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        BOARD OF ZONING APPEAL
                        FOR THE
        CITY OF CAMBRIDGE
        GENERAL HEARING
        THURSDAY JULY 27, 2023
        6:00 p.m.
        Remote Meeting
        via
        81 Massachusetts Avenue
Cambridge, Massachusetts 02139
    Jim Monteverde, Chair
    Steven Ng, Vice Chair
    Virginia Keesler
Daniel Fernando Hidalgo
            William Boehm
            Wendy Leiserson
            Matina Williams
            Zarya Miranda
            City Employees
            Stephen Natola
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(6:00 p.m.)
Sitting Members: Jim Monteverde, Steven Ng, Virginia Keesler, Bill Boehm, Daniel Hidalgo, Matina Williams, Zarya Miranda, and Wendy Leiserson

JIM MONTEVERDE: Good evening and welcome to the July 27, 2023 meeting of the Cambridge Board of Zoning Appeals.

This meeting is being video and audio recorded and is broadcast on cable television Channel 22 within Cambridge. There will also be a transcript of the proceedings. All Board members, applicants, and members of the public will state their name before speaking. All votes will be taken by roll call.

Members of the public will be kept on mute until it is time for public comment. I will give instructions for public comment at that time, and you can also find instructions on the City's webpage for remote BZA meetings.

Generally, you will have up to three minutes to speak, but that might change based on the number of
speakers, and at the discretion of the Chair.
I'll start by asking the Staff to take Board
members attendance and verify all members are audible.
STEPHEN NATOLA: Jim Monteverde?
JIM MONTEVERDE: Yes, Jim Monteverde is here.
STEPHEN NATOLA: Virginia Keesler?
VIRGINIA KEESLER: Is here.
STEPHEN NATOLA: Bill Boehm?

BILL BOEHM: Here.
JIM MONTEVERDE: Thank you.
STEPHEN NATOLA: Daniel Fernando Hidalgo?
DANIEL HIDALGO: Here.

STEPHEN NATOLA: Steven Ng?
[Pause]
STEPHEN NATOLA: Matina Williams?
MATINA WILLIAMS: Here.

STEPHEN NATOLA: Zarya Miranda?
ZARAYA MIRANDA: Present.

STEPHEN NATOLA: Wendy Leiserson?
WENDY LEISERSON: Here.
JIM MONTEVERDE: Okay. And Stephen, just to
confirm, the first case, the 1164-1166 Cambridge Street,
that's Steven, Matina, Zarya, Wendy and myself. Is that correct?

STEVEN NG: Yes.

JIM MONTEVERDE: Okay. All right.
STEVEN NG: Steven Ng present, also for the record.

JIM MONTEVERDE: Yep. Thank you.
(6:02 p.m.)
Sitting Members: Jim Monteverde, Steven Ng, Matina Williams, Zarya Miranda, and Wendy Leiserson

JIM MONTEVERDE: First case I'm going to call is Case 206665; that's 1164-1166 Cambridge Street. Staff will now unmute you. Please begin by introducing yourself and any other presenters on your team, then commence your presentation.

Before the proponent begins, I just want to remind everyone from the -- and read from the announcement, the agenda. This is a variance request. There was a previous case involving in part the use of the rear door that faces an alleyway.

The previous case restricted the use of the rear door to nonrecurring emergency egress only, and the request before us for the variance is to modify that to prepare the rear, or to allow the -- permit the rear door to be used for general restaurant operations, for Staff only, and to permit the installation of the new trash enclosure.

With that, is anyone here wishing to speak on the
matter?

ADAM BARNOSKY: Yes. Thank you, Mr. Chair. My
name is Adam Barnosky. I'm here on behalf of the applicant.
And you're correct, Mr. Chair, we are here
regarding the application on one condition imposed by the Board in BZA Case No. 9779 issued in 2009, which relates to the use of the rear door.

I will just make one clarification before going into my broader presentation, which is initially the modification that we requested in our application was to use that rear door for General Restaurant Use, as you had mentioned.

The applicant is willing to limit that modification to -- only to use that rear door for the purposes of accessing the trash bins in the rear of the building. So just to have that in mind as I go through the rest of this.

So as a reminder, this restaurant, Puritan \& Company, has been in operation for 19 years. The restaurant is currently storing its trash in the private rear alleyway behind the restaurant, and the restaurant's storage of trash, this location is lawful.

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I do want to remind the Board that despite the substantive focus and discussion about trash in the past public hearings, this hearing is about access. It's about access to the rear alleyway, and how the restaurant is able to access the trash.

Currently, the restaurant is required to go -haul trash through the restaurant onto Cambridge Street, around the corner along hundreds of feet of public sidewalk down Tremont, and then down its public alleyway. That's how it gets to its trash cans, and that's how it gets the trash back out when it is picked up.

And it's important to note that regardless of the Board's decision tonight, the restaurant will continue to use trash lawfully in the rear alleyway.

If you vote to remove or modify it, the trash will be accessed by opening the door, accessing the trash and closing it. If the Board decides to not modify, the restaurant will be required to continue to haul its trash around the neighborhood.

But I think this is important, because it also addresses some of the concerns that have been raised by the neighbors.

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And I think if you look at what we're composing and what the restaurant is proposing, this proposal is actually significantly more beneficial to the neighborhood. Because, again, if you're accessing trash, you're opening a door, using the trash cans, closing a door, it's significantly less noisy and disruptive to any neighbors, rather than going all the way around the neighborhood.

And at the last hearing, we provided the legal memorandum. I want to briefly just go through a few portions of that, in which it came to my attention potentially that some members of the Board may not have been able to dig up into that prior to our last hearing.

But in brief, you should have it on your file. It states, "The Zoning Ordinance does not prohibit outdoor storage of trash. The City's Health and Safety Code permits trash in private alleyway. The applicant's trash storage is currently compliant with all the ordinances."

And that neither the 2009 decision nor the rear door condition prohibits the use of alleyway for trash storage.

At the end of the last public hearing last month, the Board had asked -- even in light of this memo -- they
asked that we provide confirmation from the Health Department regarding the storage of trash.

So we made a request in an e-mail to the Health Department essentially saying that -- going through the details of our case, saying that -- asking if they can please confirm whether restaurant trash is permitted outside so long as it's properly stored with covered trash receptacles, area maintained, and extermination provided.

We received a prompt response from Kristen
Fernandes, who's the Sanitary Inspector from the Health Department, who stated that restaurant trash is permitted to be outside, as long as it's stored properly. The e-mail was provided to the Board, which should be in your recordings today.

The applicant also conducted community outreach. They made several attempts at this, including -- again, at the recommendation of this Board. Unfortunately, there is no condition that they have provided that would be satisfactory to the neighbors, and the neighbors have provided no information or no conditions that they would find satisfactory to allow this.

But again, and I don't mean to be -- repeat myself
here, but the importance here is that the trash is lawfully stored and will continue to be stored, we will just feel as though the access to it makes a lot of sense here.

And really, I'd like the Board to be able to focus on that access, now that the issue of trash has been all settled.

With that, happy to answer any questions. I know we've been before you twice before, so we do not want to go through every detail of this case, but happy to answer any questions the Board may have.

JIM MONTEVERDE: Okay. Thank you. Are there any questions from the members of the Board?

WENDY LEISERSON: I do have a question.
JIM MONTEVERDE: Yep. Go right ahead.
WENDY LEISERSON: Okay. Thank you for that summary, Counselor. I wanted to ask, however, what I was looking for from the Board of Health was not confirmation about whether or not you could use the alleyway for trash, my question was, because you were seeking hardship in your initial application based on the fact that you said that you were ordered by the Board of Health to store the trash outside.

I mean if you go back to your original
application, where is the -- there we go -- and your support, your -- is it in your narrative, yeah, you said in your narrative to application for modification of existing petitions to a variance, on the first page on the bottom, the paragraph that starts on the bottom you said, "Due to the above conditions, the applicant has been storing trash inside the property. Recently, the Cambridge Health Department requested that the applicant no longer store trash inside and has requested that trash be stored outside."

And then you go on on the second page in paragraph A -- the bullet point under paragraph A -- you say that your hardship is the fact that you're being forced to choose between 1) disregarding the Health Department's request to store trash outside or 2) violating the conditions of the variance.

So irrespective of where you're storing trash, the basis for the hardship, I believe, was that you were being ordered by the Health Department to choose something.

So is that -- are you now saying that that's not the case? Because that is the information $I$ was looking for
from the Board of Health.
JIM MONTEVERDE: Yeah. That's correct. That's my recollection as well. I think we asked -- and I don't have the transcript in front of me, but for correspondence between the proponent and the Board of Health, basically recapping that the Board of Health required that that trash not be stored inside, it's stored in the alleyway outside. ADAM BARNOSKY: Right.

JIM MONTEVERDE: I don't think we received this.
ADAM BARNOSKY: That's correct. And I think in my discussions with the applicant, it sounds as though those were conversations that were had between the restaurant and the applicant at the time.

There was no order that was received, there was no requirement that they -- you know, you must store outside -you know, or be in violation of the Health Department. I think that under certain circumstances, you can store either in the inside or the outside lawfully.

But I think that -- in a way, that gets away from what the issue is here, which is the applicant has the lawful right to utilize its property, which is what it's doing.

And it -- at one point it was storing its trash inside, and it decided to -- with the option to utilizing the inside or the outside, utilize the outside for storage of trash; utilize its own property for its restaurant operation.

And so, you know, the hardship in that respect could be an economic one in a way, and a practical one at that as well, because economically, to utilize the interior of a restaurant for the storage of trash, if the outside the restaurant can be utilized lawfully as well, it doesn't really make economic sense. There's a really strong economic impact requiring a restaurant to store trash inside where it's not required.

We did contact the Health Department. We did seek a statement on the record. But to that extent, the information that was provided to the Board was the statement that the Health Department is going to put on the record, which I think does speak volumes for what we're requesting here, which -- again, is not related to trash, it's related to access.

WENDY LEISERSON: I'm going to stop you there -JIM MONTEVERDE: It's okay. --

WENDY LEISERSON: -- Counselor. Because I think we have heard that before, and we heard that last time. So for the record, you're now saying that --

JIM MONTEVERDE: Wendy --
WENDY LEISERSON: -- there is no order from the Health Department that is creating hardship, is that correct?

ADAM BARNOSKY: I don't believe we ever said there was an order from the Health Department.

WENDY LEISERSON: I just read you at length in your narrative that said your --

JIM MONTEVERDE: Okay. I think --
WENDY LEISERSON: -- right? Okay.
JIM MONTEVERDE: -- just to move this along and the fourth time.

WENDY LEISERSON: Yep.
JIM MONTEVERDE: I think, Wendy, at least in my perspective, we have the answer we were looking for.

WENDY LEISERSON: Okay. Great.
JIM MONTEVERDE: And I think we can weigh
everything else based on that. I think we've heard the response. If you don't mind, I think we can --

WENDY LEISERSON: No, that's fine. Sorry. Go ahead.

JIM MONTEVERDE: No, no. That's fine. Do you have another question, Wendy?

WENDY LEISERSON: I just wondered where -irrespective of where the trash is stored, whether it was indoors or outdoors, what were you -- the trash pickup -- is that on Cambridge Street? Is that correct? You'd have to --

JIM MONTEVERDE: Yes.
WENDY LEISERSON: -- the barrel? Okay. And then what was your protocol when the trash was stored inside previously? Your waited until the diners' -- dining hours were closed and then took out the trash, is that what you did previously?

ADAM BARNOSKY: I believe so, yes.
WENDY LEISERSON: Thank you. That's all.
JIM MONTEVERDE: Thank you. Any other questions from members of the Board?

I have two, I think. The graphic that's on the screens appears to be an overlay on a survey. I'm not -- I think this is on the surveyor's title block.

But what I'm getting at is -- and I read, and Adam thanks for directing us to the Cambridge Code of Ordinance and Title 8 Health and Safety -- so I read through it and its variety of conditions.

And it does in fact, as $I$ read it, if $I$ read it correctly, say that on private property, you can store trash in an enclosed container.

The question $I$ have in this circumstance is what -- when I read the deed that's attached to the paperwork that's submitted, it read that the alleyway was subject to the -- what it called, "The usual and general passageway rights for all proper purposes in this 7' strip of land." I went to look it up under the Massachusetts General Laws what usual and general passageway rights for all proper purposes were and didn't get anywhere.

I see on the survey that it's called a "right of way." So that implies there's some encumbrance on that. There's no question it's private property, but now there's some encumbrance on that piece of property -- "encumbrance" may be the wrong word.

How do you understand that what the deed says, how that alleyway can be used, and what the right of way means?

ADAM BARNOSKY: Right. So I'll avoid getting into a full-blown title discussion.

JIM MONTEVERDE: Thank you.
ADAM BARNOSKY: The alleyway is -- it's a private alleyway, and the property is that of 1164-1166 Cambridge Street. As part of that alleyway -- so it's a private alleyway, but there are certain easement rights -- access easement rights -- for some of the neighbors.

So it's general passage rights. And the proposed storage of trash on the exterior, is not a -- it doesn't encumber or in any way diminish the passage rights of the neighbors. But again, that's --

JIM MONTEVERDE: Okay.
ADAM BARNOSKY: As far as I see, it's not relevant to the discussion of zoning, but it is -- you know, it's a practical consideration.

As part of this, we'll just state if I may, one benefit to modifying a condition if the Board so chooses is -- again, because the restaurant will continue to store trash there regardless, it does provide an opening for this Board to say that if this condition is granted, as part of it you would have to clear snow and ice from the passageway,
have a rodent extermination -- you know, all sorts of reasonable modifications that might be beneficial, both to the property owner and to the neighbors and those who may have passage rights [unclear; Zoom distortion]

JIM MONTEVERDE: Is it your understanding that as this drawing says, "7' right of way, that you're proposing that the folks on the 1164 Cambridge Street can put things and diminish that $7^{\prime}$ wide right of way? Or does that 7' right of way need to be maintained clear?

ADAM BARNOSKY: Well, $I$ believe that the $7^{\prime}$ designation is regarding the dimensional size of the passageway for the purposes of a descriptor.

But I do think that, you know, both common law and in the Massachusetts Case Law relates to the passage rites of easements. And they can be used for their intended purpose, that's the -- that's really the factor that it relies upon.

And here --
JIM MONTEVERDE: Okay. --
ADAM BARNOSKY: -- the storage of receptacles would not diminish the passage rights for the easement. JIM MONTEVERDE: Okay. I think also there were
some photos attached to the file, or it might have come from some of the neighbors' correspondence. I believe there's a -- there's a door in that wooden fence from the neighbor's property that's actually what they need that access for. It's kind of a second means of egress from those -- from the adjacent residences.

So yes, it's a rite of passage that's also allowing them a second means of egress. That was one point.

The second question $I$ wanted to ask you is as of when I looked into the Code of Ordinance, and I saw the passage that you quoted in your correspondence, where on private property, you're -- I believe it -- I forget the key word -- whether it says, "you may."

I don't recall reading that "you must," but "you may" store trash in appropriate receptacles in that -- on your private property.

There's another section that I came across, and that's 8.2.4.110 that basically says -- and this was about a private collection on private property -- that said, "The Commissioner of Public Works shall have the right to specify the times and method of storage, collection and disposal of refuse by any private collector."

I assume that potentially has an effect on what we're talking about here, were the Commissioner to issue some statement?

ADAM BARNOSKY: Potentially. I mean, what I would say to any of the Regulations regarding the Health Department is, is that if this Board would approve the modification and limit the egress right to access for trash only, that any regulations by the Health Department, which are in play now or in play later, could potentially limit or expand, like, that right, right?

