their right of way here, there is ample space here. There's 47 feet on the railroad right of way right next to Millers River, plus the five-and-a-half or five-foot, six-inch setback that we're proposing. That is enough to allow for the massDOT's future plan of a two rail track, a 14-foot bike path, and buffers on each side. This is something that is unique to our parcel -- it's not unique, but it's not -- it

doesn't exist entirely along the railroad. Just across Cambridge Street for instance, next to 109, the railroad is just 33 feet. So this is a feature of -- this is a feature that we think makes placing the Grand Junction Path partially in the massDOT's right of way more likely than say across the Cambridge Street side.

In addition, anyone that has been to our site knows that we have this community center right here that has a zero foot setback. So although we are here tonight presenting plans for a new community center, and we really hope we will be able to build that new community center -- of course, we just got our cost estimates in 5.9 to 6.6 million dollars, and so if we are not able to afford the community center, we'll be looking to renovate this community center in which case it's there for 30 years. You know, and then what will we do? We'll have to engage massDOT and the Cambridge Housing Authority has expressed to the city that we're both willing to go forward to massDOT and to kind of put pressure on them to look specifically at this part.

So the Planning Board last week recommended that Millers River be allowed to proceed while further options are explored. And we

ask the Board follows that recommendation to approve the project as presented to you tonight.

Those are really the two big issues that have come up. I don't know if you want to speak to the Brown petition as well?

ATTORNEY HANNAH KILSON: Yeah, so we wanted to speak to the Brown petition again, recognizing as Clara noted earlier that that the Brown petition --

CONSTANTINE ALEXANDER: Excuse me. I don't mean to interrupt you. I know what the Brown petition is. Why is it relevant for us tonight?

ATTORNEY HANNAH KILSON: Well, so here -- we have a kind of an advisory opinion request for the BZA. So if I can walk --

CONSTANTINE ALEXANDER: What?

ATTORNEY HANNAH KILSON: We have kind of an advisory opinion request of you.

CONSTANTINE ALEXANDER: I don't think it's appropriate for --

ATTORNEY HANNAH KILSON: Well, what we wonder is

this: If because of the Brown petition has been noticed for public hearing and we do not have our building permit.

CONSTANTINE ALEXANDER: Right.

ATTORNEY HANNAH KILSON: If before the 90-day period, September 25th elapses, the City Council amends and -- adopts it or amends and adopts it, this project will be subject to the building permit. And we would be subject to the Ordinance. And as we have expressed, the requirements in the Ordinance would not be financially feasible for the project to do, and we -- and to redesign given our time frame.

CONSTANTINE ALEXANDER: Why don't you simply lobby -- and I don't think there's an objection, get the Brown petition amended so by the time it gets voted, it would won't apply to affordable housing like yours?

ATTORNEY HANNAH KILSON: Well, if the Brown petition is amended -- it's a timing issue, sir. So this is the dynamic. If the Brown petition is amended and adopted before the end of September --

CONSTANTINE ALEXANDER: Right.

ATTORNEY HANNAH KILSON: -- we will -- and assuming

we leave today with your granting of our 40B petition, we will have to come back to you in order to get our 40B petition amended. Because unless the, unless the Brown petition is amended to specifically exempt affordable housing developments --

CONSTANTINE ALEXANDER: Isn't that what's being proposed?

ATTORNEY HANNAH KILSON: I'm not sure -- I don't know whether it is being proposed. And I don't know whether or not that amendment -- it has to be broad and not specific. I think that if it's specific, it may create spot zoning issues. So what we're asking -- what we would need to do strategically in order to be able to advance our project which has to close by the end of this year in order for us to retain the funding that we're to receive from Mass. Housing, and in order for us to retain the funding we're to receive from HUD that makes this redevelopment project possible, we would have to come back before you for either an amendment, and that timing of that process would not enable us to meet our end of the year deadline. Or if the Board would advise us that they would consider it an insubstantial change for us to seek an

amendment to our 40B permit --

CONSTANTINE ALEXANDER: Right.

ATTORNEY HANNAH KILSON: -- because we are not change being our plans --

CONSTANTINE ALEXANDER: Right, right.

ATTORNEY HANNAH KILSON: -- we are not making any difference. If we know now and we could have that advice, that it would be deemed an insubstantial change. We would only need to submit our request, which is a 20-day determination. We could stay on track.

CONSTANTINE ALEXANDER: My problem is I don't know how I can -- how this Board can make a determination now about it being insubstantial change without having all the details in front of us.

ATTORNEY HANNAH KILSON: I guess I'm going to pose -- this is a question, which is, would you -- do you -- when there is an amendment to your 40B permit -- and substantial change or an insubstantial change by the regs, is defined as because there's a change in the design plan that had been submitted to the Board initially?

CONSTANTINE ALEXANDER: Right.

ATTORNEY HANNAH KILSON: If -- but in our instance we would be making no changes to our design plan. The only change would have been that the amendment, the Brown petition was enacted, and that its application to us makes our project not financially feasible. So we would be coming forward to you to ask you to waive the application of the Brown petition to our project. And I -- and we are asking because that you would say to us, yes, that is an insubstantial change. You are not making any changes to your plans. It's just the question of whether or not you're entitled to obtain a waiver from a zoning amendment. And if that's the case, then that puts us on the route for a 21-day determination and we can proceed to permit and finance our project by the end of the year. And so, whether it's the Brown petition, frankly, or any amendment that might come down the pike between now and when our building permit is issued, we're asking the Board to give us some guidance on whether if we came before you, can we do it as an insubstantial change versus an amendment process.

