

BOARD OF ZONING APPEAL FOR THE  
CITY OF CAMBRIDGE GENERAL HEARING  
JUNE 10, 2010 7:00 P.M.

in

Senior Center  
806 Massachusetts Avenue  
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Brendan Sullivan, Member

Thomas Scott, Member

Tad Heuer, Member

Sean O'Grady, Zoning Specialist

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

CONSTANTINE ALEXANDER: The Chair will call the meeting of the Zoning Board of Appeals to order. And as is our custom, we're going to start with the continued cases. And the first case we're going to call is case No. 9793, 15 Crescent Street. Is anyone here wishing to be heard on that matter?

(No response).

CONSTANTINE ALEXANDER: The Chair notes that no one is here wishing to be heard. There's a letter addressed by Elizabeth Peoples, P-e-o-p-l-e-s. It's addressed to Mr. O'Grady. "I am rescinding my application for a Variance for 15 Crescent Street. I will be following up with an application for a demolition permits upon selection of a contractor. Future building plans will be done under a separate permit application. My understanding that upon

completion of the demolition permit, that I will have no outstanding obligations to the city and that the property will not be encumbered from the stop work order or concerns and pass paperwork from the Zoning administrator."

My comment is that I'm not going to -- I don't think we should pass on her understanding, confirm it or deny it. I think we just act on her application to withdraw, and whatever follows from that, follows from that. That's for Sean and the Petitioner to work out.

So, the Chair moves that in accordance with the request for withdrawal made by Elizabeth Peoples, the Petitioner, that this case be withdrawn.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: Sean, I  
don't know if you heard. I'm not buying into  
her understanding. That's for you to work  
out with her.

SEAN O'GRADY: Okay. Oh, yes, I  
have. And everything's fine now.

(7:05 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9909, 44 Follen Street. Anyone here wishing to be heard on that matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard on that matter. No one appears anyway.

There is a letter I believe in the file addressed to the Board from the Law Offices of Vincent J. Panico, P-a-n-i-c-o.

"Gentlemen, would you please continue case 9909 which is scheduled for a continued hearing on June 10, 2010. Please continue to any date beyond June 24, 2010. Request for a continuance arises from the fact that a related case, 9925 on the same property

scheduled to be heard on June 24, 2010 may resolve the issues in case 9909."

Sean, do you have a date you want to suggest?

SEAN O'GRADY: I was going to suggest the 24th assuming that one would go one way or the other. He's asked for any date after that.

CONSTANTINE ALEXANDER: After, exactly.

SEAN O'GRADY: If we honor him, we have some cross -- some competition tonight. So I'm going to move him since it doesn't matter, to September 16th.

CONSTANTINE ALEXANDER: Okay.

TIM HUGHES: Is that a case heard?

CONSTANTINE ALEXANDER: No. Thank you for mentioning that. This is a case not heard.

The Chair moves that this case be continued until seven p.m. on September 16th?

SEAN O'GRADY: 16th, yes.

CONSTANTINE ALEXANDER: We have a waiver of notice in the file already, a waiver of notice for a time to reach a decision in the file already. So the motion made on the further condition that the Petitioner modify the sign on the property to indicate the new hearing date.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

(Alexander, Hughes, Sullivan, Heuer Scott.)

(7:05 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9923, 289 Brookline Street. Is there anyone here wishing to be heard on that matter?

Please come forward, give us your name and address and spell your name for the stenographer.

INGRID WRIGHT: I am Ingrid, I-n-g-r-i-d Wright, W-r-i-g-h-t, at 289 Brookline Street in Cambridge, 02139.

CHRISTOPHER WRIGHT: I'm Chris Wright also at 289 Brookline Street in Cambridge. Same address, Zip Code, etcetera.

DAN ANDERSON: Hi. Dan Anderson principal at Anderson Porter Designs, 875 Main Street, Cambridge.

CONSTANTINE ALEXANDER: The floor is yours. You're seeking a Variance?

DAN ANDERSON: Yes. So, you guys want to describe briefly the proposal or shall I?

CHRISTOPHER WRIGHT: I can describe it. So, basically we're -- we sort of have a big family so we're going to expand the two-family that we bought initially. So we just want to be able to do that. And we thought we would try to convert it into a single-family.

CONSTANTINE ALEXANDER: That doesn't require a Variance. And you don't need a Variance to demolish the garage either.

CHRISTOPHER WRIGHT: Right. And part of that is the entrance.

CONSTANTINE ALEXANDER: That's where you need your Variance.

CHRISTOPHER WRIGHT: Right. And so

I guess it involves basically taking the entrance that we have currently, moving it back so we have more of a center entrance and actually making the area of that smaller, so it will be, it will be smaller, less extensive out of the house and moved back basically.

DAN ANDERSON: Same square footage.

CONSTANTINE ALEXANDER: Further down the driveway back from the street.

CHRISTOPHER WRIGHT: Exactly, exactly. So there's like a door and then like a window next to it on the porch area in the front. And we're moving it back so that where that window is essentially where the door because it makes more sense of having an entryway there essentially.

CONSTANTINE ALEXANDER: And the reason you need relief is because you're going to have a roof over this new doorway and that under our Zoning Law it creates new FAR.

CHRISTOPHER WRIGHT: There's an

existing roof over the existing porch.

CONSTANTINE ALEXANDER: Right.

DAN ANDERSON: So the relief is the fact that because we're already non-conforming in terms of FAR, moving it is essentially -- we need to ask.

CONSTANTINE ALEXANDER: You can't trade the FAR. You have to get treated as new FAR.

DAN ANDERSON: So we're treating it as new FAR.

CONSTANTINE ALEXANDER: 23 feet of new FAR.

DAN ANDERSON: And because we're reducing -- going from a two-family to a one, the garage space which otherwise is a two-car garage, which would become non-conforming, we're basically taking the entire garage down at this point so there's a net reduction in the total gross building area of the lot.

CONSTANTINE ALEXANDER: And just

for the record, the FAR situation is you're right now at 0.755. And with your project you're going to go to 0.758. So a very, very slight increase. You also still have a side yard setback issue, but in fact, you're reducing the amount of violation of the side yard setback. You're getting farther away.

DAN ANDERSON: We're hoping we're improving that. It's one of the reasons also that we asked for hardship on this is because it really does, in its existing condition, constrain the use of that drive quite substantially by a foot. So it moves it more to a usable location for the driveway and parking as well as creating a reasonable primary entry to the building.

CONSTANTINE ALEXANDER: Questions from members of the Board? Comments? Observations?

TIM HUGHES: I'm ready for a vote.

CONSTANTINE ALEXANDER: I know you

are. I'm trying to get to the statute.

By the way, these are the plans for which you are planning to do? And these are the final plans?

DAN ANDERSON: They are.

CONSTANTINE ALEXANDER: We are going to condition relief on these plans, so if you change them, you're going to have to come back before us.

INGRID WRIGHT: We have letters of support, too, from the neighbors.

CONSTANTINE ALEXANDER: And just for the record, we should have them in the record.

THOMAS SCOTT: Could you pass that down?

CHRISTOPHER WRIGHT: That contains everything, because that was sort of on whatever the poster, you know, two-family going to one, etcetera, etcetera so I felt like I wanted to put everything on there. I

knew that wasn't necessarily required for the Variance.

DAN ANDERSON: Full disclosure.

CONSTANTINE ALEXANDER: The Chair will note for the record that we've been furnished with letters addressed To Whom It May Concern. Identical letters. The letter says:

"We live on Chestnut Street and our backyard is next to side of the Wrights' backyard. We have reviewed the renovation plans; remove garage, remove side entrance and convert it to one family, and do not have any concerns." And it's signed by the residents at 105 Chestnut Street.

Similar letter signed by the resident at 301 Brookline Street.

Similar letter from a person who resides at 285 Brookline Street.

And a similar letter from the resident at 295 Brookline Street.

Questions, Tom? You all set?

THOMAS SCOTT: Yes.

CONSTANTINE ALEXANDER: Tad, you all set?

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: The Chair moves that the Board make a following findings:

That the literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the ability to use the driveway and to have an effective entrance to the structure would be adversely affected if we did not grant relief.

The hardship is owing to basically the shape of the structure and of the lot, and it's siting on the lot which is into the driveway, which unless we move the entrance, would affect the ability to use the driveway. And that relief may be granted without

substantial detriment to the public good or substantially derogating from the intent or purpose of this Ordinance.

In fact, the project involved is to create a single-family dwelling. Something that is not necessarily in great supply in the City of Cambridge. That the relief is modest in nature. That it has the support of abutters, and at least there's no expressed opposition. And that bottom line it is a result in a more rationale use of the entire premises.

On the basis of these findings, the Chair would move that a Variance be granted on the condition that the work proceed in accordance with plans prepared by Anderson Porter Designs. They're numbered A0.0, A0.1, A2.0 and A2.1. The first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Variance  
granted.

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

(7:15 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will now turn to our regular agenda at least for the first case and then we'll come to the continued again.

The Chair will call case No. 9939, the 150 Erie Street. Anyone here wishing to be heard on that matter? Please come forward.

MARGARET DONNELLY MORAN: Good evening. My name is Margaret Donnelly Moran. I work with the Housing Authority in the Design and Development Department and I'm here along with Ken Smith from Tice Design Architects to present our 150 Erie Street apartment project. It's a very exciting project for the Housing Authority. We have a couple of them going on. This one is also a stimulus-funded project. What's really

nice about 150 Erie Street is that it's been a property that we've been trying to do some major work, and for a decade and we haven't had the resources financially to be able to do it. And the stimulus funds we've received under a competitive program last fall has really been the catalyst for us to move forward with a very exciting project.

We were funded under Green Elements, Green Community Elements and Energy Efficiency and so there's some really exciting components to the project that are really, I think, great for the Housing Authority to be out in front. And Ken will talk about the photovoltaics that we're putting on the roof. But we're also doing cogeneration. We're also taking the opportunity to replace the antiquated and very expensive electric heating with the gas hydronic. And for the first time in the Housing Authority's history putting in some

central air conditioning. We've been reliant upon window units for a very long time. And with the energy work we're able to make other amenity improvements in the building including kitchen and bathroom upgrades. Some much needed common area improvements, and some site improvements as well.

We're here tonight because the Special Permit we got back in 1971 had certain little wrinkles to it in terms of FAR, setbacks and parking and we're looking for some relief on parking and on setbacks. And I'll let Tim talk a little bit more about the project and about the specific areas on the relief we're looking for.

TIMOTHY SMITH: Hi. Tim Smith with Tice Design Associates. We're architects for the project. We're working on this project for a long time. Most recently in the last year or so -- year and a half doing

a feasibility study for the application and now we're into construction documents and we hope to go into bidding very soon in the next couple of weeks.