So if -- if the Board comes, if the Health Department comes by and says, "This is somehow in violation of our provisions --" now that's contrary to my reading of it in the direct correspondence from the Health Department, but if that was the case, then it would render the modification that the Board is making tonight, right, and -JIM MONTEVERDE: Right.

ADAM BARNOSKY: So I don't know that we need to get into too lofty of a discussion on those health rights, because it's clear that the Health Department has jurisdiction over the storage of trash.

JIM MONTEVERDE: Actually, this is saying it's the

Commissioner of Public Works. But yeah. There is someone else who has jurisdiction over this.

ADAM BARNOSKY: Correct.
JIM MONTEVERDE: Okay. Does anyone else on the Board have any question before $I$ open it for public comment?

STEVEN NG: Yeah, Jim. I have a question. I think my confusion is with the restaurant design. Prior to the renovation, the restaurant was required to have a room inside the restaurant to store the trash receptacle. So what made that design have to provide that space?

ADAM BARNOSKY: I can answer that question, Mr. Chair.

JIM MONTEVERDE: Yep, go right ahead.
ANDREA BOYER: So there was never a requirement that the restaurant store trash inside; there was just additional space with the restaurant that allowed for that.

And then after or during COVID, there was a renovation of the restaurant space to utilize some of the commercial space that the restaurant was leasing, and in doing so, they removed the area that they were storing trash in.

And one of the reasons for this is because of this
proviso that creates this, you know, requirement to go around the block for the storage of trash, and I think of a time frame for using the entirety of the restaurant they thought, "This will be fine for now."

So there was never a requirement, and that requirement was never lifted. It was just a change of their operation to be competitive in a competitive market.

JIM MONTEVERDE: Wasn't that part of a discussion or a negotiation with the Licensing Board, where the operator agreed to hold their trash inside and have it brought to the curb for disposal?

ADAM BARNOSKY: I'm not aware of any condition of the Licensing Board requiring that.

JIM MONTEVERDE: It was part of the negotiation. It was part of the discussion in what the operator agreed to. That's my recollection of reading the file. And I don't have that piece in front of me.

ADAM BARNOSKY: Yeah. I'm not aware of any decisions by the Licensing Board which would be contrary to what we're requesting the Board.

JIM MONTEVERDE: Mm-hm.
WENDY LEISERSON: Jim, I don't have the full
decision, I just have what was submitted in opposition where they cite page 18 of the License Commission?

JIM MONTEVERDE: Yeah, I think we heard all this last time, right?

WENDY LEISERSON: Right.
JIM MONTEVERDE: This is all the history.
WENDY LEISERSON: Yeah. I think --
JIM MONTEVERDE: So --

WENDY LEISERSON: -- it was, you know, that their discussion was assuming it was the same rear door condition.

I did have one question, though, and I don't want to muddy the waters, Jim, and you can say we're not going to go there, but if the main concern is noise, I just wonder if there's any proposal that has not been considered; for example if it's the door issue, is there a way to create like a small, shed-like structure right up against the rear door that's just for the trash or something like that? Anyway, I -- you know, again, I don't want to muddy it.

But there used to be a shed of some sort there. And I'm not sure at the moment whether the neighbors' objections is mostly about the noise and the door, or about the trash, which may or may not be something we can make a
condition about.
JIM MONTEVERDE: Okay. I think we -- hopefully
we'll hear that if the correspondence we have in the file and if any of the neighbors choose to speak.

WENDY LEISERSON: Yeah.
JIM MONTEVERDE: And I think we heard last time; I think there's a record of their concerns and objections. I think part of it was the noise, part of it was other activities happening in the -- in the alleyway that there were photographs of, you know, someone taking wedding photos in the alleyway -- you know, Staff out there smoking and talking, et cetera that were bothersome to the neighbors.

Any other questions from members of the Board, before we open it up to public commentary? No? All right. Before we open it up for public commentary, I just want to refresh everyone's memory, public included the conditions for a variance. This is a variance.

And I'm reading from the Ordinance. "The variance is granted where a literal enforcement of the provisions of the ordinance would involve a substantial hardship -financial or otherwise -- to the petitioner or appellant." Second, the hardship is owing to circumstances
relating to the soil conditions, shape or topography of such land or structures, and especially affecting such land or structure, but not affecting generally the zoning district in which it is located.

Third, desirable relief may be granted without either - one -- substantial detriment to the public good, or -- two -- nullifying or substantially derogating from the intent or purpose of the Ordinance.

With that in mind as the threshold that we have to meet, Steven, do we have any recent correspondence in the file?
[Pause]
Stephen Natola?
STEPHEN NATOLA: Hi, yeah. Today, from Marie Hopkins,
"Dear Mr. (sic) Pacheco and the Cambridge BZA, my husband and I live at 84 Tremont Street Unit 3 adjacent to the alleyway. After consultations with the other three coowners of 82-84 Tremont Street, our position has not changed.
"We completely disagree with the use of the alleyway for storage of trash and recycle bins not only for
aesthetic reasons, but noise pollution, sanitary and pest issues."

JIM MONTEVERDE: Okay. Thank you. Is there more? STEPHEN NATOLA: I think that is the newest. JIM MONTEVERDE: Okay. And we've heard everything in the last hearing. Okay. Now I'll ask for -- open it up for public comment. Any member of the public who wishes to speak should now click the icon at the bottom of your Zoom screen that says, "Raise hand."

If you're calling in by phone, you can raise your hand by pressing *9 and unmute or mute by pressing *6. I'll now ask Staff to unmute speakers one at a time. You should begin by saying your name and address, and Staff will confirm that we can hear you. After that you will have up to three minutes to speak before I ask you to wrap up.

Is there anyone from the public who would like to speak on this matter?

STEPHEN NATOLA: Marie Barry?
MARIE BARRY: Good evening, Chairman. My name is Marie Barry. I'm one of the tenants. I'm also one of the owners at 82-84 Tremont Street. My concern is this use of
the word, "willingness" -- or, sorry, "regardless" -- that Puritan \& Company is going to do things regardless.

At any one point in time there are between eight and 10 trash and recycling receptacles in the alleyway. At the moment it happens to be two trash barrels and eight to nine -- I'm sorry, seven to eight recycling barrels.

My concern is that if the variance is granted, who's to say that the number of trash barrels won't increase. Also, the first hearing was on the twenty-third of March of this year. However, the trash barrels were -and recycling barrels were being emptied as early as I think it was December 2022 that this came into effect. We didn't know what was going on at first with the noise.

And the noise is actually very, very loud. Can start before nine o'clock in the morning, and as late at 10:00 to midnight.

And on one particular morning at around four o'clock in the morning, my husband was woken up by a truck collecting barrels at around 4:00 in the morning.

So my concern with these is that, you know, that Puritan thinks they have a license to extend and increase the number of barrels that they're storing there, and that
they need not consult us about the noise and so forth.
And the noise of things being dragged up and down the alleyway for example, if you're trying to work from home -- There are other people in the building as well as myself working from home.

In the evening time, if you're listening to the TV, the noise actually drowns out the television. So that will tell you how loud it is. Also, the noise of the glass -- whatever -- inside in the barrels being dumped is quite noisy as well.

So my concern is the use of this phrase
"regardless." Thank you, Chairman.
JIM MONTEVERDE: Thank you for your comment.
Anybody else wishing to speak?
STEPHEN NATOLA: Jamie Mateus.
JAIME MATEUS: Hi, everyone. This is Jaime Mateus from 84 Tremont Street, Unit 1. I think you've all heard me speak before. I fundamentally disagree with Puritan's assessment that they have a right to use a residentially zoned alleyway for commercial purposes. I think that is incorrect and we will continue siting that in other forums if we need to.

We cannot separate the discussion on the use to the back door from the uses of the alleyway. If you look at the transcript from the original BZA hearing that ended up in granting this variance, the entire discussion is around the noise in that alleyway and the use of the alleyway. The restrictions on that door were put in place in order to mitigate those concerns in the alleyway.

So separating these two things and saying that they have a right to use the alleyway is just not an accurate assessment.

I appreciate looking into the Regulations and understanding that private property may be used for storage of trash. I think the question here is a bit different, though. The question is that the trash is being stored in a residentially zoned alleyway. So, you know, you can have private property in the commercially zoned district or a residential one.

The problem we have is that this back of their property goes into a residential zone, and it is our understanding that you are not allowed to use this residentially zoned area for storage of commercial trash.

And I think we -- we're happy to continue finding
other forums if we need to, but that is a fundamental disagreement here.

The Chair was quoting one of the Cambridge Zoning Ordinances, and I think there's a section on the hardship that says that the hardship is owing to circumstances relating to the building shape and affecting such land or structure, but not affecting generally the zoning district in which it is located.

I would argue that what is being proposed here is directly affecting the zoning district in which it is located, because it is essentially saying that a residentially-zoned district could be used for commercial purposes.

So that seems to be counter to the Cambridge Zoning Ordinance, and I think I can quote Section 3.32 where it says, "A zoning district boundary" - "Where a zoning district boundary line divides a lot under single ownership at the time of the effective date of this Ordinance, the regulations for each zoning district shall apply to portions of the lot within the respective districts."

So I think we remain in opposition to this. I think we've detailed our arguments extensively. We've
provided evidence. I'd say that what Puritan has provided from the Health Department is not compelling, it's just a generic but not specific to this.

And in the simplest forms, the trash that used to be stored in Puritan that has worked for 10 years, they have simply decided to build a new restaurant concept in that space, and they've created a problem out of their own making and now they're trying to call that a hardship.

So I do not think this meets the definition hardship, and I appreciate the Board's time in considering this matter, and I'm hoping we can all reach a final solution today. Thank you.

JIM MONTEVERDE: Thank you for your comments.
Anyone else wishing to speak?
STEPHEN NATOLA: Stephen Michaels.
STEVEN MICHAELS: This is Stephen Michaels. I
live at 82 Tremont Street, Unit 2. So I'm part of the abutters' building. I will just second what Mr. Vantrush (sic) just said, and I want to just make two points here. One is that -- again -- the noise is definitely an ongoing issue. It was a concern from the very first hearing before the BZA.

It was a continued hearing -- the continued concern at the time of the Licensing Board hearing. I need not say any more than what you've pointed out already this evening in reviewing those.

The second point that $I$ want to make is about the 7' right of way in the alley. We're not talking a wide space here.

And with those barrels in there, they do in fact narrow the alley toward the back of the alley when they're in storage, and if we were to need to move a reasonably large piece of equipment into our back yard through the gate that goes into our back yard there, as for instance happened last year when we had an arborist come in to do work on our two trees in the back yard, we would be in fact bumping up against those barrels and have to move them out of the way to get our contractor in and out.

So there is a space issue in there.
The same thing would also happen if we were trying to have our building repainted, as happened several years ago, where we had to have the ladders in the alley to be able to access the upper part of the building.

So -- and my last point simply is that the
baseline we're looking at here was the storage of the barrels inside the building, they're moving out to Cambridge Street and back into that storage space before.

And there was no issue of noise in the alley or of barrels being moved up and down the Tremont Street sidewalk. It was only once they made the change to expand into the other -- out of the second part of the building and put the barrels out there starting last November that suddenly we and our neighbors are dealing with the sound of those barrels being slammed open and closed when stuff is dumped in them, and then rolled up and down the sidewalks all the way around.

So that is a new issue that was created by decision of the restaurant owner, and no fault of ours.

And that's my comment for this evening. Thank you, Mr. Chair.

JIM MONTEVERDE: Thank you for your comments.
STEPHEN NATOLA: Freeman Deutsch?
FREEMAN DEUTSCH: Hi, can you hear me?
JIM MONTEVERDE: Yes, we can. Thank you.
FREEMAN DEUTSCH: Very good. Hi. My name is
Freeman Deutsch. I'm at 82 Tremont Street, part of the 82-

84 Tremont Street complex. And even on the 82 side, 82 Tremont side of the complex, I can really hear those barrels every day, every time. And it's just very unpleasant to live like this.

And the garbage is not helping the rat situation. Puritan promised never put trash in the alleyway. And they said they would get a note from the Health Department explaining why this trash had to be put there. But the Health Department did not say that.

I thank you for your time and have a good day. JIM MONTEVERDE: Thank you for your comments. Any other member of the public wish to speak?

STEPHEN NATOLA: Ming-Thai?
MING-TAI HUH: Hello. Can you hear me? JIM MONTEVERDE: Yes.

MING-TAI HUH: Excellent. Hi. I'm a resident of Cambridge, 59 Washington Street. I'm also one of the applicants that are here -- the owners of Puritan \& Company. I wanted to address a few items here on page -- which is --

JIM MONTEVERDE: No. I think I'm going to stop here. And this is really commentary or comments from the public, not from the proponent. So if you are in fact the
proponent --
MING-TAI HUH: I've been raising my hand for the
last 20 minutes trying to get in --
JIM MONTEVERDE: -- as the commentary, or in
combination with your attorney?
MING-TAI HUH: Since the hearing has started, I've been raising my hand to speak.

JIM MONTEVERDE: Okay. Go ahead.
MING-TAI HUH: Thank you. Okay. So I'd like to address some of the comments around hardship, and the major point here is that the hardship is economic. The [unclear] of us using space that is not associated with the business earning income is actually the really hardest part.

There's a provision in the Ordinance of -- was a restriction of the back door was in 2009 coming off the back heels of the recession that was across the entire globe. Rents were very low. Our rent has more than doubled since then.

We have decided to take an empty storefront for the public benefit. It has been empty on the Cambridge Street and to put it in a business that we would like to thrive. In doing so, it also took away the space that we
were using with making no money to store trash. And that was something that was ineffective.

And we were willing to do it because our rent wasn't as high back then. But that has changed. We're in a very different situation today than we were in the past. Everybody has read many articles about restaurants being challenged.

So I think our objective here was to put in an business, put in a space -- a new restaurant -- abide by all the building code requirements including a new ADA bathroom, which we did -- and then ultimately put a space in that was available to the community, which we have done.

In doing so, we've obviously moved our trash outside. Because that's pretty much the only place that we can put it. It wasn't the first place that we put it, it's the last place that we chose to put it.

And that is where we've come. But we tried to make many means of ideas -- Astroturf, smooth, repaving the whole alleyway, almost making it no noise, but those have all been rejected to date.

I understand the concern about rats; I live in Cambridge with rodents. I've talked with DPW about it. DPW
says that the fact that the dump is on the same street on the same block is the real reason why there are rats in the neighborhood.

We also want to participate with the compost program to reduce rats. We have been accepted to the compost program for the City. They want us to participate in it. It would require us to have these barrels outside for collection on the same days that the neighbors and the abutters when the garbage is collected.

Today we do not have collection on Tremont Street, we have collection only on Cambridge Street. We have to roll barrels around the building, as many people have said. We do not want to do that. We don't want to roll the barrels out at all, unless they're being collected. That is why we've asked to make the best out of a situation with the hardship on us, which is dramatic; six digits, over $\$ 100,00$ to store trash. No other retail tenant on Cambridge Street does what we do.

JIM MONTEVERDE: I'm going to ask you to bring this to a conclusion, so you can stay close to the three minutes.

MING-TAI HUH: Sure. We've been trying to comply
and work with anybody and everybody on this matter. We're the ones that are suffering this hardship, because it is the expense of the market that we live in that has driven the cost of running a business dramatically higher than it ever has been.

JIM MONTEVERDE: Okay. Thank you for your comment.

