

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, MAY 30, 2019

7:00 p.m.

In

Senior Center

806 Massachusetts Avenue

First Floor

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Vice Chair

Janet Green, Member

Slater W. Anderson, Associate Member

Laura Wernick, Associate Member

Jim Monteverde, Associate Member

Maria Pacheco, Zoning Secretary

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1 P R O C E E D I N G S

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3 (7:02 p.m.)

4 Sitting Members: Constantine Alexander, Brendan Sullivan,
5 Janet Green, Jim Monteverde, Slater
6 Anderson, Laura Wernick, Alison Hammer

7 CONSTANTINE ALEXANDER: The Chair will this
8 meeting of the Zoning Board of Appeals to order, and as is
9 our custom, the first -- we'll first deal with continued
10 cases. These are cases that have started on an earlier date
11 but, for one reason or another, has been continued till
12 tonight. And then after that, we will return to our regular
13 agenda. We only have one continued case tonight and that's
14 the one I'm going to call. So the Chair will call Case
15 Number -- well, before I -- you can come on up. Before I
16 started, I wanted to make a statement for the record.

17 After notifying the Chair, any person may make a
18 video or audio recording of our open sessions or may
19 transmit the meeting through any media, subject to
20 reasonable requirements that the Chair may impose as to the
21 number, placement, and operation of equipment used so as not
22 to interfere with the conduct of the meeting. At the

1 beginning of the meeting, the Chair will inform other
2 attendees at that meeting that a recording is being made.

3 And I wish to advise those of you who are present
4 that we have two video recordings being made. Three. A
5 stenographer for purposes of assisting our preparing the
6 transcript and two citizens of the city are also recording
7 this meeting. And as you may have noticed, there's a camera
8 there. So someone is making a video recording as well. Is
9 anyone else recording this meeting?

10 Apparently not. So with that, we are ready to
11 proceed.

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1 (7:04 p.m.)

2 Sitting Members: Constantine Alexander, Brendan Sullivan,
3 Janet Green, Jim Monteverde, Slater
4 Anderson, Laura Wernick, Alison Hammer

5 CONSTANTINE ALEXANDER: And now the Chair will
6 call Case Number 017079, 10 North Point Boulevard. Anyone
7 here wish to be heard in this matter?

8 SHAWNA MARINO: Thank you, Mr. Chair. Is this on?
9 Is it on?

10 CONSTANTINE ALEXANDER: I don't know. Dawn, can
11 you -- there are two mics. This is the one that goes to the
12 stenographer.

13 SHAWNA MARINO: Okay. Okay, so it's probably
14 okay.

15 CONSTANTINE ALEXANDER: -- it's on. Take it out
16 of the holder and then sometimes that --

17 SHAWNA MARINO: Thank you. Shawna Marino, M-a-r-
18 i-n-o, with EF Education First, 2 Education Circle,
19 Cambridge Massachusetts 02141.

20 Good evening, Mr. Chair and members of the Board.
21 In response to your feedback and in an effort to minimize
22 the degree to which our proposed signage deviates from the

1 requirements of the sign ordinance, we have cut the amount
2 of proposed signage down by 75 percent. Of --

3 CONSTANTINE ALEXANDER: But, still, you're twice
4 as much as our ordinance allows. You realize that?

5 SHAWNA MARINO: Yes. Of the 75 percent, we've
6 eliminated --

7 CONSTANTINE ALEXANDER: I know, but you're up
8 here. Here's where the ordinance is. Now you're over here,
9 but you're not down to here. Let's be clear about that.

10 SHAWNA MARINO: Yes, we are still seeking a 125-
11 square foot sign.

12 CONSTANTINE ALEXANDER: And the -- our ordinance
13 says --

14 SHAWNA MARINO: Sixty.

15 CONSTANTINE ALEXANDER: -- you can't be more than
16 60. So you're twice as much.

17 SHAWNA MARINO: Correct.

18 RICHARD RUDMAN: That's why we're here.

19 CONSTANTINE ALEXANDER: That's one of the reasons
20 you're here. Three reasons, that you're seeking three
21 variances.

22 SHAWNA MARINO: Two.

1 RICHARD RUDMAN: Just two.

2 SHAWNA MARINO: Just two.

3 CONSTANTINE ALEXANDER: What happened to the
4 signage? I mean the illumination. I'm sorry, the
5 illumination.

6 SHAWNA MARINO: It's not -- we're not seeking a
7 variance on illumination.

8 CONSTANTINE ALEXANDER: You comply with the --

9 SHAWNA MARINO: We comply with the ordinance, yes,
10 sir.

11 CONSTANTINE ALEXANDER: I was under the impression
12 that you weren't, but that's fine.

13 SHAWNA MARINO: So of the 75 percent in reduction,
14 50 percent of it was eliminated by taking away the crest,
15 and the other 25 percent was reduced by reducing the size of
16 the Hult name from 250 square feet to 125 square feet. We
17 have also lowered the Hult name to be below the roof line,
18 and it's now approximately 160 feet tall. But it's 20 feet
19 below the original proposal --

20 CONSTANTINE ALEXANDER: But it's eight times more
21 than our ordinance allows. You're only supposed to be no
22 higher than 20 feet, and you're going to be 160 feet. So

1 you are lowering it --

2 SHAWNA MARINO: -- I'm sorry, we're having trouble
3 hearing you.

4 CONSTANTINE ALEXANDER: Sorry. Okay, my point I
5 was making is that, to be sure -- and I congratulate you on
6 your efforts so far. You have put before us a better -- in
7 my mind, a better sign than you did before, but you're still
8 woefully out of compliance with our ordinance.

9 SHAWNA MARINO: Yes.

10 CONSTANTINE ALEXANDER: And with regard to height,
11 you have a 160-foot-high sign, and the ordinance says no
12 more than 20 feet. You're eight times higher than our
13 ordinance permits.

14 SHAWNA MARINO: So that is why we are here. We're
15 seeking a variance to allow for a higher sign than what is
16 currently permitted and a larger sign than what is currently
17 permitted. We've -- we're still proposing for it to be
18 backlit until 9:00 p.m. We've shared this revised sign
19 design with our neighbors both at the Regatta Riverview and
20 the East Cambridge Planning Team, and we have letters of
21 support included in the packets we provided to you this
22 evening for both of those organizations.

1 We understand that we are seeking a variance, but
2 this sign is very important to us. We do not have any
3 signage facing the community college orange MBTA station,
4 and that is where the largest number of our students,
5 faculty, and visitors are coming from every day. Hult
6 international --

7 CONSTANTINE ALEXANDER: I have to raise a point I
8 raised the last time. People have GPS systems, and don't
9 tell me there are international students and their
10 international GPS app doesn't work because it will work if
11 you just do some work. But beyond that, why can't you give
12 people maps or written instructions? Why do you have to
13 have a sign that's so far out of compliance with our
14 ordinance just because you're going to have, you say, some
15 foreign students who may have trouble finding your building?

16 SHAWNA MARINO: We will have thousands of foreign
17 students and faculty coming from 129 different countries,
18 and many of them don't speak English upon first arrival
19 here. So it's very important to us because, when they get
20 off the Orange Line, the platform, it's hard to see where
21 you're going. There's a railroad. There's bridges.
22 There's highway ramps. There's other buildings. You're

1 also literally in the apex of Somerville, Cambridge, and
2 Boston, and you don't necessarily know where you are. First
3 of all, you're unfamiliar with the country, but you're very,
4 very unfamiliar with this area.

5 CONSTANTINE ALEXANDER: Didn't you tell us last
6 time that these students are here for a multi-year period
7 and maybe they would --

8 SHAWNA MARINO: Some of them are, but we have
9 faculty who come in every month and we also have students
10 who arrive every semester. We have a rotating program with
11 our six different campuses around the world.

12 CONSTANTINE ALEXANDER: The ones who come in and
13 start any semester, have they been to another campus in this
14 United States before?

15 SHAWNA MARINO: No. No, only --

16 CONSTANTINE ALEXANDER: -- first time?

17 SHAWNA MARINO: This is their first time. They're
18 -- we have campuses in Shanghai, Dubai, London, other parts
19 of the country -- of the world.

20 So I'm going to keep my remarks brief. I
21 understand that -- well, we understand your position on
22 this. We're seeking this reduced sign because we've -- we

1 believe we've made it as small and as low as we possibly can
2 to still achieve the visibility we believe we need from this
3 point in the area.

4 CONSTANTINE ALEXANDER: You're not dealing with
5 one -- and this gentleman here, your counsel, will deal with
6 a very important point, I think. Granting a variance is not
7 a discretionary item on our part. We have to find a very --
8 a rigid legal standard has been set aside. One of those
9 standards is a substantial hardship. That hardship, as you
10 know, is not just to you. It's to anybody who occupies that
11 building. So if some reason you no longer have a school in
12 that building, the office using that building, they won't
13 need a sign of the size and height that you're proposing.
14 You got -- I don't see how you satisfy that requirement.
15 Educate me.

16 THE REPORTER: Sir, could I get your name for the
17 record?

18 RICHARD RUDMAN: Oh, I'm sorry. Richard Rudman.
19 I'm counsel to EF at DLA Piper, a law firm in Boston.

20 The -- it is permitted to the Board to include
21 conditions in the variance that are related to the user of
22 the variance. So if the Board saw fit, we haven't talked

1 about this, but I think it would be okay for EF that this
2 was a variance granted so long as the building was
3 principally used as a dormitory for the Hult Business School
4 or another similar school. That would be okay with us.

5 CONSTANTINE ALEXANDER: And if --

6 RICHARD RUDMAN: -- you have a specific purpose
7 with this.

8 CONSTANTINE ALEXANDER: And if Hult ceases to have
9 an educational use for this building, they -- maybe it's
10 offices or whatever or if you sold the building and whoever
11 comes in is not operating an international school, you would
12 agree that the sign comes down?

13 RICHARD RUDMAN: Yes.

14 SHAWNA MARINO: Yes.

15 CONSTANTINE ALEXANDER: Okay.

16 RICHARD RUDMAN: With respect to hardship, Mr.
17 Chairman and members of the Board, we believe that there is
18 a legally-recognized hardship for this building because of
19 its location adjacent to the I93 ramps, the Gilmore Bridge,
20 at a location in Cambridge where there is no regular street
21 grid, there is no through traffic in this area. It's really
22 a dead end. And if we were to have a sign at 20 feet or 40

1 feet, it wouldn't be visible because the ramps and the
2 Gilmore Bridge are that high. So the height and the size
3 have really been determined based on what EF really thinks
4 is the minimum that's necessary to be visible from the
5 Orange Line T station.

6 CONSTANTINE ALEXANDER: Now what about giving --
7 in the days before GPS, giving written instructions and a
8 map to your -- to each student when they come in so they
9 know how to get from the Orange Line station across down to
10 the building? Why doesn't that work?

11 RICHARD RUDMAN: It would work for some. It
12 probably won't work for all. And I would --

13 CONSTANTINE ALEXANDER: A business school student
14 can't read a map?

15 RICHARD RUDMAN: We're talking about an
16 undergraduate business school. And --

17 CONSTANTINE ALEXANDER: Okay, undergrads can't
18 read a map?

19 RICHARD RUDMAN: -- we're talking about 18, 20-
20 year-old kids.

21 CONSTANTINE ALEXANDER: And they can't read a map?

22 RICHARD RUDMAN: Some of them, probably not. And

1 certainly they feel insecure and nervous about where they're
2 going because they've got a map, but they don't have
3 locations they can identify. There could be an arrow
4 pointing to Hult Business School, but they're looking up and
5 there are four or five tall buildings around them. They
6 don't know which one of those is the Hult school. They
7 don't know which one is 2020 at the North Point Project or
8 the Regatta Riverview. So standing there -- and I myself
9 have had this experience in a city that is completely
10 foreign to me. Think about being a 18-year-old in Shanghai
11 where you don't speak the language, you're unfamiliar with
12 the territory, and you're trying to find your way based on a
13 map. That is the experience that EF is really concerned
14 about for their students.

15 SHAWNA MARINO: We also --

16 CONSTANTINE ALEXANDER: Wouldn't it be true,
17 though -- okay, I understand that. But after one or two
18 tries, they'll figure out -- you know, maybe with the
19 benefit of your sign, figure out how to get from the train
20 station to the school building. But then they don't need
21 the sign any longer. They know where the building is.

22 SHAWNA MARINO: Then we have a whole new group of

1 students --

2 CONSTANTINE ALEXANDER: That's every -- how many

3 -- once every six months?

4 SHAWNA MARINO: Three times a -- so we have

5 students coming in three times a year sometimes --

6 CONSTANTINE ALEXANDER: Okay, three times a year.

7 SHAWNA MARINO: -- and we have faculty who come in

8 every week from different countries.

9 CONSTANTINE ALEXANDER: Faculty members surely can

10 read a map.

11 SHAWNA MARINO: Sir, we still have trouble with

12 Ubers and Lyfts coming into our campus. They don't know

13 where they go. They get turned onto the highway. I mean,

14 we see it happen all the time, and they're literally using

15 GPS technology in their vehicles coming to our site. So I

16 --

17 CONSTANTINE ALEXANDER: Personally, I think the

18 purpose of the sign, its height and its location, is for the

19 benefit of the commuters who come into North Station now who

20 can see your name 24/7. Well, not quite 24/7. And most of

21 the time they don't -- the students are not benefiting from

22 it. You're looking to put some identification,

1 advertisement on the building that our ordinance
2 specifically doesn't want to have happen. Maybe -- it's not
3 by accident that we have a 20-foot limitation on height or a
4 60-square-foot limitation on size of signs. The city
5 council, when it adopted the ordinance, wanted to restrict
6 signage in Cambridge because of the visual impact on
7 neighboring properties or neighborhoods or whatever.

8 And we get these sign variance cases a lot,
9 unfortunately, and most of the time it's a very minor change
10 to what is proposed. Yours is not minor. And I'm -- I'm
11 going to stop because I'm probably the only -- speaking only
12 for myself. I don't see the hardship that you're claiming.
13 I just don't see it. I think there is GPS. There is maps.
14 There is the fact that after a couple of tries, you can find
15 where the building is. And you're talking about how many
16 students need direction from the Orange Line station at
17 Georgetown to your building. But in the meantime, the city
18 is burdened with a sign of this size and of this height, and
19 that's not what our ordinance contemplates in my view. I'm
20 only one of five, but that's how I look at it. Enough said.
21 I've shot off my mouth enough.

22 SHAWNA MARINO: One last thing to state for the

1 record is that the sign is uniquely located in a -- on a
2 position that doesn't even face Cambridge. Not one
3 Cambridge resident or business will ever see this sign. It
4 is perfectly situated so that it's visible from the Orange
5 Line and --

6 CONSTANTINE ALEXANDER: And the railroad tracks
7 coming in on the commuter rail.

8 SHAWNA MARINO: A lot of our students are using
9 the public transportation. That's a big part of why -- no,
10 I understand why you're insinuating that we want this for
11 branding purposes.

12 CONSTANTINE ALEXANDER: Yes.

13 SHAWNA MARINO: This is about helping our very,
14 very unique international student body navigate an area that
15 people who have lived in Cambridge all their lives still
16 can't get to because it's on a peninsula. It's out -- you
17 know, people think it's Boston. They don't know where it
18 is. There's no easy way to get there.

19 CONSTANTINE ALEXANDER: That was then. Now this
20 is -- the whole development, Cambridge Corner I guess
21 they're now calling it. People will -- before I agree with
22 you, but that was because that area was a desolate area.

1 This is an area that's going to be very vibrant, going to be
2 plenty of traffic, going to be plenty of people around. You
3 know, doesn't fit. We made -- I said I was going to shut my
4 mouth, and now I will. I'm sorry, I don't mean to be
5 difficult here, but I am. You got to understand my -- where
6 I'm coming from. I'm just shocked by the signage you're
7 proposing. Anyway, do you want -- you, sir, since you're at
8 the front desk, you know, give your name and address.

9 RICHARD MCKINNON: My name is Richard McKinnon,
10 and I live at North Point on Leighton Street in Cambridge.
11 M-c-K-i-n-n-o-n. Thank you, Mr. Chairman, and I've been a
12 consultant for Hult since the --

13 UNIDENTIFIED: We're losing you?

14 RICHARD MCKINNON: Excuse me?

15 UNIDENTIFIED: You're losing your voice.

16 CONSTANTINE ALEXANDER: No, no, keep the mic
17 closer to your mouth.

18 UNIDENTIFIED: Yeah, just keep it closer to your

19 --

20 RICHARD MCKINNON: There we go. Yeah, I've been
21 EF's development consultant for 28 years now. One of the
22 issues that we have had with EF but also at my own building

1 which is right next door on Leighton Street on the opposite
2 of Monsignor O'Brien Bridge is that both the Lyft maps and
3 the Uber maps have not been able to get correctly situated
4 for the buildings at North Point. I think it has to do with
5 the fact that they are at the apex of Cambridge, Somerville,
6 and Boston, but when you come down Monsignor O'Brien highway
7 heading towards Boston and the Museum of Science, instead of
8 going into the museum way to get to EF, they take a left on
9 the Charlestown Avenue Bridge, the Gilmore Bridge, the
10 Prison Point Bridge that take you over into Charlestown.

11 It does the same thing if I'm going into my
12 development. Instead of going into North Point, it goes by
13 East Street and takes me over the bridge into Charlestown.
14 We have been trying -- Avalon Bay that owns my building and
15 certainly to do it for EF -- for four years now, especially
16 as these apps have become the prevalent apps, to get them
17 straightened out, and we have not yet been able to do so.
18 So the apps sometimes have, in fact, made it worse rather
19 than better.

20 And just one more. Excuse me, I just -- Marianne
21 D'Onofrio (phonetic) from East Cambridge will kill me if I
22 don't mention this, that when we're in front of the East

1 Cambridge Planning Team, they actually asked us to do
2 wayfaring signs to North Point because even Marianne who
3 graduated with a member of the BZA and myself from Cambridge
4 High & Latin in 1965, she says that they still can't find
5 North Point, her and her fellow 70 year olds. So that was
6 at the last two times we were in front of the Cambridge. So
7 North Point still is a little bit of a riddle for a lot of
8 folks in Cambridge.

9 CONSTANTINE ALEXANDER: Now but maybe not two
10 years from now or a year from now. When that area gets
11 fully developed, there won't be the issue. But the sign
12 will be there and it'll stay there.

13 RICHARD MCKINNON: I understand, Mr. Chairman.
14 Thank you. Thank you for --

15 CONSTANTINE ALEXANDER: Thank you for taking the
16 time to come down. Questions or comments from the Board at
17 this point?

18 JIM MONTEVERDE: I just have one. From the
19 simulations that you prepared, is there not an opportunity
20 to get the sign closer to the allowable height and still be
21 visible from the particular views that you're showing? It
22 looks like, you know, the 20 feet I can see in some of the

1 views, you may be a little bit blocked, but there seem to be
2 opportunities much lower to be able to do that.

3 SHAWNA MARINO: The bridge goes up, I believe,
4 almost 40 feet, the Gilmore Bridge up onto the building.
5 So, of course, we can keep trying to work on it. We're at a
6 point where we really, really want some formal signage on
7 that corner of the building. We started at the very top
8 because we felt like that was the most visible.

9 JIM MONTEVERDE: I remember, yeah.

10 SHAWNA MARINO: So we'll -- you know, we're happy
11 to continue to study this. If there's an opportunity to
12 have a sign permitted even lower, we can keep looking at
13 that. But there comes a point where it has to be above the
14 Gilmore Bridge and, you know, be clear for people when
15 they're looking.

16 CONSTANTINE ALEXANDER: For the -- if we were to
17 grant you relief tonight, the likelihood they're going to
18 continue to look -- to put a new sign that's lower and not
19 very high, it's going to be all over.

20 SHAWNA MARINO: Well, we're opening the building
21 in two months. Students arrive in two months.

22 CONSTANTINE ALEXANDER: Yeah, I know that, but if

1 you're looking for a sign and if we approve it, that's going
2 to be the sign. It's not going to be -- I don't think --
3 unless you come up -- maybe you'll come up with a different
4 sign that's not as prominent. I doubt it from what I can
5 see in this case, but all right. Point taken, well taken.

6 SHAWNA MARINO: We're happy to keep studying what
7 -- how we can get closer to the allowed height.

8 JIM MONTEVERDE: Do you all want to excuse
9 yourself and step in the room over there and reconsider and
10 come back?

11 SHAWNA MARINO: Is that --

12 CONSTANTINE ALEXANDER: You know, a modified
13 proposal that -- in response to Jim's comment.

14 SHAWNA MARINO: You're asking if we would move it
15 down even further than from where it is?

16 RICHARD MCKINNON: -- discuss it, Shawna.

17 SHAWNA MARINO: Sure, we can discuss.

18 CONSTANTINE ALEXANDER: Okay, and maybe what Jim
19 is suggesting is we're going to need a specific request, new
20 proposal, and rather than having you try to do it on the fly
21 sitting here, we can continue -- suspend this case, move
22 onto other cases, and when you've come up with something

1 that you think you can live with, you'll come back and then
2 we'll consider that. That's what he's suggesting. We can't
3 wait -- you can't do it on the fly sitting here.