The project is 178-dwelling units. Apartments, very small apartments. About 385 square feet, most of them, about three-quarters of them. And the housing -- one the programmatic elements of the project was to, or is to enclose some of the balconies that have been a source of water, water penetration issues. And in so doing, by enclosing about a 35-square foot balcony, we can create mini one bedrooms, that's what we're calling them. They're about, you know, 420 square foot one bedrooms, but they're a lot more marketable. CHA just did this up at Daniel Burns Apartments in North Cambridge, it was very successful.

CONSTANTINE ALEXANDER: And this

creates one of the Zoning issues, you're increasing the FAR?

TIMOTHY SMITH: Increasing the FAR above what it was, but it's still would be below what was approved in the C-3 district back in --

MARGARET DONNELLY MORAN: Right, but it's actually not incorporating -- the balconies were always part of the FAR because they were covered.

CONSTANTINE ALEXANDER: Right.

MARGARET DONNELLY MORAN: And the only thing that's affecting the FAR is actually adding the two inches of insulation to the skin of the building to increase the energy efficiency of it. So balconies themselves are fine.

TIMOTHY SMITH: That's right.

TAD HEUER: So, are you recladding entirely in order to accommodate the insulation?

TIMOTHY SMITH: Yes. Some of the exciting things that Margaret was talking is that this is a great candidate for incredible energy efficiencies, because it's basically a radiator now. There's no thermal break between them. Precast concrete walls. The windows are 35 years old, they leak like a sieve as you can imagine. A lot of thermal breaks are broken, very old. So it's kind of a -- from an energy -- from the energy grant that we applied for, it's kind of a slam dunk because just by completely replacing the envelope and cladding the building and doing -- converting the electric resistant heat over to gas-fired hydronic, plus some other things, we can cut the energy consumption which is about 450,000, we cut that in half to 225.

CONSTANTINE ALEXANDER: What's the demographics of the building? What's a typical resident? It's not families

obviously.

MARGARET DONNELLY MORAN: No, it's elderly and disabled. Most folks are in the elderly category.

CONSTANTINE ALEXANDER: Do you expect the demographics will change as a result of what you're doing?

MARGARET DONNELLY MORAN: No, it will remain federal public housing, and we'll still be restricted in the same program to the elderly and to the disabled. So the population will remain the same and it will continue as federal public housing.

TAD HEUER: Are you increasing the number of accessible units?

MARGARET DONNELLY MORAN: We are bringing -- we currently have four. We're adding five more so we'll have nine, which is right at the five percent requirement. That was one of the other pieces of work that we want to do as well.

BRENDAN SULLIVAN: And this work will allow to you do that?

MARGARET DONNELLY MORAN: Correct.

BRENDAN SULLIVAN: Whereas before you were constrained?

TIMOTHY SMITH: Like I said, the units are extremely small. We had to actually combine a couple of units to make an accessible unit or a couple of accessible units.

BRENDAN SULLIVAN: Right.

TIMOTHY SMITH: The 1971 accessible units don't nearly meet the current regulations. So that's a nice aspect of this project.

One thing that Margaret mentioned as well, in terms of some of the energy considerations is on the higher part of the roof, the back view you'll see a lot better is filling up the whole roof with photovoltaics on the roof.

CONSTANTINE ALEXANDER: For what, I'm sorry?

TIMOTHY SMITH: Photovoltaic panels, yeah. Which will account for ten percent -- we have to meet or exceed as part of the grant ten percent of the energy use or the electricity use in the building, so we're able to accomplish that as well.

TAD HEUER: What do you expect your cogent recipient to be? (Inaudible).

TIMOTHY SMITH: It's diesel. Electricity. Or it's a gas -- I'm sorry, it's a hydronic. Gas-fired hydronic cogent system.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: And the parking?

TIMOTHY SMITH: Parking is -- the two issues that Margaret mentioned, two zoning-related issues that Margaret mentioned are the setbacks and the parking.

It's just speaking to parking for a minute. There are, as part of the original 1971 permit, they received a Special Permit that was, they got 25 percent of the total units were 180 at the time, so there are 45 parking spaces. Right now there are 44 parking spaces, real parking spaces on-site. I think something -- one parking space was taken over here for some -- just for basically pool heaters to supplement the water heat in the building. It's about 44 units right now. We are asking to reduce the number from 45 to 38, taking up seven spaces. And where those spaces go, because of the federal standards, U-FAST standards for accessibility, which is a little different than the local standards, and we have to comply with both, we lose a space basically by being able to provide an aisle between accessible parking spaces.

Another issue is being able to -- there's no real accommodation.

There's a trash room in the building here (indicating) but no real accommodation for outdoor storage of trash bins and dumpsters. So we're taking up two spaces here for trash enclosures to hold about three dumpsters.

CONSTANTINE ALEXANDER: Is that on the street?

TIMOTHY SMITH: Here's your street. Here's Erie Street here. The east parking lot and the west parking lot (indicating).

CONSTANTINE ALEXANDER: Yes.

TIMOTHY SMITH: Hamilton Street is the back here (indicating).

Another consideration was a lot of folks, as elderly as they are, still ride bikes and there's no place really to put bicycles. And the Bicycle Ordinance hadn't come into effect for another nine years back when this was built. So one of the things that we have been working on with the residents is trying to find a place on-site

where those bikes could go. This rear yard is pretty much enclosed. We thought about putting some back here, but then people would be coming through the lobby with their bikes at all times of the year. So we thought about taking over, these are garage bays that are covered. They're open but they're covered. It seemed like a logical place to put some bicycle storage. We can get about 12 bikes in there as well as some recycling bins. So that was another consideration. So we're -- that's one and two, there's five altogether.

The last two, there is no real space in the first floor for maintenance, to have any kind of staging space for bringing in appliances or to have any kind of shop. And so we're going to just put a garage door in, condition this space and have a place where they can -- when they bring in a shipment of appliances or something like that, they can

have a place to put that on-site. The only space they have is really in the basement. It's really awkward to get to.

So the basement really went down to 45 that were approved back in 1971 down to 38.

CONSTANTINE ALEXANDER: What's the historical use of the 44, 45 --

TIMOTHY SMITH: We've done some more windshield surveys, you know, on my way to work at five in the morning going by and seeing what the parking use was. And we counted anywhere from 12 to 15 empty spaces overnight. And talking with site management, too, he felt the parking lot was somewhat underutilized in terms of full capacity.

CONSTANTINE ALEXANDER: What about holidays with people visiting elderly parents?

MARGARET DONNELLY MORAN: I mean, there is visitor parking in the lot and, you

know, that's never been a particular problem.

CONSTANTINE ALEXANDER: You don't have any complaints from neighbors about the parking.

MARGARET DONNELLY MORAN: No. And we do issue permits, little parking permits at no cost to the residents, and the last two years it's never exceeded 28 stickers. So, and again at no cost so it's not like people are choosing not to come in and obtain them.

TIMOTHY SMITH: That was the -- that's the parking request.

The issue around the -- on the setbacks really has to do as Margaret mentioned, is adding two inches of insulation to the walls.

CONSTANTINE ALEXANDER: Right.

TIMOTHY SMITH: And when Ben Thompson Associates did the original calculations, they did a planar method which is basically taking all the planes of the building and, you know, rather than the

height times the length divided by -- you know the way they do it now. So back in 1971, the setback was about 36 feet along Erie. We're actually at 39 measuring to the center line to the street, which is the way it's done as you know. So basically we're not, we're not encroaching on the setback. It's just, we talked to Ranjit about it, he said it's best to go through the comprehensive permits. We feel like we're adding the insulation, even though it's growing the building by two inches and increasing the FAR, that we're still -- we think we're still within the regular setbacks.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: The measurement is from the outside skin to outside skin?

TIMOTHY SMITH: Yes.

CONSTANTINE ALEXANDER: In your petition and in your advertisement you didn't ask for any setback relief.

TIMOTHY SMITH: We don't --

CONSTANTINE ALEXANDER: And you don't believe you need it.

TIMOTHY SMITH: Right exactly.

MARGARET DONNELLY MORAN: And I the FAR is growing because of the two inches and it's going from 294 to 297. And the area is zoned for 3.0. It's just that our Special Permit had a lower amount than the current Zoning and I think that was really the trigger.

CONSTANTINE ALEXANDER: Any questions from -- you're through?

TIMOTHY SMITH: I think that's it.

CONSTANTINE ALEXANDER: Any questions or comments from members of the Board?

TAD HEUER: I have a question that doesn't necessarily obtain to the application but just the construction process. This is a rather tall building for

that area.

TIMOTHY SMITH: Correct.

TAD HEUER: As a separate matter, we see a number of applicants coming in from telecommunications entities who want to put antenna on buildings. Is that something that Cambridge Housing Authority has had experience with, has a policy on, yes or no? And if you do allow them, is it something that as we're looking to try to minimize the impact of these things, and you're reconstructing a tall building is there some way to create a bay or some place where those can be placed if you were to accept them in the future unobstructively rather than just slapping them on the side of the building?

TIMOTHY SMITH: You can talk about the history I think a little bit.

MARGARET DONNELLY MORAN: Right, the only building that I can think of that the housing authority, I mean, where we get

approached, but it's always where they're looking to fill in the black spots.

TAD HEUER: Right.

MARGARET DONNELLY MORAN: And we have a couple of antennas in East Cambridge, not on the river surprisingly enough, but on apartments but more in the neighborhood and, you know, we've worked with them to put them there and go through the proper permitting for that. We've never gotten a request for Johnson, and it could be that it's so close to Memorial Drive and there are no other tall buildings that are servicing their needs. You know, it just has never been -- never say never, but it's never been -- surprisingly since it's such a prominent building in the neighborhood.

TIMOTHY SMITH: Also, when working with the solar, Brago solar and their Boston community capital solar panels and anything that would cast even the slightest shadow on

their panels, they wouldn't be happy about.

TAD HEUER: Well, most communications are looking for facade mount below the roof line which is why I asked, if you're going to be recladding, you know, many times what we're trying to avoid something that sticks out skewing antenna and out on the edge.

MARGARET DONNELLY MORAN: We would try not to do that.

TIMOTHY SMITH: I think we're trying to keep the -- because we are cladding this building, the last thing we want to do is start attaching things to it as well.

MARGARET DONNELLY MORAN: And the panels are such a pivotal part of the funding. The notion of even offering any kind of shading up there would be something we're not interested in.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Further

questions?

TAD HEUER: No.

CONSTANTINE ALEXANDER: I'll open this to public testimony. Anyone here wishing to be heard on this matter?