CONSTANTINE ALEXANDER: And I come back to what I said before, I don't know how I can tell you it's an insubstantial change

without seeing all the details.

ATTORNEY HANNAH KILSON: Without seeing all the details of the zoning amendment? Because there will be no change to our plans --

CONSTANTINE ALEXANDER: I don't know what the Brown petition's going to say if it gets adopted.

ATTORNEY HANNAH KILSON: No matter what it says we're not changing our plans. And so that's -- and I believe the regulations, when they speak to a modification of your 40B permit, the assessment of whether something is substantial or insubstantial is only a question of whether or not the design plans that you are submitting or revising have changed. And in our instance there will be no change.

CONSTANTINE ALEXANDER: But then I think you don't need any relief from us. I think you've outlined very clearly why you should be okay. You can get a change for insubstantial -- get an insubstantial change improvement. I just don't like granting this in the blind. And that's what I --

ATTORNEY HANNAH KILSON: I appreciate that. And I'm

not asking -- and you've actually given us really helpful information, because that's the kind of guidance we need to understand is that the -- because you're -- the CDD will turn to you, they will ask, Do you consider this an insubstantial change? It's only asking for a waiver from the application of the amendment. It's not asking for any changes in details of plan. And what I'm hearing, Mr. Alexander, you're saying to me is, yes, we would think that's an insubstantial change, provided your design plans --

CONSTANTINE ALEXANDER: That's a formal --

ATTORNEY HANNAH KILSON: Right. I hear that --

CONSTANTINE ALEXANDER: That's one member of the Board.

ATTORNEY HANNAH KILSON: Right. No, no, that's an informal assessment. But that is the kind of guidance we are looking for.

CONSTANTINE ALEXANDER: I don't know what you accomplish by all of this.

JANET GREEN: But your question was originally -- or your statement originally was -- oh, I'm sorry. The question that I thought you

were asking or the concern that you were expressing was the timing, not the actual decision. And how would that timing affect your end of the year project?

ATTORNEY HANNAH KILSON: So the issue for this project is that it has to be closed no later than December 31st. Meaning that it has to have received all of its construction financing. And in order to receive all of its construction financing, it will have to have all of its permits in place. The building permit process from the point in time that we have a Comprehensive Permit that is no longer appealable, is 58 days. On the calendars that we're working with, that runs us out to the end of mid to end of November. It creates a very tight time frame for us to close, but we in consultation with our financiers believe we can close in 30 days. But if we had to go back before this Board to obtain an amendment and go through an amendment process which runs the same time frames as a regular 40B petition, we would not meet those time lines.

CONSTANTINE ALEXANDER: I understand your dilemma, but you've got to understand ours. I don't think we -- well, I don't believe we should be giving informal advice on something we haven't seen --

ATTORNEY HANNAH KILSON: I respect that.

CONSTANTINE ALEXANDER: -- that's not part of the Comprehensive Permit case tonight.

ATTORNEY HANNAH KILSON: Right.

CONSTANTINE ALEXANDER: You're going to have to deal with that. And you're going to have to deal with that and deal with the city and say, listen, all the arguments you're making now, you're going to torpedo this process if you don't change the terms of the Brown petition to exempt affordable housing. I suspect you're going to succeed. But that's what you should be doing. Don't ask us to give you some advice which we shouldn't give and I don't think can give.

ATTORNEY HANNAH KILSON: Thank you.

CONSTANTINE ALEXANDER: Okay?

ATTORNEY HANNAH KILSON: Appreciate that.

Yeah, I think -- so, at this point I think we have set forth for you the waivers that are in front of you.

The one other waiver -- it's not a waiver. The one other request that's in the application, is a request regarding the pending

transfer that's part of the financing structure for this plan, and it's set forth I think on the third page of the application. Presently the property is held in, under ground lease by Millers River Holding, LLC. And Cambridge Affordable Housing Corporation is the -- ostensibly the sole member.

The property will be transferred through an assignment of the ground lease to Millers River, LLC at the point of time of closing. And we would like not to have to come back before the Board to approve that transfer.

CONSTANTINE ALEXANDER: I think that's a reasonable request. And I think if we approve your application tonight, I think you would have gotten to get with regard to that.

ATTORNEY HANNAH KILSON: Thank you.

CLARA FRADEN: Thank you.

CONSTANTINE ALEXANDER: That's it?

CLARA FRADEN: Yeah.

CONSTANTINE ALEXANDER: Questions from members of the Board before I open it up to public testimony?

(No Response.)

CONSTANTINE ALEXANDER: No.

I will open the matter to public testimony.

Is there anyone here --

JAMES WILLIAMSON: Can we start with information questions first?

CONSTANTINE ALEXANDER: Yeah. Well, public testimony --

THE STENOGRAPHER: You're yelling out from the audience.

CONSTANTINE ALEXANDER: When I said public testimony, that includes -- I meant that includes, James, questions. Any questions you may want to raise, now is the time to do it.

JAMES WILLIAMSON: So you'd like to have questions and comments rolled together?

CONSTANTINE ALEXANDER: Yeah. Or people can comment in response to the answer to a question. But, yes, basically that's right.

Mr. Brandon.

MICHAEL BRANDON: Mr. Chairman, would it help matters if you described or read the Planning Board's recommendation before there's public comment?

CONSTANTINE ALEXANDER: Sure. It's a little bit long. That's the only reason why I didn't read it. But I can summarize for it for you basically.

The Planning Board's memo to us dated July 25th, says they strongly support the project moving forward and recommends granting the Comprehensive Permit. That's to us.