4 RICHARD RUDMAN: Unless you think you can do it,
5 we'd need to --

6 SHAWNA MARINO: I may be able to do it quickly. I
7 think the question is if I come back and I say based on
8 these vantage points, we could bring it down, say, another
9 20 or 40 feet so it's basically in the middle of the
10 building, would that get us over the finish line?

11 CONSTANTINE ALEXANDER: I don't know if you want
12 to --

13 JIM MONTEVERDE: You're getting closer. You're
14 moving in the right direction.

15 CONSTANTINE ALEXANDER: Better than what you've
16 got now. Do you want to take a recess and come back a
17 little later?

18 SHAWNA MARINO: Yeah, we'll take one minute.

19 RICHARD RUDMAN: That would be appreciated, yeah.

20 CONSTANTINE ALEXANDER: Well, we'll get you -- we
21 can't go to our regular agenda till 7:30. So we got five
22 minutes to kill. If you're not ready then, we'll go to the

1 regular agenda, then you come back.

2 (Five minute recess)

3 (7:30 p.m.)

4 RICHARD RUDMAN: Thank you, Mr. Chairman, for the
5 opportunity. What we would like to --

6 (Crosstalk)

7 CONSTANTINE ALEXANDER: That's better. People in
8 the audience, not for us, our benefit, it's for the people
9 in the audience.

10 RICHARD RUDMAN: Got it. What we'd like to
11 propose is that the variance be for a sign no higher than 90
12 feet, and we would also agree to limit it to the name of the
13 Hult Business School or another comparable school.

14 CONSTANTINE ALEXANDER: Another school that's
15 owned by you or -- I just want to make sure I'm clear. If
16 you change the -- you continue to operate but the change the
17 name?

18 RICHARD RUDMAN: Right.

19 CONSTANTINE ALEXANDER: Fine. But if you -- some
20 other school moves in, you sell the building, not fine. Or
21 not --

22 SHAWNA MARINO: Right. We're fine with that.

1 RICHARD RUDMAN: We'll agree with that.

2 CONSTANTINE ALEXANDER: Okay. I just want to
3 know. I'm not trying to --

4 RICHARD RUDMAN: -- expect to be here for a long
5 time.

6 CONSTANTINE ALEXANDER: Okay. I hope so. I think
7 your neighbors want you to be here. Whether they need a
8 sign to be here is another thing. Okay. Jim, do you have
9 any further questions or anybody else?

10 JIM MONTEVERDE: No. Thank you.

11 CONSTANTINE ALEXANDER: I'll open that up to
12 public testimony. Does anyone here wish to be heard on this
13 matter? Apparently not. We are in receipt of some letters.
14 Two, in fact. The first is from the East Cambridge Planning
15 Team. "At the May 22, 2019 East Cambridge Planning Team
16 meeting, Education First" -- I guess you folks -- "presented
17 a revised proposal for a new sign on the northwest façade of
18 the new Hult Business School building facing the central
19 artery. We understand the proposed sign needs zoning relief
20 for height and area. After the presentation, the members
21 present at the ECPT, East Cambridge Planning Team, voted
22 unanimously to support the proposed sign design as

1 presented. In conclusion, we ask the Board of Zoning
2 Appeals to approve a zoning variance for the above-mentioned
3 Hult sign." I should make comment right here, it's a fine
4 letter, based on a letter of support for your original
5 proposal, and that letter asked the Planning Board to
6 comment on the signs. As far as I know, we've never
7 received any communication from the Planning Board. Have
8 you been advised in any way by the Planning Board?

9 RICHARD RUDMAN: We did submit the revised
10 proposal that's before you today to the Planning Board, and
11 the Planning Board had no comment. Did not --

12 CONSTANTINE ALEXANDER: Elected not to comment.

13 RICHARD RUDMAN: Elected not to comment.

14 CONSTANTINE ALEXANDER: Okay. Not a matter of
15 they approved it and it isn't -- they didn't have any
16 comments.

17 RICHARD MCKINNON: No, they didn't approve it.

18 CONSTANTINE ALEXANDER: Okay. I want that for the
19 record, that's all.

20 RICHARD RUDMAN: No recommendation.

21 CONSTANTINE ALEXANDER: Okay. And the other
22 letter we have is from, as you advised would be the case,

1 from the Regatta Riverview Condominium, Inc. It's addressed
2 to the Cambridge Planning Board, but I guess they mean us.
3 "Dear Members of the Board, this letter is to follow up to
4 our March 2019 communication. I'm writing once again on
5 behalf of the Board of Directors of the Regatta Condominium
6 Association here in Cambridge. We are a 435-unit building
7 with over 750 residents living here in East Cambridge. EF"
8 -- that's you folks -- "has reduced the total number of
9 proposed signage from two to one. The remaining sign faces
10 Charlestown and does not affect us here in Cambridge.
11 According to EF, the sign is necessary to help foreign
12 students and staff who use public transportation,
13 particularly the Orange Line, to find the campus. Since the
14 original letter, the sign has been reduced in size and
15 height and the crest has been eliminated. EF and Hult have
16 been wonderful neighbors, and we strongly support their
17 request for a sign variance. We ask that you consider this
18 when you vote on the petition. As always, we appreciate the
19 work of the Planning Board and thank you for allowing us to
20 voice our support."

21 RICHARD RUDMAN: We do, though.

22 CONSTANTINE ALEXANDER: That's it for public

1 comment. I'm going to close public comment. Discussion by
2 members of the Board? Let me just -- sorry, I got to frame
3 the motion. Once again, I didn't write it down. How --
4 your newest proposal, how high will the building be?

5 RICHARD RUDMAN: The sign -- the top of the sign
6 would be no higher than 90 feet above grade.

7 CONSTANTINE ALEXANDER: Okay, and be only one
8 sign?

9 RICHARD RUDMAN: Only one sign.

10 CONSTANTINE ALEXANDER: Okay. And we've agreed
11 that -- not agreed, you propose that, should you cease to
12 principally use the building for your educational programs,
13 that you would cease to have -- you would remove the sign?

14 RICHARD RUDMAN: -- remove the sign.

15 CONSTANTINE ALEXANDER: Okay. Thank you.
16 Discussion? Or anyone want to make -- you want me to make a
17 motion?

18 JIM MONTEVERDE: Motion.

19 BRENDAN SULLIVAN: Motion.

20 CONSTANTINE ALEXANDER: All set?

21 BRENDAN SULLIVAN: Yeah.

22 CONSTANTINE ALEXANDER: Okay, the Chair moves that

1 we make the following findings with regard to the variance
2 being sought. That a literal enforcement of the provisions
3 of our ordinance would allow the substantial hardship,
4 financial or otherwise, to the petitioner or appellant.
5 This hardship is, as presented by the petitioner, that it's
6 putting on at these premises a school for international
7 business students and with international faculty and, given
8 the location of the building and given the fact that most or
9 many of the people who -- at the school, either students or
10 faculty, who will be traveling on the red line and getting
11 off at the Charlestown station need this sign of this height
12 and this size to help them identify where the building is.
13 That the hardship is owing to circumstances relating to soil
14 conditions, shape, or topography, I think it's owing to the
15 fact of the location of the building at a unique point, an
16 apex was used, the word used to describe, between
17 Somerville, Boston, and Cambridge with very ill-marked ways
18 of getting from the train station, if that's how you're
19 coming, the Orange Line station, if that's how you're coming
20 to the school to find the school. And then relief may be
21 granted without substantial detriment to the public good or
22 nullifying or substantially derogating the intent and

1 purpose of this ordinance.

2 So on the basis of all of these findings, the
3 Chair moves that we grant the variance requested as set
4 forth on plans submitted by the petitioner, the first page
5 of which has been initialed by the Chair, except that the
6 sign, as now proposed by the petitioner, will now be -- at
7 its top will not be higher than 90 feet as opposed to the
8 120 feet?

9 RICHARD RUDMAN: 160.

10 CONSTANTINE ALEXANDER: 160, thank you. 160 feet
11 before, that there will only be one sign. I guess the crest
12 will be eliminated, the crest sign. And then lastly, should
13 the petitioner cease to use this building for -- in a
14 meaningful way for having a school for international
15 students, that they will remove the -- promptly remove the
16 sign and restore the façade of the building to its prior
17 state as nearly as possible given the time that would have
18 elapsed. So that's the motion. Anybody have changes or
19 suggestions?

20 All those in favor, please say aye.

21 (Affirmative responses)

22 CONSTANTINE ALEXANDER: Four in favor, one

1 opposed. Variance granted.

2 SHAWNA MARINO: Thank you.

3 RICHARD RUDMAN: Thank you very much.

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21 (7:39 p.m.)

22 CONSTANTINE ALEXANDER: Now we'll turn to our

1 regular agenda, and I think we've had some new people come
2 in the meeting since I started the continued case agenda.
3 So let me read the same statement that I read at the outset
4 of our continued agenda. So I'm going to be leaving. I'm
5 going to read the statement and then I'm going to be gone.

6 SLATER ANDERSON: Yes, Janet, you're it. Now for
7 --

8 CONSTANTINE ALEXANDER: After notifying the Chair,
9 any person may make a video or audio recording of our open
10 sessions or may transmit the meeting through any media,
11 subject to reasonable requirements that the Chair may impose
12 as to the number, placement, and operation of equipment used
13 so as not to interfere with the conduct of the meeting. At
14 the beginning of the meeting, the Chair will inform other
15 attendees at that meeting that a recording is being made.

16 And as I advised before, at this point there are
17 three recordings that are being made, at least three. One
18 by the stenographer who uses that to help prepare the
19 transcript of the meeting, and then two citizens of the city
20 are also recording. And there's a -- it's being filmed as
21 well. Does anyone else have a recording -- is recording
22 this meeting?

1 Okay, with that, we can go to the first item on
2 the agenda, and Mr. Sullivan will take over as Chair for
3 this next case.

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1 (7:40 p.m.)

2 Sitting Members: Brendan Sullivan, Janet Green, Jim
3 Monteverde, Slater Anderson, Laura
4 Wernick, Alison Hammer

5 BRENDAN SULLIVAN: The Board will hear Case Number
6 017113-2019, 2046 Massachusetts Avenue. Okay, before we get
7 into -- just as a little housekeeping matter, you submitted
8 this this evening?

9 KIM COURTNEY: Yes.

10 BRENDAN SULLIVAN: Yes. Let me distribute that to
11 the Board.

12 KIM COURTNEY: I did give five copies.

13 BRENDAN SULLIVAN: Yeah, I have them.

14 KIM COURTNEY: Kim Courtney, C-o-u-r-t-n-e-y. I'm
15 the for McCabe's Porter, LLC, the appellant.

16 (Microphone adjustment)

17 BRENDAN SULLIVAN: Kim, do you have Ranjit's to
18 the Board, a copy of that?

19 KIM COURTNEY: I just received that. It was not
20 sent to me as for the appellant. I heard from a third party
21 that there was a letter in the file, and I requested it
22 before this hearing.

1 BRENDAN SULLIVAN: Okay. I just -- again, let me
2 distribute that to members of the Board. It was in the
3 file, though. Just so they can follow along. Okay.

4 KIM COURTNEY: Good evening. Kim Courtney, for
5 appellant McCabe's Porter, LLC, doing business as Shine
6 Square Pub located at 2046 Massachusetts Avenue. This is a
7 business A2 zone. The --

8 JANET GREEN: Can't hear.

9 KIM COURTNEY: We have to figure out something.

10 JANET GREEN: You got to get rock star close.

11 KIM COURTNEY: I also have to be able to use my
12 papers.

13 JANET GREEN: Take it out of the --

14 KIM COURTNEY: I need both hands to operate so
15 it's not ideal. We need to figure out something better than
16 this. So this is a BA2 zone --

17 JANET GREEN: You're just going to have to figure
18 out how to get closer to the --

19 KIM COURTNEY: It's unfortunate that I have to
20 hold this in order to present. So this is a BA2 zone.
21 Appellant McCabe's Porter, LLC was granted a license for
22 entertainment at its location by the License Commission.

1 After that was granted, the zone -- the commissioner of
2 Inspectional Services Department kicked back the application
3 denying it. So we have two decisions here. We have the
4 decision of the ISD commissioner and we have the refusal to
5 issue the entertainment license by the License Commission,
6 both of which I believe are appealable here today under
7 Chapter 48A, Sections 8 and 13.

8 So the decision that was issued by the ISD
9 commissioner was merely a note in the Viewpoint system. So
10 when you apply for an entertainment license to the License
11 Commission, the process is to submit it through the License
12 Commission. You do not submit anything to the Zoning
13 Department. Submit it to the License Commission. Your
14 application gets forwarded to the Zoning Department through
15 the internal online system which is a relatively new system
16 which has many quirks. So this -- for some reason, the
17 zoning approval is supposed to happen before the hearing.
18 So my client paid the fee, they hired an attorney, they had
19 a hearing, and their license for entertainment was granted
20 by the License Commission. Thereafter, they purchased the
21 equipment, and then they were informed that the Zoning
22 Department had refused to allow the License Commission to

1 print the license. So this is where we are.

2 So the note in the Viewpoint system was not very
3 detailed. It simply stated entertainment is not allowed in
4 a BA2 zone. I don't believe that's correct. That's
5 certainly not the practice. So I requested numerous times
6 from Ranjit to provide a formal notice, some sort of letter
7 or formal denial of the application, and he refused to do
8 so. There is no provision in the note regarding what
9 section of the Cambridge zoning ordinance he relied upon for
10 that denial. So I came before you here blind, not even
11 knowing what I'm here to appeal. There is a letter here
12 from Ranjit which now supplies a section of the code. I'm
13 not sure why he refused to provide that previously. So I
14 will be able to address his letter even though I just
15 received it because it's quite short.

16 So there was no reference to the code. The table
17 of use regulations, Section 4.3(5)(f)(1) of which I'm sure
18 the Board is well versed, has this type of use for a
19 restaurant which allows establishments where alcoholic
20 beverages are sold and consumed and where no dancing or
21 entertainment is provided. This dancing and entertainment,
22 as far as I understand, refers to performances, dance --

1 live dance or music type performances, the type you would
2 see at the Lizard Lounge, for example, in the same zone.

3 So the code itself does not actually define
4 dancing and entertainment, but if you look at the following
5 section to which the commissioner refers in his letter which
6 is 4.3(5)(g), it actually does define dancing and
7 entertainment as, quote, dance hall or similar place of
8 entertainment. So that's a separate category. If you were
9 a dance hall or a place of entertainment and that's your
10 primary use, your primary purpose of your business, then,
11 under that section, it is correct that, in a BA2 zone, it
12 would not be allowed. Again, there are establishments that
13 do fit within that category that are in the BA2 zone.

14 So this is a restaurant use. This is not a
15 business that's focused on the provision of dancing or
16 entertainment. There are a few entertainment devices as I
17 believe all establishments in the BA2 zone that have food
18 and drink, they do have music, background music, they do
19 have televisions. That's entertainment. They have a
20 license for that. So the commissioner's statement that no
21 entertainment is allowed in the BA2 zone is very confusing
22 since I believe all food and drink establishments in the BA2

1 zone which -- of which there are many, do actually have
2 entertainment. So nevertheless, this is an accessory use.
3 So under the use regulations, Article 4.2(1)(a), an
4 accessory use shall be permitted where there's not more than
5 25 percent of the gross floor area.

6 This -- there is also, I must note, currently an
7 entertainment license on these premises for this business.
8 So there was issued an entertainment license by the Zoning
9 Board, by the License Commission for one pinball machine,
10 one video game, and two dart boards as well as music and
11 televisions. They are seeking to add one pinball machine,
12 one foosball, and one jukebox. The square footage, the
13 total square footage, of what is sought is only 83 square
14 feet. So for a premises that is 1,652 square feet, that is
15 only about five percent of their gross floor area which
16 would meet the requirements of accessory use even if
17 Ranjit's argument were successful regarding the use
18 category.

19 So as I noted, this decision is grossly
20 inconsistent with the practices of Inspectional Services and
21 the License Commission. The License Commission actually
22 currently issues entertainment licenses as a right without

1 an application. For any common victualer alcohol
2 establishment or non-alcohol establishment in BA2 zones,
3 they are automatically granted TVs and background music.
4 I'm not sure if you're aware of that, but that is something
5 that is happening on a regular basis. And attached to my
6 memorandum, the final page, there is a map.

7 So I took the zoning districts from the Cambridge
8 zoning map, and you can see that there are numerous
9 establishments. There are various BA2 zones throughout the
10 city of Cambridge, but I'm focusing here just on the span
11 just south of Porter Square and just north of Porter Square.
12 We have -- for example, starting from the north, we have The
13 Table which is a restaurant which would have background
14 music. We have Frank's Steakhouse. They have televisions
15 and music. I'm not sure if they have a jukebox. I wasn't
16 able to receive my public records response in time to verify
17 for sure whether they have a jukebox. Gustazo which is new,
18 and my understanding is that they are also in the zone and
19 they have recently been granted live music. We have The
20 Abbey. They have televisions and music. We have Changsho.
21 They also have televisions and music. Temple Bar, same. I
22 can do down the list. They go on and on and on. The Lizard

1 Lounge in Cambridge Commons are in the BA2 zone. The Lizard
2 Lounge is a full-time entertainment venue, live music,
3 spoken word, etc.

4 So I'm just confused why we're here. I'm confused
5 why the zoning -- why the ISD commissioner took this action.
6 I don't see that it's grounded in any legal basis
7 whatsoever. He refused to provide the legal basis. I think
8 that the language in the zoning code is clear that this is a
9 restaurant use that has some entertainment and that that's
10 allowed. I also think that the accessory use Article
11 4.2(1)(a) is also very clear.

12 I'd like to just address Ranjit's letter briefly
13 which is dated today. His argument is that this
14 establishment operates under the second section that I read
15 actually, Section 4.3(5)(g) calling it a bar or other
16 establishment -- this establishment does have a restaurant
17 license. This does not have a tavern license. Where
18 dancing and entertainment is provided. So there is no
19 provision of dancing or any performances. This is a
20 restaurant that has a couple of entertainment devices.
21 What's also confusing is that he says the existing
22 entertainment can remain.

1 The entertainment that's being asked for is
2 basically identical to what it already has, increasing to
3 one more pinball machine and a foosball, machine which are
4 in the same category of entertainment, and a jukebox which,
5 the jukebox, I understand from speaking with my client who
6 spoke with his landlord, that the jukebox was issued a
7 license previously, prior to him purchasing the business.
8 So it was approved on this premises in -- for this use
9 previously. I believe the statement in this letter is
10 incorrect that says that the License Commission denied
11 McCabe Porter's application to amend its entertainment
12 license. That was actually granted. It was Ranjit who
13 denied it.

14 And then even more confusing, the last sentence in
15 the second paragraph, "To the extent there may be other
16 establishments within the district which have entertainment,
17 such entertainment is allowed only as an accessory use up to
18 two days per week, not on a full-time basis." He does not
19 cite any legal authority for this statement. I have no idea
20 where this comes from. I have the accessory use language
21 right in front of me. I don't see anything in there that
22 says that. You know, if he really does plan to take away

1 the entertainment licenses of all of these establishments, I
2 only named a few. There's -- there are many. I can see
3 that this would be quite an upheaval for the business
4 community in Cambridge. So I'm really confused why this is
5 happening, why this argument is being made. Two days per
6 week, there's nothing in the laws that I can see, and he has
7 provided no basis for that statement that an accessory use
8 can only be used two days per week. I don't know where that
9 comes from.

10 He also states here that there was no request from
11 McCabe's. You know, one of my complaints is that there was
12 no formal notice issued here. It's required to have your
13 appeal rights in it. It's required to tell you what --
14 under what section of the statute they make their decision,
15 and we did not receive that. I asked numerous times in
16 writing for a decision, refused -- both Ranjit and Sisia, I
17 believe, refused to provide that. And he states that there
18 was no request from McCabe's to me requesting an answer so
19 that's just incorrect. I have numerous written requests for
20 that.

21 BRENDAN SULLIVAN: Do you have those with you,
22 those requests?

1 KIM COURTNEY: No, but I can provide them.

2 They're email --

3 BRENDAN SULLIVAN: I would have thought that would
4 have been part of the record and part of your submissions.

5 KIM COURTNEY: Those are in the public record.

6 BRENDAN SULLIVAN: As part of your application. I
7 guess --

8 KIM COURTNEY: I only received this letter today
9 so I didn't know that Ranjit made this argument until today.
10 So I wouldn't be able to respond to an argument that I
11 haven't been provided before having --

12 BRENDAN SULLIVAN: I guess, you know, in my past
13 reviewing the case for a start, the zoning district that
14 it's in went to the table of uses, and 4.3(5)(g) which is --
15 that was cited in your letter as 4.3(5), the Commission has
16 ruled that it is governed by G, and you follow that over and
17 it says business A1, A2, A3. And it says, no, the
18 entertainment is not allowed.