(No response.)

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

The Chair would note that we are in receipt of a memo from the Planning Board regarding this property and this application.

It states: The Planning Board met with the Proponents of this project at the regularly scheduled meeting of May 18, 2010. They would like to support the renovation and redevelopment of the L.B.J. Apartments as presented. The Planning Board finds that the Cambridge Housing Authority and their architect have studied the existing housing market as well as the energy needs of their

residents and address those concerns through a variety of well thought out solutions. The Planning Board also supports the reduction of the number of parking spaces and the reuse or reprogramming of those spaces for bicycle parking and recycling efforts further reducing the residents' environmental footprint."

We are also in receipt of a letter from the L.B. Johnson Apartments Resident Council addressed to us dated June 8th. It says: The L.B. Johnson Apartments Resident Council wishes to express our full support of the Cambridge Housing Authority's comprehensive permit application. The Cambridge Housing Authority and L.B.J. Resident Council have met regularly over the past year to discuss plans of the modernization of our building. We've worked with CHA staff and the architects from Tice Design Associates to collaborate on many of the design decisions.

We are grateful for the \$10 million HUD stimulus grant that was awarded to make the renovations to our building possible. We are very excited about the new kitchen and bathroom designs and plans to modernize our community spaces. The new windows, insulation, heating and cooling systems will make the building more comfortable for residents and significantly reduce the building's energy needs. While construction will cause some disruption to our normal routines, we understand that no residents will be displaced as a result of the modernization.

Is that correct?

MARGARET DONNELLY MORAN: That is correct.

CONSTANTINE ALEXANDER: (Reading)  
We collaborated with the CHA to create a solid resident relocation and unit assignment policies and procedures agreement which was

accepted by the L.B. Johnson Resident Council and subsequently approved by the Cambridge Housing Authority Board of Directors. The Comprehensive Permit request changes in the number of parking spaces. There are plenty of parking spaces for residents and our guests. We are in favor of slightly reducing the number of parking spaces to make room for covered bike storage and better storage facilities for our dumpsters. We hope the Board of Zoning Appeal approves the Cambridge Housing Authority's Comprehensive Permit application. Please contact us if we can be of further assistance.

That is the record.

The Chair would note for the record that all of the other boards in the town who have been notified of this Comprehensive Permit application and chosen not to communicate with us. So we presume they have -- at least not in opposition to what you want to do. And

we do have one Board in support, Planning Board.

Comments from members of the Board?

Ready for a vote?

BRENDAN SULLIVAN: Have we gone through all the prerequisites?

CONSTANTINE ALEXANDER: I'm going to do that when I make my motion.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: The Chair moves that a Comprehensive Permit be granted to the Petitioner to enable the Petitioner to modify its 1971 Special Permit granted by this Board with the effect of converting 69 studio units into 69 one-bedroom units by enclosing exterior balconies and replacement of windows and to reduce parking spaces in the garage from eight to four and to use the space in the garage for recycling and bicycle parking. This work, particularly the conversion, will increase FAR due to

insulation of the exterior of the building.

So the Special Permit would be granted to proceed in accordance with plans submitted by the Petitioner as part of its Comprehensive Permit application. These are your plans, sir?

TIMOTHY SMITH: Yes.

CONSTANTINE ALEXANDER: Okay.

Plans submitted as part of the Comprehensive Permit application and prepared by Tice Design.

TIMOTHY SMITH: Correct.  
Associates.

CONSTANTINE ALEXANDER: I got it right this time, Tice Designs.

The Chair moves that the Board make the following findings:

That the jurisdictional requirements for the Comprehensive Permit have been satisfied.

The Petitioner is a public agency. You

can confirm that as you said in your application.

MARGARET DONNELLY MORAN: Correct.

CONSTANTINE ALEXANDER: That's one requirement.

Second jurisdictional requirement is that the project must be fundable under a state or federal law or moderate low income housing program. And you submitted with your application an indication that you will be funded through the stimulus.

MARGARET DONNELLY MORAN: Right, we currently are and will be funded as well.

CONSTANTINE ALEXANDER: And you must control the site. And since you've been there since 1971 I suspect you control the site.

MARGARET DONNELLY MORAN: Yes, we've provided a copy of our deed.

CONSTANTINE ALEXANDER: The Chair would further note that the project will

improve the quality of the inhabitability of the structure by increasing the size of the units, by providing a more energy-efficient building; by having various green effects that benefit the community; by creating -- although it will be a loss of parking space, that the history has demonstrated that all the parking spaces that are there now are not necessary. And in fact, we will be increasing the ability of bicyclers to store bicycles on the property which is another green effort with green development that's beneficial to the community.

That there is a need in the region for a moderate housing, moderate and low income housing which this project now satisfies and will satisfy in a better way because a better quality of dwelling units.

Further, that the Board would note that all of the Boards of the town have been

notified of the application of the project and none have chosen to object and the Planning Board is in support.

On the basis of all those findings, the Chair would move that we grant this Comprehensive Permit as originally indicated.

Any other findings that people wish to make or add to what I said?

All those in favor of granting the Comprehensive Permit say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Granted. Good luck.

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

(7:50 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will now continue to the last of the continued cases, and the Chair will call case No. 9934, 60 Ellery Street. Is there anyone here wishing to be heard on that matter? Please come forward. Please give your name and address for the record.

ALEX STEINBERGH: Yes, Alex Steinbergh and I live at Three Clinton Street. I'm the trustee of the 60 Ellery Trust. And I want to request a continuance

of the case because we had a request to the Building Commissioner for nine certificates of occupancy and we got a denial letter late yesterday.

CONSTANTINE ALEXANDER: Right.

ALEX STEINBERGH: And so now we want to appeal that.

CONSTANTINE ALEXANDER: That's a separate matter. We can proceed with the Variance case tonight and hear on another night if you choose to file a formal application for your appeal.

ALEX STEINBERGH: Yeah, I talked to Ranjit this afternoon and he suggested that we file an application next week and that this case, this other case be continued until the appeal was heard. So that's what --

CONSTANTINE ALEXANDER: I understand that. I frankly don't understand why. Because we're talking about two separate legal issues. If we were to grant

your appeal, if --

ALEX STEINBERGH: Yes.

CONSTANTINE ALEXANDER: The Variance would be moot. You never have to reach it.

ALEX STEINBERGH: Right.

CONSTANTINE ALEXANDER: But if we deny your appeal, then the Variance case becomes irrelevant. So we can hear the Variance case tonight. If we were to grant it, you don't need to take your appeal. Or you might want to do it anyway, but it's up to you. If we were to deny it, it wouldn't affect your ability to file the appeal.

The reason I say this is because we have neighbors here who have come for the second time. The case was continued the last time, and although we're generally predisposed to continuing cases at the request of petitioners, again, I'm a little bit of a loss because the two cases are on separate tracks.

One is not related to the other. Usually we do that because of the relationship of the two. But I'll defer to other members of the Board.

Do you want to continue the case or do you want to hear the one tonight on the Variance? Recognizing, by the way, and this is for the benefit of the audience, even if we were to hear the case tonight, and even if we were to deny the Variance, you're going to have to come back -- presumably you're going to take an appeal from Mr. Singanayagam's decision and we'll be back here again and you'll have to come back again. So, it's not a matter of you get the case decided tonight and you never have to come back here again. So that's just what I'm pointing out. I'll give you a chance.

UNIDENTIFIED MALE: We're not here for that.

CONSTANTINE ALEXANDER: What do you

want to do, continue the case or not, members of the Board?

TIM HUGHES: Well, I'm not inclined to.

CONSTANTINE ALEXANDER: As I said, I don't see the basis for continuing it because they're completely unrelated cases.

THOMAS SCOTT: Neighbors have -- this is the second time they've been here. I'm in favor of hearing the case.

CONSTANTINE ALEXANDER: Brendan?

BRENDAN SULLIVAN: Yes, I don't disagree with your reasoning. That's what I'm trying to figure out how do I not agree with it.

ALEX STEINBERGH: Can I make one comment?

BRENDAN SULLIVAN: I don't disagree with it.

CONSTANTINE ALEXANDER: Do you want to express a view or let the Petitioner speak?

TAD HEUER: No.

CONSTANTINE ALEXANDER: Go ahead.

ALEX STEINBERGH: I brought this up and, you know, we over a week ago we made this appeal and we didn't get an answer until last night. And as a result of that, I was, you know, I went in today and he said that it was highly likely that we would get a continuance. And as a result of that, I didn't bring my attorney tonight. So....

CONSTANTINE ALEXANDER: Oh, you planned to bring an attorney and you don't have your attorney because of your conversation with Mr. Singanayagam?

ALEX STEINBERGH: Yes.

CONSTANTINE ALEXANDER: That's what your representing to the Board?

ALEX STEINBERGH: With Ranjit. And I talked to him about that this afternoon at four o'clock. And I got an assurance from him that this was, you know, it was his

suggestion to handle it this way. So, it's -- I recognize that there are neighbors here.

CONSTANTINE ALEXANDER: Well, that fact changes it from my perspective. If that's in fact the case --

ALEX STEINBERGH: I relied on that.

CONSTANTINE ALEXANDER: You relied on that, you did not bring counsel present tonight. I think it would be unfair to have this case forced to be heard without having the benefit of counsel that you planned to have. So, I'm going to reverse my recommendation to the Board and say we should continue this case.

BRENDAN SULLIVAN: I think counsel should have come to argue that point.

CONSTANTINE ALEXANDER: He was told by Ranjit that it was probable the case was going to be continued.

TIM HUGHES: I have to say when I

look at the dates on this, the decisions that were made and not enforced all the way back to 1978, that I'm not inclined to continue this case again. I'm ready to hear it and rule on it tonight. We have a busy schedule. Every time we continue another case it just, you know, compounds our time and our schedule and I'm ready to go.

CONSTANTINE ALEXANDER: Unless people want to comment more, I'll make the motion now to continue it. It's a majority vote and see how the vote come out.

Do you want to debate it among ourselves? You made your point very clear.

TIM HUGHES: I made my point.

BRENDAN SULLIVAN: There's no letter in the file from counsel. First time we've heard of counsel is right now.

CONSTANTINE ALEXANDER: I wasn't here last time. Did you bring counsel?

TAD HEUER: He didn't show up.