Stephen, any other member of the public wishing to speak?

STEPHEN NATOLA: Nope.
JIM MONTEVERDE: We're there? Okay. Discussion among members of the Board? If so, please say your name, or are we ready for a motion?

WENDY LEISERSON: This is Wendy. Does anyone -if no one else has any discussion, I remain sympathetic to the issue of dragging the trash around the business. I think I just wish that there had been a) a more accurate representation of what the hardship was. I was moved by the last comment by the owner.

And so, I -- I'm a little bit on the fence, despite the fact that I didn't like the fact that there was no order from the Health Department.

That's all I have to say right now.
STEVEN NG: This is Steven --
JIM MONTEVERDE: Anybody else have any comments? STEVEN NG: This is Steve Ng. JIM MONTEVERDE: Yep.

STEVEN NG: I'm a little frustrated about this, you know, description of hardship on the applicant's part. It seems very self-inflicted to me that if you have a plan, you'd like to expand the space in your business, that perhaps you look -- you know, I mean, the decision made by the BZA in an earlier period was taking into respect that the residential zoning is right there. The line is at the door.

So there were criteria given, conditions given that the trash should be stored inside, brought out to Cambridge, brought back inside the room, and the business owner -- you know, basically complied with that. And there was a plan that changed that intent or the design of the business.

I think that, you know, maybe they should come back to the BZA prior to making all the changes. Now, with Board of Health not -- does Board of Health know that, you
know, those conditions were in place for the property? I don't know, but I'm not inclined to support the current request, because it's at the risk of -- you're putting the burden -- if it's a financial, you know, the folks living in that residential zone will be the ones bearing a burden.

So I'm not convinced of the hardship. And we can have the conversation, but I'm not convinced the hardship is legitimate for me.

MING-TAI HUH: I can comment, Mr. Board (sic).
JIM MONTEVERDE: Nope. Nope. Thank you. This is
really just for discussion among the Board members and for us to determine if we're ready to go to a motion, or to get us ready to get to a motion.

So any other Board member at the moment? Heard from Wendy, Stephen, Matina, Zarya? Either one of you have any comments?

ZARYA MIRANDA: This is Zarya Miranda. I do not have any questions, but $I$ will say that $I$ am agreeing with Steven. And that is my only comment.

JIM MONTEVERDE: Okay. Thank you. Are we ready, then, for a motion? ZARYA MIRANDA: Yeah. I believe so.

JIM MONTEVERDE: Hearing no objection, I will move to a motion.

MATINA WILLIAMS: Sorry, I was trying to unmute. It's Matina.

JIM MONTEVERDE: Yeah. Oh, thank you.
MATINA WILLIAMS: Yep. Yep. Sorry about that. You know, the -- you go back and forth, and you kind of weight what's going on. You create more noise when you go from the front of the Puritan all the way to the back. So if you just go out the back door, you're -- you know, you eliminate that noise factor.

The barrels being there, obviously they've been there because they've been there, but also I feel like the owner sort of created this sort of issue by now taking the garbage from inside to the outside of the building, and really not -- you know, sort of -- you know, going this runaround about, you know, we have the right to, we don't, you know, it was in play, it wasn't in play -- you know, for it to be in the building, you know, in the resident -- and then having the residential line being right there.

And then you weigh the issue of, you know, you made these changes in order to stay in the neighborhood to
serve the neighborhood, and, you know, it's -- it's -- it's a hard position to be in to -- to -- you know, sort of make a decision on, you know, whether this is a hardship or not for them. That's my only comment.

JIM MONTEVERDE: Okay. Thank you.
MATINA WILLIAMS: Thank you.
JIM MONTEVERDE: Yep. All right. Let me make a
motion. And the motions are always phrased in the affirmative.

The Chair makes a motion -- oh, sorry, one thing. Mr. Barnosky, can you ask you one question? The -- this is just in terms of the motion.

The description that $I$ have in front of me, the application, which $I$ assume is what's listed on the sign on the building, says that this is a variance condition on Case BZA 9779 to permit the reuse to be used for general restaurant operations (staff only).

And I believe you said that was -- you were changing -- you wanted to change that to trash storage and disposal? Did I understand that correctly?

ADAM BARNOSKY: That is correct. The exact wording that -- the modification that we had requested was
on page 2 of the memo we submitted. I can read that if you would like.

It would be to change it from its current language to read that the use of the rear door into the right of way between 82, 84 and 88, 90 Tremont Street be limited to non recurring emergency egress only, except for access to the private rear alleyway for trash storage consistent with the City of Cambridge Health and Safety Code.

JIM MONTEVERDE: I'm not ready to go there. I don't know that I can change the verbiage. Steven -- our Stephen Natola, what does the application read?

STEPHEN NATOLA: Application -- petition, variance, to modify previously granted variance condition on Case BZA 9779 to permit the rear door to be used for General Restaurant Operation, staff only --

JIM MONTEVERDE: Okay. Thank you. I think that's the only thing we can make a motion on. I don't think we can change the verbiage.

STEPHEN NATOLA: -- there was more, Jim.
JIM MONTEVERDE: Yeah, sorry, go ahead.
STEPHEN NATOLA: -- that previously restricted the use of the rear door limiting it to nonrecurring emergency
egress only and to permit the installation of the new trash enclosure.

JIM MONTEVERDE: Right. Yeah. Correct. That's what I have in front of me. That's what I'm assuming I'm going to make the motion based on.

ADAM BARNOSKY: Mr. Chairman, if I'm, the only thing I would say is that the modified request that we made in our memo to the Board is a reduction in any relief that we're seeking.

I recognize that the Board could not grant more relief than was advertised, that was subject to met, but I believe that we have the right to limit or reduce the request that we're asking.

JIM MONTEVERDE: I don't know that. Because I'm assuming this description is what's been advertised, that's what the public has been invited to comment on and to submit correspondence on.

Stephen, can you give us an --
STEPHEN NATOLA: I would have no opinion on that.
JIM MONTEVERDE: Okay. All right. Let me make the motion, then. Keep it to the original language, the language we have in front of us.

So the Chair makes a motion to grant the relief from the requirements of the ordinance as stated in the application for the variance on the condition that the work proposed conform to the drawings -- there are none.

And further, that we incorporate the supporting statements and dimensional forms submitted as part of the application. Further, the variance is granted incorporating the following language:
"And the variance is to modify the previously granted variance condition on the case BZA 9779 to permit the rear door to be used for General Restaurant Operations (staff only) that previously restricted the use of the rear door, limiting it to nonrecurring emergency egress only, and to permit the installation of new trash enclosures."

On the basis of that motion, I'll take the Board -

- poll the Board members for a vote -- Wendy?

WENDY LEISERSON: Not in favor.
JIM MONTEVERDE: Zarya?
ZARYA MIRANDA: Not in favor.
JIM MONTEVERDE: Matina?
MATINA WILLIAMS: Not in favor.
JIM MONTEVERDE: Steven?

STEVEN NG: Not in favor.
JIM MONTEVERDE: And Jim Monteverde not in favor.
[All vote NO]
JIM MONTEVERDE: That's five opposed. Now, since we have all opposed this, we need to state for the record our objection and let me make a suggestion, in that -- and I think what I've heard from the Board member discussion before is can the requirements for the variance state that the Board must find that all of the following apply:

Literal enforcement of the Ordinance involve a substantial hardship, financial or otherwise -- I think we heard the proponent talk about the financial hardship, whether it's substantial $I$ couldn't tell, but there definitely is some financial hardship with their ownership.

And the hardship is owing to the circumstances relating to the soil condition, shape of the topography of such land or structures, especially affecting such land or structures. And I don't see that.

Desirable relief may be granted without substantial detriment to the public good -- I don't see that one -- and or nullifying or substantially derogating from the intent or purpose of this ordinance. And I don't see
that one.

So I think with the Board -- the decision the
Board has come to is that the proponent in their presentations are not making the case for all of the conditions required for a variance, and therefore it is being denied. Does the Board agree?

WENDY LEISERSON: Yes.
JIM MONTEVERDE: Okay. Sorry, Mr. Barnosky, I don't think this is the end of your discussions with the neighbors, but that's where it ends for us.

ADAM BARNOSKY: Thank you, Mr. Chair.
JIM MONTEVERDE: Yep. Next case. Stephen, can you --

MATINA WILLIAMS: I'm off.
JIM MONTEVERDE: Yes.
MATINA WILLIAMS: Have a good night.
JIM MONTEVERDE: Matina, thank you for your help.
MATINA WILLIAMS: You're welcome.
ZARYA MIRANDA: As I am. Have a good night, everyone.

JIM MONTEVERDE: Zarya, thank you. And Wendy, you're off as well?

WENDY LEISERSON: As well. Have a good night, everyone.

JIM MONTEVERDE: Thank you for your help.
WENDY LEISERSON: Thank you.
JIM MONTEVERDE: Stephen, can you confirm which case is it of the next two that's requesting the six-month extension?

STEPHEN NATOLA: Six-month Extension: 10 Hazel Street.

JIM MONTEVERDE: Hazel, okay.
(6:53 p.m.

Sitting Members: Jim Monteverde, Steven Ng,

Daniel Hidalgo, Bill Boehm, and Virginia Keesler

JIM MONTEVERDE: So the next case is BZA Case 223469 -- 50 Concord Avenue. And Sitting on this case are Steven, Daniel, Bill, Virginia, and myself. And I think we're all present. And this one is a special permit.

Is there a proponent wishing to be heard on?

STEPHEN NATOLA: Jim, let me just pull everything up.

JIM MONTEVERDE: To be heard? Yep. Oh.
Requesting a continuance. We'll be in bed by eight o'clock tonight if this continues. Okay, requesting a continuance.

And Stephen, I think you said the next -- let's see -- [reading aloud] So they're not saying how much time they want. We want to put them in for September 14. We had two slots there.

STEPHEN NATOLA: September 14 has one, two, three -- seven --

JIM MONTEVERDE: Cases?

STEPHEN NATOLA: -- cases, yeah.

JIM MONTEVERDE: Oh. How about the twenty-eighth?
STEPHEN NATOLA: The twenty-eighth is wide open. JIM MONTEVERDE: Okay. And this is a case not heard, so it can be any five of us. Okay. Let me give my continuance spiel. Where did it go? Oh, here it is.

Well, let me make a motion, then, to continue this matter to September 28, 2023 on the condition that the petitioner change the posting sign to reflect the new date of September 28, 2023 and the time at 6:00 p.m.

Also in furtherance that the petitioner sign a waiver of the statutory requirement for a hearing. Said waiver can be obtained from Maria Pacheco or Olivia Ratay at the Inspectional Services Department.

I ask that you sign it and return it to us by a week from this coming Monday. Failure to do so will de facto cause this Board to give an adverse ruling on this particular case.

Also that if there are any new submittals or changes to the drawings, changes to any dimensional forms or potentially any supporting statements, they also be changed and submitted along with the new documents, and they be in our file by 5:00 p.m. on the Monday prior to the September

28, 2023 hearing.
On the motion, then, to continue this matter until
September 28, 2023, Virginia?
VIRGINIA KEESLER: In favor.
JIM MONTEVERDE: Bill?
BILL BOEHM: In favor.
JIM MONTEVERDE: Thank you. Daniel?
DANIEL HIDALGO: In favor.
JIM MONTEVERDE: Steven?
STEVEN NG: In favor.
JIM MONTEVERDE: And Jim Monteverde in favor.
[All vote YES]
JIM MONTEVERDE: That is agreed. And then --
thank you, Stephen.
(6:57 p.m.)
Sitting Members: Jim Monteverde, Steven Ng,
Daniel Hidalgo, Bill Boehm, and Virginia Keesler
JIM MONTEVERDE: The next case is 22-- nope, sorry, we just did that. Oh, Stephen, can you give us the Case No. for 10 Hazel Street? I don't have that in front of me.

STEPHEN NATOLA: 170726.
JIM MONTEVERDE: Thank you. At 10 Hazel Street. And do you have some correspondence that they are asking for a six-month extension?

STEPHEN NATOLA: Yes. "Maria, we are requesting the extension of the variance for 10 Hazel Street, which expires on August 5. There was no extension filed before. Thank you.
"Brigitte Steines, Principal of InkStone Architects."

JIM MONTEVERDE: So when $I$ read that, $I$ was a bit confused on what they were requesting. Are they requesting us to push this continued hearing for six months?

STEPHEN NATOLA: Maria printed off the Continued schedule, the one I'm looking at -JIM MONTEVERDE: Yeah.

STEPHEN NATOLA: -- that says, "10 Hazel Street six month request."

JIM MONTEVERDE: Okay.
STEPHEN NATOLA: Let me --
JIM MONTEVERDE: So that's what we are assuming we're doing?

STEPHEN NATOLA: That was the --
JIM MONTEVERDE: I didn't know if they had some other thing, like they filed for a building permit, they had X number of months to react, or they had $X$ number of months to react to something that we had done when they were here before, and that was about to expire. Is that not an issue, and we just can grant the six month extension?

STEPHEN NATOLA: This is what was listed on -JIM MONTEVERDE: Yeah. Okay. -STEPHEN NATOLA: -- the City website. JIM MONTEVERDE: All right. So six months would bring us to -- January? June, July, August, September, October, November, December, January -- or end of January,
early February.
STEPHEN NATOLA: We have -- I only have a 2023 BZA
hearing date scheduled, so I would think that December 14 is --

JIM MONTEVERDE: Okay.
STEPHEN NATOLA: -- the closest we can get to
that.
JIM MONTEVERDE: All right. And is this a case --
who heard this case?
STEPHEN NATOLA: Let me see. Sitting Members were
Brendan Sullivan, Jim Monteverde, Andrea Hickey, Jason Marshall, and Matina Williams.

JIM MONTEVERDE: Okay. So we're going to have to reach out to those folks and see if they're available. Or can we swear in new members to read that file and decide if they're --

STEPHEN NATOLA: I wouldn't be able to advise on that.

JIM MONTEVERDE: Okay. All right. Let's -- let me do the motion to go to December 14 , and then we'll figure out the logistics.

But I think what we'll do -- so the members who
are no longer on the Board don't have to or shouldn't return -- we can basically have the new members read the previous file, and then there's a simple statement we can have them say at the beginning of the meeting that they've read it all and they're ready to sit in for the meeting. I think that would be appropriate.

All right. Let me make a motion, then, to continue this matter to December 14, 2023 on the condition that the petitioner change the posting sign to reflect the new date of December 14, 2023 and the new time at 6:00 p.m.

Also in furtherance that the petitioner sign a waiver to the statutory requirement for a hearing. Said waiver can be obtained from Maria Pacheco or Olivia Ratay at the Inspectional Services Department.

I ask that you sign it and return it to us by a week from the Monday prior. Failure to do so will de facto cause this Board to give an adverse ruling on this particular case.

Also if there are any new submittals, changes to the drawings, dimensional form and potentially any supporting statements that those be on file by 5:00 p.m. on the Monday prior to the December 14, 2023 hearing.

On the motion, then, to continue this matter until
December 14, 2023, Virginia?
VIRGINIA KEESLER: In favor.
JIM MONTEVERDE: And Bill?
BILL BOEHM: In favor.
JIM MONTEVERDE: Daniel?
DANIEL HIDALGO: In favor.
JIM MONTEVERDE: Steven?
STEVEN NG: In favor.
JIM MONTEVERDE: And Jim Monteverde in favor.
[All vote YES]
JIM MONTEVERDE: So the motion carries.

Stephen Natola, can you just make a note that we just need to reach out to, you know, the other new members to read up on the file before that date, so they can basically take over for the members who are no longer members?