19 KIM COURTNEY: It does not say entertainment is
20 not allowed. It says that under category G that type of
21 business is not allowed in a BA2 zone. It does not mention
22 anything about entertainment not being allowed.

1 BRENDAN SULLIVAN: It says where entertainment is
2 provided, dance halls and --

3 KIM COURTNEY: Right, right.

4 BRENDAN SULLIVAN: -- entertainment. But I think
5 that -- and you can interpret that for us, but that
6 entertainment, where it is provided and in the form it says
7 no, then it's not by as of right.

8 KIM COURTNEY: This is a restaurant. This is not
9 a dance hall, and there are no performances being provided.

10 BRENDAN SULLIVAN: Well, again, so in other words,
11 you would differ on your classification of --

12 KIM COURTNEY: It is not classified under G. It
13 is under F.

14 BRENDAN SULLIVAN: All right, well, so then --

15 KIM COURTNEY: I mean, this is how it is --

16 BRENDAN SULLIVAN: My point, after the start --
17 stop, at the licensing and your client was notified by way
18 of licensing that their request was denied, what was the
19 next communication to the building department to -- as to
20 why was this denied?

21 KIM COURTNEY: I asked for a formal notice and an
22 explanation.

1 BRENDAN SULLIVAN: I mean, again, in writing or
2 just a --

3 KIM COURTNEY: In writing. In writing.

4 BRENDAN SULLIVAN: All right, but you don't have a
5 copy there with you?

6 KIM COURTNEY: I can get a copy of that for you.
7 Again, I wasn't provided with this argument until today that
8 he made -- that me falsely states that I did not make a
9 request so -- there's no question that this business
10 operates under (f) (1) and not under G. And Ranjit has not
11 made any presentation that he's arguing to change the use of
12 this establishment.

13 BRENDAN SULLIVAN: Okay. That's it for your
14 initial presentation?

15 KIM COURTNEY: Yes.

16 BRENDAN SULLIVAN: Any questions for the Board at
17 all? Let me read into the record the -- we've all reviewed
18 the application, memorandum of a letter from the
19 commissioner dated May 30. "Dear Members of the Board of
20 Zoning Appeal, I am writing about the appeal filed by
21 McCabe's Porter with the Board on April 26, 2019 appealing a
22 March 26, 2019 decision by me concerning McCabe's December

1 26, 2018 amended application with the Cambridge Board of
2 Licensing Commissions seeking to amend its entertainment
3 license by adding additional entertainment devices at 2046
4 Massachusetts Avenue. I am attaching a copy of the amended
5 application for your convenience. The 2046 Massachusetts
6 Avenue property falls in zone business A2 under Article 4,
7 Section 4.3(5)(g) of the Cambridge zoning ordinance, a bar
8 or other establishment where alcoholic beverages are sold
9 and consumed and where dancing and entertainment is provided
10 and a dance hall or similar place of entertainment are not
11 allowed in the zone business A2.

12 "As a result I added a note in the Inspectional
13 Services Department Viewpoint system on March 26, 2019
14 stating that existing entertainment can remain at McCabe's
15 Porter but additional devices are not permitted. On March
16 29, 2019 the License Commission denied the McCabe's Porter's
17 application to amend its entertainment license by adding
18 additional entertainment. To the extent there may be other
19 establishments within the district which have entertainment,
20 such entertainment is allowed only as an accessory use up to
21 two days per week, not on a full-time basis. McCabe's
22 states in the appeal to the Board that I am required to

1 issue a formal decision on this matter.

2 "However, no existing violation by McCabe's is at
3 issue here, and I am not required to issue an enforcement
4 decision in writing under Section 7 of Chapter 48 where
5 there is no violation and I am merely informing another city
6 department as to whether an activity is allowed in the
7 district. There was no request from McCabe to me requesting
8 an answer as to whether full-time entertainment is allowed
9 within zone business A2, and, therefore, I did not write
10 such a letter to McCabe's. Please let me know if you have
11 any questions. Very truly, Ranjit Singayagam, Commissioner
12 of Inspectional Services."

13 KIM COURTNEY: And for the record, I have noted a
14 number of inaccuracies in that letter previously.

15 BRENDAN SULLIVAN: Hence the disagreement, I
16 guess.

17 KIM COURTNEY: No, this is new. We disagree with
18 --

19 BRENDAN SULLIVAN: Well, both the submissions are
20 new. Yours is new. His is new. I mean, what -- you know,
21 it puts us on the --

22 KIM COURTNEY: My arguments are not new.

1 BRENDAN SULLIVAN: Well, I did not interrupt you,
2 Kim. Please don't interrupt me. Let me complete my
3 statement. And when we get a late submission from you with
4 points of law and so on and so forth, it's difficult for us
5 to digest it on the fly and within a few minutes.

6 KIM COURTNEY: Right. I presented all the points
7 that are in my memorandum. That's just there for
8 convenience, but I presented my verbal presentation.

9 BRENDAN SULLIVAN: Got it. Mr. Commissioner,
10 would you like to respond to any of the points raised?

11 RANJIT SINGAYAGAM: Sure. Thank you, Mr. Chair.
12 Yes, usually when I sign, when the business appearing by the
13 License Commission that requires zoning approval, we grant
14 approval first. I'm not sure why the License Commission
15 granted the license for entertainment. I don't know. But
16 when I came to know that there were --

17 UNIDENTIFIED: We can't hear.

18 UNIDENTIFIED: I'm sorry, Ranjit, we can't hear
19 you.

20 RANJIT SINGAYAGAM: Can't hear. Can you?

21 UNIDENTIFIED: That's better.

22 RANJIT SINGAYAGAM: As I said, usually in the

1 Viewpoint system when somebody is applying for a license, a
2 licensed institution, they need zoning approval. So we sign
3 zoning and then they go ahead with the hearing. I'm not
4 sure how this happened, the approval landed in with five
5 days of full-time entertainment without by zoning. When I
6 came in the morning, I signed and said you cannot have full-
7 time entertainment.

8 The last 30 years I've been doing this and then
9 CDD and I decided that only accessory entertainment allow --
10 zone there doesn't allow full-time entertainments. That's
11 why we allow business this, like two-man, folk music we
12 allowed in the past 30 years. So it's a practice that we
13 used as accessory use, not a full-time use, for a zone -- in
14 a zone where there is no entertainment allowed.

15 In this particular case, they had some -- it's a
16 game, it's entertainment in my view. So they had that game,
17 or so many machines, one of, I'm not sure. But they wanted
18 to increase that. That's why I call the owner of McCabe
19 restaurant, and I didn't know that there was an attorney at
20 that time. So I saw the number on the Viewpoint and called
21 him and said this is the trouble. That's what happened. So
22 this is the practice they are doing for a long time.

1 BRENDAN SULLIVAN: Okay. Could you address the
2 issue that counsel is claiming that it's governed under
3 Section F? You're claiming that it's governed under Section
4 G. Could you address that issue?

5 RANJIT SINGAYAGAM: Entertainment is only
6 mentioned in Section G.

7 BRENDAN SULLIVAN: Okay. The -- did you receive a
8 formal request in writing for an interpretation as to your
9 action?

10 RANJIT SINGAYAGAM: Yes, I think it happened
11 during the end of March which I was -- I was also on
12 vacation from March, I think, 18 to the tenth -- I can't
13 remember the date. Twenty-ninth of March to the tenth of
14 April. But I was not there to answer, started working -- I
15 think Sisia responded back to her.

16 BRENDAN SULLIVAN: Okay. In the normal procedure
17 as far as the allowing of gaming devices, entertainment, in
18 this particular zone we had a case -- have a case previous
19 where they asked for live entertainment and it was denied by
20 this Board. My understanding is that it sort of stops at
21 the corner across from McCabe's unfortunately, and I think
22 that might have been as a courtesy to the elderly housing

1 which is their neighbor. Did you sort of understand it that
2 way?

3 RANJIT SINGAYAGAM: What do you mean by that?

4 BRENDAN SULLIVAN: Well, that the allowing of the
5 entertainment, sort of that that zone ends at the opposite
6 corner from where McCabe's is?

7 RANJIT SINGAYAGAM: I think it's a different zone,
8 if I'm not mistaken.

9 BRENDAN SULLIVAN: On the opposite corner.

10 RANJIT SINGAYAGAM: Porter Square is a business C
11 zone, this is the nature of that zone, B2.

12 BRENDAN SULLIVAN: Okay. And as the accessory use
13 which counsel has raised which is permitted, is that a --
14 found in the code or was that a policy that has been --

15 RANJIT SINGAYAGAM: It's a policy that has been
16 since Mr. Barber was in Community Development when we
17 started that --

18 KIM COURTNEY: I'm sorry, since when?

19 RANJIT SINGAYAGAM: Since Lester Barber who used
20 to work for the community development --

21 KIM COURTNEY: Lester Barber?

22 RANJIT SINGAYAGAM: Yeah. It was almost 35 years

1 ago.

2 BRENDAN SULLIVAN: Yeah, okay.

3 KIM COURTNEY: Shall I hold my questions --

4 BRENDAN SULLIVAN: Yeah, why don't you, Kim, yeah,
5 just? Any questions by the Board at this time?

6 LAURA WERNICK: So I still don't understand why
7 there are TVs and recorded music allowed at these other
8 establishments but not at McCabe's. For instance, you know,
9 at the Cambridge Commons. What's the difference between the
10 two?

11 RANJIT SINGAYAGAM: Well, you're asking me about
12 background radio music and a game?

13 LAURA WERNICK: Yeah.

14 RANJIT SINGAYAGAM: I think games is an
15 entertainment.

16 LAURA WERNICK: And that is not entertainment?

17 RANJIT SINGAYAGAM: That's background music.

18 LAURA WERNICK: And TVs?

19 RANJIT SINGAYAGAM: That's issued by the License
20 Commission. So I'm not sure --

21 LAURA WERNICK: It is -- it does seem like a
22 pretty fine --

1 RANJIT SINGAYAGAM: Yeah, because it's -- when you
2 have entertainment that you're performing, you're working or
3 singing or playing a game or something.

4 LAURA WERNICK: But, like, the music downstairs at
5 the Cambridge Common, at the Lizard Lounge.

6 RANJIT SINGAYAGAM: I'm not sure how that was
7 approved. Cambridge Common. That must be background music.

8 BRENDAN SULLIVAN: Slater, any questions?

9 SLATER ANDERSON: No.

10 JIM MONTEVERDE: Ranjit, this is for you. Just --
11 I'm just looking at the chart. I'm just trying to see the
12 different categories. So -- and if you could just explain.
13 McCabe's Porter is -- serves food, serves drinks?

14 KIM COURTNEY: Correct, it's a restaurant.

15 JIM MONTEVERDE: Restaurant, bar?

16 KIM COURTNEY: It's licensed as a restaurant. It
17 is a restaurant.

18 JIM MONTEVERDE: I understand that. I'm asking
19 what the function is. So --

20 KIM COURTNEY: It's a restaurant.

21 JIM MONTEVERDE: -- does it have a bar, sit-down
22 bar with detached dining --

1 KIM COURTNEY: I'm confused. Your line of
2 questioning -- what's the purpose of your question?

3 JIM MONTEVERDE: Just answer the question. Is
4 there a bar that I can sit at and have a drink?

5 KIM COURTNEY: Is there a bar?

6 JIM MONTEVERDE: Yes.

7 KIM COURTNEY: I'm not aware of any aspect of the
8 zoning law that has anything to do with whether there's a
9 physical bar structure if that's your question.

10 JIM MONTEVERDE: Well, in the category of lunch
11 room, restaurant, cafeteria, it doesn't say bar.

12 KIM COURTNEY: Bar in the zoning does not --

13 JIM MONTEVERDE: Or have --

14 KIM COURTNEY: -- mean a physical bar that you sit
15 at that's an elevated dining surface. That's not what the
16 bar means in the zoning code. In the zoning code, it's
17 referring to a tavern. It would be a tavern license --

18 JIM MONTEVERDE: Whether you --

19 KIM COURTNEY: -- Cambridge.

20 JIM MONTEVERDE: Just explain to me as I walk into
21 the door at McCabe's Porter, if you would, please --

22 KIM COURTNEY: That does not make it fall under

1 Section G if it has a bar.

2 JIM MONTEVERDE: What do I see when I walk in the
3 door?

4 KIM COURTNEY: There is an elevated surface that
5 people can sit at and consume food and drink. That does not
6 make the establishment a legal bar.

7 JIM MONTEVERDE: But otherwise, there are tables?
8 There's a kitchen for serving food?

9 KIM COURTNEY: Yes.

10 JIM MONTEVERDE: Thank you. Ranjit, so the
11 categories we have here under E, lunch room, restaurant,
12 cafeteria, it's a restaurant. F, establishments where
13 alcoholic beverages are sold and consumed where no dancing
14 or entertainment is provided. Your description is the
15 couple devices that are there amount to entertainment.

16 RANJIT SINGAYAGAM: Yes.

17 JIM MONTEVERDE: Correct?

18 RANJIT SINGAYAGAM: Yes.

19 JIM MONTEVERDE: Which is what drives you down to
20 Section G, and unfortunately G ends by saying dance hall or
21 similar place of entertainment which it is not. Correct,
22 counsel?

1 KIM COURTNEY: Correct.

2 JIM MONTEVERDE: Thanks.

3 BRENDAN SULLIVAN: I'm going to open it up to
4 public comment.

5 KIM COURTNEY: Am I allowed to ask my questions
6 and respond --

7 BRENDAN SULLIVAN: No, it'll be opened up to
8 public comment, close public comment, then you can comment.
9 Opening it up to public comment, and the issue before us is
10 really quite narrow. It's not whether or not additional
11 entertainment devices is a good idea, maybe not a good idea,
12 or whatever. It's whether or not the commissioner has
13 correctly ruled that this establishment is governed by
14 Section G and in the 9(b) application before the Licensing
15 Commission. That's the issue before us. It's not whether
16 it's a good idea or not. It's really his decision and his
17 ruling. Let me open it to public comment. If you'd please
18 come forward, identify yourself for the record with your
19 name and address.

20 RUTH RYALS: I'm Ruth Ryals, and I'm here because
21 I am in the neighborhood.

22 UNIDENTIFIED: Your address.

1 UNIDENTIFIED: Get closer.

2 RUTH RYALS: I live in the neighborhood. I --

3 UNIDENTIFIED: Ruth, why don't you just --

4 RUTH RYALS: 115 Upland Road, and it's R-y-a-l-s.

5 And I am probably unusual in my age range in that we are
6 probably out for live music a couple nights a week. It's
7 not McCabe's. It is the Lizard Lounge. It is a lot of --
8 you know, it's Passim's, it's a lot of places in Cambridge.

9 We are also out to eat up and down this section.

10 It's a map. And I also served on the advisory committee for
11 Envision Cambridge and on the economic section of the work
12 group, and I want to read to you one of the goals from
13 Envision Cambridge. "Great commercial districts, preserve
14 and enhance the distinctive character of Cambridge
15 commercial districts, especially its major squares and
16 mixed-use corridors." That's exactly what this is here.
17 I'm also president of Porter Square Neighbors Association,
18 but I'm here personally, not as the organization, but just
19 to tell you I do love this section of Mass. Ave. and spend a
20 lot of time using it, working around it.

21 And I strongly disagree that a game of foosball is
22 entertainment. Entertainment is what happens at Lizard

1 Lounge or in Passim's or Sinclair. That's live music.
2 They're in no way a dance hall or even a bar. They're a
3 place to come like a pub and get food and talk to your
4 neighbors and play -- I don't know what's the difference
5 with having a dart board or foosball. I don't think any of
6 that matters. I find the TVs which you can find in almost
7 any of these restaurants up and down the avenue to be much
8 more abrasive when you're trying to dine than somebody over
9 in the corner playing a game. So I think it's a misreading.
10 I'm not a lawyer. I've spent my life working with lawyers
11 and actuaries and reading the code. Tax partner at one
12 point. It's a mistake to say they fall under G.

13 BRENDAN SULLIVAN: Thank you.

14 RUTH RYALS: Thank you very much.

15 BRENDAN SULLIVAN: Anybody else who would like --

16 RUTH RYALS: It's also a mistake to not send these
17 two people in the room off in another room and come to an
18 agreement that lets us have a nice place to go eat and drink
19 and have a little fun and not bother anybody. Thank you
20 very much.

21 BRENDAN SULLIVAN: Thank you. Anybody else like
22 to speak? Yes?

1 HEATHER HOFFMAN: Hi. Heather Hoffman, 213 Hurley
2 Street. And I'm here as a lawyer who thought that I could
3 read words in an ordinance, and I am baffled that this is
4 licensed under Section F. And where did Section G come
5 from? And how does it suddenly become Section G if you add
6 one more of something that's already there? I am
7 tremendously confused, and this makes no sense to me. So I
8 hope that this Board will come to a decision that actually
9 does make sense because, as you know, there -- the city of
10 Cambridge wants to have eating and drinking establishments
11 all over the place, and so this is not just a decision that
12 applies to one establishment. It will apply all over the
13 city in people figuring out what they can and can't do in
14 all of these establishments. So I hope that your decision
15 will make it clear and will make sense and will make the
16 ordinance make sense. Thank you.

17 BRENDAN SULLIVAN: Thank you. Anybody else who
18 wishes to speak on the matter? All right, we'll close this
19 public comment. Ms. Courtney?

20 KIM COURTNEY: Ranjit --

21 BRENDAN SULLIVAN: Kim, let me just throw this out
22 and you can say yay or nay.

1 KIM COURTNEY: Sure.

2 BRENDAN SULLIVAN: Because you just received
3 Ranjit's letter today. We just received your comments
4 today, your legal analysis. Would it be of any value -- I'm
5 not taking -- just getting your comments here -- for us to
6 step back tonight, let the Board digest both correspondence
7 to us, and then reassemble on another night --

8 KIM COURTNEY: After the hearing is finished, if
9 you decide to continue the matter, that would be your
10 choice. I would prefer to have a decision.

11 BRENDAN SULLIVAN: Tonight? Okay.

12 KIM COURTNEY: Yes, but I would like to continue
13 with the hearing --

14 BRENDAN SULLIVAN: Yeah, yeah, no, that's fine,
15 that's fine. Okay, all right. I just -- throw that out as
16 an option, that's all.

17 KIM COURTNEY: Okay. Commissioner, you stated
18 that usually the zoning is approved first through Viewpoint
19 before a hearing is scheduled on a License Commission
20 application. Correct?

21 RANJIT SINGAYAGAM: Yes.

22 KIM COURTNEY: And did you not receive any request

1 from the Viewpoint system prior to the hearing to approve
2 this matter?

3 RANJIT SINGAYAGAM: As soon as I got the the
4 Viewpoint system requesting review of the denial of this
5 use, I took it up right away. I don't know how the
6 Licensing Commission had a hearing prior to that.

7 KIM COURTNEY: So you think it was the same day --
8 your response was the same day that you received the notice
9 through the Viewpoint system?

10 RANJIT SINGAYAGAM: I think yes.

11 KIM COURTNEY: And you stated that in conjunction
12 with CDD you made a determination of a (sic) unwritten
13 policy regarding accessory uses, correct?

14 RANJIT SINGAYAGAM: Yes.

15 KIM COURTNEY: And so you confirm that that's not
16 in writing anywhere in the zoning ordinance or anywhere
17 else, correct?

18 RANJIT SINGAYAGAM: Yes.

19 KIM COURTNEY: And the individual's name was
20 Lester Barber?

21 RANJIT SINGAYAGAM: Yes.

22 BRENDAN SULLIVAN: Okay, I'm going to let you ask

1 -- come to the Chair if you would.

2 KIM COURTNEY: I'm sorry.

3 BRENDAN SULLIVAN: Yeah.

4 KIM COURTNEY: Okay. It may be difficult if I
5 can't interview the --

6 BRENDAN SULLIVAN: Well, I know, but, you know,
7 again, this is a -- zoning board is not court of law.

8 KIM COURTNEY: Right, it's an informal hearing,
9 and I have to ask -- I can ask you and you can say it again.
10 Is that what you would like to do?