ALEX STEINBERGH: No, I wasn't here. I didn't come. Once again, I relied on, you know, we made an application -- not an application, request for the nine occupancy certificates. And Mr. -- and Ranjit and Mr. Driscoll said that they would give us a ruling. And so they suggested that we ask for a continuance. So, you know, I think what I've done has been in good faith. I'm trying to get this thing in the right order so that if this is to be appealed to the Superior Court, that it's done correctly. And I've, you know, I believe I'm entitled to rely on what the City Zoning Officer or the Building Inspector tells me is the right way to proceed. It's sort of complicated, and I guess I got off on the wrong foot that I should have first sent that letter in requesting the occupancy permits. But it sounds like it's going to, you know, be heard and decided this one thing. But, you know, you know better

than I do what the procedures are.

TIM HUGHES: Just my reading of the petition itself makes me suspect that you'll rely on the decisions of the City when it's to your advantage and not when it's not to your advantage.

ALEX STEINBERGH: No, that's not true. If you want to speak to the merits I think the, you know for -- between 1979 and 1994 there were two conflicting laws.

CONSTANTINE ALEXANDER: We don't want to make this a case heard.

ALEX STEINBERGH: Well, this person just started off. He can say what he wants to say, but I don't feel that I -- that's true.

TIM HUGHES: I'm still speaking toward the idea of a continuance.

ALEX STEINBERGH: I haven't been here since 1985. I'm trying to get this done correctly. I want to clear up my estate and move on.

CONSTANTINE ALEXANDER: I'd like to take public testimony because several people raised their hand. I'm going to be very clear. We're only going to talk about only to grant the continuance. Not the merits, okay? You raised your hand first.

Come forward and give your name and address for the stenographer.

STAVROS MACRAKIS: My name is Stavros Macrakis, 61 Ellery Street.

CONSTANTINE ALEXANDER: You may want to spell that, please.

STAVROS MACKRIS: S-t-a-v-r-o-s, M-a-c-r-a-k-i-s.

CONSTANTINE ALEXANDER: Yes, sir.

STAVROS MACKRIS: So on the question of a continuance, I think there are a couple of issues. First of all, I don't think Ranjit is authorized to speak on your behalf, on this Board's behalf. He can give advice and one can take it as what it's worth which

is someone who's experienced in the system. But it's just in some sense personal advice. I don't think that it's something that you can legally rely on as expressing the position of this Board, which is an independent Board, first point.

Second point, my understanding is that Mr. Steinbergh is an experienced real estate investor, not an individual with a single house whose inexperienced with procedures, so I would suspect he is familiar with the procedures of this Board and other boards and should not be given extra leeway. And obviously he should be given reasonable leeway, but not extra leeway in a matter of a continuance. That's basically what I have to say.

CONSTANTINE ALEXANDER: Okay. For the record, before I take other comments. You're absolutely correct about the reliance. It's not just a matter of relying

on Ranjit. There is an established law that people cannot -- the City can't be bound by representations made by its officials. It's a notion of estoppel. There is no estoppel. So you're right. People can take their advice but the City is not bound by their advice and have adhere to them. On the other hand there is a the notion of fairness, that's the other thing we want to put in the balance. I want to make the record clear because what Mr. Steinbergh said as well is that we're not bound by what is represented to us by what Ranjit has said.

She was next, okay?

MARYBETH LAWTON: I'm Marybeth Lawton. I reside at 54 Ellery Street and I co-own a parking lot with the RGM or RPM the management company. So, I have a lot of concerns about this property and I oppose the continuance. I think as Stavros stated that, you know, Mr. Steinbergh is

intelligent enough to know that when a case comes before a Board, that it's reasonable to bring an attorney. And I just think this is a tactic to delay it further. So I'm opposed to the continuance.

CONSTANTINE ALEXANDER: Now, sir.

TRACY LICKLIDER: I'm Tracy Licklider T-r-a-c-y, L-i-c-k-l-i-d-e-r and I'm at 12 Ellery Square which is a complex at Ellery Square that abuts the property.

I concur with what's been said. I think that you agreed about the reliance point that what Mr. Ranjit said is his opinion, not a ruling. And I also believe, I don't actually know, but I have a strong belief that the Petitioner is very experienced in the ways of real estate and boards. And to not bring his lawyer, which is something he perfectly well could have done, seems merely a provocation for an excuse. The other party we heard earlier

brought a lawyer. And it's, I think, customary in controversies that people bring lawyers. And so I feel that here we've come again another time, and if there's fairness, there ought to be some consideration of fairness of the people besides the Petitioner. I understand he has the rights, but I'm just talking about general fairness, that we not -- and I understand that we may have to if this is decided either way and he goes to court, we may be back here again. But it seems to me, and again, I don't quite see the same separation that you described. I understand procedurally, but at the moment he's denied occupancy for nine units. And so it seems odd to me that we would continue a case in which he wants to get away with four places thinking that he might get nine places -- I mean rather, he can keep nine and keep his four parking places only. And so I think it should be decided tonight on the

current merits that he's denied by -- and if he wants to appeal he has the right to appeal. But not just continue this at his -- he can reapply if he's decided for, that may moot all previous discussions and then we will be right to presented. But at this point it seems like a hyper-conditional expedition of saying we know what the status is and he's still hoping he's going to get nine and only have four. And to me it seems on the merits tonight --

CONSTANTINE ALEXANDER: Let me elaborate on that because I think there may be some misunderstanding. You don't have the benefit of the file.

TRACY LICKLIDER: I'm also not particularly knowledgeable.

CONSTANTINE ALEXANDER: The Petitioner has asked for a Variance and that's why we're here tonight. He has separately said to the Building Department.

I don't even need a Variance. Even if I were in violation of the earlier decision, the statute of limitations has run. So I am as a matter of right today, entitled to have nine unit apartments. And I don't need your Variance, thank you very much, good-bye. Okay?

That, he has made that argument to the Building Department. Mr. Singanayagam has denied, rejected it because the statute of limitations has not run. He, the Petitioner, has a right to take the appeal of that decision back to us. So if we were to hear the case, just so you understand, if we were to hear the case tonight, if, and if we were to deny the Variance, the Petitioner still can now pursue his rights with regard to the statute of limitations. Come back before us, we'd have another hearing. And if he won, if we reversed Mr. Singanayagam, whatever happened tonight would be

completely moot. He would have as a matter of right, the right to have nine units. That's the issue. That's why I say it's two different silos.

TRACY LICKLIDER: I understood. But it seems to me that approving his request for a Variance at this point is premature. One might do it, but rather than have it be continued indefinitely, it seems better to me, again, I'm just a citizen here, also I may be a suspect abutter, but I'm just saying it seems like the right thing to do is to stop continuing this, maybe with no decision, and say it's just not ripe for deciding. And if he wins, he can come back and ask you guys again. Or it may be completely moot. In other words, if he's found -- he may not need to ask any questions.

CONSTANTINE ALEXANDER: You've had a chance to speak unless you're going to add something new.

MARYBETH LAWTON: There is another piece here. It's not just the nine units.

CONSTANTINE ALEXANDER: I'm sorry?

MARYBETH LAWTON: It's not just the matter of nine units. That's one matter regarding this property. But there's also the matter regarding the four parking spaces that they own. And my understanding from Ranjit is that those four parking spaces were supposed to be available for the people that live in the building. That's not what's happening. They're not available.

CONSTANTINE ALEXANDER: That's also a separate matter. There's a letter in our files that Traffic Department has written to the Petitioner saying the parking arrangements are not in compliance with the Cambridge law. But that wouldn't be decided tonight anyway, whichever way we go. Just so you understand that.

MARYBETH LAWTON: Oh, okay.

CONSTANTINE ALEXANDER: I'm going to suggest we put the continuance to a vote and see where we go unless members of the Board want to debate it further. You've debated enough. I think we know where you are, but anyway go ahead.

BRENDAN SULLIVAN: I just suspect that if he was going to be represented by an attorney, then an attorney would have shown up just to make sure that it was continued. And would have pleaded that, a brief appearance or whatever. But there was no letter in the file indicating that Mr. Steinbergh is being represented by counsel. Or nor the application or anything. The first an attorney has surfaced is here a few minutes ago.

CONSTANTINE ALEXANDER: Further comments or should we put it to a vote?

THOMAS SCOTT: Are you capable of presenting the case? I guess is the

question.

ALEX STEINBERGH: I'm not prepared.

THOMAS SCOTT: You're not prepared?

ALEX STEINBERGH: To present the case.

THOMAS SCOTT: You would have been totally reliant on your attorney to present the case is that what you're saying?

ALEX STEINBERGH: My attorney was going to present the case.

BRENDAN SULLIVAN: Who was it?

ALEX STEINBERGH: Pardon.

BRENDAN SULLIVAN: Who is it?

ALEX STEINBERGH: Bingham McCutchen Carl Solomont, S-o-l-o-m-o-n-t.

CONSTANTINE ALEXANDER: Ready for a vote? I think we should discuss whether we get on with it or not.

BRENDAN SULLIVAN: That's fine, yes.

CONSTANTINE ALEXANDER: If we

continue it, what date? As part of the motion, I have to have a date.

BRENDAN SULLIVAN: I'm sort of soliciting some words from to your left there.

CONSTANTINE ALEXANDER: I've given him plenty of opportunity. He's remaining silent.

SEAN O'GRADY: August 12th.

CONSTANTINE ALEXANDER: August 12th? Okay. You have the right to remain silent, Mr. Heuer.

TAD HEUER: I know.

CONSTANTINE ALEXANDER: Also remember it's a three to two vote.

TAD HEUER: Which means I'm the deciding vote.

CONSTANTINE ALEXANDER: I'm not sure that's right.

TAD HEUER: I tend to be with Mr. Hughes that this has gone on for quite

sometime. I mean, the issue in front of us if we go to a Variance is whether there's a hardship involved. It's not as to how the previous decisions of this Board are or are not correct or incorrect. That's all material for an appeal. The only issue before us on the Variance is whether the Petitioner can demonstrate that there's a hardship in not being allowed to have nine units independent of anything that we've done in the past.

CONSTANTINE ALEXANDER: And the hardship is owing to special conditions, etcetera, etcetera. It's just the three part test for a Variance not just the hardship.

TAD HEUER: But not having nothing to do with the fact that we did or did not allow four or restrict to four or make any other decisions. Well, usually I would agree that the correct order just for

convenience is to have an appeal followed by a Variance, if then the appeal is denied. There's no absolute reason it has to go in that order because they operate as independent matters. And here I don't see anything, in the alternative that given the Petitioner has gone through this process for apparently 20 years that there should be an ability to make an argument for or against hardship as denying versus what the Building Commissioner is authorized to do. As an attorney, I'm swayed by the fact that most people want counsel, but I do find it suspect that counsel would be raised at this late date and only in response to the possibility of continuance might not be possible. So, I'm on the fence between that strict sense that counsel should be available to anyone who requests counsel. And the fact that counsel has never appeared, and should be genuinely sought and not sought as a matter of

convenience.