The Board recommends that the applicant continue to work with city staff in order to address the following two issues that were raised by board members and members of the public at the meeting. And I'm going to propose tonight that we adopt this and say if we do, we approve this. A direct condition is that you continue to work with to deal with these two issues:

One -- and they've already been identified. One is the tree issue. The issue about whether additional, existing mature trees on the site can be preserved.

So they're going to continue to work with the appropriate city officials with regard to that.

The other is regarding design options that would not prevent the future establishment of the plan Grand Junction pedestrian/bicycle path. And that's also been addressed.

So the direction will be, if we do it, we approve, subject to the condition that these folks continue to work on these two issues with the appropriate persons as identified here.

Does that answer your question?

MICHAEL BRANDON: Yeah.

CONSTANTINE ALEXANDER: Okay.

Now, James, you want to go ahead.

JAMES WILLIAMSON: Sure. Should I use a mic?

CONSTANTINE ALEXANDER: Yeah, please, if you would.

JAMES WILLIAMSON: So thanks. James Williamson, 1000 Jackson Place.

First of all, these are just questions about sort of for clarification, information. I'd like to see this project succeed, but projects

don't have to be exactly the way they're initially proposed, they can be changed, hopefully improved.

On the noise issue, since it's meant to be an emergency diesel generator, what is the elevation at which it's going to be placed? One of the issues with the Brown petition has to do with flooding and possible risks of flooding, and of course, you would want a generator to be above where the flooding is occurring, right?

CLARA FRADEN: So our generator is on the ground floor, however, at this portion of the site we are above the flood limit, both the storm surge and the storm water.

JAMES WILLIAMSON: Do you happen to remember how many feet that -- at what level?

CLARA FRADEN: I don't.

GARRETT ANDERSON: It's also we're saying the generator is sitting on a diesel tank, so it's about five feet off the ground.

JAMES WILLIAMSON: All right, thank you.

On the tree issue, what I heard from the Council for the Housing Authority is that it has been evaluated. I'm wondering so what

has been the results so far of the evaluation? And to clarify what the Planning Board and your suggestion about working -- continuing to work with the Planning Board, my -- I don't think this typically goes back to -- you know, I don't think the work typically happens with the Planning Board, so I'd really appreciate some clarification about where this is actually going to go? And I'm mindful of the fact that with Jefferson Park, when there was some concerns about taking down all 96 trees and there was an agreement to leave eight, four of the eight that were left ended up getting cut down during the course of construction when decisions were made that, you know, judgment was made well, we need to do a trench here or maybe there was some damage to one or more of the trees during the course of the construction. So what's the current status of the evaluation and how is this actually going to get resolved?

CLARA FRADEN: So we have, we have 14 trees in the courtyard in the parking lot that are being lost due to the addition of a new community center. We have four trees along the building that are being lost due to the construction of the new facade. So one of the questions that came up in the Planning Board meeting were what other means and

methods to construct this facade? We went and asked our contractor that and they evaluated this, and we need to be using mass climbers which go up and down the side of the building and cannot physically fit alongside of the building with those four trees there. So unfortunately those four trees need to be removed.

In addition, three of those four trees are being removed to allow for a sidewalk to the back entrance of our property. Right now, if you want to enter the -- from Gore Street, you have to walk through our parking lot which we do not feel is a responsible design feature.

Thank you, Kerry.

So it's really one tree that is being lost due to the construction of the new facade solely.

Another tree is being lost due to the provision of this new sidewalk that right now exists on corner of Gore and where the sidewalk is. Right here. And then five trees are lost on Lambert Street for the driveway. And this driveway, I want to say, is being designed to preserve prominent 26-inch caliper Linden at the center. You can see it there. And you can also see it featured on one of our boards.

Kerry, I think it's behind this landscape board. Maybe if you move the landscape board over one. Yeah, that prominent Linden there.

We are also designed four trees, new trees to be planted around there; two eight-inch caliper and two six-inch caliper trees around that --

JAMES WILLIAMSON: So you're looking to save the Linden. Where is the sycamore that people, uhm --

CLARA FRADEN: So the sycamore is to the left off of --

JAMES WILLIAMSON: And what's your current, given the evaluation or the status of the evaluation, is there a way -- I mean, what's your current thinking about being able to save the sycamore?

CLARA FRADEN: We think that we can --

JAMES WILLIAMSON: And also save the Linden I guess?

CLARA FRADEN: Well, the Linden is being saved.

JAMES WILLIAMSON: Regardless.

CLARA FRADEN: Yeah. The Linden is being saved regardless. That was a very important -- it's a beautiful tree, a prominent tree. The sycamore to the left we don't think we can save. The reason

for that being in order to save it, we have to condense, make our curb cut more narrow, which means an MBTA ride van cannot fit there. Or move it over three feet to the right. That one sacrifices the Linden a little bit more. But it also then pushes -- makes a pinch point on the other side down here to the right of the curb cut between an existing retaining wall and an existing berm that's on the site and the curb cut. We actually first looked to remove that existing berm because we're putting a courtyard in that area, and if we remove the berm, we can have a larger courtyard for our residents. However, there's a sycamore planted in the berm with its roots everywhere, and so we made the decision to actually have a smaller courtyard in order to save that very prominent sycamore.

JAMES WILLIAMSON: On the community room, I don't understand, and this might be a good time to, you know, explain it. The existing community room, which we're planning -- the Housing Authority are planning to save, save as an empty shell where future development is planned? And so can you explain -- so the new community room which, you know, may or may not happen because of the financing is meant I gather to replace the existing community room which would remain empty

or have temporary uses until what is contemplated there?

CLARA FRADEN: Yes.