STEPHEN NATOLA: Yep.
JIM MONTEVERDE: All right. Thank you. And we are at 6:30.
(7:02 p.m.)
Sitting Members: Jim Monteverde, Steven Ng, Daniel Hidalgo, Bill Boehm, and Virginia Keesler

JIM MONTEVERDE: We're now in the Regular Agenda.

And the first case $I$ will call is BZA-230010 -- 263

Monsignor O'Brien Highway. Mr. Rafferty, or is there anyone else from the proponent who wishes to speak? And this is a special permit request.
[Pause]

And Mr. Rafferty, you're muted. At least that's what my screen says. When you're ready to join us, just unmute.

JAMES RAFFERTY: I'm sorry. I have done that. I had some issues.

JIM MONTEVERDE: Thank you.

JAMES RAFFERTY: My apologies. Good evening, Mr. Chair, and members of the Board. For the record, my name is James Rafferty. I'm an attorney with offices located at 907 Massachusetts Avenue in Cambridge.

I'm appearing this evening on behalf of the applicant, Somerbridge Hotel LLC. Present with me this
evening from Somerbridge is Christine Thomas. Also present is the Project Architect, Jason Diorio -- D-i-o-r-i-o.

This is an application for a special permit to allow a hotel use in Special District 1. Special District 1 is a small zoning district that runs the length of Monsignor O'Brien Highway from the Somerville border down to Lechmere Square. I'm not sure if we still do.

But within that location, the Zoning Ordinance has identified a district they're calling, "Special District 1." It has a base zoning requirement, and so, the Industry $A$ District. But there are certain additional requirements.

This case is somewhat unique in a couple of ways. This is actually the third application by Somerbridge for a special permit at the site. We have been at this exercise for many years.

The first special permit granted by the BZA was back in 2017. After that, in 2019 the plans of the hotel changed, and there was a second special permit sought. That was approved. And then after that special permit was approved, the City of Somerville engaged in rezoning.

One of the unique characteristics of this site, certain Board members have been able to discern that, but
the municipal boundary goes right through this lot. In fact, the municipal boundary between Cambridge and Somerville, which follows the outline of the old Millers River, goes through the building.

And if you look at the floor plans carefully in the building, there are actually going to be 18 hotel rooms that have a municipal boundary going through the hotel room. I jokingly told the residents at the ECPT meetings that there was a special; you could get a room, go to bed in Somerville and wake up in Cambridge and never have to get out of your pajamas.

But it is -- it has provided a number of challenges from a permitting and regulatory perspective, as you might imagine. So the project of Somerville, which is more than half of the site, changed their zoning in considerable ways there. So back in May, the Somerville Planning Board after a many-year effort approved a special permit; the design that you'll see tonight.

It's also the case that this hotel, Somerbridge, is actually going to be flagged with two different hotel brands. It's going to be an AC Hotel. Some people may be familiar -- we have an AC Hotel owned by this operator out
on Route 2 at the old Bowl-O-Drome area where the bowling alley was -- but there's also a new flag occurring.

And half this hotel is going to be called, "Moxy" -- M-o-x-y. I'm informed by Ms. Thomas that Moxy would apply (sic) to members of the Board since it attracts a hip, trendy crowd, as opposed to the AC Marriott.

But at any rate, it's a unique hotel. It has two flags. It has the municipal boundary grown through it. It consists of 199 rooms. Fifty-four of those rooms will be in Cambridge. The balance will be in Somerville. And it's also the case that the project itself has approval already in place from the City of Somerville.

Their requirements involve both a variance and a special permit in Cambridge. We are only before this Board this evening on the question of use. Special District 1 allows a Hotel Use, provided a special permit is granted. There are currently at least three hotels located in this Special District.

And Somerbridge, with their associated entity operates one closely up the street from there, a Fairfield Inn. There's also a Holiday Inn and a Hampton Inn on this stretch of O'Brien Highway.

This area is right on the cusp of the Cambridge Crossing. The new Green Line Extension goes right behind the hotel, so it has a terrific proximity to transit.

And it also has as part of its condition in the Somerville permit, they will be providing a bicycle connection through their property, through the Somerville Community Path, which is located behind the hotel.

That Community Path and that link will ultimately become a connection between the Grand Junction that is under development in Cambridge now -- the Grand Junction Pathway will come across through this property and up to the Community Path.

So that -- the location of that is depicted in the survey that we submitted with the application.

As I said, Mr. Diorio is here and happy to talk to you about the design of the hotel. It's also -- Ms. Thomas is quite familiar with all the operational aspects of it. If the Board were interested, she could provide far more information on that as well.

JIM MONTEVERDE: No. So thank you, Mr. Rafferty. Can you confirm or just restate what you're in front of us for, relative to the special permit? If you need the
special permit for the hotel use that's proposed that we previously approved twice before.

JAMES RAFFERTY: That isn't -- that is -JIM MONTEVERDE: Basically. JAMES RAFFERTY: -- basically correct. JIM MONTEVERDE: Okay.

JAMES RAFFERTY: Actually correct. The -- Section 17.12 of Special District 1 indicates that a hotel use is permitted upon the issuance of a special permit.

So two predecessor Boards found the Hotel Use appropriate in this location in 2017 and again in 2019. We're asking this Board to adopt the same reasoning and grant the special permit for this use.

JIM MONTEVERDE: Right. And I'm assuming the other ones are -- have lapsed, because they weren't -they're more inactive, they didn't build a building.

JAMES RAFFERTY: That's correct.
JIM MONTEVERDE: All right. Does anyone on the Board feel like they need any other information? I think I have everything I needed.

VIRGINIA KEESLER: This is Virginia. I would be interested just in understanding where the pedestrian
bicycle ramp is relative to the development.
JIM MONTEVERDE: It will be --
JAMES RAFFERTY: So on this image you see here,
coming across the front of the property on O'Brien Highway.
And then at the bottom right-hand corner -- I guess -- I'm
not seeing it --
CHRISTINE THOMAS: We're the -- let me add if
you're along the far --
JIM MONTEVERDE: Sorry, can you identify yourself?
JAMES RAFFERTY: Christine --

CHRISTINE THOMAS: I'm sorry.
JAMES RAFFERTY: -- you have to identify yourself, Christine.

CHRISTINE THOMAS: Yes. I'm sorry. Christine
Thomas. I'm the developer of the hotel located at 263 Monsignor O'Brien Highway.

JIM MONTEVERDE: Thank you.
CHRISTINE THOMAS: If you look at the right-hand side of the property line, you'll see a dotted line that moves back along the side of the building and makes a righthand turn, and then another right-hand turn and then a lefthand turn in order to make the climb to the historic
railroad wall that is behind the property.
And if you move to the front of the hotel along the sidewalk, the combination of connection will be pedestrian sidewalk, a tree, garden, and then a two-way cycle track that comes up to the intersection and makes the cross of Monsignor -- at that point, it has crossed the line into Somerville where this intersection is, and it would cross McGrath Highway there.

JAMES RAFFERTY: So on the plan -- on the plan itself that's on the screen now -- the area that will contain the ramp and the path is labeled, "Dedicated Reserve Space." It's 14.5' wide. It runs up the right-hand side of the property line, as Ms. Thomas noted. It turns and takes a right angle, proceeds west, and then takes another right angle left and continues up to --

JIM MONTEVERDE: Thank you.
JAMES RAFFERTY: -- the wall. And the connection to the actual community path -- this is a somewhat of a Rubik's Cube of permitting. We have to go to the State Highway Department as well as Department of Transportation that controls the land behind the wall. McGrath O'Brien Highway is controlled by the State Highway Department.

City of Somerville's Traffic Department is involved in approving of the curb cuts in the path. It's a multilayer from a jurisdictional perspective, but the good news is the Somerville Planning Board dealt with all of those issues in their decision. So the obligations around -- on the Bike Path and the access to the Community Path above are all spelled out in that decision.

JIM MONTEVERDE: Okay.
BILL BOEHM: Uh --
JIM MONTEVERDE: Anyone looking for any other info?

BILL BOEHM: Yes. Bill Boehm. I was also curious about that path. I was wondering if you have an architectural site plan and does that path -- I'm curious about the trees. You mentioned trees. I know it's part of the ordinance that you need to provide street trees.

And I didn't see them indicated on this plan, and I was just wondering if there was an architectural site plan, we could look at that would show vegetation.

CHRISTINE THOMAS: Well, if you give me a minute, if you give me a minute, our -- both my architect and I are in New Hampshire. And I think that he has lost his Internet
with the rolling storms through. So let me see if I can pull it up from my files, all right?

BILL BOEHM: Sure. And --
JIM MONTEVERDE: Yeah. I think Bill, I saw -- I
could see tree grates along Monsignor McGrath, so you know there are trees there.

BILL BOEHM: Okay.
JIM MONTEVERDE: And I just -- before we flip the screen, I was looking to see if there was any in the entry drive or along it.

CHRISTINE THOMAS: Let me see --
JAMES RAFFERTY: Mr. Chair, well, Ms. Thomas, there is a requirement in the special permit that has to be at least one street tree having a $3^{\prime \prime}$ caliper located every 25' along Monsignor O'Brien Highway. So obviously the proposal needs to comply with that requirement. The plan -I see where it's been circled in red at the bottom here. It shows the location of those trees on Monsignor O'Brien Highway.

BILL BOEHM: Great.
STEVEN NG: It's okay to annotate, right? I do that all day.

BILL BOEHM: Thanks for pointing out the tree. JIM MONTEVERDE: Thank you.

BILL BOEHM: I guess the --
STEVEN NG: Yeah.
BILL BOEHM: I guess the reason I'm curious is because my understanding is the plans that are approved by us tonight are the plans that would be expected to be built. And so, you know, if we had a reason to distrust anything if it's not in the plans, it's sort of not part of the record. So I -- that's why I would like to see the architectural site plan.

STEVEN NG: Yeah.

BILL BOEHM: The other -- and while --
JAMES RAFFERTY: May I just respond to that?
BILL BOEHM: Yeah.
JAMES RAFFERTY: Briefly?
JIM MONTEVERDE: Go right ahead.
JAMES RAFFERTY: The tree planting requirement here is not discretionary. So it is not the case if it's not on this plan that this Board would somehow have the authority to waive that requirement. That is a requirement -- a dimensional requirement, if you will, of the district.

So in order for the building permit to issue, there will have to be a site plan showing that. It's specifically spelled out the size of the tree and the distance between the trees is not something, candidly, that's before the Board. It's a requirement for the development.

I agree, I wish we did have -- it would make the Board's job easier and an understanding better. I wish that we did in fact have the rendered landscape plan, which I know exists, and be happy to attach it to the file.

But the proposal will comply with the Planting and Landscape Requirements of 17.15.2.

BILL BOEHM: Great. The other question I have before we all lose our connection here with this impending storm: There's another clause in that SD 1 that's a little mysterious to me: 17.16, Development Consultation Procedure. I went to look it up and it seemed to be missing.

Do you know anything about that, where projects were supposed to have a special Development Consultation Procedure?

JAMES RAFFERTY: Yes. That -- I think the

Ordinance has a reference to a section that has since changed. Because I'm sure you've noticed that if you go to the section there referenced, 11.40, it has nothing to do with the Design Consultation Procedure.

These days that section is located in Article 19. What that means is before the applicant can receive a building permit, they have to go through a CDD Design Consultation Procedure. That's set forth in 19.30 or 19.40 these days, but one - 19.40 is the Citywide design.

Now if a project is -- the Design Consultation Procedure isn't required when the project has received a special permit from the Planning Board, I'm not certain whether a special permit from the Zoning Board would have the same effect.

But the literal language says that unless you get a special permit from the Planning Board, the applicant has to go through a Design Consultation Procedure.

That's a public hearing conducted by CDD.
Abutters are invited. And it occurs in districts throughout the city. Historically, they were held at City Hall Annex. And public gets to comment, and we get to respond. That's a Design Consultation Procedure. And I'm sure --

BILL BOEHM: Would that typically be -- would that typically be in advance of us reviewing the project, or after we review the project?

JAMES RAFFERTY: I've had it occur both ways, frankly. I think sometimes the Planning Board Office comments on these BZA cases. I looked but didn't see a Planning Board comment on this case. We have done two prior special permits and have yet to do the Design Consultation because we never got close to a building permit.

But the process itself, its advisory -- it's also the case, candidly, that most of the design elements of this building have been -- are approved as part of the Somerville Planning Board description.

So if there were some suggestions in the Design Consultation that conflicted with the Somerville -- the drawings that are before this Board and that have been approved by the Somerville Planning Board, that that would be problematic. But we'd have to sort through that.

JIM MONTEVERDE: Okay. Any other questions from members of the Board, or any other information you'd like to hear about?
[Pause] No? Okay. Then I'll open the matter up
to public commentary. And first, Stephen Natola, are there any correspondence in the file?

STEPHEN NATOLA: Let me see.
"The Friends of the Community Path and Friends of the Grand Junction Path wish to express our full support for the Somerbridge Hotel at 263 O'Brien Highway, 230010, for the special permit."

So they support this, and the East Cambridge Business Association reaffirms their continued support for Somerbridge Hotel LLC.

JIM MONTEVERDE: Very good.
STEPHEN NATOLA: That's it.
JIM MONTEVERDE: Okay. Let me open it up to public commentary -- public comment. Any members of the public who wish to speak should now click the icon at the bottom of your Zoom screen that says, "Raise hand."

If you're calling in by phone, you can raise your hand by pressing *9 and unmute or mute by pressing *6.

I'll now ask Staff to unmute the speakers one at a time. You should begin by saying your name and address, and Staff will then confirm that we can hear you. After that you will have up to three minutes to speak before $I$ will ask
you to wrap up. Do we have any members of the public who wish to offer comment?

STEPHEN NATOLA: Lynn Weissman?
LYNN WEISSMAN: Hi. Thank you for letting me
comment. My name is Lynn Weissman. My address is 112
Belmont Street. I am Somerville resident. However, I am -as written in the letter, I am the co-President and coFounder of the Friends of the Community Path.

We also work closely with the Friends of the Grand Junction Path. And we have been working closely with this developer and their neighbor next door for a couple years, in good faith, trying to help, you know, have this ramp happen.

It's, you know, critical that it gets up to the MBTA land in order to make the very short connection over to the Community Path, and to kind of bridge that connection to Route 28.

There are also some plans in place for bike/ped infrastructure and a two-way cycle track an some other things. So I just wanted to commend the developer for working with us.

As mentioned before, we support this project and
we know that it's -- that the developer and their next-door neighbor to the west, you know, worked really hard to figure out a transportation configuration that works for the developments as well as the two cities.

So -- and I know that Friends of the Grand
Junction Path couldn't be here tonight, I believe, but they are also very in support of this. So thank you very much. JIM MONTEVERDE: Thank you for your comments.

Anyone else wish to speak?
STEPHEN NATOLA: Rachel Burckhardt?

RACHEL BURCKARDT: Good evening. My name is
Rachel Burckhardt. I live in Cambridge at 1429 Cambridge Street. And I'm one of the Founding Members of the Friends of the Grand Junction Path. So Lynne didn't know I was going to be on tonight.

But anyway, I just want to reiterate what Lynn had said in that we're very appreciative of the developer adding this. We're actually getting in the [unclear] lane before the other parts, particularly, you know, going through Twin City Plaza area gets done. So this is highly appreciated, and we support this petition by the developer. Thank you.

JIM MONTEVERDE: Thank you for your comments. Stephen, anyone else?

STEPHEN NATOLA: No one else.