11 BRENDAN SULLIVAN: If you would raise the points.
12 Raise the points that you wish to be --

13 KIM COURTNEY: Are you cutting me off from
14 questioning the commissioner?

15 BRENDAN SULLIVAN: I'm just stating --

16 KIM COURTNEY: That's what it sounds like.
17 Because I have --

18 BRENDAN SULLIVAN: I --

19 KIM COURTNEY: -- a number of points and you asked
20 him a number of questions, and I have a number of questions
21 --

22 BRENDAN SULLIVAN: On direct, yes.

1 KIM COURTNEY: -- about his responses --

2 BRENDAN SULLIVAN: Yes.

3 KIM COURTNEY: -- that are relevant.

4 BRENDAN SULLIVAN: The answer is yes.

5 KIM COURTNEY: Yes what?

6 BRENDAN SULLIVAN: I am asking you to direct your
7 comments to me.

8 KIM COURTNEY: My comments or my questions for the
9 commissioner?

10 BRENDAN SULLIVAN: You direct them to me, Kim.

11 KIM COURTNEY: I have questions for the
12 commissioner. May I ask them?

13 BRENDAN SULLIVAN: Direct them to me. We're not
14 going to keep around, around, and around in circles here.
15 So if you ask --

16 KIM COURTNEY: You want me to ask my questions to
17 you -- I don't have a point. I have questions.

18 BRENDAN SULLIVAN: Then ask me --

19 KIM COURTNEY: I will have points after he answers
20 my questions.

21 BRENDAN SULLIVAN: Ask me the questions.

22 KIM COURTNEY: So the commissioner stated that

1 this unwritten policy that accessory uses -- he actually
2 didn't really articulate what that policy is, but he
3 mentioned something about policy regarding accessory uses.
4 I would like to know more about that policy, I would like to
5 know why it's not written, and I would like to know if it's
6 -- if it has existed for 35 years, why are there all these
7 establishments, every single one of them has entertainment.
8 How is that possible? Is he seriously claiming that all of
9 these businesses now can only operate with entertainment two
10 days a week? Entertainment is music below conversation
11 level, televisions. Those are granted as of right right now
12 by the License Commission. It's not just amusement devices
13 or darts. Entertainment is also live music. And I
14 understand that that may fall under -- may or may not fall
15 under a different category, but that's not what we're asking
16 for. So according to this letter, my reading is that all of
17 these businesses are going to have to stop playing
18 background music in their establishments. I'm really
19 confused. I don't understand.

20 And I also don't understand why I'm not allowed to
21 ask the commissioner questions. I'm an here. I'm
22 representing my client. There is a witness here to testify

1 on behalf of Inspectional Services. You asked him
2 questions, and you are blocking me from asking questions. I
3 would like an explanation for that.

4 BRENDAN SULLIVAN: I will run the meeting the way
5 I feel and that this is not a court of law. This is not --
6 he's not under deposition. And I'm going to ask that your
7 questions that you have, if they -- potentially you're
8 asking questions that really need to be in writing. A
9 formal request --

10 KIM COURTNEY: I made numerous requests for him to
11 explain himself.

12 BRENDAN SULLIVAN: And I asked you to produce that
13 and you have not.

14 KIM COURTNEY: I said I would produce it. You
15 just asked today.

16 BRENDAN SULLIVAN: But you have not.

17 KIM COURTNEY: You just asked for it today at this
18 hearing.

19 BRENDAN SULLIVAN: Well, I would have thought that
20 that would have been in your submissions because you're
21 asking -- in your application you weren't even exactly sure
22 what section you were asking relief under to appeal this

1 decision, and I would have thought that you would have sent
2 a formal request --

3 KIM COURTNEY: I told you I'd be happy to provide
4 you --

5 BRENDAN SULLIVAN: And, again, now we're just
6 point/counterpoint debating the issue.

7 KIM COURTNEY: -- documentation --

8 BRENDAN SULLIVAN: All right, if you could finish
9 up --

10 KIM COURTNEY: I'm very confused with your
11 approach. So, let's see, I have a number of questions here.
12 So it appears to me that the commissioner is trying to
13 change the zoning of my client. He's discussing Section G.
14 My client's operation does not operate under Section G. We
15 have received no notification from the Zoning Department
16 that the use is being changed for my client. So they do not
17 operate under Section G. There is nothing in this code that
18 says anything about two days a week, not full time. This is
19 something that is just coming from him verbally. I would
20 need documentation. You know, he can't make a verbal
21 decision to change someone's zoning on a case-by-case basis.

22 There's a reason why we have a written zoning

1 code. We have the Cambridge zoning ordinance in writing for
2 a reason so that Cambridge businesses know what's expected
3 of them. And from what I've heard today, unfortunately I'm
4 not allowed to ask my questions. And I understand why
5 because it does not appear that the commissioner has an
6 understanding of this zoning code from what I've heard
7 today. So that's not fair --

8 JIM MONTEVERDE: Would you please ask a question?

9 KIM COURTNEY: He told me to make my points.

10 JIM MONTEVERDE: No, no, will you please ask a
11 question? Is there a question in your --

12 KIM COURTNEY: He won't let me ask my questions.

13 JIM MONTEVERDE: You're free to deliver a
14 question.

15 KIM COURTNEY: I was told not to ask my questions
16 and to make my comments and to make my points.

17 BRENDAN SULLIVAN: To the commissioner I said.
18 Ask your questions to the Chair, to the Board.

19 KIM COURTNEY: So I'm not allowed to make points
20 now?

21 BRENDAN SULLIVAN: Those are making points.

22 KIM COURTNEY: Okay. Can you please ask the

1 commissioner for me why background music is not
2 entertainment?

3 BRENDAN SULLIVAN: I think I will ask -- I will
4 answer for him and you can correct me. It is because it has
5 been the policy of the department. Also with -- in
6 consulting with licensing to deem it as such. Is that
7 correct?

8 RANJIT SINGAYAGAM: Yes.

9 KIM COURTNEY: I'm sorry, okay. Again, now I'm
10 confused by your testifying. So there's a policy that
11 background music is not entertainment. So then why do
12 businesses pay a fee to have background music and have to
13 get a license for entertainment?

14 BRENDAN SULLIVAN: Because that's the policy of
15 the licensing.

16 KIM COURTNEY: Okay, you understand that that
17 doesn't make sense, correct?

18 BRENDAN SULLIVAN: It may not.

19 KIM COURTNEY: Okay. The bottom line here is we
20 have a Cambridge zoning ordinance. You have to follow the
21 language of the ordinance. The commissioner isn't allowed
22 to just make things up as he goes along. He's not allowed

1 to make up his own zoning ordinance subsections or
2 definitions without the city council. And that -- it
3 appears that that's what he's trying to do.

4 BRENDAN SULLIVAN: All right. Let me close the
5 testimony part of the hearing. Any questions from members
6 of the Board? Laura?

7 LAURA WERNICK: It does -- along Mass. Avenue,
8 there's a lot of different types of entertainment along
9 Mass. Avenue. It does seem a subjective decision and not
10 appropriate way to make policy or to promote policy. The
11 unclarity about entertainment I think is something that
12 really needs to be addressed more carefully and clarity
13 around if it is -- the license is that -- under F, under --
14 as a restaurant, are there different -- than to the
15 entertainment aspects. It just seems so fuzzy what
16 entertainment is and where it can be allowed and that the
17 language of the ordinance really requires greater clarity
18 than it currently has. It seems that it does make it unfair
19 for businesses trying to pursue economic benefits if they
20 can't understand the ordinance.

21 JANET GREEN: And I --

22 BRENDAN SULLIVAN: Again, maybe just, again, my

1 own personal is that the ordinance says that it is not
2 allowed, but it's like anything else in the zoning
3 ordinance, you know, setbacks, three and a half feet. Even
4 my house is three and a half feet at one point.

5 KIM COURTNEY: I'm sorry, can you speak into the
6 microphone?

7 BRENDAN SULLIVAN: My house is three and a half
8 feet at one point. It's not allowed in the zone. Doesn't
9 mean that you can't apply then for relief. So anyhow, it's
10 not that --

11 KIM COURTNEY: I'm sorry, but --

12 LAURA WERNICK It's the entertainment --

13 KIM COURTNEY: -- may I interject?

14 BRENDAN SULLIVAN: Sorry, no.

15 KIM COURTNEY: I'm not here for a variance
16 application. This is as of right, he's entitled to have
17 this entertainment by the zoning code. This is not a
18 variance application.

19 JANET GREEN: I guess I'm feeling like there are a
20 lot of material that has come up tonight from a variety of
21 sources that we didn't have a chance to examine prior to
22 this meeting and that is being tossed back and forth. And

1 it seems to me that it would be better to have it -- all
2 those materials to look at before we come to a decision in
3 this case.

4 BRENDAN SULLIVAN: Slater?

5 SLATER ANDERSON: I tend to agree with the Chair.
6 I think there is more that I'd like to review out of respect
7 for the commissioner as well as the applicant and their
8 rights in this situation. And there's past files of Ms.
9 Roberty (phonetic) that I'd like to get a sense of, you
10 know, how the property's been interpreted from a use
11 standpoint historically under the zoning code. And there's
12 just -- you know, there's a lot of issues that have been
13 raised tonight. I'm not prepared to make a decision tonight
14 on this.

15 BRENDAN SULLIVAN: Jim?

16 JIM MONTEVERDE: No, I would agree, yes.

17 KIM COURTNEY: So may I in closing then --

18 BRENDAN SULLIVAN: I'm sorry?

19 KIM COURTNEY: -- in closing just make a final
20 closing -- just one sentence?

21 BRENDAN SULLIVAN: One sentence if you want.

22 KIM COURTNEY: Okay, thank you. So it's my

1 position that the commissioner's decision was arbitrary and
2 capricious, not based on substantial evidence, fails to
3 state the grounds for his determinations, I still believe
4 that even after this discussion, and is not supported by the
5 law and should be overturned.

6 BRENDAN SULLIVAN: Considering comments by the
7 members of the Board, considering the submission of
8 documents this evening, and the uncomfortableness of the
9 Board if that's -- any better word than that -- to render a
10 proper and informed decision, I would make a request that we
11 continue this matter to allow both parties, representative
12 of McCabe's counsel, and also the city to augment any
13 additional information, legal analysis, and basis for their
14 decisions to the Board for our review so that we may arrive
15 at a (sic) informed decision. Anything else I should add to
16 that?

17 JIM MONTEVERDE: No.

18 BRENDAN SULLIVAN: Okay, on that motion to
19 continue, all in favor? Now the question is timeframe.
20 Shall we do it --

21 KIM COURTNEY: The next possible meeting. My
22 client has purchased the equipment, and it's sitting there

1 with signs on it saying it can't be used.

2 SISIA DAGLIAN: Brendan, can I just -- I think
3 there are a few --

4 BRENDAN SULLIVAN: Well, we have to assemble the
5 same five people.

6 SISIA DAGLIAN: Yeah. Janet, are you away June 13
7 or --

8 JANET GREEN: I'm --

9 SISIA DAGLIAN: -- June 27? Laura, you're not
10 here and, Janet, you're away.

11 JANET GREEN: On June 13?

12 SISIA DAGLIAN: Correct, and June 27. June 27 is
13 a continued case with your name on it, but I'm not sure if
14 you're here that day.

15 KIM COURTNEY: Sorry, I'm not available June 13.

16 SLATER ANDERSON: Neither am I.

17 JANET GREEN: June 27 is what we're looking at
18 now.

19 SISIA DAGLIAN: And, Janet, you're not here.
20 Okay, and then so July 11, Janet, you're not here. And July
21 25, Jim, you're not here.

22 BRENDAN SULLIVAN: Two weeks from now we have a

1 full --

2 SISIA DAGLIAN: Janet and Laura are not here.

3 BRENDAN SULLIVAN: Are not here. Okay.

4 SISIA DAGLIAN: So August 15 I think is the next
5 date where this --

6 BRENDAN SULLIVAN: And I am not here on the
7 fifteenth.

8 SISIA DAGLIAN: I'm sorry, you're not here.

9 KIM COURTNEY: I'm sorry, I'm a little bit
10 confused. So you're saying that you -- it's your
11 understanding that you need all of the five same members
12 present?

13 BRENDAN SULLIVAN: We need to reassemble this
14 Board that heard this. You can go forward with four members
15 if you wish and not five. Going forward with four is you
16 would need four unanimous votes to support your position.
17 If you have a five-person Board, one member could dissent
18 from your position and you would still seek -- you would
19 still claim relief. You need four --

20 KIM COURTNEY: -- having a second actual hearing
21 or is this going to be merely a vote?

22 BRENDAN SULLIVAN: It would be a -- it's not a de

1 novo, no. It would be a hearing because we would then
2 dissect all the information, any information, any new
3 submittals that we would receive.

4 KIM COURTNEY: So it's May 30. In my opinion,
5 it's unreasonable for my client to have to wait till August
6 15 to have another hearing --

7 BRENDAN SULLIVAN: I understand that, Kim, but,
8 you know, we have to assemble the same five people. Or four
9 out of five people.

10 KIM COURTNEY: And it can't be voted on --

11 BRENDAN SULLIVAN: It cannot. No.

12 KIM COURTNEY: You're sure about that?

13 BRENDAN SULLIVAN: No, that -- so going back to
14 the calendar.

15 SISIA DAGLIAN: August 15 doesn't work.

16 BRENDAN SULLIVAN: I am not here.

17 SISIA DAGLIAN: And so you're not here. So then
18 September 12 is the next --

19 BRENDAN SULLIVAN: September 12?

20 JANET GREEN: I think we've got another on
21 September 12 --

22 KIM COURTNEY: I'm sorry, I think this matter is

1 simple enough we should be able to resolve this here and
2 now.

3 BRENDAN SULLIVAN: Laura, September 12?

4 LAURA WERNICK: September 12 is good.

5 BRENDAN SULLIVAN: September 12?

6 SLATER ANDERSON: Good. It's my wedding
7 anniversary, but I will be here.

8 JOHN HAWKINSON: Mr. Chair, would you think about
9 setting a deadline for submissions?

10 BRENDAN SULLIVAN: That's -- yeah, okay, September
11 12?

12 KIM COURTNEY: It's May 30. It's May 30.

13 BRENDAN SULLIVAN: So this matter will be heard on
14 September 12, 2019 at 7:00 p.m. as a case heard. I would
15 request that any new submissions from either the city
16 presenting their position and/or McCabe's representing their
17 position be submitted to the Board and received no later
18 than 5:00 p.m. on the Monday prior to the September 12
19 hearing and also on the condition that petitioner sign a
20 waiver to the statutory requirement for a decision to be
21 read thereof.

22 KIM COURTNEY: I'm not interested in waiving that

1 right. I would like a decision.

2 BRENDAN SULLIVAN: What is the date?

3 SISIA DAGLIAN: I don't have it with me, the date
4 that --

5 JANET GREEM: The next available?

6 SISIA DAGLIAN: Well, we could do it June 13.
7 There would be three of the five members.

8 (Crosstalk)

9 SISIA DAGLIAN: Okay, June 27? It's just Janet --

10 BRENDAN SULLIVAN: So a decision would have to be
11 read by June 27 without a waiver?

12 SISIA DAGLIAN: I'd have to count through from the
13 application date on onwards. So it's July 26.

14 BRENDAN SULLIVAN: You refuse to sign the waiver?

15 KIM COURTNEY: Well, I haven't seen the waiver,
16 but my understanding is you're trying to make me have a
17 hearing on September 12. And I think it's already

18 unreasonable that my client has had to come before you --

19 BRENDAN SULLIVAN: Sisia, could you provide the
20 waiver for counsel?

21 KIM COURTNEY: -- reasonable for the Board to make
22 a decision today. I think we should be able to have a

1 decision sooner than that. I see no reason why the Board
2 can't convene and make a decision --

3 BRENDAN SULLIVAN: So, again, are you refusing to
4 sign the waiver?

5 KIM COURTNEY: I'm not interested in delaying the
6 matter. I'd like to have --

7 BRENDAN SULLIVAN: It's a simple question, Kim.
8 Yes or no, will you sign --

9 KIM COURTNEY: No, I'm not signing the waiver.

10 BRENDAN SULLIVAN: Fine, that's a simple question.
11 Which brings us back to the Board rendering a decision this
12 evening. Shall I make a motion? Shall I make a motion? I
13 make a motion to approve the appeal of the commissioner's
14 decision regarding the applicant McCabe Porter, LLC. The
15 Board affirms the position of counsel for McCabe that the
16 commissioner ruled incorrectly in denying the granting of
17 additional entertainment devices at the said locus which is
18 2046 Massachusetts Avenue. On the motion to grant the
19 appeal, all those in favor? One in favor. The appeal is
20 denied, not receiving the necessary four affirmative votes.
21 The Board finds that the commissioner properly cited the
22 section pertaining to this particular locus and denying the

1 -- and state -- and the correspondence to the Licensing
2 Commission. The appeal is denied.

3 KIM COURTNEY: Thank you for your time.

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1 (8:46 p.m.)

2 Sitting Members: Constantine Alexander, Brendan Sullivan,
3 Janet Green, Jim Monteverde, Slater
4 Anderson, Laura Wernick, Alison Hammer

5 CONSTANTINE ALEXANDER: All set? Mr. Hope?

6 SEAN HOPE: Good evening, Mr. Chairman, members of
7 the Board. For the record, Sean Hope, Hope Legal Offices in
8 Cambridge. I'm here on behalf of the petitioner. We are
9 requesting a continuance, and we submitted a letter in the
10 file. We are hoping to have a continuance on June 27.

11 CONSTANTINE ALEXANDER: Okay.

12 SEAN HOPE: Says here that --

13 SISIA DAGLIAN: Yeah, we have only one case that
14 --

15 CONSTANTINE ALEXANDER: Okay, June 27 is --

16 SISIA DAGLIAN: Yeah.

17 CONSTANTINE ALEXANDER: It's a case not heard so
18 we don't need to worry about who can be here and who can't.
19 Okay, so the Chair moves that we continue this case as a
20 case not heard until 7:00 p.m. on June 27 subject to the
21 following conditions. One, that the petitioner sign a
22 waiver of time for decision. And if you haven't signed

1 that, you will. Thank you. Before.

2 Second, that the posting sign, which has not been
3 maintained, by the way, up until now, must be maintained for
4 the 14 days prior to the June 27 date as required by our
5 ordinance reflecting the new date, June 27, new time, 7:00
6 p.m. And lastly, to the extent that any modifications or
7 new plans to the dimensional form, to the architectural
8 drawings or the like, they must be in our files no later
9 than 5:00 p.m. on the Monday before June 27. All those in
10 favor of that can say aye. Five in favor, case continued.

11 SEAN HOPE: Thank you.

12 CONSTANTINE ALEXANDER: You don't have to go very
13 far I don't think.

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1 (8:47 p.m.)

2 Sitting Members: Constantine Alexander, Brendan Sullivan,
3 Janet Green, Jim Monteverde, Slater
4 Anderson, Laura Wernick, Alison Hammer

5 CONSTANTINE ALEXANDER: The Chair will now call
6 Case Number 017106, 711 Concord Avenue. Anyone here wishing
7 to be heard on this?

8 SEAN HOPE: Good evening, Mr. Chairman, members of
9 the Board. For the record, Sean Hope, Hope Legal Offices in
10 Cambridge. I'm here today on behalf of petitioner. We have
11 Fo Guang Buddhist Temple. On behalf of the temple, we have
12 project architect Mr. Ben Wang. Spell your name for the
13 record?

14 BEN WANG: Yes. Hi, everybody. Good evening.
15 Ben Wang.

16 SEAN HOPE: You want to spell your full name for
17 the stenographer.

18 BEN WANG: Ben --

19 SEAN HOPE: For her, not for us.

20 MAN JUE: My name is M-a-n J-u-e, Man Jue. Thank
21 you.

22 SEAN HOPE: So this is an application requesting

1 variance relief to construct a second-floor addition to an
2 existing non-conforming commercial structure. So this site
3 is unique in some ways because it --

4 CONSTANTINE ALEXANDER: Bring it -- what is --
5 specifically, I'll make sure the record's clear, what is the
6 relief you're seeking?

7 SEAN HOPE: Sure. So -- and if you would want us
8 to frame it -- So this parcel is located in the Alewife
9 Overlay district. The Alewife Overlay district is broken
10 into six categories, and so this is number three, the
11 triangle district. It's also in the Parkway Overlay
12 district and it has a base zoning district of office one.
13 So for those reasons, the amount of relief might seem large,
14 and I'll go through it. So under Article 5 in the office
15 one, there is right beside you're at setback that you apply
16 to base zoning district. You would -- the existing building
17 is within as well as the proposed second-floor addition.
18 There is also the Parkway Overlay district which has a
19 front-yard setback requirement of 25 feet. The existing
20 structure is two feet from the property line and also the
21 second-floor addition which is the full footprint of the
22 building also would be. So there is that Parkway Overlay

1 variance for front-yard setback.

2 There is also a restriction of yards. There's a
3 yard requirement about building in certain yards area which
4 is part of the Alewife Overlay district. So, again, this is
5 all triggered by the second-floor addition being within
6 certain setbacks. And as you can -- we'll go through -- the
7 second-floor addition is going to comprise the full
8 footprint of the building.