So the existing community building will be used for construction offices. And this will mean that we don't need to have trailers littering the site in the neighborhood during the three years of construction. And then after, as we know, the Cambridge Housing Authority is in the process of renovating the second half of our portfolio. So we often need overflow space sometimes for the workforce program namely. We also have our operation or school maintenance operation staff housed there. So those functions will remain. Our hope, though, is to be able to build a new community center and then in the future redevelop that parcel.

JAMES WILLIAMSON: With a new housing or something like that?

CLARA FRADEN: We're looking at -- we're exploring all options right now. We're looking at both commercial uses that could be provided to subsidize new housing, but also provide services, maybe a healthcare clinic that could serve residents. We're also looking at

different housing options.

JAMES WILLIAMSON: And bring one back and they closed two.

Now, the Grand Junction Railroad, I'm glad to hear you say, because I was going to ask about the two way tracks.

CLARA FRADEN: Yes.

JAMES WILLIAMSON: Because that's an important -- that's been an important issue for the former Secretary of Transportation, Fred Salvucci and others, not just a bike path, but to be able to run special trains on the Worcester line up the Grand Junction to, you know, help relieve the congestion and that, you know, the Red Line at Kendall Square, to open up new back and forth train access to North Station.

CLARA FRADEN: Yes.

JAMES WILLIAMSON: So you said something about that, and I wanted to understand, you said well, we're addressing that or we're accommodating that? And can you explain that?

CLARA FRADEN: Of course.

JAMES WILLIAMSON: Because I think that's also important

in this issue of where the community room building can be.

CLARA FRADEN: So we have heard that massDOT is interested in this two track rail. And the Community Development Department as part of their long-term planning for the Grand Junction has done a number of studies to look at actually what space is needed to accommodate a two track rail service and pass and the necessary buffers. So they've put out the 31 feet for double rail track to run. And then 10 to 14 feet for a multiuse path. Plus two feet for a barrier, plus two feet for a shoulder, plus two feet for another shoulder. So that comes to 47 feet to 51 feet depending on if you go with the 10 or the 14-foot multiuse path. At Millers, with the 47, right -- foot, right-of-way plus our five-foot, six proposed setback, that comes to a little bit over 52 feet. So that is enough to accommodate the double rail track, the large 14-foot multiuse path and buffers.

JAMES WILLIAMSON: With the one aspect that the bike pedestrian path would have to be on the other side.

CLARA FRADEN: Yes. It requires that part of the path -- it would operate on both sides.

JAMES WILLIAMSON: Gotcha. Thank you. And are you planning or are the Housing Authority planning to do regular construction updates for both the residents and the neighborhood because --

CLARA FRADEN: Yes.

JAMES WILLIAMSON: -- that hasn't always been the case.

CLARA FRADEN: I've had two meetings with neighbors and abutters in the last month and so we've started our e-mail listserve with the neighbors and then definitely continue --

JAMES WILLIAMSON: Through construction?

CLARA FRADEN: -- I'm at Millers River multiple times a week, and I will continue formal updates.

JAMES WILLIAMSON: Through --

CLARA FRADEN: Through construction.

JAMES WILLIAMSON: Thank you. Appreciate it. Thanks a lot.

CONSTANTINE ALEXANDER: Thank you, James.

Anyone else wishes to be heard? Sir.

ALLEN MOORE: Thank you. My name is Allen Moore. I

live at 23 Cherry Street in Somerville. I'm also co-President of the Friends of the Community Path, an organization representing existing and future users of the community path in Somerville, but also the Grand Junction Path in Cambridge and in Somerville and hoping to connect those two.

So we also support affordable housing and this specific project and the ability to improve the housing. We sent out this letter this afternoon outlining our recommendations and requests, and that is to make sure that the redevelopment of the site permits the Grand Junction path to be built alongside the Grand Junction courtyard. And I think the challenge is if -- as you just explained, if the MBTA allows the quote/unquote excess width to be joined to the width that your development would allow, then, yeah, it looks like everything would be good. But if they don't, then that can preclude it. So we're requesting, and I hope you can continue to find ways to perhaps when the design continues, to move the new structures, the parking, and whatever further from the rail lines so that there's more room for the future path. I don't know how your Board can somehow make that more certain to happen. I

understand there are restrictions because of -- it's affordable housing, that you have less authority to add such conditions or restrictions, but I'm hoping you can do as much as you can so that this all works out in the future.

CONSTANTINE ALEXANDER: Well, what I was planning to do tonight, at least I'm planning to do, is to basically condition that they continue to work with the city officials to explore design options that would not prevent the future establishment of the planned Grand Junction pedestrian bicycle path. It's going to be an ongoing process. But the direction will be, come up with some solutions. Those are my words. We know what the goal is. Planning Board knows what the goal is. You folks know what the goal is. Just a matter now of how to accomplish those goals.

ALLEN MOORE: Okay, thank you.

CONSTANTINE ALEXANDER: Thank you. You come from Somerville, too.

ALLEN MOORE: Yes.

CONSTANTINE ALEXANDER: I'm impressed.

JAMES WILLIAMSON: This is a little spot is in Somerville.

CONSTANTINE ALEXANDER: What's that?

JAMES WILLIAMSON: A little spot is in Somerville.

CONSTANTINE ALEXANDER: Yeah, I'm aware of that.