JIM MONTEVERDE: All right. Any discussion from Board members, or are we ready for a motion?

STEVEN NG: I think we're ready for a motion.
JIM MONTEVERDE: All right. And this is a special permit.

The Chair makes a motion to grant the relief from the requirement of the Ordinance under Sections 17.12.1.a, Hotel Use and 10.40 regarding a special permit on the condition that the work proposed conform to the drawings entitled -- Stephen, can you tell me what these drawings are entitled and a date, and who prepared them?

STEPHEN NATOLA: One moment. Registered Architect, James Loft, "3D - Proposed Rendering, AC Hotel \& Element." Dated 02/10/2023.

JIM MONTEVERDE: Okay. Initialed and dated by the Chair, and further, that we incorporate the supporting statements and dimensional forms submitted as part of the application. Further, the special permit is granted and there are no following conditions.

On the motion, then, to grant the relief for the special permit, Steven?

STEVEN NG: In favor.

JIM MONTEVERDE: Daniel?
DANIEL HIDALGO: In favor.

JIM MONTEVERDE: Bill?

BILL BOEHM: In favor.
JIM MONTEVERDE: Virginia?
VIRGINIA KEESLER: In favor.
JIM MONTEVERDE: And Jim Monteverde in favor.
[All vote YES]
That's five affirmative. The special permit is granted.

JAMES RAFFERTY: Thank you very much, Mr. Chair, and members of the Board.

CHRISTINE THOMAS: Yes, thank you.
JIM MONTEVERDE: You're welcome. Yep. You're welcome.

CHRISTINE THOMAS: Thank you.
(7:26 p.m.)

Sitting Members: Jim Monteverde, Steven Ng, Daniel Hidalgo, Bill Boehm, and Virginia Keesler JIM MONTEVERDE: The next case is BZA-229553-- 20 Forest Street, Unit 1. This is a variance request to add a two-story addition within the side and rear yard setbacks and further violating FAR. Does the proponent wish to speak on this?

STEPHEN NATOLA: Michael will be joining. JIM MONTEVERDE: Okay. Mr. Rafferty, are you staying with us for the evening?

JAMES RAFFERTY: Yes. I have the next case. JIM MONTEVERDE: Oh, Forest Street? Or the Clifton?

JAMES RAFFERTY: The Clifton.

JIM MONTEVERDE: Oh, okay. All right. We're going to do Forest Street first.

JAMES RAFFERTY: Would you prefer I turn off my camera?

JIM MONTEVERDE: No. It's okay, I was just curious.

JAMES RAFFERTY: Yeah. Understood.
JIM MONTEVERDE: Michael, you're --
JAMES RAFFERTY: There he is.
JIM MONTEVERDE: There you go.
MICHAEL BONNER: There I am. I am presenting
today with my architect, Ozzie Limas, but I don't see his name on the list, even though I added him. Just noting that.

STEPHEN NATOLA: What's it? What's his name?
MICHAEL BONNER: His name is Oswaldo Limas.
STEPHEN NATOLA: A-s-w -- yeah, yep. He's promoted.

MICHAEL BONNER: Okay. He's here, then?
STEPHEN NATOLA: Yeah.
MICHAEL BONNER: Okay, thank you. First of all, I wanted to thank the Zoning Board for hearing my application. I have been a private music teacher in Cambridge since 2010. And I maintain the studio of over 40 students.

I teach students as young as 4 years old, and all my students are accompanied to lessons by a parent, which means that there are over 80 people coming in and out of my front door.

During COVID in 2019, I shut down my studio, in a discussion with my condo association neighbors, for health and safety reasons, and $I$ have been teaching on and off privately for the last year.

My application is to build a dedicated COVID-safe music studio in my side yard, so my students do not have to come into the front entrance.

I began discussions with my immediate neighbors at 22 Forest Street, whose property overlooks my yard almost two years ago. They have been very supportive, and I want to thank Hilary Coolidge, Ruth Goodman, and Asad Sudebar for their input on the design.

So just to clarify, I am stating my hardship is that I cannot make a living. It's something I've been doing for almost 30 years. I love teaching. And I don't want to have to drive to students' homes to teach. I would like to continue to teach in my home.

And the reasons I cannot, besides health, are just to teach, it's not feasible to teach in my first floor for sound disturbance reasons. So that is my statement of hardship. It's really about me continuing my career as a teacher and a member of the artistic community in Cambridge.

As far as the design, which my architect will special on more, I'll just say that the design which my architect will speak on more, I'll just say that upon speaking with Asad, who will be most affected by the design of -- it became clear that it would be aesthetically easier and beautiful to place the studio at the back of my property, so it didn't lock his bedroom window.

Right now, the design only has -- the design -the building blocking his bathroom window, which is ideal.

So I want to let my architect, Ozzie, speak more about the other piece, which is my nonconforming yard. But I'll just say that in order to -- if $I$ did conform with the zoning requirements and put the structure more forward, it would block my living room window, it would block Asad's bedroom window. And it just would not look aesthetically pleasing. It would create more density.

So that is the reason the design is built off of my kitchen.

So with that, $I$ would like to turn it over to Ozzie to give his piece of the discussion.

OSWALDO LIMAS: Good evening, BZA members. My name is Oswaldo Limas, a/k/a Ozzie Limas III with Designs by

OZ to the [unclear]. I am Principal Designer for this project at 20 Forest Street, Unit 1, where we are adding a music studio on the first floor and a home office on the ground level, both having access at the front street through gated front yard.

As you can all see from my presentation renderings, an $A C$ plan is submitted.

We designed this space, as Mike was saying, symmetrically inserting the new footprint to meet rear yard wall, front entry wall, beyond the existing window bay, as Mike just mentioned, therefore maximizing the addition to fit nicely and appear transparent with the surrounding buildings.

The existing building is two-unit condo association. Top floors are 2, and the first and -- are the ground in Unit 1. It is a typical brownstone, and in this case the façade is brick with white siding in the rear.

Our addition is set $15^{\prime}$ from the corner of the existing building, 19'6" towards the front, making this area a home office. That would be the ground level. This space will have four casement side windows and match -- in the matching brick to the existing building, as well as front
street access.

The floor broad (phonetic) is slightly bigger, as the left side is cantilevered one foot, making this space the music studio access through Michael's kitchen, through a glass door where there was an existing structure at one time. That's before -- actually before my time. So I didn't see that.

The studio will have matching windows through the kitchen, transom windows and some operable windows at the rear elevation, right side to match the existing small front porch with the steps leading to the front yard. Flat rubber roof not to obstruct this Unit 2 's view, existing view, and obviously we're going to have downspouts that will pitch to the left side, handling any water to grade.

Now, because this lot has been previously subdivided kind of in a strange way, we're now making it nonconforming, It has created a hardship, and now we need to seek relief from the BZA for a rear yard setback required 20' per note $C$ in the Standard Chart.

In our architectural site plan, we illustrate the existing angle property line, 7' to 8'6" because it's angled at the back. Therefore, we are seeking 12', 11'6 variance.

We also need relief as the FAR is 0.5. With the new efficient it will be 1.2. It was nonconforming to begin with, I know you guys don't like that, but it is what it is right now.

As well as side yard relief, it is required 7'6". New addition will be 5'6" to existing property line asking for $2^{\prime}$ variance.

I would like to note that when I initially started, my zoning analysis was with the idea that this project would be a perfect candidate for the new zoning amendment, missing middle housing, multifamily housing for triple deckers, townhouses, full complexes, all in Cambridge residential neighbors.

Specifically, the amendment allows three-story buildings without a driveway to build up 40 percent of the lot area on any neighborhood residential lot in Cambridge. Therefore, the zoning amendment also seeks to allow modest additions in renovations to existing homes as-of-right, then creating -- not creating red tape and delays for such improvement.

I don't know where that amendment is, but here we are now with the current zoning standards. And we are
requesting relief for $F A R$ side yard, rear yard -- as I stated before.

My client is looking to contribute -- to continue contribution -- to the Cambridge community as a local, homebased music teacher, making a safe environment for anybody who comes in and any conditions with the COVID or anything else, that's have a private access. Instead of going through the conventional hallway or the conventional vestibule of the front entry.

Let's see. And at the same time, I would add that the abutters have supported this project, okay? And they have submitted letters in writing as well. I would also add that this building is not harmful or disruptive to the existing character of the surrounding Cambridge neighborhood.

Now I'll answer any questions pertaining to the architectural engineer questions for this project. Thank you.

JIM MONTEVERDE: Thank you. Members of the Board, have any questions for the proponent?

BILL BOEHM: Yes. Bill Boehm. I have one question. You mentioned that by placing this addition
towards the rear, you would not be blocking your own living room windows, right?

MICHAEL BONNER: Yes.

BILL BOEHM: Your neighbors --
MICHAEL BONNER: It's actually towards the front.
BILL BOEHM: -- or your neighbor's bedroom window.
And I'm a little confused about that. I would only -- does the owner of this live on the first floor of this building?

MICHAEL BONNER: The owner --
BILL BOEHM: Yes.

MICHAEL BONNER: -- actually lives on the first floor, yes.

BILL BOEHM: So how would the addition anywhere it was placed block a neighbor's window if it was a one-story addition?

MICHAEL BONNER: I should have said, "obstruct" because he's on the first floor and his bedroom window faces my yard -- faces, you know, that part of the yard. Does that make sense, Bill?

BILL BOEHM: Yeah. So he's an abutter. He's not in your --

MICHAEL BONNER: Yes.

BILL BOEHM: -- building? Okay.
MICHAEL BONNER: Correct.
BILL BOEHM: Got it. Now that makes sense. Thank you.

MICHAEL BONNER: Oh, yes. I'm sorry I didn't say that.

BILL BOEHM: That's all right.
MICHAEL BONNER: He's at 2 Forest Street, No. 1.
BILL BOEHM: Makes perfect sense. Thank you.
MICHAEL BONNER: Thank you, Bill.
JIM MONTEVERDE: Anyone else have any questions?
Any members of the Board?
VIRGINIA KEESLER: I might just be missing it.
I'm not seeing the letters of support in the file.
MICHAEL BONNER: There -- there actually aren't any.

VIRGINIA KEESLER: Okay.
MICHAEL BONNER: Ozzie might have not seen that correctly. I did speak with my abutters and spoke with them by e-mail. But no, there aren't any letters of support. Sorry.

OSWALDO LIMAS: Sorry. I thought I misunderstood.

MICHAEL BONNER: No problem. No problem. JIM MONTEVERDE: Any other questions?

VIRGINIA KEESLER: So I guess -- oh, sorry. JIM MONTEVERDE: Sorry. Go ahead, Virginia.

VIRGINIA KEESLER: So by extension, I guess I'm thinking that we need some kind of confirmation from the other owner in the condo association.

MICHAEL BONNER: That is -- we do have that letter of support.

VIRGINIA KEESLER: All right.
MICHAEL BONNER: I'm so sorry. That was in my
original application.
VIRGINIA KEESLER: Oh, okay.
MICHAEL BONNER: Neil Colon and Jan Waller
(phonetic) are totally supportive of the project.
VIRGINIA KEESLER: Okay.
MICHAEL BONNER: Sorry. Yeah.
JIM MONTEVERDE: Okay. Anyone else have any
questions? I have two. Actually you've answered one about the condo association. But -- and Stephen, can you bring up the floor plan, or the site plan that had dimensions on it, the setback dimensions? There you go.

The -- on the -- it's the left side setback, the 5', 5.5'?

OSWALDO LIMAS: Yes.

JIM MONTEVERDE: When you look at the 3D view, there's a lower level and then there's an upper level that's cantilevered further toward the property line.

OSWALDO LIMAS: Yes, sir.
JIM MONTEVERDE: So what is that 5' -- 5.5'
measuring to? The lower level or the upper?
OSWALDO LIMAS: The lower level.

JIM MONTEVERDE: All right. Okay. So -- and what is then the encroachment or the side yard setback from the upper level, first floor?

OSWALDO LIMAS: It would be 4'5" because it's a 1' cantilever.

JIM MONTEVERDE: Okay. Okay. Those are my
questions. Stephen, are there -- is there any
correspondence in the file? Stephen Natola?
STEPHEN NATOLA: Yeah. Repeat that question?
JIM MONTEVERDE: Sorry. Are there any
correspondence -- is there any correspondence in the file?
STEPHEN NATOLA: Susan White, July 27.
"Dear BZA, I am responding to your notice sent to me via mail regarding BZA-229553. I oppose this proposal to add a two-story addition within the side and rear setback, further violating FAR. My reason relates to destruction of outdoor green space, destruction of a substantial part of the back and side yard. Susan White, 50 Frank Street -- 50 Frost Street."

JIM MONTEVERDE: 50 Frost?
STEPHEN NATOLA: Yeah. I believe that's all the correspondence.

JIM MONTEVERDE: Okay. And is there anything in the application, as I think the proponent mentioned from the other condo owner?

MICHAEL BONNER: Yes, there -- oh, sorry, there should --

JIM MONTEVERDE: Hold on.
MICHAEL BONNER: Sorry. My bad. Thanks.
JIM MONTEVERDE: That's okay. Let's see if -Stephen Natola, if we have it in the file.

STEPHEN NATOLA: Yeah. Let me pull it up if you guys want to discuss something else.
[Pause]

It does not seem like it was included as part of the application.

JIM MONTEVERDE: Okay. So I suggest before we go much further -- and this is really for consideration of the Board -- that there be -- that the proponent do outreach to its neighbors, specifically the folks I think that would be to the left side, where the setback would be most impactful and to the property behind it, where the set -- where the rear setback would be impactful and get -- talk to them and encourage them to send us some correspondence, particularly if they're in favor. Or if they're against, just let us know their opinion.

And then also from your condo association, or your other condo member -- I'm assuming -- you said there are two condo members, correct? There's only one other?

MICHAEL BONNER: There are a couple. So yeah, there's only one other in the association. Yeah.

JIM MONTEVERDE: So all the condo association correspondence from them -- that they've seen your proposal, and they take no exception to it?

MICHAEL BONNER: Yes.
JIM MONTEVERDE: So I suggest we continue this
case, allow you to get that correspondence, submit it to the Board so we can make an evaluation when we can understand that your fellow condo owners take no exception, and then we can get some more response from your -- the neighbors, specifically the ones immediately adjacent to you.

Members of the Board, are you okay with that?
STEVEN NG: Yes. Steve Ng yes.
JIM MONTEVERDE: Okay.
STEVEN NG: Would you want to open this to the public and see if they're here? Do you want to open it to the --

JIM MONTEVERDE: That's fine.
STEVEN NG: -- public?
JIM MONTEVERDE: Yep. Let's do that one step.
BILL BOEHM: Can I -- may I -- this is Bill Boehm, may I ask a question first, Jim, just as a matter of clarification?

JIM MONTEVERDE: Yep.
BILL BOEHM: On the -- on such cases, is the letter from the condo made prerequisite to coming to Zoning? JIM MONTEVERDE: Well, it would have been nice. But no, there have been other cases where it hasn't been
submitted, and we've allowed them to submit it, you know, assuming that it's -- they have everything else, the discussion is a positive one, we vote to approve on the condition that they supply that approval from the condo association, with all the other condo members. So we've done it that way as an after the fact.

The neighbors is a different story. Those, we'd like to hear from. So --

BILL BOEHM: And on that one, the neighbors have been noticed, but you -- you're feeling like it's incumbent upon the proponent to actually -- understand from them whether they care to --

JIM MONTEVERDE: Well --
BILL BOEHM: -- care to comment that you're not?
JIM MONTEVERDE: I agree with Steven to let the --
let's open this up to public commentary, see if they do speak. I kind of jumped ahead. Let's do the public commentary, see if any of the adjacent abutters do comment, and that will cover it.