9 CONSTANTINE ALEXANDER: The second floor-addition,
10 if we were to approve it, is that going to extend beyond the
11 frame of the building now or is it just going straight up?

12 SEAN HOPE: So it's just going straight up on the
13 front and sides. On the rear there's a requirement for a
14 stair, and so that stair is going to exceed the rear
15 footprint. But it's not going to be within that required
16 front-yard setback.

17 So there are three zoning districts as I --

18 CONSTANTINE ALEXANDER: The relief -- I'm sorry, I
19 don't do this. The relief you're seeking, frankly, is
20 rather modest in terms of the -- because you're not making
21 the building occupy more of the lot than it now occupies.
22 You're not going to -- and we'll get to that in a while.

1 You're not going to put a commercial use on this property.

2 What you're proposing to use the addition for --

3 SEAN HOPE: That's right.

4 CONSTANTINE ALEXANDER: -- is temporary housing
5 for visiting Buddhist monks.

6 SEAN HOPE: That's right, and members of the
7 temple.

8 CONSTANTINE ALEXANDER: And members of the temple.

9 SEAN HOPE: That's right.

10 CONSTANTINE ALEXANDER: Temporary for members of
11 the temple?

12 SEAN HOPE: So, I mean, the Buddhist monks are --
13 and actually, you know what, do you -- Ben, do you want to
14 speak to how that use would be?

15 BEN WANG: Yeah.

16 SEAN HOPE: You might want to come and use the
17 microphone.

18 BEN WANG: Sure.

19 (Crosstalk)

20 BEN WANG: Very close. Good. The lot's existing
21 of the temple and shows -- that's the footprint. Concord
22 Avenue over here. And there's 14 parking spaces on site by

1 now. That's the distinct plan. We'll have a Buddha Hall
2 with vision room. And the tea house and reception area and
3 central kitchen.

4 SEAN HOPE: And just to be clear, that's the
5 existing --

6 BEN WANG: -- existing condition.

7 CONSTANTINE ALEXANDER: Yeah, that's what it says
8 on the bottom, existing level one.

9 BEN WANG: Thank you. That's -- we can skip that
10 one. That's the proposed second floor.

11 CONSTANTINE ALEXANDER: Now you have an option 1A
12 and an option 1B in the plan. Are you -- one of the
13 questions I'm going to ask tonight is you got to tell us
14 which one.

15 BEN WANG: We have -- this is the one we propose.

16 CONSTANTINE ALEXANDER: 1A?

17 BEN WANG: 1A. Full footprint. The same
18 footprint as existing. So on the second floor there will be
19 -- the darker yellow will be for the monk, nun, and the
20 lighter yellow will be for temporary visiting, short-term
21 visitors. In the front here will be multi-purpose room and
22 the meditation work for monk. So that -- and then obviously

1 we have stairs, (indiscernible) and the elevator. So any
2 more questions?

3 CONSTANTINE ALEXANDER: Not right now.

4 BEN WANG: Okay. And initially the rendering of
5 the exterior. Thank you.

6 CONSTANTINE ALEXANDER: That's the existing
7 building?

8 BEN WANG: That's the existing building, and the
9 proposed will be exactly the same footprint as right now,
10 and we'll have solar panel and roof terrace and also some
11 screen wall, art gallery, calligraphy, photography for the
12 Buddha images, those are on sight.

13 CONSTANTINE ALEXANDER: That's just option 1B.
14 You said you're not going to do that.

15 BEN WANG: No, that's just another view, option
16 1B. That's the same story.

17 SEAN HOPE: Is it -- the distinction with the
18 fence?

19 BEN WANG: Yeah, yeah.

20 SEAN HOPE: So in option 1A and 1B, the difference
21 is not the building and where it sits. It's actually the
22 landscaping and the fencing. And part of the context, to

1 jump in, so this application, if the Board approves it, will
2 have to go the Planning Board. This is an area of planning
3 concern. So as we first developed the drawings, we were
4 looking -- where zoning might focus on the front-yard
5 setback, we looked at the whole lot trying to develop it.
6 Part of what we're trying to do in terms of softening some
7 of the streetscape has to do with the Alewife Overlay goals
8 and guidelines. And so one of the guidelines or the goals
9 of the Alewife Overlay district is to create active
10 streetscapes another is for water retention and stone water.
11 This is an area that gets lots of stone water. And the
12 third is to create a mix of retail uses.

13 So while the site is almost -- has no green space,
14 it's all hard top and parking, we anticipated the Planning
15 Board was going to want us to soften at least that first 25-
16 foot setback area. So I think the difference between the
17 two plans has more to do with design rationale than it does
18 to do with what zoning would have for a footprint. But I
19 think it's clear to the Chair we want to make sure that if
20 you were to approve it, the right plans are approved.

21 CONSTANTINE ALEXANDER: Let me ask the members of
22 the Board. Do you care whether we approve a plan with the

1 fencing or not or do we just leave it to the Planning Board?

2 I'm fine with doing what you've suggested --

3 SLATER ANDERSON: I'm fine. Yeah, we're focused
4 on the building.

5 CONSTANTINE ALEXANDER: Yeah, on the building.
6 got to be sure we're all on the same page.

7 SEAN HOPE: And so I did want to address --
8 because when we started this, we did look at the Parkway
9 Overlay recognizing that, although it was passed over ten
10 years ago, it is zoning, it is an overlay, and there was a
11 reason behind it. I think one of the parts about this lot
12 as opposed to other lots is there was an existing structure
13 on there. And so the idea is for new development or a
14 demolished site, you are able to build the building 25 feet
15 back from the street. That would allow for green, open
16 space, permeable space. That additional permeable space
17 serves one of the major goals of the Alewife Overlay
18 district which is to have more permeable area.

19 In this case, whether we had the building set back
20 25 -- the second story addition 25 feet or not, it would not
21 change the permeable area, it wouldn't change any of the
22 goals of the Alewife Overlay district. We did do some

1 outreach. We reached out to our neighbors, and I did see
2 some letters of opposition in the file. But they all
3 focused on environmental factors. And so I would say if we
4 were building a new building that didn't meet the 25-foot
5 setback, those concerns would be valid. We would be taking
6 potentially green, open space and putting in a building and
7 hard space.

8 In this case there is nothing in terms of
9 environmental that's impacted by this. This is -- as Mr.
10 Wang represented, this is a religious institution. It's a
11 temple. This is their ability, as they've grown in their
12 services, to be able to grow and add additional services to
13 the monks and to the different members of their temple. And
14 I believe this -- well, the Planning Board did a review of
15 this application and there's a letter of support in the file
16 where they looked at this and they said that the proposed
17 addition is consistent with the Alewife Overlay goals and
18 the goals of Envision. And not to go far into Envision but
19 Envision was a city-wide process that studied different
20 areas. And, again, they looked at this area, furthered the
21 goals, but they also talked about a diversity and mixture of
22 uses. The other thing was about connecting active

1 streetscapes, and I do think that there's nothing that we're
2 proposing here that's inconsistent with the Alewife Overlay
3 district or the Concord-Alewife Plan.

4 CONSTANTINE ALEXANDER: I'm going to suggest to my
5 fellow Board members when we come to a vote that we put a
6 condition on this property that in no event can this
7 building that's -- that we're going to be approved tonight,
8 that we will, that can be used for commercial purposes.
9 It's only going to be used for temporary living space for
10 traveling temple monks. That's what you said in your
11 application. My concern only would be at some point the
12 temple succeeds, you move onto a bigger property somewhere
13 else, and some big retail -- a retail operation moves in and
14 it could adversely affect the neighborhood. So that's why I
15 want to limit -- should we grant the relief, limit the
16 relief for the temple purposes and for no other purpose.

17 SEAN HOPE: I think that's appropriate. I just
18 want to make sure that the term "monks," there's not some
19 other term --

20 BEN WANG: Well, right --

21 SEAN HOPE: Is that --

22 BEN WANG: -- we should ask the -- Man Jue. You

1 want me to translate the Chinese to you? Just explain.

2 CONSTANTINE ALEXANDER: You have to speak up.

3 UNIDENTIFIED: Yeah, there's a mic.

4 CONSTANTINE ALEXANDER: So the audience can hear
5 too.

6 MAN JUE: We have regents that -- we are temple,
7 Buddhist temple, not commercial. We just --

8 CONSTANTINE ALEXANDER: No, I know that.

9 JANET GREEN: Are you a nun?

10 MAN JUE: Yes, I'm nun. I hope I was monk, but
11 I'm nun. Buddhist nun.

12 CONSTANTINE ALEXANDER: What I'm saying is -- and
13 I'm picking up what your counsel has presented in his
14 application -- that you're building the second floor to
15 provide temporary living space for temple monks. And that's
16 it, not for commercial space. And I want to be careful,
17 should we grant you the -- grant the relief you're seeking
18 tonight, that if at some point in the future this building
19 ceases to be used as a Buddhist temple, that no commercial
20 building is going to move in here at least without being
21 back before our Board and getting relief. That's my only
22 point.

1 MAN JUE: No, because we have nearly one million
2 Buddhist followers and we have 200 temples around the world.
3 And some member, they come from different country and they
4 stay here for a few, maybe one or two --

5 CONSTANTINE ALEXANDER: No, I understand that. We
6 have no problem with that.

7 MAN JUE: Is it commercial?

8 JANET GREEN: That's good. No, that's not
9 commercial.

10 CONSTANTINE ALEXANDER: No, that's not commercial.

11 JANET GREEN: That's not commercial. That's okay.
12 That's --

13 MAN JUE: There's no commercial. Temple.

14 CONSTANTINE ALEXANDER: Yeah, just want to be
15 sure, no commercial --

16 SEAN HOPE: Also, I think the restriction is
17 appropriate and that's what their intention is. I think --
18 before you open the public comment, could I just -- maybe to
19 give some perspective as well about this 25-foot setback?
20 So there's a 25-foot Parkway Overlay setback. This is a lot
21 in an area that allows for an FAR of 1.5. So it allows for
22 -- and also for heights up to 55 and 80 feet. So just in

1 the context of that 25-foot setback, they were envisioning
2 that you'd have a much larger building on some of these
3 lots. So this is only going to be the two stories. It's
4 going to be still 40-plus feet, but it's far below what
5 could happen on the site.

6 CONSTANTINE ALEXANDER: Well, just to put numbers
7 to it, I think it's important for our Board to know, the
8 height of the building, should we grant you the relief, will
9 go from 14 feet to 42 feet. You're going to add 28 feet of
10 height to the building. But as you pointed out earlier, the
11 ordinance allows you to go to 55 feet. So you don't need
12 any zoning relief for that.

13 SEAN HOPE: That's right, yeah. I just wanted to
14 give the Board some context of what the site could have and
15 what the regulations were intending. That's it.

16 CONSTANTINE ALEXANDER: Questions from members of
17 the Board?

18 JIM MONTEVERDE: I just have -- oh, sorry, I just
19 have one. The basic zoning is office one?

20 SEAN HOPE: Yeah, the base zoning is office one,
21 that's right.

22 JIM MONTEVERDE: And is the residential use,

1 however you want to qualify it, allowed in office one?

2 SEAN HOPE: Yes, it's an allowed use.

3 JIM MONTEVERDE: You consider this a lodging
4 house?

5 SEAN HOPE: No, I do not.

6 JIM MONTEVERDE: It's a different --

7 SEAN HOPE: Yeah, so there is a -- 4.33(a)(1) and
8 (3) talks about monastery or housing for religious purposes,
9 and that is the difference between a lodging house, one that
10 would be commercial and would be regulated differently,
11 versus for -- So they would have to maintain their religious
12 affiliation and then that housing that's associated with
13 that religious use.

14 JIM MONTEVERDE: And that use, so it would have to
15 be for religious purposes.

16 SEAN HOPE: That's right. So it's similar to the
17 restriction the Chair talked about. Also, we would be
18 violating our zoning if we somehow made it used for other
19 purposes and it probably would be interpreted as a lodging
20 house at that point.

21 JIM MONTEVERDE: Thanks.

22 CONSTANTINE ALEXANDER: Any other questions from

1 members of the Board at this point? I'll open the matter up
2 to public testimony. Is there anyone here who wishes to be
3 heard on this matter? Sir?

4 JOHN CHUN: Sit down here or should I stand?

5 CONSTANTINE ALEXANDER: Whatever -- wherever you
6 prefer. Make sure you speak into the microphone so people
7 can hear.

8 JOHN CHUN: Good evening, everyone. My name is
9 John Chun, C-h-u-n. I'm from 48 Loomis Street in Cambridge
10 Highlands. And just going back to Mr. Hope's statement that
11 he reached out to the neighbors, but we never got any word
12 from Mr. Hope. I don't know whether he reached out to any
13 of the residential neighbors in the area, but we only got to
14 find out -- find this out through the -- your posting on the
15 city website.

16 I am here to oppose the proposal here, the
17 petition. One reason is that Cambridge Highland neighbors,
18 the residents have a high stakes in the development of the
19 Alewife area, both the quadrangle as well as the triangle
20 area. And one thing that we want to make sure is that, as
21 Mr. Hope stated, there's a 25-foot setback requirement, and
22 that is something we consider to be very important to

1 preserve the parkway environment of Concord Avenue. And
2 when we say the environment, we're not just about the green
3 space or air quality. We're talking about the ambience,
4 preserving that. When you're driving through Concord Avenue
5 next to Fresh Pond, we want to make sure that there is that
6 parkway ambience in the area, and having that 25-foot
7 setback is a very important aspect. In fact, the building
8 right next to it, the Mt. Auburn Medical building has that -
9 - the setback for the green space, and there is a drastic
10 difference. As you can see there, as we're driving through
11 the neighborhood here on Concord Avenue, there is a dramatic
12 difference as you're going through this proposed building
13 here with the second floor now and then going through the --
14 next to that, the medical building, with the trees and the
15 green space there. It makes a big difference.

16 And in fact, I brought a map from the city showing
17 the different layouts of the buildings on Concord Avenue.
18 And, yes, there are a few non-conforming buildings there
19 without the proper setbacks. However, we as neighbors, we
20 like to push for requiring the setbacks for any re-
21 development or new development in the area. Otherwise, this
22 building will be there with the second floor for decades to

1 come, and that means that we're not going to have a proper
2 parkway there for -- in our lifetime. And we'd like to see
3 that change. And I've been active in Envision activities as
4 well, and we are in the process of developing this area now.
5 And I think this is the only chance that we can enforce this
6 setback requirement and then making sure any other non-
7 conforming buildings will become conforming in the future as
8 well.

9 And one more thing I'd like to point out is that
10 behind the building area there, there are actually the
11 police station as well as ambulance station back there. And
12 when they come out, they actually come through -- there's a
13 driveway right behind this temple here. When they come out,
14 they sometimes bolt out of it with their lights on. Now
15 they -- it's hard to see the pedestrians or bikes or even
16 cars coming from Concord Avenue as these emergency vehicles
17 exit there. And not having that setback is blocking the
18 view of those vehicles, whereas if you go and then build a
19 setback with the green space, then I believe that we will
20 have a safer neighborhood with that -- those emergency
21 vehicles coming up from there.

22 CONSTANTINE ALEXANDER: Thank you. I -- pardon my

1 ignorance, but what I don't understand is right now you
2 don't have a 25-foot setback.

3 JOHN CHUN: Correct.

4 CONSTANTINE ALEXANDER: 4.4 feet, one inch or
5 something like that.

6 JOHN CHUN: Yes, yeah, yeah.

7 CONSTANTINE ALEXANDER: If we grant relief
8 tonight, that's -- we're not going to reduce the setback any
9 farther. It's still going to be 4.1. It's just going to be
10 the structure that is in that parkway is going to be higher,
11 28 feet higher.

12 JOHN CHUN: Right, correct.

13 CONSTANTINE ALEXANDER: But we're not going to
14 intrude on the setback anymore than what's there right now
15 should we grant relief.

16 JOHN CHUN: Right. However, any -- so they
17 purchased the building back in 2016, and then, by then, the
18 zoning was already in place, this Alewife Overlay
19 subdistrict, as well as, you know, the -- all the zoning
20 that's in place today was in place back in 2016. And when
21 they purchased the building, they would have known that they
22 -- any changes like this that's -- this coming up here would

1 have triggered this kind of a variance to take place. So
2 one thing that we are asking as the residential neighbors in
3 the area is that whenever this type of a variance petition
4 comes up, we'd like to be notified because we are
5 stakeholders of the neighborhood here.

6 And then I looked at all the people that -- the
7 parties they notified, but they are all commercial property
8 owners in the area. They don't really have much stake of
9 the setback requirement, whereas, for residential neighbors,
10 where we drive through the neighborhood all the time, it is
11 an important agenda for us. And then we are also looking
12 out for any development going up in the quadrangle as well
13 as the triangle as part of Envision and any future
14 development.

15 So, something that we'd like to ask of this Board
16 tonight is that please consider that this -- your decision
17 that you're making tonight will have decades of impact to
18 the people driving through that parkway. Are we going to be
19 turning this into a parkway or are we going to allow these
20 non-conforming buildings to stay in the footprint going
21 forward for any other buildings? Therefore, we're not going
22 to have the chance to build this Concord Avenue as a parkway

1 at sometime -- you know, sometime in the near future.

2 CONSTANTINE ALEXANDER: Thank you.

3 JOHN CHUN: Thank you.

4 CONSTANTINE ALEXANDER: Thank you. Anyone else
5 wishes to be heard on this matter? Apparently not. We have
6 a bit of correspondence in our files. We have a letter from
7 Mr. Chun. I don't need to read it because you've already
8 said it.

9 JOHN CHUN: Yes, thank you.

10 CONSTANTINE ALEXANDER: We have a memo from the
11 Planning Board. "The Planning Board has reviewed the
12 variance request to waive the setback requirements in the
13 Parkway Overlay district and discussed the modest proposal
14 for a single-story addition over the existing building. The
15 Planning Board supports the application as it is in keeping
16 with the nature of the existing area and goals of the
17 district. The design of the entire project adequately
18 serves the goals of the Parkway Overlay district." And then
19 we have a number of petitions and letters, all in
20 opposition.

21 I'll just read the preamble to the petition. I'll
22 try to identify how many people have signed it. "The

1 undersigned hereby petition the Board of Zoning to deny the
2 appeal for a variance relief by Fo Guang Buddhist Temple at
3 711 Concord Avenue. The setback requirements by the current
4 zoning for the Concord Avenue Parkway subdistrict within the
5 Parkway Overlay district are crucial for the environment and
6 the neighborhood and for preserving Concord Avenue as a
7 parkway. All new development and re-development should
8 conform to the zoning." And as I said, there's -- signed by
9 four people, three more is seven, four more is 11 plus four
10 is 15 plus two is 17. So we have 17 people who have signed
11 this petition, and then we have an email from Ann Tennis, T-
12 e-n-n-i-s who resides on Griswold Street.

13 She says, "I am writing to you to oppose the
14 appeal submitted by Fo Guang Buddhist Temple at 711 Concord
15 Avenue. Preserving the required 25-foot green setback along
16 Concord Avenue is important for the environment and the
17 neighborhood." We have an email from Vivian Shu, S-h-u, who
18 resides at 63 Loomis Street, and it says -- it's quite
19 similar -- "I am writing to you to oppose the appeal by the
20 petitioner. Preserving the required 25-foot green setback
21 along Concord Avenue is important for the environment and
22 the neighborhood. Many people use the sidewalk. With

1 future development, many more will do so." And then another
2 from Amy Flax, F-l-a-x, who resides at 86 Normandy Avenue.
3 Again, it's the same point, oppose the appeal because we
4 need to preserve the required 25 green setback along Concord
5 Avenue. And that's it. There are no letters, I believe, of
6 support. I will close public testimony. Anything further
7 you want to --

8 SEAN HOPE: So I just would want to point out when
9 I looked at the emails and I looked at portions of the
10 petition, there are some overlaps and there are some people
11 who wrote their own email and signed the petition. I just
12 wanted to clarify that.

13 Also, it seems as if there -- from the letters and
14 what I've heard that if the -- there's an idea that if the
15 Board denied the relief, somehow there would be a 25-foot
16 green yard setback, and I think that's just -- that's not
17 understanding either the plans or -- and I can understand
18 when neighbors for a setback, they want to see it developed.
19 And any new development would have to be -- to have that,
20 and frankly, we wouldn't be here if they were going to re-
21 develop the site and try to build it in place. The only
22 logical reason why we have it because there is a logic to

1 the existing building. We're going to be using the existing
2 footprint, and there is no as a right, even if you pulled it
3 back, because of the base zoning district, there is not a
4 functional second-floor addition that wouldn't still need
5 relief from this Board.

6 CONSTANTINE ALEXANDER: Point well taken. The
7 fact of the matter is the argument for the 25-foot setback
8 should have been made when the original zoning relief was
9 granted to build the structure. But now the structure's
10 been built legally, and now you're not looking to, in any
11 way, reduce the setback. You just want to go higher as I've
12 said several times. So I'm frankly at a loss to understand
13 the opposition. I think there's a misunderstanding, but I
14 don't see the basis for the opposition in my opinion. And
15 I'm prepared to vote in favor of the relief you're seeking.
16 Slater?