ALLEN MOORE: The property is in Somerville but also connecting the two paths in Somerville, too.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard on this matter? Sir. One at a time.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: I have a statement here from City Councillor Quinton Zondervan. (Reading) I am sorry I can't be with you all tonight as I am still recovering from hip replacement surgery. As a Wellington-Harrington resident, who lives just down the street from Millers River and the Grand Junction Path, it is particularly difficult for me to see these two urgent priorities in competition with one another. The seniors of Millers River undoubtedly deserve the proposed upgrades to the property and the community deserves an uninterrupted Grand Junction Path. It is important for everyone to realize that the Grand Junction Path right of way at Millers River is not a new

problem, however, as Millers River has always been a major choke point for the path due to the position of the existing community center on Cambridge Street. With that said, the current proposal will worsen the situation by extending the impacted area and leaving only a 5.5 foot setback from the railroad right of way for the new proposed building. Because the path requires at least 18 feet, the proposed 5.5 foot setback would force the Grand Junction Path to run at least partially on the railroad right of way which has not been secured from massDOT. It does therefore jeopardize the Grand Junction Path if the city is not able to negotiate sufficient space on the railroad right of way from massDOT in the future once the issue with the existing building is also resolved. Unfortunately we cannot rely on the state to grant the necessary regulate, but we will try to obtain it. I am grateful that the Cambridge Housing Authority for continuing this dialogue with the city and with the cyclists as we try to fit this much needed path into a very tight space when making much needed improvements for (inaudible).

CONSTANTINE ALEXANDER: Thank you.

THE STENOGRAPHER: You didn't state your name.

GEORGE SCHNEELOCH: George Schneeloch. I live at 81 School Street, apartment 1 in Somerville.

THE STENOGRAPHER: Can you spell your last name?

GEORGE SCHNEELOCH: S-C-H-N-E-E-L-O-C-H.

CONSTANTINE ALEXANDER: Sir. No, no, not your. The person behind you.

DOUG RAND: Hello. My name is Doug Rand and I live at 15 Lambert Street, apartment 902. And I figured I'd come down and speak as a resident and let the Board know exactly what we feel about -- I can't talk for everybody but myself, I don't understand why anybody wouldn't want affordable housing in Cambridge. It's definitely something we need. We need the -- we need this to pass tonight so we can take care of the building, the existing building that we have. It is in dire need for our residents to have a place that is to live. As far as any concerns that the residents have, this building has been existing. It's been a senior citizen residence that I'm sure that they would like to keep it as a senior citizen residence. Although we have to share it with other residents now that are -- because of existing problems with other buildings.

CONSTANTINE ALEXANDER: Right.

DOUG RAND: So we've got people moving in. As far as what we would like to do is keep our community room. That community room we feel is ours. Although now with the Cambridge Housing Authority putting in an existing building or doing with the building, and now considering sharing it along with the public, which I believe we all should share, it should be a community room for everybody.

As far as the trees that are going out around the existing building, I live actually on the Medford side. I live on the court side area, so I know that the sun comes in and -- the sun sets right on my apartment. As far as the trees that are there, we really don't get that much shade in the courtyard from those trees. The residents of -- are either forced to sit in the Lambert area where it's more shady, and we have the existing building. So I don't think the tree issue is really an issue. We need our apartments fixed.

CONSTANTINE ALEXANDER: Right.

DOUG RAND: That's basically what we're here for today.

As far as Grand Junction and the railroad, we have the same

problem that they have up on Sherman Street. We need a quiet zone.

When they pass through with trains, they're blowing their horns and it's really not -- it's something that we have to live together with because we need also the Grand Junction and we need our residents. So we got to have something where the housing authority can do something as far as the pathway, so that they can -- we can move forward with this existing.

So I think, I think I should say that that's what I as a resident feel. I can't say for every resident, but that's basically what it is.

CONSTANTINE ALEXANDER: Well, first of all, thank you for taking the time to come down and staying at this late hour. We appreciate that.

DOUG RAND: All right.

JAMES WILLIAMSON: Is that new noise? Is that new train horn noise?

DOUG RAND: No, it's been --

CONSTANTINE ALEXANDER: I think the folks from the Cambridge Housing have heard you loud and clear and they're going to be working toward --

DOUG RAND: Right. I'm sure they will be working with our residents.

CONSTANTINE ALEXANDER: Right.

DOUG RAND: As far as with the existing problems in the building, because we actually need a third elevator in the building.

CONSTANTINE ALEXANDER: Right. Not tonight.

DOUG RAND: Right, yeah.

CONSTANTINE ALEXANDER: Thanks.

DOUG RAND: Yeah, thank you.

CONSTANTINE ALEXANDER: I see a hand up in the back. Miss, you want to come forward?

LEE FARRIS: Thank you. My name is Lee Farris, L-E-E F-A-R-R-I-S, 269 Norfolk Street in Cambridge. And I'm writing or I'm here speaking with regard to the Millers River project. The Cambridge Residence Alliance of which I'm the Vice President, has always called for more affordable housing in Cambridge, and we certainly want all existing affordable housing to be maintained in good condition. Therefore, we support the CHA's project to renovate the Millers River Apartments. The

Cambridge Residence. Alliance also supports the climate safety petition.

And we understand the issues have been described by CHA about the climate safety petition's possible impact on the timing of Millers River permitting and financing. Had the City Solicitor not suggested that the BZA cannot grant exemption from the requirements of the climate safety petition, I would be asking that you do so.

Lastly, we do request that you push the applicants to preserve as many additional large existing trees on the site as possible.

CONSTANTINE ALEXANDER: That's been covered already.

LEE FARRIS: And allow for the Grand Junction Path. Many great Cambridge Residence Alliance members, like me, are bike riders and pedestrians and we do look forward to some day riding and walking along the path.

Thank you very much.

CONSTANTINE ALEXANDER: Thank you for staying around.

Anyone else wishing to be heard? Sir. You don't have to speak you know.

COUNCILLOR DENNIS CARLONE: Very quickly. I just wanted to --

CONSTANTINE ALEXANDER: Your name?