It would have been nicer to have it in the file and understood, though, as beforehand as we read through the file but I'm happy to do it in public comment and hope
someone comments. And I think you're right. If everyone's been notified, if no one chooses to respond, then we just have to act on, you know, our best judgment.

MICHAEL BONNER: Mr. Chairman, may I ask one thing? That letter of support was in the original application before $I$ was sent to the Board. And I don't know if you have that. It was a requirement for the original application, for which I paid, and then I was referred to the Board for the variance.

But I did not know I had to include it with the variance. I had told them that there was an opportunity to provide a letter of support. JIM MONTEVERDE: Yeah. MICHAEL BONNER: They said they already - you had written one. JIM MONTEVERDE: Yeah. I'm assuming you're saying that's ISD when you applied for a permit? MICHAEL BONNER: Yes. JIM MONTEVERDE: Building permit? MICHAEL BONNER: Yes. JIM MONTEVERDE: Yeah. We just don't have it in our file. So --

MICHAEL BONNER: I understand.
JIM MONTEVERDE: -- I'm happy to assume that it might exist, and again, if everything else is favorable, we'll make that a condition.

But Stephen, let's open this up to public comment.
Any member of the public who wishes to speak should now click the icon at the bottom of your Zoom screen that says, "Raise hand."

If you're calling in by phone, you can raise your hand by pressing *9 and unmute or mute by pressing *6.

I'll now ask Staff to unmute speakers one at a time. You should begin by saying your name and address, and Staff will confirm that we can hear you. After that you will have up to three minutes to speak before I ask you to wrap up.

STEPHEN NATOLA: No member of the public is wishing to speak.

JIM MONTEVERDE: Okay. All right. And seeing that the neighbors were notified, and no one has chosen to respond -- either in writing or in commentary today, any further discussion from members of the Board, or are we ready for a motion?

DANIEL HIDALGO: Daniel Hidalgo.
JIM MONTEVERDE: Yep.
DANIEL HIDALGO: I guess, you know, I'm really very sympathetic to the applicant and, you know, it seems like at least with the condo association I'm glad that it sounds like he has the approval. Yeah. I would like to hear more from the neighbors.

But I guess I'm still a little bit, you know, I guess I would -- given that the variance application, I would love -- I'm a little bit uncertain about how the hardship really applies to the unique properties, the unique characters of the property itself as opposed to just sort of general hardship.

And so, I'm a little bit, you know, on the fence, because it just strikes me that -- there's nothing really specific about the property that's leading to the variance as opposed to, you know, some other -- an addition that wouldn't require a variance which has a higher standard. So that's just where I am.

OSWALDO LIMAS: Can I just say one thing? The radius --

JIM MONTEVERDE: Hold on, hold on, hold on. Mr.

Limas, hold on, hold on.
OSWALDO LIMAS: Okay.
JIM MONTEVERDE: This is time for discussion just among the Board, so let us chitchat first, and if we have any questions for you to confirm, we'll raise that to you. VIRGINIA KEESLER: I wonder -JIM MONTEVERDE: Virginia?

VIRGINIA KEESLER: -- I wonder if the odd shape of the lot could factor into that argument, because it has sort of the long piece of land?

JIM MONTEVERDE: Yeah. I would -- I'm looking at the three conditions for the variance: The literal enforcement, involves a substantial hardship. We heard about a hardship; we all can determine whether it's substantial from the proponent and the need for the space. Hardship owing to the circumstances relating to the soil condition, shape of topography of the land: Yeah, I think the shape, I think, if you look at that site plan, where else could you put a volume of this dimension?

This would definitely lead to that -- I think confirm to that. And then this is where I was hoping to hear more from the neighbors.

But desirable relief may be granted without substantial detriment to the public good, nullifying or derogating from the intent or purpose of the ordinance.

So I think it meets those. I'm the on the fence about the substantial hardship, but there's definitely a hardship, I think, and a need for the space.

DANIEL HIDALGO: Thank you. I appreciate that.
BILL BOEHM: I'll just chime in here to say that I think on the first hardship case of the kind of economic -I think I'm well aware of the difficulty of artists making a living in Cambridge. This is a very expensive community.

While it's not a straight up Zoning consideration, it is our -- our city, and I know a lot of artists who have had to move out of the community or cannot afford to practice in Cambridge.

And I think to the extent that we're able to support artists with reasonable requests, we should do that.

JIM MONTEVERDE: Okay. And my only comment is I would like to inquire of the proponent if the Board agrees. My only concern is the dimensional, the relief requested, not that it's a big difference. But the 5.5' on the left side is actually measured to the lower area. The upper
volume is, you know, another foot closer to the property line.

I would be happier if they would just, you know, suck the entire volume a foot back toward the existing building so that that 5.5 was in fact the worst case, not just -- not the best case. I don't know how other members of the Board feel about that.

STEVEN NG: Yeah. I think one of the concerns I have is is this -- the actual footprint of the space? I mean, that's almost 300 square feet.

And I'm not sure programmatically if it -- music lessons or what have you and how much, you know, square footage do you really -- is that what's required, or can it be smaller?

JIM MONTEVERDE: Yep. So Stephen Natola, do we have a floor plan? I think there's a floor plan at the lower level and upper level. Yeah.

So I think the Board's question for the proponent is do you have the opportunity to reduce this footprint somewhat so that it's your upper level that's 5.5 from the property line? And can you talk to us about your need for the overall dimension of that music studio?

MICHAEL BONNER: Absolutely. I'm sorry I didn't say this in the beginning. I need to accommodate with myself a student and parent and a grand piano. The current space I'm teaching in is approximately 350 square feet in my basement.

So really to do something that's equivalent -- and again, it's for COVID safety. It's for everyone's comfort. We made it 300 square feet on top. That was the reasoning.

OSWALDO LIMAS: And I've -- if I could also add that the structure underneath the foundation wall will also support a piano along that wall, because it's going to be more than 500 pounds -- probably closer to 700 -JIM MONTEVERDE: Yep.

MICHAEL BONNER: -- for a grand piano. And that would definitely help support that load.

JIM MONTEVERDE: Yeah. So it's not the foundation so much that I'm concerned about. It's the request of the release of the 5.5' from the left property line that that actually is from the lower level ground floor plan, not the first floor plan.

And I guess I'm asking can the first floor plan be reduced by a foot in that dimension, so that that dimension
actually applies to the first and ground floor plan? Is that a possibility? The proponent?

OSWALDO LIMAS: Mike, that's up to you. I mean, it definitely can be done.

MICHAEL BONNER: I would rather have that than get no variance approved at all. And I can see how that would look aesthetically just as nice -- you know, just along that way. You know, I wouldn't oppose it.

JIM MONTEVERDE: Okay.
MICHAEL BONNER: Yep.
JIM MONTEVERDE: I'm sure your architect can deal with it.

BILL BOEHM: Um--
JIM MONTEVERDE: Does that satisfy the members of the Board, or any other comment?

BILL BOEHM: Yeah. I'll have a comment on that. I think this kind of encroaching on setbacks -- we've already seen, I've seen in my two meetings -- is quite variable, what's accepted and what's not.

And I personally have no problem with going down to five and a half feet. We've seen much greater encroachments on side yard setback than that.

And I feel like this is a serious musician who knows the size that he needs for his studio and has designed it as such. And I see no reason to negotiate on that, personally.

JIM MONTEVERDE: Okay.
VIRGINIA KEESLER: This is --
JIM MONTEVERDE: But I think if they have agreed if the proponent's agreed that they could -- I'm just desiring that the plans in front of us actually reflect the application, which is asking for the 5.5', and that in fact that's measured to the greatest, you know, building element that's fronting that lot line.

So I'm basically asking that that ground -- that first floor plan and the ground floor plan be within that 5.5'.

And I think if the proponent is willing to do that and think that's acceptable on the first floor, and it still works for the piano and the parent and the student, I'm willing to suggest that, and see if it works, if the other members of the Board are in agreement. Otherwise, we can let it stand the way it is.

Steven, do you have a comment or a suggestion?

Thought, one way or the other?
STEVEN NG: No, no. I think the applicant kind of, you know, with the size of the piano and the spatial needs, I can understand, you know, why they're doing this.

JIM MONTEVERDE: What's proposed?
STEVEN NG: Yeah. The room size --
JIM MONTEVERDE: Okay.
STEVEN NG: -- so everyone's comfortable in that space kind of setting. So it's totally fine.

JIM MONTEVERDE: All right. Hold on. I will not try to impose a condition on this. All right. In that case, are we ready for a motion?

BILL BOEHM: Yes.
JIM MONTEVERDE: I think we are.
BILL BOEHM: Although, Jim, I would just say that I think it's incumbent on the proponent to create the drawing, isn't it? Because it's not a 5.5' setback. In fact, it's a 4.5' setback. So --

JIM MONTEVERDE: Well, that's why I asked where the setback -- the dimension was taken to. I suspected from the way the drawings are set up that it was from -- and I think we could -- Stephen, you're there, we can mark this up
on the drawing that just so we all understand the 5.5' is off of that ground-floor plan, and we know that the firstfloor plan cantilevers a foot over.

So I think we can just make has that annotation and we're covered. So with that, is that okay? Can we -ready -- is that okay, we can do a motion, then?

STEPHEN NATOLA: On A-2, ok first-floor plan make note?

JIM MONTEVERDE: Yeah, just that the 5.5' to the property line is off of the ground floor plan, that left side wall.

STEPHEN NATOLA: Sheet AO.

JIM MONTEVERDE: No, the other -- right one, but you just got the wrong drawing. It's not the ground --

STEPHEN NATOLA: Okay.
JIM MONTEVERDE: -- it's not the first floor, it's the ground floor.

OSWALDO LIMAS: It may show on the site plan what he's talking about, $A-0$.

MICHAEL BONNER: Yeah. A0 has five sets.
JIM MONTEVERDE: Yeah, I understand. That's why I couldn't asked the question initially. I couldn't figure
out what the 5'6" was measured to. Was it measured from the ground floor or from the first floor?

So I think whoever made the annotation just now from the first floor plan, $I$ think it actually belongs on the ground floor plan. And that confirms what we've heard.

So I think, again, when I -- when I'm there inperson to sign the drawing, I can put that note on that ground floor plan.

All right. With that, the Chair makes a motion to grant the relief from the requirements of the Ordinance under Sections 5.31, the Dimensional Requirements, and Section 8.22.3, Nonconforming Structure, and 10.3 for a variance on the condition that the work proposed conform to the drawings entitled, "Forest Street Addition" dated August 22" -- is that 2023? No, it can't be -- "22" prepared by, Designs by OZ, initialed and dated by the Chair.

And further, that we incorporate the supporting statements and dimensional forms submitted as part of the application.

Further, the variance is granted incorporating the following condition: And the condition is that you obtain an approval from the Condominium Association. I'm assuming
this is an association. If there isn't --
OSWALDO LIMAS: Yes.
JIM MONTEVERDE: -- then all of the condo owners, get some acceptance from them that states that they've -you've shown the plans to them, and they take no exception. That will be the condition. And that's the condition that we're attaching. On that motion, then, Virginia?

VIRGINIA KEESLER: In favor.

JIM MONTEVERDE: Bill?
BILL BOEHM: In favor.

JIM MONTEVERDE: Daniel?
DANIEL HIDALGO: In favor.
JIM MONTEVERDE: Steven?
STEVEN NG: In favor.
JIM MONTEVERDE: And Jim Monteverde in favor.
[All vote YES]
JIM MONTEVERDE: That's five in favor. Motion passes. Variance granted. Please, just get us that correspondence from the condo association, and you're good to go.

OSWALDO LIMAS: Absolutely.
MICHAEL BONNER: I just wanted to --

JIM MONTEVERDE: Thank you.
MICHAEL BONNER: -- I want to thank everyone. And
coincidentally, today is my fifty-fifth birthday, so this was a great gift. Thank you.

JIM MONTEVERDE: You're very well.
OSWALDO LIMAS: Happy birthday, Michael.
JIM MONTEVERDE: Happy birthday.
COLLECTIVE: Happy birthday.
MICHAEL BONNER: Thank you so much, everyone.
OSWALDO LIMAS: Thank you so much, Board of

Cambridge.
JIM MONTEVERDE: Yep.
OSWALDO LIMAS: We'll get that out to you.
JIM MONTEVERDE: Thanks. Can I ask that we take a two-minute break? I have to turn a light on here so I can see. One second.
(BREAK)
(8:00 p.m.)
Sitting Members: Jim Monteverde, Steven Ng, Daniel Hidalgo, Bill Boehm, and Virginia Keesler

JIM MONTEVERDE: Now, the next case is BZA 227724
-- 91 Clifton Street. And Mr. Rafferty?
JAMES RAFFERTY: Thank you. Good evening again,
Mr. Chair. James Rafferty on behalf of the applicant.
Present with us this evening: Nelson DeOliveira. This is an application for a special permit, who had windows those nonconforming walls of a three-family home currently under renovation in a Res B district in North Cambridge.

In actuality, the applicant received a building permit to install these windows. And the work has been done. It was only when a Certificate of Inspection was called for that it was discovered that the building permit was not properly issued, and that a special permit, as the Board Members know, openings or additions -- additions or enlargement of openings on nonconforming walls requires a special permit by the Board.

In this case, $I$ think the story can best be told with drawing AEX-200, if it's possible to have that drawing
brought up. At least you will see the layout of the windows on the existing walls. It's a three-family house. There are six windows on the first two floors and five windows on the first floor.

If we go to the drawing $A-201$, we'll see that the number of windows has actually been reduced. But their locations have been changed. In the reduced version, each window, each floor has been reduced by one, but the windows are in different locations than previously.

It's also the case that on the rear elevation there are two windows being added on the rear elevation. So those windows on both the left and the rear are within -- on walls located within the setback. The application asks for relief for a special permit to allow them to be relocated. As I said, the overall amount of openings on the nonconforming wall is actually reduced if you were to compare the existing condition elevation with the proposed. JIM MONTEVERDE: Okay. So this is a mea culpa? JAMES RAFFERTY: Well -JIM MONTEVERDE: This is after the fact. JAMES RAFFERTY: -- when one does work -- when one does work pursuant to a building permit, I'm not sure how
much --
JIM MONTEVERDE: That's true.
JAMES RAFFERTY: -- one must seek forgiveness, but
JIM MONTEVERDE: I agree.
JAMES RAFFERTY: There was a mistake somewhere, I
would suggest.

JIM MONTEVERDE: Okay. And the Nelson Group, are they -- I'm trying to -- they're the contractor that they -JAMES RAFFERTY: Nelson DeOliveira?

JIM MONTEVERDE: Yeah. Nelson Group. I'm just -are they doing other development in town?

JAMES RAFFERTY: Oh, yes. They've been -- yeah.
Yeah. Mr. -- he's done, he's done quite a bit of work, yes.
JIM MONTEVERDE: Okay. All right. Thank you for your presentation. Any questions from members of the Board? If not, I will open it up to public commentary. Stephen, are there any correspondence in the file? BILL BOEHM: Sorry, Jim I had to fix a fan for a second, and I stepped away.

JIM MONTEVERDE: Yeah. BILL BOEHM: I do have a question.

JIM MONTEVERDE: Okay.
BILL BOEHM: There is basement space indicated in
the plans. And I think I'm going to guess I know how this happened. It doesn't seem to contribute to the FAR calculation, but it's clearly living space in the plans. And I'm going to guess that this was submitted.