CONSTANTINE ALEXANDER: And again since I'm the Chair I get the last word. I think again, we have had a representation made. I have to take it on its face, that the Petitioner was advised that the case would be most likely be continued I think that's the best way of putting it. He has a hard case to make and I think he needs the benefit of counsel. And he said he would have brought counsel, and I'm prepared as I said, to take it on its face particularly since we're going to be back here again anyway. It's not like if we heard the case tonight, that would be the end of it. So, we're going to hear it again, let's hear it with counsel present if necessary. And we hear both cases probably at the same time. But the appeal for Mr. Singanayagam's decision on the statute of limitations and also on the Variance itself. That's it.

The Chair moves that this case be continued until seven p.m. on August 12th. The Chair noting that the waiver of time for a decision is already in the file, so the continuance can be made on the condition that the Petitioner modify the sign on the premise to indicate the new hearing date.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor?

(Alexander, Sullivan, Heuer, Scott.)

CONSTANTINE ALEXANDER: Opposed.

TIM HUGHES: I'm opposed.

CONSTANTINE ALEXANDER: One opposed.

TAD HEUER: That being said before you go away. I would suggest strongly that it be continued on the basis that counsel is

present at the next --

CONSTANTINE ALEXANDER: Oh, absolutely. We're not going to --

ALEX STEINBERGH: Counsel will be present.

CONSTANTINE ALEXANDER: If there's no counsel, here we're going ahead with the case.

TAD HEUER: This case will proceed on that date if I'm sitting on this Board. And I would also ask if an appeal is to be taken, the appeal be taken expeditiously so it can be scheduled simultaneously.

ALEX STEINBERGH: I was just given this.

TAD HEUER: Right.

CONSTANTINE ALEXANDER: Can an appeal be heard on August 12th?

SEAN O'GRADY: We need that within the next few days.

CONSTANTINE ALEXANDER: I want to

make sure.

BRENDAN SULLIVAN: We will leave that slot open.

CONSTANTINE ALEXANDER: Yes.

SEAN O'GRADY: Understand this. The appeal is a much easier application than the -- it's just the cover page. It's just the letter. Ranjit's letter, boom, it's, you know, half hour of work.

ALEX STEINBERGH: Okay.

TAD HEUER: And also if that appeal is not filed to be timely heard, there will be no further continuance in order to have the appeal taken before the Variance.

CONSTANTINE ALEXANDER: That's right. We're going to hear that Variance case one way or another on August 12th that's the message.

ALEX STEINBERGH: Thank you.

(8:15 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9940, 46 Brewster Street. Is there anyone here wishing to be heard on that matter? You know the drill.

MAGGIE BOOZ: Thank you. My name is Maggie Booz. I'm the architect for Bardri and Geeta Nathan at 46 Brewster Street.

B-o-o-z.

BADRI NATHAN: I'm the homeowner  
Badri B-a-d-r-i. Last name is Nathan  
N-a-t-h-a-n at 46 Brewster Street.

MAGGIE BOOZ: We're here requesting  
a Variance to move a cover over a side door.  
So I brought these photographs. I don't  
remember which photographs I sent you with  
the application.

This is the front of 46 Brewster Street.  
This is the view down the area of the garage  
down the driveway. This is the existing  
landing and stair up to the side door right  
now and that's a closer up view of it. And  
what we're requesting is that there's -- that  
the side door and the stair be moved about -- I  
think it's about 15 or 16 feet away to right  
here, just really flipped basically.  
Flipped the landing so that it's tucked in  
against this side of the house instead of  
against this side of the house, and have the

stair go down in the opposite direction. In other words, the stair goes down the backyard instead of away.

CONSTANTINE ALEXANDER: What is the technical Zoning issues that are created by what you wanted to do?

MAGGIE BOOZ: We have two Zoning issues. We're over on floor area right now. Our floor area ratio is exceeded. We can't trade bad floor area for bad floor area. So, I mean legally we could build this stair without a cover on it and we could also make it ten feet away from the garage. And we would still have a three and a half foot wide stair. We could do this project without a Variance.

CONSTANTINE ALEXANDER: And that's the other Zoning issue is you're too close to the garage?

MAGGIE BOOZ: Exactly. We're looking for relief only because right now

what happens in the plan, which if you have the first floor plans, it's the easiest one to see, the railing of our stair at three and a half feet from the building abuts into the casing of the window that we're putting -- that we're proposing putting this landing next to. So we want to move it enough so that we don't, we don't butt into that window casing. We just want to -- because the sill of this window is down below the height of the guardrail over a stair. It's, you know, two feet high or something. It's relatively three feet high normally. So we're asking for relief in that dimension as well.

CONSTANTINE ALEXANDER: And these are your plans, these two pages?

MAGGIE BOOZ: Yes.

CONSTANTINE ALEXANDER: Questions from members of the Board?

MAGGIE BOOZ: We do have letters of

support from neighbors.

CONSTANTINE ALEXANDER: Give me those for the record.

MAGGIE BOOZ: One was faxed to the Building Department tonight. Badri and Geeta have spoken to all their neighbors.

BADRI NATHAN: They called and said they would send letters. All the abutting neighbors would send letters.

MAGGIE BOOZ: The only one who didn't was the one directly in back who can't -- the stairs are visible to them but they just sold that house.

BADRI NATHAN: They just sold the house. So the person haven't moved in yet.

MAGGIE BOOZ: But it doesn't affect them in any way. They can't see it.

CONSTANTINE ALEXANDER: I'll open this matter to public testimony. Anyone wishing to be heard on this matter?

(No response).

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

The Chair is in receipt of two letters. One is from Robert M. Neer, N-e-e-r and Ann Eldridge, E-l-d-r-i-d-g-e. They reside at Nine Riedesel Avenue. The letter is actually addressed to the Petitioner. "As next-door immediately abutting neighbors on the driveway side of your house, my wife Ann and I have reviewed your plan to relocate the door, stairs and overhanging roof on our side of your house and we have no objection to that plan. Our house at Nine Riedesel Avenue is owned 50 percent by me and 50 percent by Eva J. Neer marital deduction trust which was created when my first wife died in 2000. I'm writing this letter in my personal capacity and in my capacity as trustee of that Eva J. Neer marital deduction trust. In neither capacity do I object to the above plan."

The second is a letter from Annette LaMond, L-a-M-o-n-d and Joseph Moore who reside at Seven Riedesel Avenue addressed to the Board. "My husband Joseph Moore and I are writing in support of the Variance appeal of our neighbors, Bardi and Geeta Nathan to relocate a door and construct a roof over it. We hope the Board of Zoning Appeal will allow them to move forward with this change. We appreciate having the opportunity to express our support."

That's the sum and substance of the public testimony. I'll close public testimony.

Comments from members of the Board?

TAD HEUER: Maggie, is the current stair also too close to the garage or does it only become too close when you --

MAGGIE BOOZ: You know, the garage ends just at the bottom of the stair. So there is probably an area where the stair

overlaps the edge of the garage and would be considered too close, yes.

TAD HEUER: Okay. So it's not -- technically it's not a new request that it's you're putting something closer that was not already --

MAGGIE BOOZ: That's true.

TAD HEUER: -- closer. It's just being put in a different direction. So it's swapping that problem as well?

MAGGIE BOOZ: That's right exactly. Swapping both problems, right.

CONSTANTINE ALEXANDER: Ready for a motion?

The Chair moves that the Board makes the following findings:

That a literal enforcement of our Zoning Ordinance would involve the substantial hardship to the Petitioner. The hardship being that there's a need for this covered side door in a more appropriate

location than is the case now, and as it affects the ability to best used structure.

That the hardship is owing to the fact that the shape of the lot and of the structures, the structure is a non-conforming structure, particularly with regard to its proximity to the garage.

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

In support of the finding with regard to that is that the relief is very minor and technical in nature.

That the project has a support of abutters, the people most directly affected. And that generally it improves the ability to use the residence at 46 Brewster Street.

The Variance will be granted on the condition that work proceed in accordance with plans submitted by the Petitioner.

There are two pages numbered A-3.1 and A-7.1 prepared by Smart Architecture. The first page of which has been initialed by the Chair.

All those in favor of granting the Variance so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(8:25 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9941, 34 Larchwood Drive. Anyone here wishing to be heard on that matter? Please come forward.

OMAR ETON: Good evening.

CONSTANTINE ALEXANDER: For the

record, name and address.

OMAR ETON: Omar Eton, 34 Larchwood Drive.

CONSTANTINE ALEXANDER: Yes.

CERYL HUGHES: Ceryl Hughes, 66 Indian Street of Watertown.

CONSTANTINE ALEXANDER: Okay.

Now, the issue -- we're not going to get into the merits tonight because of the fact that it's been brought to our attention that the signage requirements of our Zoning By-Law were not complied with. You didn't post a sign that's required advertising this hearing for the requisite period of time. So we have to continue the case.

OMAR ETON: I plead for hardship and ask you --

CONSTANTINE ALEXANDER: What kind of hardship?

OMAR ETON: Well, we're going to be delaying and delaying and it's costing us --

CONSTANTINE ALEXANDER: You should have posted the sign in accordance with the Zoning By-Law.

OMAR ETON: What happened was you all send it out, right, Memorial Day when I wasn't in town. When we got back I posted it. I'll also point out two other things which is we have contacted -- we have been in continuous contact with all our neighbors, one of whom is present right now. And we have sent them actually all the architectural plans.

CONSTANTINE ALEXANDER: Right.

OMAR ETON: And we have met with them.

CONSTANTINE ALEXANDER: Right.

OMAR ETON: And so one suggestion I would have is to hear the case and then put it on contingency for two more days.

CONSTANTINE ALEXANDER: We can't do that, sir. The hardship that's going to be

relevant to the Variance application is not relevant to the signage requirement. The Zoning By-Law is quite clear. In your case you were away for Memorial Day weekend, so be it. You have to advertise that case for the public sign for the specified period of time. You did you not do so. So we cannot hear the case tonight. There's no, ifs, ands or buts. Unless you were to dispute that you claim you had the sign up for the appropriate period of time, we would hear that. But it's quite clear because you didn't pick up the sign by the requisite time that you didn't do that. So, the only question now is when are we going to continue the case to. We're not going to hear the case tonight. Again, because we have no choice. That's just how the statute works. Notice is a very important part of what we do. We very much -- not only rely, we enforce the notice requirements to be sure that the public at large is apprised of what's

being sought.