COUNCILLOR DENNIS CARLONE: Dennis, Dennis Carlone, C-A-R-L-O-N-E.

CONSTANTINE ALEXANDER: Oh, of course, I'm sorry, Dennis.

COUNCILLOR DENNIS CARLONE: Nine Washington Avenue. And I think the CHA tonight presented all the issues very fairly and very professionally. I think the reason they kept raising the petition -- the Brown petition and its effects is to make it not just clear to the Board, but clear to everybody in the audience. And it helps the Council to deal with this Monday night, because the reports from the Planning Board and our Ordinance Committee will be coming forth and we can make some decisions. Everybody on the Council wants this housing to occur. I think the primary question I have, you dealt with as the Board -- as the Planning Board did, and that is making sure that both public efforts, the junction and the public housing go forward.

So thank you and those are my comments. Very brief.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishes to be heard? Sir.

MIKE CONNOLLY: I'll be real brief as well. Mike Connolly.

I'm a State Representative for the 26th Middlesex District which includes Millers River. I also serve on the Housing Committee in the state legislature and certainly want to strongly support the work of the Cambridge Housing Authority but also want to echo these concerns with the Grand Junction Path. Quinton Zondervan, Councillor Zondervan reached out to me a few days ago. I had a good conversation with Councillor Mallen about it today as well as Mike and the City Manager. And I just think that we all have to work together to make sure that these two issues don't compete with each other but they work together with each other. We hear from people all day that two of the biggest issues are housing and transportation, and this Grand Junction Path really it's just an unbelievable opportunity. And I really just don't want us to ever reach a point to say we somehow blocked it any way. I support having some language in there to continue to make sure that we work to address it, and

I'm committed to doing all that I can on the state level as well.

CONSTANTINE ALEXANDER: Thank you very much. And thank you for your service.

Oh, my goodness more. You've already spoken, haven't you?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: No.

CONSTANTINE ALEXANDER: No. I'm sorry. My mistake. I apologize. It's a late night.

PEGGY BARNES LEONARD: Very brief. Hi. I'm Peggy Barnes Leonard, 115 Fayerweather Street. Very briefly, I think you have received a letter from Doug Brown who is one of the co-authors of the climate safety petition of course. And I just want to read into the record and make clear, I'm on the climate safety petition committee. As he says, in many ways the project is a model for future residential development in flood prone areas. That's one of the highlights. I think you do have the record. And he understands the issues raised by CHA around the timing of their permitting and subsequent financing and in no way wishes to force them to go back to the drawing board yet again thus missing another

annual funding cycle. I guess they're in some kind of legal limbo with -- the Zoning Board does have the right to grant waivers under the 43B. However, since this is not officially a petition, the true petition, you can't -- the opinion of the City Solicitor is that a waiver cannot be --

CONSTANTINE ALEXANDER: Right.

PEGGY BARNES LEONARD: Okay.

CONSTANTINE ALEXANDER: Thank you.

PEGGY BARNES LEONARD: So we are in support of this going forward. (Inaudible).

CONSTANTINE ALEXANDER: Sir.

MICHAEL NAKAGAWA: My name is Mike Nakagawa, N-A-K-A-G-A-W-A, 51 Madison Avenue. I want to support the project. I'm one of the people who helped with the climate safety petition, Brown petition, and it fits in with what we support is safe, healthy housing and they're trying to do -- make this so much a better place. They're trying to preserve the trees as they can. Realize that some they're trying to save, a lot of the largest trees, which we appreciated it, and replacing them with large caliper trees so that benefits are more immediate in that size. And I

just want to say that if we haven't had a chance as the petitioners to be able to suggest what we would think would make the petition more palatable, but we would -- this would be excluded under what we would propose for restrict -- eliminating the area for the flood applicability to just overlapped flooding instead of just the street level storm sewer backup flooding, but we haven't had a chance to be able to present that to anyone so that if it were to go forward, this would not be covered by what we would propose. I would however mention one thing to be concerned about, is for the new community center. It looks like there might be some impact of where predicted flooding would be, and that if that intersects with the building, that the building would be protective of potential flooding for that if it goes bad. And well, I think it's a great effort and support what they're doing with all the housing.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishes to be heard? Sir.

NATE FILMORE: I too will be brief. Just to reiterate some of the things that have been previously said.

BRENDAN SULLIVAN: Name and address.

NATE FILMORE: Oh, sorry. My name is Nate Filmore. I live at 13 Marcella Street, No. 3 in Cambridge.

CONSTANTINE ALEXANDER: If you're going to repeat things someone else has said, don't, because we've heard them.

NATE FILMORE: Okay.

CONSTANTINE ALEXANDER: And it's getting late.

NATE FILMORE: I understand that. And I'm also very tired. I just wanted to say that I appreciated conversations that -- I'm with the group Cambridge Bicycle Safety in addition to being a new resident. And I just wanted to say that I appreciated conversations that we had earlier today by brought by Councillor Mallen and with Mike Johnson and other members of the Cambridge Housing Authority regarding the Grand Junction Path and the commitment that was made to work with the city and the MBTA going forward to find a solution that will work. And, you know, I think we all recognize that this is an incredibly important project and will connect over 40 miles of paths around the region and provide a safe and equitable transportation option for everybody.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishes to be heard? It's your turn, Mr. Brandon, and I hope you're trying to add something that --

MICHAEL BRANDON: I'll try.

CONSTANTINE ALEXANDER: If you don't, I'm going to cut you off.

MICHAEL BRANDON: All right. Give me a chance. My name is Michael Brandon. I live at 27 Seven Pines Avenue. I had a question about the jurisdictional issue that was dealt with right at the start. And if I understand it, there's a preliminary approval for Mass. Housing?