17 SLATER ANDERSON: Is there a scenario where the
18 second floor is set back by the setback? I mean, how does
19 that affect the plan?

20 SEAN HOPE: Yeah, so we did look at that, setting
21 the building back. So, one, in terms of the program and
22 what we're trying to accomplish, it would require a second

1 and third story, but that still would be in the right yard
2 setback. So we would still be here for relief. Even if we
3 met the front, we would still have to be -- to get setback
4 relief. So that's one.

5 Two, the stair, having two sets of stairs in that
6 footprint meeting the 25-foot setback, would really eat up a
7 lot of usable space. So in terms of the quantity of
8 bedrooms for the monks and the nuns that would be visiting
9 as well as the meditation room which is a big important part
10 of what they're looking to accomplish, you wouldn't be able
11 to do that. But we also did explore using the basement.
12 You know, they have a full basement, and, again, because of
13 the high water table, the soil conditions in that area, and
14 also a lot of that space would be using living quarters, it
15 just didn't make any sense.

16 So, when we looked at the structural limitations,
17 the need for space, and then also, frankly, there's -- this
18 is a temple and resources are not the same as a market re-
19 development. There was a practicality toward building up on
20 the existing footprint for cost as well as efficiencies.
21 But we did explore it.

22 CONSTANTINE ALEXANDER: Further questions?

1 Anybody else have questions? Ready for a vote? Okay, the
2 Chair moves that we make the following findings with regard
3 to the variance that's being sought. That a literal
4 enforcement of provisions of the ordinance would involve a
5 hardship to the petitioner, such hardship being that the
6 petitioner is in need of additional space to further its
7 religious mission in terms of providing the temporary living
8 space for traveling temple monks.

9 And, therefore, so long as this property is used
10 for religious purposes, there is a need -- there is a
11 substantial hardship if we don't grant the relief. The
12 relief is -- somebody stole some pages from my book. I'll
13 figure it out later. I can do it from memory. That the
14 relief is due to -- that there is -- to the nature of the
15 existing structure and its location on the lot. Therefore,
16 there is a need for the zoning relief that's being sought
17 and that relief may be granted without substantial detriment
18 to the public good. In fact, what is being done will be --
19 promote a further use -- religious use of this property
20 which is done in -- consistent with past use of the
21 property.

22 So, the Chair moves we grant the variance

1 requested on the condition that the work proceeds in
2 accordance with these plans submitted by the petitioner and
3 initialed by the Chair and subject to the following
4 condition or conditions. That the additional space that's
5 being proposed on the second floor may only be used as
6 temporary living space for traveling temple monks and,
7 further, that there be no commercial use of the second floor
8 either for office or retail space regardless of who owns the
9 property. All those in favor, please --

10 SLATER ANDERSON: I think you might want to
11 clarify monks and nuns.

12 JANET GREEN: Yes, I was just going to say that.

13 CONSTANTINE ALEXANDER: I'm sorry?

14 MULTIPLE: Monks and nuns.

15 SLATER ANDERSON: And nuns.

16 CONSTANTINE ALEXANDER: I'm sorry. I'm reading
17 from Sean's statement. He's the guy you point the finger
18 at.

19 JOHN CHUN: We don't discriminate

20 CONSTANTINE ALEXANDER: Okay, yeah, thank you,
21 monks and nuns. All those in favor, please say aye?

22 JOHN CHUN: Mr. Chairman?

1 CONSTANTINE ALEXANDER: Yes?

2 JOHN CHUN: Question for you, though. If the
3 building were to go on sale, wouldn't you have some
4 condition of that not being able to be sold for any
5 commercial purposes?

6 CONSTANTINE ALEXANDER: If they put this building
7 up for sale and they tore down the second floor, they could
8 sell that building for -- no problem. But if they're going
9 to keep the second -- the buyer is going to keep the second
10 floor, they'd have to come back before us.

11 JOHN CHUN: Well, so could that be added to the
12 condition that you just --

13 CONSTANTINE ALEXANDER: That's the way it works.

14 JOHN CHUN: I'm sorry?

15 CONSTANTINE ALEXANDER: That's the way it works.
16 The condition is only applying to -- I'm limiting -- the
17 Board is limiting the second -- we're going to allow the
18 second floor for a limited purpose, temporary living space,
19 etc.

20 JOHN CHUN: Whoever -- no matter who owns it?

21 (Crosstalk)

22 CONSTANTINE ALEXANDER: Okay. We take the vote?

1 I got interrupted.

2 (Crosstalk)

3 CONSTANTINE ALEXANDER: Thank you. Ready? All
4 those in favor, please say aye. I am in favor. Relief
5 granted.

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1 (9:24 p.m.)

2 Sitting Members: Constantine Alexander, Brendan Sullivan,
3 Janet Green, Jim Monteverde, Slater
4 Anderson, Laura Wernick, Alison Hammer

5 CONSTANTINE ALEXANDER: The Chair will call Case
6 Number 017107, 216-218 Lexington Avenue. Anyone here wish
7 to be heard on this matter? You're seeking two forms of
8 relief, a variance --

9 KELLY BOUCHER: We're seeking both a variance and
10 a special permit, yes. And I got some small sets which I
11 find are sometimes easier to read than --

12 CONSTANTINE ALEXANDER: Are these the same --

13 KELLY BOUCHER: They're exactly the same, just
14 little. My name is Kelly Boucher, B-o-u-c-h-e-r, and my
15 address is 30 Bow Street in Somerville, Massachusetts. And
16 you -- and these are the homeowners who will introduce
17 themselves as well.

18 NISHA SMOLENSKI: So I'm Nisha Smolenski --

19 CONSTANTINE ALEXANDER: You got to get close. You
20 got to get really close.

21 NISHA SMOLENSKI: And I'm Nisha Smolenski. My
22 address is --

1 THE REPORTER: Could you spell that, please?

2 NISHA SMOLENSKI: Yes, N-i-s-h-a S-m-o-l-e-n-s-k-
3 i, 216-218 Lexington Ave., Cambridge.

4 THOMAS SMOLENSKI: And my name's Thomas Smolenski,
5 S-m-o-l-e-n-s-k-i. Same address, 216-218 Lexington Ave.

6 CONSTANTINE ALEXANDER: Okay, so the variance case
7 first and then we'll go to the special permit.

8 KELLY BOUCHER: Great. We're here today for both
9 a variance and a special permit, and I'll take a minute to
10 explain why. The existing house is a two-family residence
11 located in Res. B on Lexington Street. The existing lot is
12 less than 50 feet wide, and because of that, the house does
13 not have a driveway or parking spaces. So it's existing
14 non-conforming for parking, and it's also non-conforming for
15 width and setback. So the lot is only 40 feet wide, but
16 we're not allowed to use the narrow lot rule because it's
17 bigger than a 5,000-square-foot lot. So we still need to
18 meet a sum of 20 setback.

19 And we're coming for two things. The first is to
20 get a variance. The existing house is a little bit too tall
21 as it is, and although we're not proposing to raise the roof
22 in any way, we are proposing window wells and an area way to

1 the basement that will change the average grade and,
2 therefore, make the building effectively taller from average
3 grade but not taller from the street.

4 CONSTANTINE ALEXANDER: The purpose of the
5 additional window wells is?

6 KELLY BOUCHER: Part of it is so that they can use
7 the living space in the basement. Right now there are not
8 egress windows. It does not meet building code. They're
9 adding an area way for bike storage room as well. So they
10 want to be able to get their bikes in and out without
11 struggling through a bulkhead. So that's the reason why
12 we're proposing the variance.

13 The special permit, if you go to the site plan
14 which is on page A11, on the top is our proposed site plan,
15 and you can see the red setback lines. So on the left side,
16 our existing setback is 8.4 and on the right side, in order
17 to comply with a sum of 20, we would need an 11.6 side yard
18 setback which we don't have in the existing building. All
19 of our proposed addition space is within the setback so
20 we're not increasing any non-conformities in that way, but
21 it means on the right side any fenestration, windows, doors
22 require special permit.

1 CONSTANTINE ALEXANDER: You mentioned in your
2 advertisement that -- let's find it -- your fenestration --
3 you need a special permit for fenestration changes within a
4 setback. You touch that. Alteration and enlargement,
5 including dormer in a -- to a non-conforming structure. Are
6 you -- tell me about the enlargement of the dormer and and
7 will it --

8 KELLY BOUCHER: Well, I'll talk about the whole
9 enlargement just in general. So right now the house has a
10 big main box and a small back ell. The back ell is in bad
11 shape. It doesn't have a foundation. Structurally it's not
12 really worth saving. So what we're proposing to do is fully
13 rip the back ell off and not retain any of that square
14 footage for our renovation and put back an addition that's
15 25 -- not more than 25 percent of the original main house
16 we're keeping which is the --

17 CONSTANTINE ALEXANDER: Which is why you need the
18 special permit?

19 KELLY BOUCHER: Yes. So if it -- we weren't going
20 to take this part down, we might not need the special
21 permit. But because we really don't want to have to save --

22 CONSTANTINE ALEXANDER: I understand why you need

1 a special permit, but will the dormer, as modified by virtue
2 of what you're proposing, not comply with the dormer
3 guidelines?

4 KELLY BOUCHER: It will comply with the dormer
5 guidelines, and the house overall is not over it's FAR but
6 it is an expansion of a non-conforming use.

7 CONSTANTINE ALEXANDER: So you -- it's your
8 representation to this Board that your modified dormer will
9 comply with the dormer guidelines?

10 KELLY BOUCHER: Yes. It's only 15 feet long. It
11 does setback from both the ridge and the eaves as it's
12 supposed to.

13 CONSTANTINE ALEXANDER: Thank you.

14 KELLY BOUCHER: So it will, and it's not in the
15 setback. The windows are not in the setback either.

16 CONSTANTINE ALEXANDER: Thank you very much.

17 KELLY BOUCHER: So the dormer technically would be
18 as a right, but as part of our whole application, it's one
19 of the things we're asking permission for today.

20 CONSTANTINE ALEXANDER: That's it?

21 KELLY BOUCHER: That's all --

22 CONSTANTINE ALEXANDER: Questions from members of

1 the Board?

2 JIM MONTEVERDE: Just one. Just -- I think the
3 drawings are clear. You're taking a current two-family?

4 KELLY BOUCHER: Yeah.

5 JIM MONTEVERDE: Dwelling, converting it to a
6 single family, renovating to convert it to a single family,
7 is that --

8 KELLY BOUCHER: It will remain a two family.

9 JIM MONTEVERDE: Remain two?

10 KELLY BOUCHER: Right now it's broken up sort of
11 in an awkward position, but it will have the main house and
12 the upper floors and it will have a basement apartment as
13 the second --

14 JIM MONTEVERDE: Oh, so the basement is the
15 apartment?

16 KELLY BOUCHER: Yes. Will be when proposed. It
17 isn't now. It's --

18 JIM MONTEVERDE: I understand, thanks.

19 CONSTANTINE ALEXANDER: Questions from members of
20 the Board? I'll open the matter up to public testimony. Is
21 there anyone here wishing to be heard on this matter?

22 Apparently not. We do have some correspondence. We have an

1 email from James Wood and Claire Messud, M-e-s-s-u-d, who
2 reside at 212-214 Lexington Avenue. "As the owners and
3 residents of 212-214 Lexington Avenue and direct neighbors
4 of Thomas and Nisha Smolenski who live at 216-8 Lexington
5 Avenue, we are delighted to write in support of their
6 petition to expand and renovate their existing home. We
7 have looked at the architect's drawings and we like what we
8 see. These two houses, ours and the Smolenskis', were
9 clearly built at a time by the same builder. They are
10 identical. We renovated our house two years ago, and it is
11 much improved inside and out. It's fitting that the
12 Smolenskis are now doing the same. We are pleased to
13 support them in their petition."

14 We have an email from Joan Sawyer. "I live at 215
15 Lexington Avenue in Cambridge, directly across the street
16 from the Smolenskis at 216 Lexington. I am writing to let
17 you know that my husband and I are in full support of their
18 petition to improve their home. They are great neighbors,
19 and the house could use an appropriate update to keep up
20 with the other updates on the block."

21 An email from Marydale, one word M-a-r-y-d-a-l-e,
22 DeBor, D -- capital D-e -- capital D small E capital B-o-r.

1 "I live at 217 Lexington Avenue, directly across the street
2 to the Smolenski family. I write in support of their
3 proposed renovation at 216-216 (sic) Lexington Avenue. The
4 renovation will be handled by their very able designer and
5 contracting team and will be a wonderful enhancement to our
6 lovely neighborhood." And that's it. There are no letters
7 of opposition.

8 I will now close public testimony unless you have
9 anything further to add.

10 JANET GREEN: No.

11 CONSTANTINE ALEXANDER: Ready for a vote? Start
12 with the variance first. The Chair moves that we make the
13 following findings with regard to the variance being
14 requested. That a literal enforcement of the provisions of
15 our ordinance will involve a substantial hardship, such
16 hardship being that this is an older structure that is not -
17 - needs -- not suitable for residential purposes to the
18 extent it could be, perhaps should be, and this problem is
19 not peculiar to you. It's to anyone who owns the property.

20 So, it runs with the land. That the relief is
21 necessary because of the fact this is already a non-
22 conforming structure and that any modification requires

1 zoning relief and that relief may be granted without
2 substantial detriment to the public good. So on the basis
3 of these findings, the Chair moves we grant the variance
4 requested on the condition that the work proceed in
5 accordance with plans prepared by Boyes-Watson Architects
6 dated 5/23/19, the first page of which has been initialed by
7 the Chair. All those in favor, please say aye. Five in
8 favor, variance is granted.

9 Moving on to the special permit, the Chair moves
10 we make the following findings with regard to the special
11 permit being sought. That the requirements of the ordinance
12 cannot be met unless we grant the special permit. The
13 traffic generated or patterns of access or regress resulting
14 from the -- what is being proposed will not cause
15 congestion, hazard, or substantial change in established
16 neighborhood character. As pointed out, the changes are
17 very modest in nature and do not impact abutting properties.
18 Abutting property owners are all in support of the petition
19 or the city of Cambridge generally. That the continued
20 operation of or development of adjacent uses as permitted in
21 our ordinance will not be adversely affected by what has
22 been proposed. And, again, the letters of supports peak to

1 that.

2 Next, that no nuisance or hazard would be created
3 to the detriment or the health, safety, and/or welfare of
4 the occupant of the structure or the citizens of the city.
5 And that generally what is being proposed will not impair
6 the integrity of the district or adjoining district or
7 otherwise derogate the intent and purpose of this ordinance.
8 So on the basis of all these findings, the Chair moves we
9 grant the special permit requested, again on the condition
10 that the work proceed in accordance with the plans
11 referenced with regard to the variance we just granted. All
12 those in favor, please say aye. Five in favor. Good luck.

13 KELLY BOUCHER: Thank you very much.

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1 (9:33 p.m.)

2 Sitting Members: Constantine Alexander, Brendan Sullivan,
3 Janet Green, Jim Monteverde, Slater
4 Anderson, Laura Wernick, Alison Hammer

5 CONSTANTINE ALEXANDER: The Chair will now call
6 Case Number 017110, 116 Magazine Street. Anyone here wish
7 to be heard on this matter?

8 JAMES RAFFERTY: Okay, good evening, Mr. Chair,
9 members of the Board. For the record, my name is James
10 Rafferty, R-a-f-f-e-r-t-y. I'm an with offices located at
11 907 Massachusetts Avenue in Cambridge. I'm appearing this
12 evening on behalf of the applicants, Guillermo Trotti, T-r-
13 o-t-t-i, and his wife Dava Newman, N-e-w-m-a-n. Mr. Trotti
14 and Ms. Newman have recently purchased this property at 116
15 Magazine Street, and they did so not with the intention of
16 going into the laundry business because they have busy
17 careers otherwise. They actually think that this would make
18 a wonderful residence. Both Mr. Trotti and Ms. Newman are
19 long-time Cambridge residents who served as housemasters at
20 MIT for many years. Ms. Newman relocated to Washington D.C.
21 where she has served in the Obama administration as the
22 deputy administrator at NASA. She's now in the aerospace

1 program at MIT. So she explained to me that in her case,
2 when people say it's not really rocket science, that's the
3 exception. It is rocket science with Ms. Newman.

4 And Mr. Trotti is an architect with a very
5 interesting practice. His specialty involves very small
6 spaces, and currently the space station that's orbiting the
7 globe was designed by Mr. Trotti. And the -- also the --

8 CONSTANTINE ALEXANDER: Mr. Rafferty likes to
9 embellish when he --

10 GUILLERMO TROTTI: Yeah, yeah, he is embellishing.

11 CONSTANTINE ALEXANDER: I --

12 JAMES RAFFERTY: What, you didn't design that,
13 you're telling me?

14 GUILLERMO TROTTI: Did work in the interior,
15 though.

16 JAMES RAFFERTY: Oh, well, I wanted to provide
17 some context as to why he's very skilled in what -- this is
18 a unique case in the sense that this space, at first glance,
19 one would say it doesn't seem like the most conducive to
20 residential conversion. But in Mr. Trotti's case, his
21 experience is -- other than significant architectural
22 achievement, is the design of the South Pole station in

1 Antarctica. So -- and he's shared with me visions of that.

2 So he has a skill in converting small spaces into livable

3 spaces.

4 This location, that -- those guidelines were taken
5 into account by Mr. Trotti as he looked at this building.

6 This, as you probably can surmise, is a non-conforming

7 structure and a -- containing a non-conforming use in a

8 Residence C zoning district. The principal elements of the

9 plan are to convert the first floor and -- to residential

10 use and the second floor to accommodate a master bedroom.

11 The proposed addition on the second floor has been designed

12 with attention to the setback requirements. It's a corner

13 lot so, as you know, it has two side setbacks. So the two

14 side setbacks here are conformed with deliberately, with an

15 understanding that this addition would need to conform. It

16 does represent an increase in gross floor area over and

17 above what's present. It's approximately a 500-square-foot

18 increase, but, again, it's only intended to accommodate a

19 single bedroom.

20 And the reason for the bedroom located on the

21 second floor is related to the hardship. The building sits

22 hard on the sidewalks of two streets, Allston Street and

1 Magazine Street. It has a lot of glass frontage, and it
2 doesn't have that much natural light because the building to
3 the left as you're moving up Magazine Street is very close.
4 It's only a few feet apart. It contains a multi-family
5 building and a restaurant. So air, light, and other factors
6 for bedroom living aren't really all that easily obtainable
7 on the ground floor. So the design here was to put a
8 bedroom, a modest-sized bedroom and a bath, on the second
9 floor to accommodate this. Mr. Trotti can share with you
10 his enthusiasm for the space, the high ceilings. He's an
11 architect and would plan to do a lot of his studio work
12 here.

13 The other relief being sought is parking. There
14 is not a parking space available. The -- there's a special
15 permit request for a parking space. Years ago, the prior
16 owner of the property sought to get parking relief because
17 there is -- if you look at the footprint of the building,
18 there is a small portion -- there's an eight-foot section of
19 the lot where the building isn't located. As the Board
20 knows, a minimum driveway requirement with requirements are
21 ten feet, and we gave some thought to seeking a special
22 permit to reduce that.

1 But in discussions with the neighbors, the
2 neighbors, particularly the abutting neighbors, did not
3 favor putting a driveway and attempting to put even a modest
4 or a small vehicle in that location. The applicants own a
5 single car. They are avid bicyclers and they will be
6 commuting to MIT largely on foot or by bicycle. So one of
7 the appealing aspects of the building and the location is
8 its proximity and adjacency. So there is a special permit
9 request for the parking waiver.

10 As the Board's probably aware, the current use or
11 any continuation of that retail use would not require
12 parking because it's grandfathered. But because there's a
13 change to a residential use, the grandfathering transfer
14 which typically applies in nearly any other change of uses
15 does not apply in the residential case. But it will allow
16 for some form of open space and, again, allow for a patio
17 space for the dwelling.

18 The size of the second floor bedroom is really, I
19 would suggest, perhaps the critical issue before the Board.
20 And the hardship that is related with that is totally
21 associated with the commercial style of the building and the
22 real lack of opportunity to get adequate air and light into

1 bedroom space which has a different -- from both a building
2 code and a livability perspective, has a different
3 requirement. We've had conversations with abutters. I
4 understand we've met with several abutters who are
5 supportive.

6 Other abutters are here, and I understand they
7 express some concern about impacts of light and air so I'll
8 wait to hear perhaps what they have to say. But the relief
9 as set forth in the application involves variances
10 associated with the dimensional requirements that are
11 present when you convert a building like this to
12 residential, particularly open space. We are not going to
13 be able to meet an open space requirement here. But the --
14 again, the open space and the other dimensional limitations
15 are really a function of the existing structure, and it's
16 quite unique to this property.