So I'm going to ask my own question and Jim, if you can verify: Did this sort of straddle the new ruling about basement space? Because I think today that space would be included in FAR calculation?

NELSON DEOLIVEIRA: May I speak? We do have up-to-date plans. They show that there's a storage space.

JAMES RAFFERTY: That's correct. The drawing contained an error declaring it to be -- it is -- the space is below 7', so it's not habitable or occupiable --

JIM MONTEVERDE: Okay.
JAMES RAFFERTY: -- space. And I think in an earlier plan -- it was pointed out to me this week that an earlier plan set showed a description of a playroom or something in the basement. Revised plans were submitted now that characterizes that as storage. It is below 7'9".

JIM MONTEVERDE: Okay. Any other questions from
members of the Board?
[Pause]
No? Stephen Natola, do we have any commentary in the correspondence in the file?
[Pause]
Stephen, are you with us?
STEPHEN NATOLA: Hi. It does not seem like there's any correspondence.

JIM MONTEVERDE: Okay.
STEPHEN NATOLA: Now, regarding the basement
labeling issue, the correct plans were sent into ISD after the 5:00 p.m. deadline. So I had to bring it up if you wish to accept those.

JIM MONTEVERDE: They're labeled as storage? STEPHEN NATOLA: Yeah.

JIM MONTEVERDE: Okay. We'll include those in that set and --

STEPHEN NATOLA: Okay.
JIM MONTEVERDE: -- I can initial those. All
right?
Let me open the matter up to public comment. So any members of the public who wish to speak should now click
the icon at the bottom of your Zoom screen that says, "Raise hand."

If you're calling in by phone, you can raise your hand by pressing *9 and unmute or mute by pressing *6. I'll now ask Staff to unmute speakers one at a time. You should begin by saying your name and address, and Staff will confirm that we can hear you. After that, you will have up to three minutes to speak before I ask you to wrap up.

Do we have any members of the public who wish to speak?

STEPHEN NATOLA: The Zoom label says, "I" or "L."
UNIDENTIFIED: Hello, my name is [unclear] and my husband [unclear]. We are the homeowner of 89-91 Clifton Street, Unit 3, Cambridge, MA, 02140. So we don't know -like we saw this board in our front yard, and then so that's why we are here to join this meeting.

I think we have no clue what's happening here.
TAO (phonetic): Let me add -- this is Tao -- so we are the homeowner of the third floor. Until just now, we had no clue what they are going to do. We have not been approached, we have not been asked, we have not been consulted of our opinion on this. So we have no idea what
is going on.
So I don't know. I think it is the basic
etiquette to check with the neighbors to seek their ideas or
approval. We haven't got any of that. That is very
surprising to us. So -- and it seems that we reached out
and they said that they're only going to do the window for Unit 2. Nothing has to do with us.

So I have no clue what is going on. If this only change Unit 2, whether the outfit might change?

FEMALE: And I emailed the manager of Nelson
Group, and then she refused to give us any information on this project. She said, "Well, like, I'm not sure" why we are not included in this project since we are the homeowner of the condos in this building.

JIM MONTEVERDE: Okay.
STEPHEN NATOLA: Um--
JIM MONTEVERDE: Steven, do you know the diagram that typically accompanies these things, that shows a -- you know, City site plan and list of neighbors that are -- or abutters that are notified?

UNIDENTIFIED: Yeah. JIM MONTEVERDE: Could we have that in part of the
file?

STEPHEN NATOLA: Oh. I would say that if they are an abutter, they would have received correspondence by now.

JIM MONTEVERDE: Are they occupants of the
building?
TAO: May I say something?
JIM MONTEVERDE: Hold on.
JAMES RAFFERTY: Mr. Chairman, they're recent purchasers of Unit 3 and that they would not appear on the abutters' list is my understanding.

TAO: [Unclear; crosstalk].
JIM MONTEVERDE: Unit 3 is a unit within this building?

JAMES RAFFERTY: Yes.

JIM MONTEVERDE: And is it just that they're surprised at these modifications?

JAMES RAFFERTY: I apologize, I don't know anything about -- I don't know much about the background here, but this should have been explained to them, because this involves windows that are already in place in their unit.

JIM MONTEVERDE: Right.

JAMES RAFFERTY: And -- and -- and --

TAO: No, no --
JAMES RAFFERTY: Why that wasn't explained to the
-- there's a shortcoming on the applicant's side.
TAO: No.
JIM MONTEVERDE: Okay.
TAO: Nothing, no one --
JIM MONTEVERDE: Hold on. Stephen, I don't know
that the objection is really related to the Zoning matter that we have in front of us. It seems to be between management and an owner, and not us.

So respectfully, I'd have to ask the owner of that unit to pursue this with the condo association or with the developer. I don't -- yeah.

So that's all the commentary from the public. Stephen, was there anyone else who wishes to speak?

STEPHEN NATOLA: No one else.
JIM MONTEVERDE: Okay. Discussion from the Board members?

BILL BOEHM: Yes. Jim, I have a question. The person that spoke up, I'd just like to clarify, they own one of the units here. Did we not just establish in the last
case the condo co-owner just needs to approve the plans before they're done?

NELSON DEOLIVEIRA: Can $I$ say something, Bill?

JIM MONTEVERDE: No. Hold on one second, Mr.

DeOliveira.

NELSON DEOLIVEIRA: All right.

JIM MONTEVERDE: Yep, we did. But I suspect we're
going to hear this was, as units were being sold, and frankly whether there was or was not an association, but does the proponent wish to clear that up? Was there in fact three units that were sold? There was a condominium association in place when this change was proposed or was done? Can you clarify that for us?

NELSON DEOLIVEIRA: No.

JAMES RAFFERTY: Nelson, please state your name.

JIM MONTEVERDE: Introduce yourself.

NELSON DEOLIVEIRA: Oh, my name is Nelson

DeOliveira. I'm the Contractor.

JIM MONTEVERDE: Yep.

NELSON DEOLIVEIRA: Developer over there. When I went to apply for the $C O$, that realized that little mistake on the windows. And then in order to get the CO we had to
apply for a variance.
When we applied for a variance, the unit was not sold yet.

JAMES RAFFERTY: Excuse me. Excuse me, Nelson. It's not a variance.

JIM MONTEVERDE: It's a special permit.
NELSON DEOLIVEIRA: Oh, a special permit.
Therefore --
JIM MONTEVERDE: By the way, were the units sold before the --

NELSON DEOLIVEIRA: No.
JIM MONTEVERDE: -- change was made?
NELSON DEOLIVEIRA: No. The unit was just sold
right now. And the unit was sold after we did the application, after we did the application for the special permits.

JIM MONTEVERDE: Okay.
NELSON DEOLIVEIRA: However, I am away. I
apologize the third floor was not clarified to them, but let
them know it has no effect, we're the not going to change any windows in their place. We just work with the existing there right now.

JIM MONTEVERDE: And are there in fact -- I think the question was asked if it's a condominium, we want in our file approval from the condominium association or the other condominium owners that they take no exception to the changes that are proposed here?

JAMES RAFFERTY: I suspect -- Nelson, if I may, Mr. Chair -- Nelson how late is -- is Unit 3 the only unit that is closed?

NELSON DEOLIVEIRA: No. We just closed the Unit second floor -- first floor. Second floor is not closed yet. The City had issued us a temporary CO until I believe until the end of this month.

JIM MONTEVERDE: Okay. So Unit 3 --
NELSON DEOLIVEIRA: Yes.

JIM MONTEVERDE: -- is the only condo association -- condo member -- condo that's been sold? There really is no association until the rest of the units are sold?

NELSON DEOLIVEIRA: That's correct.
JIM MONTEVERDE: There really is no one else to give us their commentary, and the one owner who is commenting appears to be objecting to the change, or not have been made aware of the change.

JAMES RAFFERTY: And -- and -- and --

NELSON DEOLIVEIRA: That's correct. We still have control of the association until we sell the last unit. JIM MONTEVERDE: Yeah. No, I understand. JAMES RAFFERTY: But Mr. Chair, we're happy to commit -- happy to explain that the new owner of Unit 3 has a condition in their condo that technically at the moment does not comply with the Zoning Ordinance. So the approval of this request will benefit the marketability of their new home.

> JIM MONTEVERDE: Yep. Okay. Any other questions

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    STEVEN NG: You never mention --
    JIM MONTEVERDE: -- for members?
    STEVEN NG: You never mentioned that to them?
    JAMES RAFFERTY: I think this arose from -- I
    don't have the history, Mr. Ng, so I apologize. It should
        -- the short answer it should have. I'm surprised, and I
        know Nelson is known for communicating, but he was out of
        town, but that is an error of communication on the
        applicant's part, but the application was filed prior to the
        time Unit 3 closed, apparently.
    But as to why we should have done a better job of letting them know -- candidly, I wasn't aware that the unit had sold.

JIM MONTEVERDE: And there must have been drawings of a unit deed that showed the unit plans, and it must have showed -- I'm assuming it showed openings and the positions that you're proposing in this application, correct?

JAMES RAFFERTY: It would have had to in order to have been approved at the Registry, yes, so that -JIM MONTEVERDE: You would think, yeah. JAMES RAFFERTY: -- the first went out, so. JIM MONTEVERDE: Okay. JAMES RAFFERTY: But I'm happy to commit now to have a conversation with Unit 3 owner and explain it is an unusual situation with the Board already -- with the building permit having been issued and the work already been done.

JIM MONTEVERDE: Right. That would be great if you could do that.

All right. Any other questions from members of the Board or are we ready for a motion?

STEPHEN NATOLA: Jim Monteverde, there's a member
of the public with their hand raised.
JIM MONTEVERDE: Okay.
STEPHEN NATOLA: How should I proceed?
JIM MONTEVERDE: Well, let them speak.
STEPHEN NATOLA: Okay. Jim Ferraro?
NELSON DEOLIVEIRA: Jim Ferrero --
JIM MONTEVERDE: He's one of the other proponents.
So now, we're --
STEPHEN NATOLA: Oh, okay.
JIM MONTEVERDE: -- beyond that. We have another

STEPHEN NATOLA: Yeah.
JIM MONTEVERDE: Can $I$ just clarify maybe to
answer some of your questions. I really don't think it's necessary, but --

JAMES RAFFERTY: I only ask Mr. Ferraro as the attorney for -- put the condo docs together, Mr. Chair. He might have some insight as to timing and the status of the association.

JIM MONTEVERDE: Okay.
NELSON DEOLIVEIRA: [Unlear], he's the owner of the building, just the (phonetic) contractor.

JIM MONTEVERDE: All right. Mr. Ferraro?
JIM FERRARO: I just want to add that I did have discussions with the owners' attorneys regarding this variance.

JAMES RAFFERTY: Special permit, please.
JIM MONTEVERDE: Special permit, yep, but that's okay. Yep.

JIM FERRARO: And you -- with the process was because it was -- because the certificate -- preliminary Certificate of Occupancy was issued. So I discussed with the attorney what the process was, why we were doing this, and how it was going to work.

Whether the attorney relayed that to their client or not, I don't know. Clearly not. But it was discussed with their attorney.

JIM MONTEVERDE: Okay. Thank you, Mr. Ferraro.
Now, back to the Board. Is there any more discussion, or are we ready for a motion?

BILL BOEHM: I have a question.
JIM MONTEVERDE: Yep.
BILL BOEHM: What's the extent of work left to be done in Unit -- in the third unit?

NELSON DEOLIVEIRA: No work should be done in the unit. The work was completed. We got a -- well, we got rough inspections, insulation inspections, we just got in the final -- all the work has been completed, the unit is sold. The work has been completed a couple months ago. Nothing to do in the place anymore.

JAMES RAFFERTY: And apparently the ISD issued a temporary CO to allow the unit to close. As Mr. Ferraro noted, it was explained that the closing to Unit 3 owners to their Council that this process would need to be completed in order for them to get a permanency [unclear].

NELSON DEOLIVEIRA: I have no idea of what is this about when they are talking.

JIM MONTEVERDE: That's okay. Yes. Thank you.
Ready for a motion, members of the Board?
Hearing no exception, the Chair makes a motion to grant the relief from the requirements of the Ordinance under Sections 8.22.2.c for a nonconforming structure, and Section 10.40 for a special permit on the condition that the work proposed conform to the drawings entitled" --

Stephen, can you put a drawing up on the screen? Sorry, I didn't write down the info there. Just so we can
see the title. There we go.
-- drawings entitled, "89-91 Clifton Street"
prepared by Flow Design Inc. and dated 05/20/2022, initialed and dated by the Chair.

And further, that we incorporate the supporting statements and dimensional forms submitted as part of the application.

JAMES RAFFERTY: Mr. Chair, excuse me, I think it's also the case that you approve the late drawing filing -- that --

JIM MONTEVERDE: Oh yes, I'm sorry, yeah.
JAMES RAFFERTY: -- the basement floor plan. In addition to the 520 drawings, there's a --

JIM MONTEVERDE: Yeah.

JAMES RAFFERTY: -- floor plan for the basement.
JIM MONTEVERDE: Right. And thank you. Thank
you, Mr. Rafferty. So yes, we're accepting the late addition, the drawing that shows the revised basement drawing, and the basement used as storage.

On the motion to grant the special permit, Virginia?

VIRGINIA KEESLER: In favor.

JIM MONTEVERDE: Bill?

BILL BOEHM: In favor.
JIM MONTEVERDE: Daniel?

DANIEL HIDALGO: In favor.
JIM MONTEVERDE: Steven?

STEVEN NG: In favor.
JIM MONTEVERDE: And Jim Monteverde in favor.
[All vote YES]

JIM MONTEVERDE: That's five affirmative. The special permit is granted.

COLLECTIVE: Thank you very much.
JAMES RAFFERTY: Have a good evening.
NELSON DEOLIVEIRA: Thank you very much.
(8:21 p.m.)
Sitting Members: Jim Monteverde, Steven Ng, Daniel Hidalgo, Bill Boehm, and Virginia Keesler

JIM MONTEVERDE: The next case we will hear is BZA-229609 -- 129 Sherman Street. And this one is also another special permit.

STEPHEN NATOLA: Charles Le Ray?
JIM MONTEVERDE: Charles, are you the proponent; do you want to speak for the proponent?

CHARLES LE RAY: Yes. Good evening, Mr. Chair, and members of the Board. I'm Charles Le Ray. I'm an attorney with Dain, Torpy, Le Ray, Wiest \& Garner at 175 Federal Street in Boston representing the applicant, Cambridge Montessori School.

Also with us tonight are Michael Flannery, President of the School's Board of Trustees and Allison Lynch, who's the Assistant Head of School.

We're asking that you remove four conditions from an Institutional Use special permit 7039 that was granted in 1995. That special permit allowed Cambridge Montessori to convert and use a former commercial industrial building at

129 Sherman Street as an elementary school, which they continue to use today.

Cambridge Montessori opened in 1962 in the St. Bartholomew Church. By 1995, they relocated and expanded to multiple locations. We were looking to acquire permanent facilities when the 129 Sherman Street property became available.

It's mostly covered with a school building, which goes from Sherman Street to the rear, and at the back there's a small commercial garage storage building that we call "the shed" with a little courtyard space between the two buildings.

So there was insufficient space on the property to provide the amount of parking that was then required by the Cambridge Zoning Ordinance.

For that reason, the Board in 1995 included four conditions related to parking that we're asking to remove today. The first, which is Condition 13, required the school to lease approximately 50 spaces at 137 Sherman Street. This is the long parking lot next to the railroad tracks across Bellis Circle from the school's property.