OMAR ETON: And so what we have done is we have e-mailed to the entire Larchwood community. We have met with all the individuals. You have posted information in the newspapers. The sign has been up short two days, and so while you're getting very technical on this and you're not even allowing us to present, I don't have all the time in the world. I'm an oncologist. I'm going right back to work right after this. And so the notion of making this kind of adjustment without even the potential for hearing us out, getting that component over with, and dealing with a contingency if there were someone --

CONSTANTINE ALEXANDER: I'm not trying to be difficult.

TAD HEUER: It would be illegal. We couldn't do this.

CONSTANTINE ALEXANDER: We can't do

it. We have no choice.

OMAR ETON: We shouldn't have been here then today because we did query this earlier today.

CONSTANTINE ALEXANDER: I'm sorry?

OMAR ETON: We shouldn't be here right now. We did query it and we were told that we could come in and see what happens from --

BRENDAN SULLIVAN: Who did that?

CERYL HUGHES: Mr. Sean Doyle.

SEAN O'GRADY: That's not what we said.

CONSTANTINE ALEXANDER: He's sitting right there. The fact of the matter is what Mr. O'Grady and what the Inspectional Services Department will never discourage you or anyone else from coming before the Board and making your case.

OMAR ETON: Right.

CONSTANTINE ALEXANDER: That

doesn't mean he guaranteed that we were going to give you relief or even suggest that we were going to grant you relief.

OMAR ETON: That's fine.

CONSTANTINE ALEXANDER: He did what I think is fair for the citizens of Cambridge. We have to do what the law requires us to do, and what the City Council has required us to do. There's nothing in our Zoning Ordinance that allows us to give you relief.

OMAR ETON: Exactly. When we were asked earlier that we were short, we should have just been told it's short and not worth presenting or worth coming in here to present. That's what we should have been told. Not to come in and present ourselves. We asked specifically whether we can, whether we will present. Okay?

CONSTANTINE ALEXANDER:

Mr. O'Grady, you wanted to respond to that?

SEAN O'GRADY: I didn't speak with

you. I did speak with your man. I told him in no uncertain terms that this is what's going to happen. I also told him I am not the Board. I cannot make that decision. And he is free to come and talk to the Board. That's, that's the law also. But in no uncertain terms, your man was told, repeatedly over the last two weeks that this was going to happen.

OMAR ETON: Well, in that case -- all right, so we have a misinterpretation then. So we will defer as requested.

CONSTANTINE ALEXANDER: When is the next available date for the --

SEAN O'GRADY: August 12th.

OMAR ETON: Oh, my God.

CONSTANTINE ALEXANDER: August 12th.

The Chair will move that this case being continued until seven p.m. on August 12th on the condition that the Petitioner sign a

waiver of time for reaching a decision. And on the further condition that the sign remain posted until the hearing date, but that the sign be modified, for the date. Put a new date in there from today's date to August 12th.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: So you have to sign a continuance for a time for decision and that's all we can do. Sorry, but we have no choice. It's not open for discussion.

OMAR ETON: You're going to cost me a fortune.

CONSTANTINE ALEXANDER: Sir, we're not costing you anything. You didn't post

the sign.

OMAR ETON: You could have all told me to post the sign sooner than Memorial Day the Friday before.

CONSTANTINE ALEXANDER: I'm not going to engage in a debate with you about this. See you on August 12th.

OMAR ETON: You need some more efficiency in this operation.

(8:30 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9942, 45 Walden Street. Anyone here wishing to be heard on that matter? Yes, sir.

For the record.

ATTORNEY MATTHEW SULLIVAN: My name

is Matthew Sullivan. I represent the neighbor of the Petitioner. Her name is Shirley Kimbro (phonetic).

CONSTANTINE ALEXANDER: Before you get any further, we have a request from the at Petitioner to continue this case.

ATTORNEY MATTHEW SULLIVAN: I just wanted to make sure it was here. I was told it going to be here so I showed up just to make sure.

CONSTANTINE ALEXANDER: You're not here to object to the continuance?

ATTORNEY MATTHEW SULLIVAN: No, not at all.

TAD HEUER: Look at that. That's fantastic. The attorney shows up.

ATTORNEY MATTHEW SULLIVAN:  
Absolutely, yeah.

CONSTANTINE ALEXANDER: Thank you, sir.

Let me read into the record, we have a

letter from the law office of Dennis Benzan, B-e-n-z-a-n addressed to the Board. "I'm respectfully requesting that the Board of Zoning Appeal continue the hearing scheduled for June 10, 2010, for the following reasons: The property owners in the above-referenced matter need additional time to confer with abutters about the scope of proposed renovations. For the foregoing reasons, the Petitioner by her attorney, Dennis A. Benzan request that said hearing be continued until the earliest date in July of 2010."

What is that date, Mr. O'Grady?

SEAN O'GRADY: That is July 8th.

CONSTANTINE ALEXANDER: July 8th.

Is that a date that's convenient for you, sir?

ATTORNEY MATTHEW SULLIVAN: Yes.

CONSTANTINE ALEXANDER: Do we have a waiver of notice, yet Sean, by the way?

SEAN O'GRADY: I don't know.

CONSTANTINE ALEXANDER: I don't

think we do. Let's make sure we get one.

The Chair moves that this case be continued until seven p.m. on July 8th on the condition that the Petitioner sign a waiver of time for decision, and on the further condition that the sign be continued to be posted, but be modified to reflect the new hearing date.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor the case continued. We'll see you in July.

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

(8:30 p.m.)

(Sitting Members: Constantine Alexander,  
Tim Hughes, Brendan Sullivan, Tad Heuer,  
Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair  
will call case No. 9943, 284 Harvard Street,  
Unit No. 12. Is there anyone here wishing to  
be heard on that matter?

ATTORNEY DAVID NICKERSON: Good  
evening, Board.

CONSTANTINE ALEXANDER: Good

evening.

ATTORNEY DAVID NICKERSON: May name is David Nickerson. I'm the attorney representing Peter Tian.

PETER TIAN: I'm Peter Tian. I live at 284 Harvard Street.

CONSTANTINE ALEXANDER: Thank you. You have an unusual situation so why don't you elaborate.

ATTORNEY DAVID NICKERSON: We do. Very basically this is a 37-unit building, condominium building. All the other units in this building are residential buildings, are residential units. One unit has historically been used as a doctor's office because the 1970 Zoning Ordinance permitted doctors and dentists offices. And unfortunately what happens is the unit's only 517 feet. And I should point out at this time the condominium master deed states that the unit can be used for residential or business

purposes. It is, if the Board would like, I have photographs.

CONSTANTINE ALEXANDER: What your condominium documents say don't involve us as the Zoning Board point of view.

ATTORNEY DAVID NICKERSON: The point is it was constructed to be used residential or office space. Unfortunately with the passage of time, there's been a lot of changes in the medical profession. The requirements now require separate storage spaces, handicap accessible bathrooms, 517 feet. Doctor Tian realized it's too small. It just cannot be used. Because it was designed originally as either residential office space, no exterior changes needed to be made to the building.

CONSTANTINE ALEXANDER: And in fact we're talking about a residence district.

ATTORNEY DAVID NICKERSON: Yes.

CONSTANTINE ALEXANDER: So you

would be converting this to a --

ATTORNEY DAVID NICKERSON: To a residence.

CONSTANTINE ALEXANDER: Getting rid of a non-conforming use basically. This today is legal non-conforming to our conforming --

ATTORNEY DAVID NICKERSON: Correct.

CONSTANTINE ALEXANDER: There is under our Zoning -- you may not know the answer to this, but I'd like to get it on the record if you do know it. Under our Zoning By-Law you have a right to convert, it's under Section 5.26 if you meet four requirements. And I assume you're seeking the Variance because you don't meet at least one of those four.

ATTORNEY DAVID NICKERSON: That's correct.

CONSTANTINE ALEXANDER: Do you know which one you don't meet?

ATTORNEY DAVID NICKERSON: I believe we don't meet -- the lot area is 2.9 rather than 2.5 required by the current Zoning Ordinance.

CONSTANTINE ALEXANDER: So for that reason you can't rely on 5.26 to do it as a matter of right?

ATTORNEY DAVID NICKERSON: Correct.

CONSTANTINE ALEXANDER: You need a Variance.

ATTORNEY DAVID NICKERSON: Right. And I think there also -- let me refresh my memory. I think also the overall -- the minimum lot requirement. That would not change at all. The building is what it is.

CONSTANTINE ALEXANDER: Questions from members of the Board?

Anyone here wishing to be heard on this matter?

(No response).

CONSTANTINE ALEXANDER: The Chair

notes that no one indicates a desire to be heard.

Do we have any letters of support?

ATTORNEY DAVID NICKERSON: No, no letters of support. I have spoken to the condominium association, Cheryl Sarkin (phonetic). She is the manager of the building. They don't have any objections.

CONSTANTINE ALEXANDER: No one has expressed an objection to you at all?

ATTORNEY DAVID NICKERSON: No.

CONSTANTINE ALEXANDER: Make sure there's nothing in the file. There doesn't appear to be. I've opened it to public testimony. There is no public testimony. There are no letters in the file. Anyone wishing to make any comments? Members of the Board or are we ready for a vote? Okay.

The Chair moves that the Board make the following findings:

That a literal enforcement of the

provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being you would be restricted to using this unit for medical or dental purposes, but in fact, the unit is not of sufficient size in accordance with contemporary standards to allow that use. So that the unit could not be used at all.

That the hardship is owing to basically the nature of the structure. It is a non-conforming use actually, this past dental use. And that's the nature of the use. And the structure is such that you can't increase the size of the unit to make it large enough to be used for a dental practice, at least without acquiring someone else's property. And the relief may be required without substantial detriment to the public good. In fact, what we'll be doing is taking a non-conforming use and bring it into conformance with our Zoning

By-Law. We would be adding to the housing stock of the city, and we would have no impact on the neighborhood generally as witnessed by the fact that the condominium association or any abutters and none of the abutters have expressed any objection to the relief being sought.

On the basis of the following findings the Chair moves that a Variance be granted to the Petitioner to convert this unit to a residential unit.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

ATTORNEY DAVID NICKERSON: Thank you. Thank you, Board.

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

BRENDAN SULLIVAN: Just for our

edification, the application form that everybody gets. Item 6 required to post a notice set forth in the procedures and set forth in Attachment D. And Attachment D, it says here the panel will be available for pick up no later than three weeks and it must be posted no later than 14 days for the public. So it's quite clear right there.

(Whereupon, a discussion was  
held off the record.)

(8:45 p.m.)

(Sitting Members: Constantine Alexander,  
Tim Hughes, Brendan Sullivan, Tad Heuer,  
Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair  
will call case No. 9944, 1540 Cambridge  
Street. Anyone here wishing to be heard on  
the matter?