17 And having said that, I believe we have the plans.
18 We're happy to go through them. The lower level of the
19 building is unchanged. The windows that are being
20 introduced are occurring on streets -- on walls facings
21 streets. So the only non-conforming wall, frankly, in the
22 building is the one that abuts a one-foot setback, and

1 there's no attempt to put windows on that wall. So --

2 CONSTANTINE ALEXANDER: As you pointed out, one
3 thing that could give someone pause is the fact that the
4 dimensional relief is significant relative to what our
5 ordinance requires -- or permits. You're going to have
6 twice as much gross foot area if we grant relief than our
7 ordinance permits and almost twice as much FAR, floor area
8 ratio. That's not fatal, in my mind anyway, but anyway
9 something that would give me a little bit of pause.

10 One thing that's positive, and I don't think you
11 mentioned, Mr. Rafferty, is you're going to take a non-
12 conforming use in the residential district, a laundromat,
13 and convert it to residential use which is very much a
14 positive. So that's in support of what you want to do.
15 That's just my off-the-cuff observations.

16 JAMES RAFFERTY: Thank you. I just point out
17 along those lines, it is an exceptionally small lot area.
18 So the amount of square footage we're talking, while it does
19 exceed the .6, it is also the case that the vast majority of
20 structures in the neighborhood in a close proximity aren't
21 anywhere close to a .6 FAR. So from a context perspective,
22 this would not be an oversized building in terms of the

1 surrounding structures.

2 CONSTANTINE ALEXANDER: No, I understood. It will
3 be oversized going up, if you will, because of the second
4 story.

5 JAMES RAFFERTY: Not when we have a -- the
6 abutting property is a three-family house so --

7 CONSTANTINE ALEXANDER: Is it? Okay, I'm --

8 JAMES RAFFERTY: The abutting property on Allston
9 Street is three stories, and we're going to -- the height
10 here is going to be 28 feet. So we're almost eight feet
11 below the allowed height.

12 GUILLERMO TROTTI: -- both abutters.

13 JAMES RAFFERTY: And the predominant structures on
14 this stretch of Magazine and Allston are mostly multi-family
15 dwellings, nearly all three families. So I'm not aware of
16 many single-story dwellings in the neighborhood.

17 CONSTANTINE ALEXANDER: Right. Okay. Questions
18 from members of the Board? Alison?

19 ALISON HAMMER: Yes.

20 CONSTANTINE ALEXANDER: You may want to use the
21 mic.

22 ALISON HAMMER: Really take it out? Okay. Can

1 people hear me?

2 THE REPORTER: Can you say your name and spell it
3 for me?

4 ALISON HAMMER: Sure, Alison Hammer, A-l-i-s-o-n
5 H-a-m-m-e-r. So when I look at this plan one thing that I
6 wonder about a little bit, so I look at the ground floor and
7 I see two rooms that are called library and study. But one
8 of them has an en suite bathroom and then there's also a
9 full bathroom. And then when we get to the staircase, I see
10 a door separating the staircase from the rest of the house,
11 a door to the outside at that staircase, and then when I go
12 up to the second floor, I see a bedroom with a kitchenette
13 and an en suite bathroom. So --

14 JAMES RAFFERTY: A kitchenette?

15 ALISON HAMMER: -- I mean, what does that show? I
16 see a sink and, like, a little hot plate thing and a
17 refrigerator right at the --

18 GUILLERMO TROTTI: That's the -- yeah, it's like a
19 bar.

20 ALISON HAMMER: Yeah. So that, to me, is feeling
21 like a little second apartment with its own entrance. That
22 might not be the intention, but that's how it reads to me,

1 as, I guess, like a secondary unit, accessory unit.

2 Something that might be rented out separately.

3 GUILLERMO TROTTI: No, the idea is, you know,
4 we're having a deck and planning to have a garden hopefully,
5 you know, build a garden. And then so if we have a
6 gathering, you know, that's the asset of the building to be
7 up there. So we thought about it, you know, like, having a
8 bar or, you know, something that we can --

9 ALISON HAMMER: Right, but you could see how,
10 like, let's say if somebody were to move in here after you.
11 I'm sure you'd like to live here for a long time. It does
12 feel like a second unit up there. Somebody could very
13 easily just say, fine, I'm going to live on the ground floor
14 in these two bedrooms and rent out this other bedroom. So
15 the -- that organization just gave me a little bit of a
16 pause as to what was being asked for here, whether it was
17 two units or one unit.

18 JAMES RAFFERTY: It's clearly one unit. There had
19 been discussion about the deck and the ability to have -- to
20 maybe have drinks or something on the deck. So when you
21 said kitchenette, that's why I was confused.

22 GUILLERMO TROTTI: Yeah, at the closure, something

1 really quick, we're putting just to save on the air
2 conditioning, we're putting a small, low unit upstairs so
3 really create -- it's to not have the air ventilation, you
4 know, the air --

5 ALISON HAMMER: Because usually, like,
6 Inspectional Services I don't think often, like, looks
7 positively on second kitchens in a single residence. Right?

8 SISIA DAGLIAN: Right.

9 ALISON HAMMER: So -- especially I believe if you
10 have, like, a cooking appliance in there is really --

11 JAMES RAFFERTY: No, I agree. I think --

12 JANET GREEN: It's a stove.

13 JAMES RAFFERTY: Right, and I don't -- I'm not
14 even sure it's a stove.

15 (Crosstalk)

16 GUILLERMO TROTTI: No, it's, like, a sink. It's,
17 like -- all we're putting in is an additional sink.

18 ALISON HAMMER: Okay, because what --

19 JAMES RAFFERTY: -- bar.

20 ALISON HAMMER: -- seems to show on the plan is a
21 stove, like a dual hot plate, and a refrigerator.

22 GUILLERMO TROTTI: No, that's a wet -- it's

1 basically a wet bar and --

2 ALISON HAMMER: Okay.

3 CONSTANTINE ALEXANDER: Alison, would it solve
4 your problem if a condition of the relief is that the
5 structure can only be used as one dwelling unit?

6 JAMES RAFFERTY: Without question. I mean, as a
7 restriction --

8 CONSTANTINE ALEXANDER: -- a restriction that
9 would, I think, solve Alison's problem and in no way be
10 inconsistent --

11 JAMES RAFFERTY: Absolutely.

12 GUILLERMO TROTTI: We can take the door out,
13 whatever you think is --

14 ALISON HAMMER: I just wanted to understand what
15 the --

16 GUILLERMO TROTTI: No, mostly it was to control
17 the zone of that small unit that we -- so we don't have to
18 have full air conditioning upstairs which is -- it was an
19 extra, you know --

20 CONSTANTINE ALEXANDER: I think point, though,
21 that she made is that once you move on and sell the
22 property, someone comes in, might want to tinker with it or

1 make it a two family or --

2 GUILLERMO TROTTI: And it will not be, like,
3 metered different, right? It will just be one unit.

4 CONSTANTINE ALEXANDER: Well, we can handle that
5 with the limitation that it can only be used as a single
6 dwelling unit.

7 GUILLERMO TROTTI: Absolutely.

8 CONSTANTINE ALEXANDER: Any other questions? Open
9 the matter up to public testimony. Does anyone here wish to
10 be heard? Ma'am?

11 IRENA STOCKTON: I am Irena Gavanescu Stockton. I
12 am the neighbor on Allston Street --

13 (Crosstalk)

14 IRENA STOCKTON: Gavanescu, G-a-v-a-n-e-s-c-u, and
15 the last name Stockton, S-t-o-c-k-t-o-n. First name's
16 Irena. And so I am the neighbor on Allston Street living on
17 the first floor. And Mr. Trotti and his wife Dava reached
18 out to us, and I'm very grateful for that. And I'm really
19 happy to welcome to the community such venerable members. I
20 do have an objection, though. I'm happy that they want to
21 build and I'm happy that their construction is such good
22 quality and I'm happy that they thought of a light and airy

1 structure. But in doing so, they take a lot of light and
2 air from the neighboring unit.

3 So I live on the first floor. My condominium
4 doesn't have a lot of light, and as his simulation
5 demonstrated, indeed adding to the height of the building is
6 adding yet another wall to the neighboring construction.
7 And, indeed, we do lose light and we have little to start
8 with. So I was hopeful that they would consider placing the
9 first floor addition towards the front of the building. It
10 would be away from our building this way. It is important
11 to me because light comes in the building.

12 CONSTANTINE ALEXANDER: Well, may I -- observation
13 is that, should we grant relief, we always put on a
14 condition that the work will proceed in accordance with the
15 plans that were submitted and which we've seen. And what
16 you're asking for is to have these plans modified. Which is
17 fine. If you -- if that's what he -- petitioners do,
18 they'll have to come back and get a -- again with the new
19 plans to get a variance.

20 So that's where we are. And we could either do
21 that and require them to come back should they -- or we can
22 just proceed with these plans and -- recognizing the impact,

1 the adverse impact on your property. But, I mean, again, I
2 -- I guess maybe I'm enamored with this thought, but I think
3 what's very positive here is we're going to take a
4 residential district and create another dwelling unit which
5 the city of Cambridge needs and it's consistent with the
6 zoning for the area. These businesses in and around this
7 area are non-conforming and they're not desirable from a
8 zoning point of view.

9 JAMES RAFFERTY: Can I be permitted? Because that
10 suggestion -- so the suggestion around relocating the second
11 floor was given consideration by Mr. Trotti, and he can
12 explain. It has everything to do with the structural
13 support needed for this second-floor addition. When we
14 studied the height, though, we wanted to be able to let the
15 Board know and abutters know that if this building were to
16 come down and a replacement structure were to be
17 constructed, it would have the same setback facing this
18 property that this building has. In fact, perhaps could be
19 a half a foot closer. And the height of any successor
20 structure could go to 35 feet. And I never like to argue in
21 the negative, but we did think about impacts on the abutters
22 and did try to understand how to improve them.

1 What we've heard from another abutter who's here
2 tonight is the active exhaust activity associated with the
3 laundromat, we don't have photos of the roof, but there is a
4 series of stacks that vent these heaters that are quite
5 noxious in the opinion of many people we've spoken to. All
6 of that goes away. The roof scape is going to be
7 landscaped. The roof will have landscape elements. We
8 talked about maybe having some green placed on the roof so
9 at least visually it could be seen.

10 We anticipated that this request might come and
11 had -- I discussed with my clients whether they would want
12 to explore being able to do so. And at the risk of being
13 unresponsive, the reality is that it cannot happen
14 structurally. They cannot locate this in a location close
15 to the front and be able to create the structural support
16 they need. So with all due respect, it's not -- I don't
17 know if you have anymore to say on that, if you want to hear
18 anymore from the applicant on that, but I think I've
19 summarized --

20 CONSTANTINE ALEXANDER: I think maybe the abutter
21 might want to hear more.

22 IRENA STOCKTON: Yes, so what I heard was that

1 there was going to be more and more towards the street, and
2 I'm sad that there is a need -- a trace more noise towards
3 Magazine Street, but we have to weigh some extra noise
4 toward their bedroom as opposed to loss of privacy, loss of
5 space, and loss of light to us. So why would that be more
6 important than, you know, what I am losing?

7 JAMES RAFFERTY: Well, as far as privacy goes, I
8 don't believe there are -- I think they've consciously not
9 installed any windows on the wall facing your property.

10 IRENA STOCKTON: That's true. It's just going to
11 be an area of walking around on that wall -- on that
12 ceiling. But this is my only objection. Yes, there is more
13 noise towards the front, but it is an option.

14 CONSTANTINE ALEXANDER: Thank you for taking the
15 time to come down. Anyone else wishes to be heard on this
16 matter? Apparently not. Sir? You come forward and give
17 your name to the stenographer.

18 CRAIG HALAJIAN: Good evening. My name is Craig,
19 Craig Halajian.

20 UNIDENTIFIED: Got to get --

21 CONSTANTINE ALEXANDER: -- closer.

22 UNIDENTIFIED: Put it on the table, Craig, and sit

1 right up in front of it.

2 CRAIG HALAJIAN: My name is Craig, Craig Halajian,
3 C-r-a-i-g, last name is H-a-l-a-j-i-a-n. And I own the
4 building that parallels this building at 114 Magazine
5 Street. And when I first heard about this proposal, I was
6 skeptical until I took a close look at the drawings a couple
7 of days ago. And it's a very difficult, you know, task to
8 try and modify and improve this structure because of the
9 proximity of this building to my building, but I can see
10 that the -- that he has taken that into consideration. As
11 far as where he's locating the proposed second-story
12 addition to it, he's -- his building and my building are
13 only 14 inches from one another, very tight, and he's offset
14 his second-story proposal it looks like -- I should be
15 wearing my glasses. What is that, 11 --

16 GUILLERMO TROTTI: Eleven and a half feet.

17 CRAIG HALAJIAN: Eleven feet, six inches.

18 GUILLERMO TROTTI: That doesn't count the extra 14
19 inches or so that we have in between. It's just -- that's
20 from our wall --

21 CRAIG HALAJIAN: Right. So he was --

22 GUILLERMO TROTTI: -- 12 feet away.

1 CRAIG HALAJIAN: -- considerate of that in his
2 proposal to put something on the building which his -- would
3 be very important for me. I mean, it would have to be
4 because the -- all the windows on my side of the building
5 face that side. I don't have any windows on the other side
6 because of hallways and what not. And he's also set it back
7 which I think is important. And I hear the comment from the
8 last -- from the young lady who just spoke, the abutter in
9 the back, but to set this back from the street, not only --
10 it decreases the mass of the building, the sense of the mass
11 of the building from the street side which is the more
12 active side of the -- of that building.]

13 So I think it's a better looking proposal and
14 structure with it set back the way it is. And I was a
15 little negative at first, but in seeing how he set it back
16 from the -- from where it abuts my property, I'm acceptable
17 at 11 and a half feet. So I'm in favor of it. There's no
18 perfect solution when you try and do something like this.
19 It's a tradeoff between what you can do and what you can't
20 and you're trying to make compromises, and I think he's done
21 a very good job with that. And I think it'll be a good-
22 looking building.

1 CONSTANTINE ALEXANDER: Thank you for taking the
2 time to come down. Anyone else wishes to be heard on this
3 matter? Apparently not, and we're not in receipt of any
4 letters or other written communication. So any final
5 comments, Mr. Rafferty, or --

6 JAMES RAFFERTY: No, I -- just to reiterate the
7 point being the change to a conforming use as noted by the
8 Chair is something that I think distinguishes perhaps this
9 case from other cases that seek dimensional relief.

10 CONSTANTINE ALEXANDER: Thank you.

11 ALISON HAMMER: Can I a little bit more of an
12 explanation as to what are the structural issues that
13 prevent you from -- it seems like you kind of accommodated
14 one neighbor but not the other neighbor. So I just wanted
15 to -- you know, you just said structural issues. I'm an
16 architect as well so I'd like to understand, you know, are
17 those, like, significant structural issues actually --

18 GUILLERMO TROTTI: There are several issues.

19 (Crosstalk)

20 GUILLERMO TROTTI: Hi, my name is Guillermo
21 Trotti. Anyway, just for the record. And all the utilities
22 are back there, you know, so all the connections to -- you

1 know, to the electrical comes to the back as well as the
2 plumbing. But then -- and structurally, what happens is
3 we're using the walls of the -- the main reason we got
4 excited about this building is to have the opening -- the
5 open space in the front. You know, the 12-foot ceilings
6 and, you know, have a big open space in the front of the
7 building. So by putting this on top of the back where the
8 other two rooms are, the bathrooms, then we're transmitting
9 the structure through those elements. So we can put columns
10 through there rather than having to span the building, you
11 know, with big steel, more expensive steel, and a structure
12 that we'd have to spend that space.

13 So it's -- so the main reason is we don't have to
14 -- we would have to ask for the same columns, we would have
15 to add columns in that space which is the main reason to the
16 building is to have that front open and airy and, you know,
17 divide it. Or bite the bullet and end up with maybe a
18 higher structure, putting a couple feet or at least, you
19 know, 18 inches of steel to cross from wall to wall. So I'm
20 using the walls, both of those rooms, as structure. That's
21 why. It all, you know, connects together. There's where
22 the savings comes from.

1 And all -- so -- and also in circulation because
2 we have access to a storage basement there. So the addition
3 -- you know, having the staircase where it is now, if I put
4 it anywhere else -- and I have studied this. I did the
5 study. As a matter of fact, the idea was why not do that.
6 But then when we spoke -- that would add a tremendous amount
7 of square footage. It's basically another staircase and
8 other square footage that I lose downstairs and then I have
9 to create a bigger landing on the top.

10 So if I'm wanting to be just under 500 square
11 feet, it doesn't make any sense to spend -- and I will not
12 do it if we can't do this. Basically I'm stuck because it's
13 a tremendous amount of cost for very little square footage,
14 and we wanted to have -- if we want to do this -- to really
15 create something out of that garden, you know, create the
16 roof, you know, create a beautiful space where we can, you
17 know, have gatherings and, you know, bring students, you
18 know, and so on. I mean, the idea is to use that space in a
19 different way, and so it would be significantly more costly
20 and it wouldn't make sense. It doesn't make any financial
21 sense. So that's the burden.

22 ALISON HAMMER: Thank you.

1 CONSTANTINE ALEXANDER: Any other questions,
2 comments, members of the Board?

3 SLATER ANDERSON: What's the distance from that
4 back side, the windowless side on the second floor to that
5 structure on Allston Street, the next residence, separation?

6 GUILLERMO TROTTI: The back abutter or the side?

7 SLATER ANDERSON: Well, we caught it's roughly 13
8 feet on the close abutter, but the one on that side, Allston
9 Street.

10 GUILLERMO TROTTI: We have --

11 DAVA NEWMAN: Twenty-six --

12 GUILLERMO TROTTI: No, we have an eight-foot
13 patio, and actually I'm setting it up on the roof, I think
14 it's about ten inches in from the -- our wall. So that's
15 8'10". And then to the actual building, I think there's a
16 three-foot --

17 DAVA NEWMAN: There's an alley --

18 GUILLERMO TROTTI: -- alley between --

19 SLATER ANDERSON: So it's comparable to the
20 setback from the Magazine abutter is what I'm saying, the
21 second floor?

22 DAVA NEWMAN: It's further. It's more -- it's

1 bigger. This is a bigger setback. It's bigger --

2 GUILLERMO TROTTI: It's actually -- and the other
3 reason I use -- okay.

4 CONSTANTINE ALEXANDER: Any other questions?

5 UNIDENTIFIED: I think we --

6 UNIDENTIFIED: -- feet. It's 20 --

7 CONSTANTINE ALEXANDER: I think we're ready for a
8 vote. The Chair moves that we make the following findings
9 with regard to the variance being sought. That a literal
10 enforcement of the provisions of the ordinance would involve
11 a substantial hardship, such hardship being is that this
12 structure, built as a -- for a commercial use and that its
13 location is such that any modification is going to cause
14 problems. And what is being proposed tonight is to actually
15 take a non-conforming structure in terms of use, non-
16 conforming use I should say, I'm sorry, and make it a
17 conforming use, i.e., going from commercial to residential.
18 That the relief being sought is the result of the structure
19 itself as it was built and which any modification would
20 require zoning relief and that relief may be granted without
21 substantial detriment to the public good.

22 With regard -- as we pointed out, the fact that it

1 will take a non-conforming use and convert it to a
2 conforming use, i.e., commercial to residential, that's a
3 very positive thing for the city of Cambridge. And in that
4 connection, it will create one more dwelling unit for the
5 city. So on the basis of all of these findings, the Chair
6 moves we grant the variance requested on the condition that
7 the work proceed in accordance with plans prepared by Trotti
8 & Associates, Inc. dated March 25, 2019 and the first page
9 of which has been initialed by the Chair. All those in
10 favor --

11 JAMES RAFFERTY: Excuse me, did you want the
12 condition that Ms. Hammer asked for, single family?

13 CONSTANTINE ALEXANDER: Yeah, oh, yeah, I forgot.
14 Thank you. And on the further condition that this unit,
15 this structure, when we grant relief, will only be used as
16 single family and no second dwelling unit in whatever form
17 can be used on that property, at least without coming back
18 before our Board. All those in favor, please say aye. All
19 in favor, five in favor.

20 MULTIPLE: Four.

21 CONSTANTINE ALEXANDER: I'm sorry.

22 ALISON HAMMER: I didn't vote in favor.

1 CONSTANTINE ALEXANDER: Oh, I'm sorry. I'm
2 looking over this way. I apologize. Four in favor, still
3 the variance has been granted as a four to one vote.

4 ALISON HAMMER: Special permit.

5 JAMES RAFFERTY: Okay, now we have the special
6 permit on the parking.

7 CONSTANTINE ALEXANDER: Oh, yeah, let me get
8 there. It's time for you to address why -- again, why the
9 special permit.