CONSTANTINE ALEXANDER: Yes. We have a letter in the files.

MICHAEL BRANDON: And so when will that be finalized? And is that indeed not a requirement before you even apply?

ATTORNEY HANNAH KILSON: No, in order to submit the application to come before the ZBA, you have to have the preliminary site plan approval -- the preliminary site eligibility letter. So that's been issued

by Mass. Housing.

The final approval letter will be issued by the Mass. Housing after the Comprehensive Permit is granted and it's no longer appealable. And then the plans have been finalized in accordance with any recommendations that come out of the Comprehensive Permit.

MICHAEL BRANDON: Thank you for that.

And that standard procedure I presume?

CONSTANTINE ALEXANDER: Yes, it is.

ATTORNEY HANNAH KILSON: Yes, it is.

MICHAEL BRANDON: Thank you.

Also -- oh, on the tree issue, if the new community center cannot be funded, would it be possible then to retain some of the trees that would be lost until going forward in the future with redevelopment?

CLARA FRADEN: It would be possible to save some of the trees, but not all of the trees. Some -- nine of the trees are in a berm in the existing courtyard, and we need to use that space for construction lay down area. Unfortunately since they're in the berm, all of their roots are tied up together so it's not like we can use a portion of the berm and then

still save the, you know, the trees on the other side the berm, and they're all interlinked. And we need that space for all the construction materials to be stored on-site. So some of the --

CONSTANTINE ALEXANDER: I'm sorry.

CLARA FRADEN: So some of the trees will be able to be saved but not all of the 14 that are being lost due to this.

CONSTANTINE ALEXANDER: It will be a condition of the permit we grant tonight that they work with city officials to preserve as many of the trees as possible --

MICHAEL BRANDON: Right, you made that clear.

CONSTANTINE ALEXANDER: -- and to replace those that are being taken down --

MICHAEL BRANDON: You're right, I understand the planned conditions. I would just hope that in your discussions with CDD and as you move forward, that you rethink the possibility of using the parking lot, part of the parking lot for construction material storage. You know, even if that involves some sort of a shuttle system off site or nearby if that's possible. I don't know if you've considered that. But I hope you will.

Because that seems a shame to me to lose mature trees given the climate crisis that we're facing and the extreme value that trees give us.

The other aspect is I don't think the City Council was ever sent the application, although other agencies have, and I don't know why that was the case, because you're seeking to waive zoning restrictions, but it's normally the City Council that gives final approval for curb cuts laid out on the public way. I haven't specifically requested a waiver from that requirement, so that may be an issue.

As far as the actual curb cut, it's actually two curb cuts that you're seeking?

CLARA FRADEN: Yes.

MICHAEL BRANDON: And the total definitely exceeds what the zoning allows. I wonder would it be possible rather than creating the driveway and affecting trees, would it be possible to just create a loading zone on the street where you say there's already problems with double parking I think, that could be enforced, used by the T's van system. So I -- you can -- have you considered this and addressed it? And if not, you know, I hope in exploring with CDD, that you would pursue that.

It was mentioned on the diesel tank, that would be under the generator, the emergency generator, and I just hope that that is somehow protected from potential flooding. That's another aspect of the Brown petition is to ensure that as the climate gets worse and we get bigger storms, that we not, you know, have toxic substances getting into the flood waters and spreading.

I think the last area I'd like to ask about -- and by the way, I do fully support the renovation project with the concerns that have been raised and will be addressed in the conditions about the tree canopy, preserving it and trying to adjust for the -- to allow the future Grand Junction Path to proceed even if it results in some alterations to at least create more space for them to occur.

So the other question is about this whole mention of a, an opinion from the City Solicitor that the Board cannot do what you originally asked and waive the applicability of the Brown petition, the pending Brown petition. And I -- one thing that I ask is whether the Board received a formal legal opinion that's in the file, you know, to clarify exactly what she may have said.

CONSTANTINE ALEXANDER: That's not for us to do. I'm not -- the Brown petition and dealing with it is for the -- is for the petitioner and the appropriate city officials to deal with. We haven't been presented anything regarding the Brown petition. It's not really within the purview, in my judgment, of the Chapter 40A proceedings. Our charge is to give preliminary approval to this project to go forward and waive whatever zoning requirements that the project would not otherwise satisfy and whatever conditions we may impose on that. That's what this is about. The Brown petition to me is something I don't want to get into it tonight. We've had no presentation regarding that. It's just not part and parcel of what we need to do tonight. There are other people --

MICHAEL BRANDON: Well, maybe the attorney could elaborate on what she said in terms of that. Do you agree?

BRENDAN SULLIVAN: It's not an issue.

CONSTANTINE ALEXANDER: No, no.

BRENDAN SULLIVAN: We're going to go round and round and round on something that's not an issue.

CONSTANTINE ALEXANDER: That's right. We're not

going to deal with the Brown petition tonight, Mr. Brandon. I said it already. I said it. Counsel has accepted it. Drop it.

MICHAEL BRANDON: Fine. It seems like you could save the potential for them having to come back.

BRENDAN SULLIVAN: That's their problem.

CONSTANTINE ALEXANDER: That's right. It's their problem. And if they come back, it's probably going to be -- if they have to come back for an insubstantial change, and that's a much more streamlined procedure and --

MICHAEL BRANDON: So if I'm understanding what happened, is you are now withdrawing the request, the applicant is, withdrawing the request to be exempted from the Brown petition? Is that correct? So that's not before you?