ATTORNEY SEAN HOPE: Yes, please.  
Good evening.

CONSTANTINE ALEXANDER: Good

evening.

ATTORNEY SEAN HOPE: Members of the Board, Attorney Sean Hope on behalf of the Petitioner Mr. Daniel Marquardt owner and operator of Coady Florist. We're seeking a Variance to utilize a small portion of an existing retail flower shop located at 1540 Cambridge Street in Residence C-1. I'd like to start off by saying first that this is -- granting relief, this would not be the first time this location has actually utilized two retail services in this one location. There's a history of retail at this location. Several years back it was used as a variety store. Subsequently it was used as a video, and I believe at one point it was used as laundry, and currently it's used as a flower shop.

CONSTANTINE ALEXANDER: It was always one use?

ATTORNEY SEAN HOPE: No. And it

actually had -- I heard as many as four over the history.

CONSTANTINE ALEXANDER: Four little stores?

DANIEL MARQUARDT: Yes, back when it was first built there was two stars on Ellsworth Ave. and two stores on Cambridge Street.

ATTORNEY SEAN HOPE: But under Mr. Marquardt's ownership there was video store which is almost approximately the same space that we're trying to do a drop-off dry cleaning service.

As the Board knows, the Zoning Ordinance requires that any alterations de minimus or not of a non-conforming use requires a Variance, and that's the reason we're here today.

The hardship can be seen in two areas: First, it's the shape of the lot and the shape of the structure to the building that renders

it not suitable for residential. Now if you're familiar with the site, it's located, you know, abutting Cambridge Street on the corner of Ellsworth Avenue. There's a hospital adjacent. There's metered parking along the side. But I think it's really the one-story element, the fact that it's one story, that the windows and the frontage almost have no front yard or side yard setback that creates an environment where there's really no privacy. So if you were going to use it as residential, you would -- the lighting air would be from the windows facing Cambridge Street and Ellsworth you would have people looking directly into your living room or your bedroom. There are other first floor units all along Cambridge Street, but I would say this is uniquely the only one that would be street level. So I feel like it would not be suitable for residential.

The second hardship is really financial

that's unique to the Petitioner, but also could be seen for other small businesses in the area and this is really due to the economic hardship during this recession that we're dealing with. The Petitioner in the last year has seen his business decline close to 15 percent, and business owners such as Mr. Marquardt have to be creative in order to find ways to bring in revenue without increasing costs. We feel that granting relief would allow a needed service to the community as a pickup dry cleaning as well as to not extend the footprint and also that use would not create detriment -- public detriment to the public good.

Now, within a mile of 1540 Cambridge Street there were three businesses that were either dry cleaning or laundry type of businesses. They either moved, vacated or found a new location within Cambridge. In talking to the mid-Cambridge Neighborhood

Association and as well as the abutters, we felt that a pickup dry cleaning was suitable and also a need for that community. Now, when we went to the mid-Cambridge Association, one of the biggest concerns we heard was make sure there were going to be no chemicals or dry cleaning done on the site. This is going to be primarily -- I mean, essentially just drop offs. So it's going to be a storefront, and we're talk begun 472 square feet that we're going to use it for. As I said before, there has been a retail use there of similar size.

I'd also like to point the Board to Article 4.35 and that is the retail and consumer services portion. And I think that's significant because the existing flower shop and our proposed use are really subcategories in that section. I think it would be distinguished between finding an office or lab use to go along with an existing

retail. These are going to be two retail uses in that location. So I do think the impact would be minimal, and I also think it would be providing a service to that neighborhood.

CONSTANTINE ALEXANDER: You mentioned one thing here, I want to emphasize. No change to the footprint of the building, you're not going to expand the size of the building?

ATTORNEY SEAN HOPE: We're just going to essentially carve out 427 feet by -- and there's actually already an entrance there, so it's really going to be adding a storefront and I think the plans show that as well.

TAD HEUER: And I'm sorry, is it partition between the two or is it going to be you can walk into the dry cleaner and walk into the flower shop and vice versa?

ATTORNEY SEAN HOPE: There is plans

to put up partitions so that there would be separate uses. And actually if you look at the space, there's already, where I think the former space was, there's like a natural divide that has opened up. So we'll be closing that wall off again.

TAD HEUER: And in terms of the one letter in opposition that I saw was about parking. Can you talk a bit about parking, and then also about loading? If there's going to be pick up/drop off, do you know how often it's going to occur, where it's going to occur and those kind of patterns?

ATTORNEY SEAN HOPE: There is a loading zone on Ellsworth Street existing -- Cambridge Street already existing for the flower shop use. Because the total square footage is below 10,000 square feet, that we would not need another loading zone for the extra proposed use. But in terms of parking I do think the nature of

the drop-off dry cleaning we believe is going to be a neighborhood use. I think we all -- we also benefit from the fact that Cambridge Street has a series of meters along Cambridge Street that we feel like if neighbors wanted to drive there, they would not have to use the permit parking which I do believe is tight all over Cambridge, but in that neighborhood as well. I -- I don't want to read into, you know, this specific neighbor, but if you look at the petition we signed, the neighbors around them have also supported it. So I do think it is a tight location. I don't necessarily think the type of use that we are proposing to use is going to exacerbate and you can even make the argument that a residential use at that location when you have visitors and others who may not just use that meter parking could make it worse. But I like to make the point so that there is a parking space that is

adjacent to the property, used for that property, and the existing flower shop use is grandfathered.

CONSTANTINE ALEXANDER: I wanted to make sure you're responding to Mr. Heuer's question. He's asked a very good question. When the dry cleaning is to be picked up or returned as clean, where does the truck that brings it in, park? Can they use the loading zone for the flower shop?

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: The intent is to make that loading zone both available for the dry cleaning --

DANIEL MARQUARDT: The loading zone is currently we let anybody in the neighborhood, like UPS, or anybody who is doing a delivery, park there. It's a city loading zone. It isn't just a flower shop loading zone. We don't go and kick people out who are using it to run --

CONSTANTINE ALEXANDER: But it's your property? It's you're your loading zone, right?

TAD HEUER: It's on the street.

CONSTANTINE ALEXANDER: Oh, I'm sorry. Understood.

TAD HEUER: How long are the meters, are they 15 minute increments?

DANIEL MARQUARDT: The loading zone is directly in front, and the meters are across the street and those are two hours. And the city is very vigilant about keeping track who is in them for two hours.

BRENDAN SULLIVAN: The building along Ellsworth, what's the parking situation there?

DANIEL MARQUARDT: The side of the building on Ellsworth is residential parking.

BRENDAN SULLIVAN: Okay.

TAD HEUER: Have you had any

difficulties with the flower shop in terms of parking?

DANIEL MARQUARDT: No. We have had the space that the two-family that's beside us, we have, you know, Cambridge parking. We share a space that's half our property, half their property. So we get it during seven to seven during the day, and they take it seven to seven at night. So that it's used. And then fortunately for us my father owns the three-family across the street which has eight parking spaces behind it which he uses to park his car when he decides to come and see us. But we don't....

TAD HEUER: You never had complaints from the neighborhood about all these people trying to park?

DANIEL MARQUARDT: Unfortunately your business is not that robust.

TAD HEUER: You wish there were complaints?

DANIEL MARQUARDT: Yes.

TAD HEUER: All right.

BRENDAN SULLIVAN: Do you have an affiliation with a dry cleaner or proposed affiliation?

DANIEL MARQUARDT: No, we've actually investigated this four big commercial factories. One in Somerville, one in Medford and two in Everett that do all small dry cleaning.

BRENDAN SULLIVAN: So you haven't got somebody lined up. You're hoping to go get approval and then entertain offers basically I guess?

DANIEL MARQUARDT: Yeah, why go and look at a contract....

BRENDAN SULLIVAN: And get permission. Okay.

CONSTANTINE ALEXANDER: Further questions from members of the Board?

Is there anyone here wishing to be heard

on this matter? Sir, come forward give your name and address.

CHRIS ROBINSON: Chris Robinson, 20 Ware Street. I live in mid-Cambridge and I'm a member of the mid-Cambridge Neighborhood Association but I'm not speaking on their behalf. We did discuss this last night. And there was absolutely no opposition. We did -- one of our members lives on Ellsworth and was aware of the neighbor that was concerned about it, but in general we do favor the Variance proposal, and we think this would provide a great benefit for the neighborhood and also the people that work at the hospital. That was another concern. And one of the things that -- when I spoke to Mr. Marquardt, mentioned that was very attractive to me was the possibility that there might be somebody there to do alterations. And as, you know, in these hard times, there are people are much more

reluctant to go out and, you know, get new clothing. And so I think to have somebody that can, you know, patch up a coat, you know, it needs -- really provide a great service. So I'm very much in support of this.

CONSTANTINE ALEXANDER: Thank you, sir.

Anyone else wishing to be heard on this matter?

(No response.)

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

We do have letters in our file. There's letter on the letterhead from the Cambridge City Council from Sam Seidel, S-e-i-d-e-l. He's member of the City Council addressed to the Board. "I am writing in support of Petitioner Daniel Marquardt's use Variance to add a pick-up dry cleaning service to the existing flower shop. The Marquardt family have been business

owners and valued members of the mid-Cambridge neighborhood for decades. I believe granting a Variance to allow a pickup dry cleaning service would be an added benefit to the community and would not cause added congestion or hazard. During challenging economic times small businesses are forced to think creatively about ways to add services and reduce costs. Granting the requested relief will achieve both of these goals as well as meet a demand that currently exists in the area."

We are in receipt of a petition signed by I would say approximately 30 or 40 individuals of various addresses. The petition reads: We the undersigned support the petition to convert the existing flower shop located at 1540 Cambridge Street into part flower shop and part pick up drop off dry cleaning service. We believe that approval of a requested Variance will provide for

additional services to the neighborhood and help to maintain the vitality of small retail operations located in and serving the neighborhood. We are also supportive of the Petitioner's decision to not perform any dry cleaning on the premises."

And lastly, we have a letter from Dominique M. Vois, V-o-i-s who resides at 25 Ellsworth Avenue, apartment 2, addressed to the Board. "I received notice of a petition for Variance case 9944 to convert existing retail space (flower shop) into part flower shop and part pick up dry cleaning service. As a neighbor of 1540 Cambridge Street, I oppose the granting the Variance by the Board because parking is already difficult on Ellsworth Street and if you allow the Variance, you will only exacerbate the current parking problems."

TAD HEUER: You've represented that Ellsworth Street is residential permit

parking; is that correct? So, it could not be used in any event for a non-resident coming to pick up their dry cleaning.

CONSTANTINE ALEXANDER: Not legally.