10 JAMES RAFFERTY: Right. In the case of the
11 special permit, the ordinance makes provisions for the Board
12 to reduce the required amount of parking if a determination
13 can be made that excessive congestion will not result.
14 Factors that the ordinance directs the Board to look at, one
15 of the principal ones is proximity to public transportation.
16 As the Board knows, this location is within five or ten
17 minutes walking distance of the Central Square T station.
18 There are -- there is bus service that runs actually on this
19 street and other streets in Cambridgeport. And the nature
20 of the use of the building -- of the occupants of the
21 building themselves have only one car and although that, of
22 course, is not necessarily going to be true for the life of

1 the building, the existence of on-street parking in this
2 area is -- has general availability within a block or so.

3 CONSTANTINE ALEXANDER: Okay. The Chair will move
4 we make the following findings -- unless anybody has a
5 question on the parking issue -- the following findings with
6 regard to the special permit being requested regarding
7 parking. That the requirements of the ordinance cannot be
8 met unless we grant you the special permit you are seeking.
9 That traffic generated or patterns of access and regress
10 resulting from what is proposed will not cause congestion,
11 hazard, or substantial change in neighborhood character.
12 And this regard -- as Mr. Rafferty has pointed out, there is
13 ample on-street parking in the area and there is also other
14 access to public transportation within a reasonable distance
15 from the structure. That the continued operation or
16 development of adjacent uses will not be adversely affected
17 by what is being proposed with regard to parking. That no
18 nuisance or hazard will be created to the detriment or the
19 health, safety, and/or welfare of the occupant of the
20 proposed use of the citizens of the city. And generally
21 what is being proposed with regard to parking will not
22 impair the integrity of the district or adjoining district

1 or otherwise derogate the intent and purpose of this
2 ordinance.

3 And as one of the bases for the finding of the
4 special permit is the fact that there is ample access to
5 other means of public transportation within a reasonable
6 district -- distance from this structure. So on the basis
7 of all these findings, the Chair moves we grant the special
8 permit requested, again on the condition that the work
9 proceed in accordance with the plans identified in
10 connection with the variance. All those in favor, please
11 say aye. Five in favor - this time five, right?

12 ALISON HAMMER: Five, yes.

13 CONSTANTINE ALEXANDER: Special permit granted.

14 JAMES RAFFERTY: Thank you very much.

15 GUILLERMO TROTTI: Thank you very much. Thank you
16 for the hearing.

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1 (10:06 p.m.)

2 Sitting Members: Constantine Alexander, Brendan Sullivan,
3 Janet Green, Jim Monteverde, Slater
4 Anderson, Laura Wernick, Alison Hammer

5 CONSTANTINE ALEXANDER: The Chair will now call
6 Case Number 017114, 273 Upland Road (Rear). Anyone wishing
7 to be heard on this matter?

8 SEAN HOPE: Good evening, Mr. Chairman, members of
9 the Board. For the record, Sean Hope, Hope Legal Offices in
10 Cambridge. I'm here tonight on behalf of petitioner. We
11 have Mrs. Lee Steffy Jenkins. Can you spell your name for
12 the record?

13 LEE STEFFY JENKINS: First name is L-e-e S like in
14 Sam, T like in Tom, E, F like in Frank, F like in Frank, Y
15 and last name is Jenkins, J-e-n-k-i-n-s.

16 SEAN HOPE: So this is a variance request to add a
17 one-story addition to an extremely small carriage house that
18 is in the rear of the lot at 273 Upland. Before I get into
19 the details, I just wanted to clarify for the record. So
20 the relief that we're seeking is much -- is more modest than
21 what was advertised. The -- we are seeking setback relief.
22 The existing structure which we're adding onto is well

1 within the rear yard setback, and so we're doing the first
2 -- excuse me, a one-story addition to the open part of the
3 lot. But the posting incorrectly said that we were
4 exceeding the gross floor area, so we're below what's
5 allowed. The existing structure is approximately 500 square
6 feet. Ms. Jenkins has lived there for about eight or nine
7 years, and she can spin some more detail. But the house is
8 very small, and while we were waiting in the back, she had
9 said that her kitchen is probably about the size of that
10 podium there. So it's a very small structure.

11 Ms. Jenkins also owns a bakery in the Porter
12 Square neighborhood, and, again, has been living there for
13 eight or nine years. She is now seeking -- she was a
14 renter. She is going to make this her personal residence
15 and has the opportunity to purchase the rear unit. And so
16 to do that, part of the purchasing it was to make the house
17 -- to do approximately 420 square feet addition to make that
18 structure more livable. This is a rear carriage house, and
19 so there -- the existing structure is clear to the property
20 line. So there is an intentional design to make the
21 addition low profile so that it would not -- second-floor
22 addition might block light from the neighboring abutters.

1 So that was intentional. Also the way the lot is oriented,
2 there is a generous 27 side yard setback, and so that --
3 she's looking to build in that area. Do you want to maybe
4 add a little bit about the rationale for the design?

5 LEE STEFFY JENKINS: Sure. So I wanted to make
6 sure that all my neighbors -- can you hear me now? So I
7 wanted to make sure that there was virtually no impact on
8 all my neighbors, and the way I've designed this, there is
9 no impact. The back neighbor of the addition will face a
10 garage, the side of a garage. The other side neighbor,
11 nothing is changing with them at all. And then on the other
12 side, it's pushed to the back of their lot so it doesn't
13 impact them at all, which all my neighbors are very thankful
14 for. And they all intended to write letters in support, but
15 people have busy lives and have been traveling now. So
16 unfortunately, they didn't get the letters in.

17 CONSTANTINE ALEXANDER: We have one -- we have two
18 letters actually. One is from the owner of the front house.

19 LEE STEFFY JENKINS: Right, but the others have
20 said they would, but there was --

21 CONSTANTINE ALEXANDER: How big will the
22 structure, roughly, be? How many square feet should we

1 grant relief tonight?

2 LEE STEFFY JENKINS: It's going to be around 900
3 total when we're done, and the new addition is going to
4 become my living room. My current living room is going to
5 actually become a kitchen or, you know, a workable kitchen
6 that I can actually have counterspace. I don't have any
7 counterspace now. I was friends with Alice who's now
8 deceased before I moved in here. She's the one that
9 encouraged me to come to Cambridge and open my bakery here.

10 And the house was very small. I had moved from a
11 much larger house into this one, and I actually still have
12 things in storage. But Alice very generously let me use the
13 big house so I use the washer and dryer in there. I have
14 all my storage. I actually used her bathroom because I only
15 have a tiny bathroom that doesn't have a bathtub. I used
16 her kitchen. But the front house has now been sold so I
17 won't be able to use the front house for anything, and so in
18 order to live there, I actually have to make it completely
19 self sufficient, including trying to figure out how to put
20 in a washing machine and dryer, putting in a bathtub,
21 putting in a boiler because I don't have very good heating
22 units, just wall units that were 40 years old with no --

1 they're just electric wall units. So by moving my living
2 room into this new structure, that's enabling me to
3 reconfigure the living space.

4 CONSTANTINE ALEXANDER: You appreciate -- because
5 I think in the file that you got -- the intent is to
6 condominium the lot so you'll be one of two units.

7 LEE STEFFY JENKINS: So they're only
8 condominiuming the lot so that I can buy the back unit
9 because that was Alice's intention.

10 CONSTANTINE ALEXANDER: Okay, but I assume that
11 whoever owns the front unit will have a majority vote within
12 in the condominium association given the relative size of
13 your structure to theirs. You appreciate what will -- I
14 mean, if you want to do something and the owner of the front
15 house says no, you're going to --

16 LEE STEFFY JENKINS: So the owner of the front
17 house is Alice's children.

18 CONSTANTINE ALEXANDER: That won't be forever.

19 LEE STEFFY JENKINS: No, but she's not selling the
20 front house until I'm finished with all of my work on the
21 back house.

22 CONSTANTINE ALEXANDER: But when she sells the

1 house after you finish your work, you're going to be a
2 minority owner of a condominium association. And it just --
3 before you make your investment, I just want to point out to
4 you that you're a little bit -- now it's wonderful, but
5 you're going to be a little bit at risk to whoever buys the
6 front house.

7 LEE STEFFY JENKINS: Well, we've -- we just
8 finalized all the condo docs, and we've specified exactly
9 where every --

10 CONSTANTINE ALEXANDER: Good, okay.

11 LEE STEFFY JENKINS: -- exclusive use and we don't
12 have any shared use except for one little tiny driveway.

13 CONSTANTINE ALEXANDER: Okay, good. I want to
14 make sure --

15 LEE STEFFY JENKINS: So -- yeah, so everyone is --
16 when the new people buy, they're going to be very aware of
17 what their exclusive use is, what my exclusive use is, and
18 I'm only going to have 20 percent of the -- whatever it's
19 called for the condo -- yeah, the interest, right. But
20 everything is already written -- basically written in stone
21 and they can't change it without a hundred percent --

22 CONSTANTINE ALEXANDER: That's true, that's true.

1 Long as you're satisfied with the condo documents as they
2 are now, you're protected.

3 LEE STEFFY JENKINS: Yeah. And I have a good
4 condo lawyer so --

5 CONSTANTINE ALEXANDER: Thank you.

6 SEAN HOPE: I think the only thing I would add is
7 that although this size structure, for any occupant, would
8 likely need a very similar addition to bring it up to modern
9 standards. So this is -- this variance and this hardship
10 about the size is not just unique to the petitioner.
11 Anybody would need -- you know, 900 square feet is pretty --
12 the standard that you live by. Just want to make that
13 point. Thank you.

14 CONSTANTINE ALEXANDER: I'll open up the matter
15 for questions, members of the Board, at this point.

16 JIM MONTEVERDE: No.

17 CONSTANTINE ALEXANDER: We'll open the matter up
18 to public testimony. Does anyone here wish to be heard on
19 this matter? Didn't think so. There is no -- I'm going to
20 close public comment. We have two emails in our file. One
21 is from Tobey, T-o-b-e-y, and Matthew Pearl who reside at
22 269 Upland Road. "We are writing to offer our support of

1 Ms. Jenkins' variance request as we understand it does not
2 impact our property." Hope they understand it right, but
3 that's their call.

4 And then we do have a longer email from Amanda
5 Bowen as trustee of the Alice Wick Hall Trust, 2015. I'm
6 going to read it because I think it's important to the
7 petition itself. "I'm writing in strong support of the
8 variance appeal from Lee Steffy Jenkins for 273 Rear Upland
9 Road. Lee Steffy has lived in the property for over eight
10 years as a tenant of my late mother, Alice Hall, a resident
11 of Cambridge for over 50 years. We have converted Lee
12 Steffy's apartment unit into a condominium and plan to
13 sell/have sold it to her at a price she can afford, well
14 below market, so that she could stay in Cambridge.

15 In this instance, we were happy to contribute to
16 the goals set by the city to help create affordable housing
17 so that residents aren't pushed out of the city by very high
18 housing prices. While my mother was alive, Lee Steffy used
19 parts of the larger front house as the unit is very small.
20 This will no longer be possible, and the unit needs to be
21 expanded to make it wholly livable in itself. The proposed
22 expansion is modest, but the resulting space still well

1 under a thousand square feet. We believe that her plan to
2 expand the single-story structure is a good one for the
3 neighborhood. It preserves the current privacy for all
4 houses surrounding it, including our front house." And
5 that's it. So what a nice letter of support. Puts a good
6 framework on what is being proposed. Questions from members
7 of the Board?

8 JANET GREEN: No.

9 JIM MONTEVERDE: No, sir.

10 CONSTANTINE ALEXANDER: Okay, I think I'll propose
11 to make -- I'll make the following motion. I propose to
12 make the following findings. That a literal enforcement of
13 the provisions of the ordinance would involve a substantial
14 hardship, such hardship being is that we have a substandard
15 structure -- residential structure now, particularly in
16 terms of size, and this applies not only to you but anybody
17 who occupies the structure. That the need for relief
18 results in the fact that this is a non-conforming structure
19 and a very small area and that relief may be granted without
20 substantial detriment to the public good.

21 In this regard, as pointed out by one of the
22 letters, we're dealing with an very imaginative use of this

1 space which will help the affordable housing situation in
2 the city of Cambridge which is a primary goal of this city
3 in recent years. So based upon all these findings, the
4 Chair moves we grant the special permit -- I'm sorry, the
5 variance requested on the condition that the work proceed in
6 accordance with plans prepared by Watermulder, W-a-t-e-r-m-
7 u-l-d-e-r, Architects, and there is no -- yes, there is --
8 no, no date on this. Date was left blank, but the first
9 page of which has been initialed by the chair. All those in
10 favor -- that are dated -- thank you, April 17, 2019. All
11 those in favor, please say aye. Five in favor, relief
12 granted. Good luck.

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1 (10:19 p.m.)

2 Sitting Members: Constantine Alexander, Brendan Sullivan,
3 Janet Green, Jim Monteverde, Slater
4 Anderson, Laura Wernick, Alison Hammer

5 CONSTANTINE ALEXANDER: The Chair will Case Number
6 017115, 30 Berkshire Street. Anyone here wish to be heard
7 in this matter?

8 JIM HEFFERNAN: Good evening, Mr. Chair and the
9 Board. My name's Jim Heffernan, J-i-m H-e-f-f-e-r-n-a-n.

10 CONSTANTINE ALEXANDER: You're not Joe The
11 Architect?

12 JIM HEFFERNAN: I am not Joe the Architect. Joe
13 the Architect is sitting to my left, and also with me,
14 Patrick Dooling is sitting to my right.

15 PATRICK DOOLING: That's Pat, P-a-t, Dooling, D-o-
16 o-l-i-n-g.

17 JOE STROMER: And Joe Stromer, J-o-e S-t-r-o-m-e-
18 r.

19 JIM HEFFERNAN: We're here tonight based on a
20 variance that was granted by this Board at a public hearing
21 in July of 2017, written decision in August. There was a
22 variance and special permit granted at that hearing. This

1 is a building that was damaged by fire, three-unit
2 condominium. We are not changing anything from what was
3 approved that night. Unfortunately --

4 CONSTANTINE ALEXANDER: Except the size.

5 JIM HEFFERNAN: Except for the -- well, it was
6 approved that night. So that night there was an approval of
7 the variance to expand the back just for adding compliance
8 to the stairwell. If we go ahead and build it as it was
9 designed in 2005, the stairwell would not be to today's
10 standards of code compliance. We thought we were going to
11 go with that, but looking at the wisdom of this Board from
12 roughly a year and a half ago and speaking with the
13 commissioner, it made sense to go back to what the variance
14 was, allowing a staircase to go into the back rear yard.

15 CONSTANTINE ALEXANDER: I'm puzzled because I'm
16 looking at your advertisement. It says to construct three-
17 unit dwelling slightly bigger than the building that was
18 damaged by fire. And you make reference to the fact we
19 granted relief before. I look at the dimensional form for
20 this case and the dimensional form for the case we granted
21 the variance before, they're identical. So what's -- how --
22 when you say slightly bigger, I don't understand what it

1 means.

2 JIM HEFFERNAN: They are exact -- the set of plans
3 are exactly the set of plans that were previously --

4 CONSTANTINE ALEXANDER: Then why's it slightly
5 bigger?

6 JIM HEFFERNAN: Slightly bigger than the footprint
7 of the building that was there before the fire, the existing
8 --

9 CONSTANTINE ALEXANDER: Oh, granted, that was in
10 the --

11 JOE STROMER: It's the same exact proposal that
12 was before the Board two years ago.

13 SLATER ANDERSON: Yeah, so it's not slightly
14 bigger from two years ago, it's exactly the same.

15 CONSTANTINE ALEXANDER: Okay.

16 JOE STROMER: Meaning nothing has changed from
17 what was approved.

18 JIM HEFFERNAN: And to clarify, the special
19 permit, it technically hasn't expired yet, but it's tied
20 into --

21 CONSTANTINE ALEXANDER: Well, I don't think we can
22 put -- no, I don't think we can take action on the special

1 permit. The special permit is in existence. And when it
2 expires, you can either -- come seek an extension, but we
3 can't grant relief for something that doesn't need relief,
4 and that's the case. So I'm -- special permit is not going
5 to be voted on tonight.

6 JIM HEFFERNAN: I actually agree with your legal
7 opinion on that one, and it was based out of the abundance
8 of caution that tied into that, but I --

9 CONSTANTINE ALEXANDER: I understand why you --

10 JIM HEFFERNAN: -- agree with you.

11 CONSTANTINE ALEXANDER: So can I take it you can
12 withdraw your request for a special permit?

13 JIM HEFFERNAN: I am fine with doing that.

14 CONSTANTINE ALEXANDER: Okay, the record should
15 reflect that we're not acting on the special permit tonight,
16 it's just the variance. Okay. Seems, to me, pretty
17 straightforward, but any questions from members of the
18 Board? No questions? There's no one in the audience so I
19 can't ask for that. And I don't think we --

20 SLATER ANDERSON: Wait, there's one gentleman over
21 there.

22 CONSTANTINE ALEXANDER: Oh, he doesn't count.

1 Don't pay any attention to him. And I don't think there are
2 any letters in our files.

3 JIM HEFFERNAN: Oh, I will mention the -- we did
4 hear from the neighbor at 28 Berkshire, and he mentioned
5 verbally over the phone that he was in support.

6 CONSTANTINE ALEXANDER: Okay. The record shall
7 reflect that, an oral report from petitioner. So the Chair
8 moves that -- I think we're ready for a motion I should say.
9 The Chair moves to make the following findings with regard
10 to the variance being sought. That a literal enforcement of
11 the provisions of the ordinance would involve a substantial
12 hardship, such hardship being is that this is a structure
13 that was damaged by fire and the petitioner has made -- has
14 gotten variances before -- a variance before with regard to
15 rebuilding this structure. And that without this further
16 minor relief, would not be able to proceed with the
17 reconstruction that you're proposing.

18 That the circumstances relate to the nature of the
19 structure as it is right now, and so whatever modification
20 you want to make requires relief. And the relief may be
21 granted without substantial detriment to the public good or
22 nullifying the intent of the ordinance. On the basis of

1 these findings, the Chair moves to grant the variance
2 requested on the condition that the work proceed in
3 accordance with the plans prepared by Joe the Architect -- I
4 don't see -- usually I can find the date, but it's here
5 somewhere. Anyway, the first page of which has been
6 initialed by the Chair. All those in favor, please say aye.
7 Five in favor, relief granted.

8 JIM HEFFERNAN: Thank you very much.

9 CONSTANTINE ALEXANDER: -- hanging around.

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1 Sitting Members: Constantine Alexander, Brendan Sullivan,
2 Janet Green, Jim Monteverde, Slater
3 Anderson, Laura Wernick, Alison Hammer

4 CONSTANTINE ALEXANDER: We have one case left, and
5 we're going to continue this case. The Chair will Case
6 Number 1 -- I'm sorry, 017104, 194 Rear Prospect Street.
7 Anyone here wishing to be heard in this matter? You're not
8 going to be heard. The Chair is in receipt of a letter
9 which I will read into the record. It's from C. Christopher
10 Logan. "I am writing to request a continuance of the BZA
11 hearing for this application to be scheduled for the July 25
12 hearing. This change in date will allow the owners Peter
13 and Suzanne Martin to attend." I think we have room on July
14 27 (sic).

15 SISIA DAGLIAN: Yeah, there's no one else at that
16 time.

17 CONSTANTINE ALEXANDER: Chair moves that we
18 continue this case until July 25 on the -- well, continue
19 this case as a case not heard, subject to the following
20 conditions. That the petitioner sign a waiver of time for
21 decision. He hasn't done that yet, right?

22 SISIA DAGLIAN: No. We'll have to contact him.

1 CONSTANTINE ALEXANDER: Please contact him and
2 tell him he has to get that. Otherwise, we will hear the
3 case earlier and deny the relief. Second, that the
4 petitioner needs to put up a new posting sign or modify the
5 existing one to reflect the new date, July 25, and the new
6 time, 7:00 p.m., and that the sign as so modified be
7 maintained for the 14 days required by our ordinance. And
8 lastly, to the extent this petitioner wants to submit new or
9 modified plans or dimensional forms, these must be in our
10 file no later than 5:00 p.m. on the Monday before July 25.
11 All those in favor, please say aye. Case continued. Thank
12 you.

13 JOHN HAWKINSON: Are you adjourned?

14 CONSTANTINE ALEXANDER: Say again?

15 JOHN HAWKINSON: Are you adjourned?

16 CONSTANTINE ALEXANDER: We are adjourned.

17 (End of proceedings.)

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E R R A T A S H E E T

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Page Line 'Change From' 'Change To' Reason for change

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

Date

CERTIFICATE

Commonwealth of Massachusetts

Middlesex, ss.

I, Catherine Burns, 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 _____ day of _____, 2019.

Notary Public

My commission expires:

August 6, 2021