CONSTANTINE ALEXANDER: It was not before us in the application. It was brought up tonight during the presentation. I don't want to deal with it. And I don't want to --

MICHAEL BRANDON: It is in the written application.

CONSTANTINE ALEXANDER: Right.

MICHAEL BRANDON: My question is, is that now being withdrawn? Because you can concur with the City Solicitor that this Board doesn't have the power to waive a pending zoning change --

ATTORNEY HANNAH KILSON: I think the --

MICHAEL BRANDON: -- that's in writing, it does exist. The Board knows what it is.

BRENDAN SULLIVAN: Has it been enacted?

ATTORNEY HANNAH KILSON: So -- right. The authority of the Board is to waive local requirements and regulations. And the definition of local requirements and regulations --

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY HANNAH KILSON: -- by the regulation -- under the 40B regulations are that regulations or requirements that are in effect at the time of the filing of the application, that definition, within the regulations, unfortunately from the petitioner's position, creates a bar to their ability to have jurisdiction over our request. So we did make a request that they waive the application, but we recognize given the definition of local requirements and regulations that presently the Brown

petition is not enacted and so is not in effect.

MICHAEL BRANDON: So you have withdrawn that request?

ATTORNEY HANNAH KILSON: Yes, we're not making -- it's our tenth request in our application and we're no longer seeking it because it lacks jurisdiction.

MICHAEL BRANDON: Okay. That's very helpful. And is there case law that you're aware of?

BRENDAN SULLIVAN: Michael.

CONSTANTINE ALEXANDER: Mr. Brandon, come on.

ATTORNEY HANNAH KILSON: It doesn't need to be case law because the definition provides for the basis.

MICHAEL BRANDON: Okay, thanks a lot. Sorry to take so much time.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishes to be heard in on matter? This petition I should say.

(No Response.)

BRENDAN SULLIVAN: Close it.

CONSTANTINE ALEXANDER: I plan to don't worry. The Chair will close public discussion or public comment I should say.

Discussion or do you want me to make a motion with regard to granting the Comprehensive Permit?

JANET GREEN: Motion.

ANDREA HICKEY: Motion.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that we make the following findings with regard to the request -- the application for the Comprehensive Permit:

That the petitioner has demonstrated that they satisfy the jurisdictional requirements of Chapter 40A; namely, with regard to their status as a non-profit.

That they are a fundable project and that they have control of the site. And by definition they do that.

The Chair moves that we make further finding that the applicant has submitted to the Board a complete and satisfactory application for a Comprehensive Permit pursuant to the Code of Massachusetts Regulations, including preliminary site development plans,

preliminary drawings. I think those are the main things. And a list of the required exceptions to local requirements and regulations which of course you've done.

Further, the Chair moves that we find that the applicant has met all of the jurisdictional requirements of Code of Massachusetts Regulations.

That the applicant has submitted in the written materials evidence concerning the continued need for affordable housing in the City of Cambridge and in the surrounding region.

On the basis of that evidence and the Board's knowledge of housing in the City of Cambridge, the Board -- the Chair moves that the Board find that there continues to be a regional need for affordable housing and a substantial unmet need for affordable housing in the City of Cambridge.

The project as indicated will consist of 300 units.

In reviewing the project, the Chair moves that the Board find that we have not identified any significant health, safety, environmental design, open space, or no adverse impact on storm drainage, traffic, or

other engineering and planning matters that would support denial of the project or outweigh the local or regional housing need.

I move that the Board find that the relief from this -- that we have determined that the relief from the specific requirements of local restrictions and regulations requested by the applicant is necessary in this circumstance to ensure the creation of affordable housing and to allow for the construction of the project as proposed.

So based upon these findings that I've just proposed, the Board finds that the proposed development meets the requirement for a Comprehensive Permit under Chapter 40B, and that such a permit shall be granted to the applicant subject to the following conditions:

One, that final detail construction plans be submitted to the building inspector to ensure that the final plans are consistent with the preliminary plans submitted by the applicant. The first page of which has been initialed by the Chair. And that's what you've given me so far.

And that the project proposed in accordance with the recommendations of the Planning Board set forth in a memorandum of July 25, 2018; namely, that the petitioner continue to work with staff to

determine whether additional existing mature trees on the site can be preserved, and that in an attempt to propose a robust replacement plan for those trees that have been removed.

And second condition set forth in the Planning Board's memo is that the petitioner continue to work with staff to explore design options that would not prevent the future establishment of the plan Grand Junction pedestrian/bicycle path. This path has been a community desire for many years and is an important part of the City's overall strategy to promote walking and bicycling opportunities.

That's with that that's the last of the conditions that I propose. So I would ask for a vote that we approve this Comprehensive Permit subject to those conditions that I just identified.

ANDREA HICKEY: I wanted to remind you to add that the petitioners are allowed to put into effect an assignment of the ground lease without triggering their having to come back.

ATTORNEY HANNAH KILSON: Right. Request for the ability to transfer the Comprehensive Permit to Millers River, LLC at the time of our construction financing.

CONSTANTINE ALEXANDER: Do you need that in advance? I would be happy to make that.

ATTORNEY HANNAH KILSON: Yes, we do need that.

CONSTANTINE ALEXANDER: Okay. Let that be added to the conditions that we've identified.

ATTORNEY HANNAH KILSON: Thank you.

CONSTANTINE ALEXANDER: Anything else?

All those in favor of granting the Comprehensive Permit on the basis of the conditions I've identified, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.
Comprehensive Permit permit has been granted. Good luck and keep going.

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

(Whereupon, at 11:40 p.m., the Board of
Zoning Appeals 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 24th day of August, 2018.

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

My Commission Expires:
April 29, 2022

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