The second condition apparently recognized the

Zoning Ordinance required much more parking than the school would ever need, and allowed the school to sublease spaces, as long as it kept at least 20 for its own use. That's condition 14.

The third part condition is number 16, and it required that the gate from the parking lot to Bellis Circle be kept closed to vehicles during school hours. And that was so that vehicles wouldn't use that -- went through Bellis Circle, they'd have to access the parking lot via Sherman Street.

In 2017, the School acquired the 137 Sherman Street property. On the plan you see 137 is the large property to the north of Bellis Circle there. 2017, the School acquired the Sherman Street property at 137.

The plan was to develop a new centralized school facility on that property. There were fundraising difficulties compounded by COVID pandemic, led to the conclusion unfortunately this plan wasn't economically feasible.

And in 2002, it was decided to sell the property, that it didn't make sense for the school to continue to own a large parking lot that it was barely using any of.

So earlier this year, the property was sold. The new owners have been allowing the school to continue renting space there while they're formulating redevelopment plans. But that time is coming to an end.

As you know, in 2022 the Cambridge City Council removed the requirement for off-street parking anywhere in Cambridge.

The fourth condition is number 15 of the decision. And it required that student drop-off and pickup would occur at 137 Sherman Street. And the School is responsible for getting the students safely back and forth across Bellis Circle while also making things as convenient as possible for drivers using Bellis Circle for the neighbors.

2018, the City extended the median between the north and south sides of Sherman Street as part of an attempt to address the nearby railroad crossing, so they could make that a crossing at which the trains did not blow their horns day and night.

In connection with that, they converted the parking spaces on Sherman Street in front of the School into a dedicated drop-off, pickup zone for the students. And so, the school started making use of that area, used it much
more during the pandemic, and this summer it's been the primary pickup/drop-off for the summer program.

So we no longer need the 137 Sherman parking lot for drop-off and pickup, and frankly won't be able to use it much longer anyway.

So we're asking you to remove these four conditions that are obsolete. In the narrative, we describe how we think we comply with all the applicable Institutional Use Special Permit requirements and the General Special Permits Requirements.

And we want to let you know that June 7, we invited the neighbors to come and meet us in the evening so we could discuss in general what's going on with the School, and specifically tell them that we were making this application and there were no objections to it.

So we're happy to answer any questions you may have.

JIM MONTEVERDE: Thank you. Any questions from members of the Board?

BILL BOEHM: Yes. I have questions. How many -where will the -- presumably staff is used to parking in this lot. And I'm just curious where they're parking now.

CHARLES LE RAY: Very few staff have been using the lot of late. There are about a half dozen striped spaces on the property between the back of the school and the shed. And there's the nearby property known as the brickyard, where the school also rent space, and there's some parking available there.

JIM MONTEVERDE: Sorry, is that on the site plan that we're looking at?

CHARLES LE RAY: Pretty much -- they're not shown on the site plan. If you see on the start of the left part, there's a dimension of 25'.

JIM MONTEVERDE: Yep.
CHARLES LE RAY: That area. And then going from there up towards Bellis Circle is where the spaces are striped.

JIM MONTEVERDE: And is that a sufficient number of spaces for all the staff who desire spaces, who desire parking?

CHARLES LE RAY: We believe so. And as I said, we also have the ability to park nearby at the brickyard. And we're -- we've been discussing with some property owners in the area who have parking that's available during the day
whether we might be able to use a bit of their space if we need to.

So we're confident that one way or the other we can do without the 137 Sherman Park.

BILL BOEHM: Okay. And I have another question. JIM MONTEVERDE: Yep.

BILL BOEHM: For drop-off, you said it's been working well this summer for the summer program to use the commercial -- the spaces in front of the school? Is it a -is that going to work year-round? Is it a smaller program?

And I'm just curious if that -- if those reserved commercial drop-off or whatever those are labeled is proving to be adequate?

CHARLES LE RAY: We think so. We were using it during the last year as well as using it this summer. It runs the full length of the property on 129 Sherman, and it's labeled as "pickup, drop-off for the students." So we found it's been adequate.

And as part of the start of any academic year or part of the summer program, parents receive a handbook, which includes a description of how parking is supposed to work. And they're all supposed to read it and sign a page
that they return saying they've read it. So the parents will get good information on what they're supposed to do and how to do it.

DANIEL HIDALGO: Can I ask a question?
JIM MONTEVERDE: Daniel?

DANIEL HIDALGO: Yeah. I'm just curious, so the large parking lot that you're required to use, what's that used for now. Is it mostly just drop-off and pickup? Or are people actually parked there all day?

CHARLES LE RAY: We're not using -- we're not using it for drop-off and pickup now. We're using the dedicated loading area on Sherman. It's more convenient and safer for the children. I think some faculty and staff -very few have been parking there from time to time.

For the most part, the parking lot is empty and if you go to the rear, there was a dumpster and, you know, some people hanging out from time to time. It's essentially just empty.

DANIEL HIDALGO: Okay. Thank you.
VIRGINIA KEESLER: Um--
JIM MONTEVERDE: Any other questions? Yep.
VIRGINIA KEESLER: So perhaps this is explained in
the handbook, but I guess --
JIM MONTEVERDE: Virginia, you have to just introduce yourself, please.

VIRGINIA KEESLER: Oh, yeah, this is Virginia. Perhaps this is explained in the handbook that you mentioned, but given that these are young children, is there a protocol with the use of the loading zone to sort of make sure that the flow of drop-off is sort of smooth and moving along to accommodate the overall volume of drop-off?

CHARLES LE RAY: Yes. If you can promote Allison, she can probably speak in more detail about that.

ALLISON LYNCH: Yes. My name is Allison Lynch. I'm the Assistant Head of School at Cambridge Montessori School. Just to highlight what Charles said, yes.

Actually, this is a safer drop-off., as they are directly dropping general off in front of the school, in front of the entrance. And Staff will be in that location to escort children to their classrooms. So they're actually closer to the door, and they do not have to cross the street to get into the school itself. So it's a safer option all around, and preferable for parents actually.

We feel like we can move traffic and keep it
moving in the morning and at pickup.
JIM MONTEVERDE: Any other questions from members
of the Board? No? If not, let's see if we have any
correspondence in the file, and then we can open it up to the public commentary.

Stephen, do we have any correspondence in the
file?
STEPHEN NATOLA: No correspondence in the file. JIM MONTEVERDE: Okay. Let me open it to the public then. Any member of the public who wishes to speak should now click the icon at the bottom of your Zoom screen that says, "Raise hand."

If you're calling in by phone, you can raise your hand by pressing *9 and unmute or mute by pressing *6. I'll now ask Staff to unmute speakers one at a time. You should begin by saying your name and address, and Staff will confirm that we can hear you. After that, you will have up to three minutes to speak before I ask you to wrap up. Any takers?

STEPHEN NATOLA: No one is raising their hand. JIM MONTEVERDE: All right. Okay. Thank you. Any further discussion from members of the Board amongst
ourselves, please, first? For a motion?
BILL BOEHM: Bill Boehm, a comment. I think the lack of comments by the public speaks volumes because usually parking issues will draw out a lot of comments. So that sounds like it's not a problem. So that's great.

JIM MONTEVERDE: Right. Thank you. Any other member of the Board have any discussion?

STEVEN NG: I think we're ready for a motion.
JIM MONTEVERDE: Yeah. Let me just throw in a couple things. So I just -- just because I don't have the file in front of me, my apologies. Right? I don't have my second screen, so I can't read all the paperwork.

But when Mr. Le Ray went through all of the items from the previous zoning permit, I don't have all those statements in front of me. And I want to make sure we get those correct if we're in favor of granting the relief, because the application merely says, "Amend/remove conditions on the previously granted special permit relating to off-site parking and pickup/drop-off from students."

So I want to make sure we get the verbiage correct in terms of what is -- was in the former document, and what we're finding acceptable.

Personally, I'd like -- I'd just like to -- I can understand the point that you don't need the 137 Sherman lot, that's fine. Then you have other space on your property for parking for people who need it, and you have other space available to you or that can be available to you, I'm assuming you provide that at no expense to the drivers? The parkers?

I'd just like to confirm what the conditions are. That it basically remains similar to what it was previously, if they were providing basically 20 spaces beyond what they were allowed to sublease that there's still some -- there's some way to provide parking for people who need it and want it, their staff.

Otherwise, I feel comfortable with the rest of it. I'm not sure I'm agreeing to the verbiage about -- you know, the new City requirement -- or not requirement -- where they removed the parking requirements from any application.

I don't know that I would go there, as opposed to, you know, here's the -- here's -- what was granted before. There was parking for your operation for people who needed it, and there will still be a way for you to provide parking for people who need it in some modified scheme.

So that's kind of the way I feel like I can word something and be comfortable.

Stephen Natola, do you have the previous documentation?

And Mr. Le Ray, could you repeat? I wrote down -I was trying to write down the numbers to the items, and I think I scrambled them up. But --

CHARLES LE RAY: So it's Special Permit 7039, received in 1995.

JIM MONTEVERDE: Yep.

CHARLES LE RAY: And we're asking that you remove conditions 13, 14, 15, and 16.

JIM MONTEVERDE: Oh, I'm sorry. Okay. And 16 was a drop-off?

CHARLES LE RAY: No, 13, 14 and 16 relate to the parking, and the use of 137 Sherman, and 15 is the dropoff/pickup.

JIM MONTEVERDE: Okay. Sorry. Again, help me just because I don't have the paperwork in front of me. 13, I noted was the least you were going to -- the least -- you were going to -- they were required to lease spaces across the street at 137 Sherman, correct?

CHARLES LE RAY: Correct.
JIM MONTEVERDE: And 14 was you were allowed to
sublease, but you -- assuming you would maintain 20 spaces at the school?

CHARLES LE RAY: Correct.
JIM MONTEVERDE: Correct? And the next one
relating to parking was which one?
CHARLES LE RAY: 16 concerned the gate from the parking lot onto Bellis Circle.

JIM MONTEVERDE: Oh, right. Right. Right, right.
Okay. So that 16 was the gate?
CHARLES LE RAY: Yep.
JIM MONTEVERDE: And the gate on --
CHARLES LE RAY: It's from --
JIM MONTEVERDE: Yeah, that's the one.
CHARLES LE RAY: -- 137 Sherman onto Bellis
Circle.
JIM MONTEVERDE: Okay. And then the student dropoff was what number?

CHARLES LE RAY: 15.
JIM MONTEVERDE: 15. Okay. So shall I make a
motion? I will propose a draft. I'll do the legalese part
of it in a second. But the meat of it is that we agree to remove the requirement of Item 13 and relieve the school of the requirement to lease space at 137 Sherman Street, Item 13, and the previous Item 14, where we relieve them of the requirement to -- that allowed them to sublease space by keeping at least 20 spaces for themselves, and relieve them of the Item 16 that required that a gate be closed -- gate's on Sherman Street, correct?

CHARLES LE RAY: No. There's two entrances to the parking lot.

JIM MONTEVERDE: Oh, yeah.
CHARLES LE RAY: There's one on Sherman Street and there's one on Bellis Circle. It's the one on Bellis Circle they wanted closed.

JIM MONTEVERDE: Because the gate closes on Bellis Circle. And that's the gate to 137 Sherman?

CHARLES LE RAY: Yes.
JIM MONTEVERDE: Okay. And we removed that
condition. And then that takes care of parking. And that's on the condition that parking be provided for those members of the school community staff that need it or want it either on their current -- within their current property, or in
other space that they will obtain. That closes out the parking item.

And then to item 15, which required the student drop-off at -- can you -- Stephen are you, oh there it is. And you'd be allowed to do the student pickup and drop -- is it pickup and drop-off off of Sherman Street, as shown in the application, in lieu of what's written here in Section 15? Did I have that correct? That will be the guts of the motion here.

CHARLES LE RAY: I believe you covered everything we asked for tonight.

JIM MONTEVERDE: Let me try. Let's see how it works.

STEVEN NG: Yeah. I think you got it.
JIM MONTEVERDE: All right. The Chair makes a motion to grant the relief from the requirements of the Ordinance under Sections -- and this is a special permit, as per and it's to revise the previously granted special permit 7039 under Sections 4.55.1.3, Existing Lot Status; Section 4.56.c.c.1, 4.56.c.2, 4.56.c.7, Table of Institutional Use Regulations; and Section 10.40 Special Permit.

In particular, the items listed in the permit 7039
will be modified as follow:
Stephen, can you go up to the item 13, or to the
previous page? Thank you. That the requirement of item 13, which was the lease agreement for spaces -- 50 spaces at 137 Sherman Street -- be removed. And then item 14, can you go to page 7, Stephen?
[Pause]
Stephen, can you move ahead one page to page 7?
[Pause]
Remember the holiday tune, Alvin and the Chipmunks where someone finally screams, "ALVIN?"

STEVEN NG: ALVIN?!
JIM MONTEVERDE: Yeah, STEPHEN?
COLLECTIVE: [Laughter]
STEPHEN NATOLA: Hi.
JIM MONTEVERDE: Stephen, all right, thank you. Can you move to page 7, please? I'm just trying to get to item 14. There you go.

And item 14, which required the school to maintain
20 spaces being deleted in its entirety, and item 16 that the gate requirement on Bellis Street 2137 Sherman Street be removed in its entirety.

And item 15 regarding pickup and drop-off, that this section, this item be deleted, and in its place substituted that the student drop-off and pickup will be at Sherman Street.

Did I miss anything? And I can finish here.
That's the motion. On the motion, Steven?
STEVEN NG: In favor.
JIM MONTEVERDE: Daniel?
DANIEL HIDALGO: In favor.
JIM MONTEVERDE: Bill?

BILL BOEHM: In favor.
JIM MONTEVERDE: Virginia?
VIRGINIA KEESLER: In favor.
JIM MONTEVERDE: And Jim Monteverde in favor.
[All vote YES]
JIM MONTEVERDE: Five in favor. Special permit granted.

And Steven, I'd just like to take a look at a draft to that transcript before we -- I sign it to send out. But I think that's the gist of it.

Mr. Le Ray, does that -- is that the gist of what you're looking for?

CHARLES LE RAY: Yes. It's exactly what we're looking for. Thank you.

JIM MONTEVERDE: Okay. All right. You're
welcome. And to all a good night.
CHARLES LE RAY: Thank you, everyone. Goodnight.
JIM MONTEVERDE: So what's this storm you all were
talking about in Boston? I'm here in North Carolina.
CHARLES LE RAY: Ah.

JIM MONTEVERDE: What's going, what's coming,
what's going on in Boston?
VIRGINIA KEESLER: No.
CHARLES LE RAY: Just a little thunderstorm that
came through.
JIM MONTEVERDE: Oh, we had that the other day.
Okay. All right. Sounds good. Thank you all.
DANIEL HIDALGO: Thank you.
JIM MONTEVERDE: See you in two weeks.
COLLECTIVE: Goodnight.
JIM MONTEVERDE: Bye-bye. Thank you, Stephen.
Thanks for your help.
[08:44 p.m. End of Proceedings]

## CERTIFICATE

Commonwealth of Massachusetts
Middlesex, ss.

I, Michele Dent, Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the above transcript is a true record, to the best of my ability, of the proceedings.

I further certify that $I$ am neither related to nor employed by any of the parties in or counsel to this action, nor am I financially interested in the outcome of this action.

In witness whereof, I have hereunto set my hand this 11th day of August_, 2023.


Notary Public
My commission expires:

June 12, 2026


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