CHARLIE MARQUARDT: They do so at their own risk.

CONSTANTINE ALEXANDER: You've responded to Ms. Vois' comments unless you want to add more.

ATTORNEY SEAN HOPE: No.

CONSTANTINE ALEXANDER: Any comments, discussion?

BRENDAN SULLIVAN: I think it's a nice amenity, if not a necessity for the neighborhood. There's one on the corner of Concord and Huron and the neighbors use it, they walk up to it, and there's no parking obviously there. But, you know, you're in and out in ten minutes and I think for that neighborhood there's a fair distance for

another drop off.

THOMAS SCOTT: I will say the cleaners that's right next to the Inman Pharmacy it's posted that they're closing. So this would be a needed amenity based on that.

BRENDAN SULLIVAN: Yes. And I think one of the things that tears at a neighborhood is to see a for rent sign. And the thing, again, that Coady Florist is going to -- which had expanded is now coming back again and to have some vitality and some life and the place occupied is well worth it.

CONSTANTINE ALEXANDER: I think your comments are well said.

TAD HEUER: I have a technical question.

CONSTANTINE ALEXANDER: Go ahead.

TAD HEUER: So you said you're doing a dry cleaning pick up. Are you also thinking of doing alterations as was

suggested?

DANIEL MARQUARDT: We provide -- somewhat of a sign that say come here, we'll meet you and they'll take it off to the premises as well.

TAD HEUER: Okay. The only reason I ask and I think it's a fine idea, is that this is advertised under Article 4 Section 4.35 out of subsection. And I'm just noticing that (c) which is barber shop, beauty shop, laundry and dry cleaning pick up agency, shoe repair, self-service laundry or other similar establishment.

(d), was hand laundry, dry cleaning or tailoring shop.

To the extent that there's any concern, I would suggest that we grant, seeing as they've only requested 4.35 which covers the entire range, that it not be limited to C which is the only restriction for --

CONSTANTINE ALEXANDER: You would

say any use permitted under 4.35?

TAD HEUER: Either that or allowing any use allowed under C or to the extent that alterations are considered D, D.

CONSTANTINE ALEXANDER: As I think about it, I understand your point, it's well taken. I'm not too comfortable giving a broader relief, if you will, as requested in terms of general uses of the property. I think all the commentary from the public has been directed to pick up dry cleaning service.

TAD HEUER: That's fine. I'm just pointing out if alterations would not need some similar establishment technically they would not be receiving relief for it. It would deemed appropriate seeing as they've advertised not for a specific subsection as was the case previously in this general vicinity a couple months ago. That, you know, we extend it to allow -- we either

interpret C to allow for alterations or we allow tailoring --

BRENDAN SULLIVAN: It would be ancillary to and not prime purpose of.

CONSTANTINE ALEXANDER: In my view, you know, also I think we can use that to the Inspectional Services Department. That's an enforcement issue as to how broad the relief would be.

TAD HEUER: That's fine.

CONSTANTINE ALEXANDER: I think we're ready for a motion.

The Chair moves that the Board make the following findings:

That a literal enforcement of the provisions of our Ordinance would involve a substantial hardship to the Petitioner. That hardship being is that the Petitioner is in need of additional revenues to sustain a locally important and long-standing business for the community.

And that hardship would be that the business could be jeopardized unless we grant the relief being sought.

The hardship is owing to circumstances relating to the shape of the structure and of the land. It is a structure that is only usable for commercial purposes, although it is in a residentially zoned district. And, therefore, conforming use is not feasible with regard to the structure.

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

And we would move that there is substantial neighborhood support for this project.

That this project provides a necessary service in this area of the City of Cambridge. It in fact enhances the residential quality

of the neighborhood by providing a vital service to the residents of the neighborhood.

That there is no evidence that there will be parking or other issues that would detract from the residential quality of the neighborhood. There appears to be sufficient parking on the street and the abutting streets, and that historically there have been no parking issues with regard to a commercial use of this space.

On the basis of the Variance to be granted to the Petitioner to convert the existing retail flower shop space into part flower shop and part pick up dry cleaning on the conditions that the dry cleaning business be only pick up in nature, no dry cleaning can be done on the premises.

And on the further condition is that the footprint of the building, the building cannot be expanded in terms of the external dimensions. The reason for that being we

don't want to increase the impact of a non-conforming use on that neighborhood. But if you stay within the framework of your building right now, you would satisfy the conditions of the Variance.

From the basis of the foregoing we would grant a Variance subject to those two conditions.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(9:05 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9945, 13-15-17-19 Washburn Avenue. Anyone here wishing to be heard on this matter?

ATTORNEY VINCENT PANICO: Good evening.

CONSTANTINE ALEXANDER:

Mr. Panico, before we start Mr. Heuer has an issue that goes to whether we should hear the case at all tonight. So I'll let Mr. Heuer have the floor.

TAD HEUER: So, Counselor, in looking at the application forms, this is ostensibly a request to subdivide merged properties. And it's been advertised to separate two lots; one vacant, which I understand is the lot to the left of the built lot?

ATTORNEY VINCENT PANICO: As you face them, yes.

TAD HEUER: Accidentally merged title held separately. And when I saw that, my first thought is how can that be? Because there could be no merger when title is held separately. The definition of merger is that the titles are held incumbent. In looking at the application forms for the

ownership information, I see there are two forms as there would -- I was surprised to see the two forms actually, because, again, merger is -- subdivision is usually on a single lot owned together by definition. And it states that I, and the we is crossed out, because there's an option of I/We. And this is I, David J. Oley represents that I, David J. Oley, owns the property at 17-19 Washburn. And the record title is also in the name of David J. Oley, and it is also required notarized.

The other application for ownership information states that James J. Oley of 859 Broadway in Everett owns the property at 13-15-19 Washburn Ave. and that James J. Oley, et als. are the record title owners.

So my concern here is that at least on its face we have two separate titles which by definition you cannot have merge. I understand, and I'd like you to elaborate on

exactly why the merger is here. But be that as it may, if there are actually in fact as opposed to on record, identical ownerships which caused it to merge, that is in no way evident from the file we have in front of us. I further submit that it can't be amended at the table because it's notarized and there can be no change to a notarized document. So, I'm troubled as to how this case can go forward tonight given that it would seem to be contrary on its face, the documents we have before us, because there could be no merger because it appears the property is held separately. So if you could, if you have a contrary view as to why we could move forward based on the evidence in front of us, I'd welcome in. And also if you could explain the actual merger if it is indeed different from what is in the documents before us. It may be valuable as background. I'm not sure it changes my opinion as to what we can do

tonight.

CONSTANTINE ALEXANDER: He's not asking me the question, he's asking you the question.

ATTORNEY VINCENT PANICO: I wish that your position were what the facts are. Everything you said is true, but unfortunately what happened, this property was left to the present owners by will. The previous owner who died had the property, both properties in his own name. He purchased the parcels separately at different times, but once he purchased them both in his own name, they became merged. He never realized that. And up until the day he died.

CONSTANTINE ALEXANDER: We understand that. We understand that. Now he dies owning a merged lot. Now what happens?

ATTORNEY VINCENT PANICO: He left

one to his brother and one to his son.

CONSTANTINE ALEXANDER: So he left -- he divided, if you will, divided the property not knowing what he was doing probably legally, right?

ATTORNEY VINCENT PANICO: But it's only merged for Zoning purposes. It's still two separate lots.

TAD HEUER: How can that with be?

CONSTANTINE ALEXANDER: Yes, how can that be?

ATTORNEY VINCENT PANICO: You can not change the title to property by Zoning.

CONSTANTINE ALEXANDER: No, no, the property was left -- maybe I'm wrong, but the property was left to two different persons for the will or however it was left. But through probate the lot got divided. That lot is -- legally is in two separate hands, but for purposes of the Zoning, because it had been merged, he could not, for Zoning

purposes subdivide the property.

ATTORNEY VINCENT PANICO: He could not unmerge them.

CONSTANTINE ALEXANDER: He could not unmerge them.

ATTORNEY VINCENT PANICO: Correct.

CONSTANTINE ALEXANDER: So from a Zoning point of view, these two lots do not comply with the Zoning By-Law, but they're owned separately.

ATTORNEY VINCENT PANICO: Correct.

CONSTANTINE ALEXANDER: Why is there a merger issue before us tonight?

ATTORNEY VINCENT PANICO: Because for Zoning purposes -- I argued this with the Commissioner.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY VINCENT PANICO: For Zoning purposes, they are merged. Title is held separately. I'd be happy to agree with you a hundred percent.

BRENDAN SULLIVAN: Anybody could own two contiguous lots and then on their own sell it to Tom, sell it to Vinny. But as I said, they cannot unmerge it because at one point I owned both of them. And by selling them off doesn't unmerge them.

CONSTANTINE ALEXANDER: That's right. I'd like to think of it this way. Forget about two lots merging. I have a lot, a lot of land, 6,000 square foot piece of land, a lot. I decided today I'm going to give 3,000 feet to my son and leave myself with a 3,000 square foot lot. You can't do that from a Zoning point of view because you have to have a minimum lot size of 5,000. Legally you can do it. So, my son owns a 3,000 square foot lot and I own a 3,000 square foot lot. I now go to do on my lot to do something. And the Zoning people say no, you can't because you have an undersized lot. The issue is not -- I would have to come before

this Board and get a Variance for the -- from the requirements of lot size to do whatever I want to do. It's not a merger issue. It's an issue, as I see it, and I think Mr. Heuer is right, it's an issue of -- if it's a merger issue, the merger goes back to the estate. Whoever the heirs of that estate or the Executor of that estate would seek a Variance from us to say that merger -- undue the merger, and therefore if we did that, then the lots can be conveyed as was done. But now with two separate owners --

BRENDAN SULLIVAN: But they were never unmerged for Zoning.

TAD HEUER: Right. They were never merged for Zoning. Isn't the appropriate Petitioner the entity or heirs thereof who last held it, continues to hold it as a merged lot for Zoning purposes?

ATTORNEY VINCENT PANICO: They are the petitioners here.

TAD HEUER: But they're not the petitioner --

ATTORNEY VINCENT PANICO: People who inherited the property are the petitioners here.

BRENDAN SULLIVAN: A subdivision should have happened, and then the subdivision can, once they set the subdivision, Zoning subdivision occurs. Then the will can effect.

CONSTANTINE ALEXANDER: That's how it should have worked, absolutely right. Absolutely right. It didn't happen that way.

BRENDAN SULLIVAN: It didn't happen that way so they were never unmerged.

CONSTANTINE ALEXANDER: We're getting very technical. I just don't see it as a merger case. That's my problem. I think Mr. Heuer's case, it's a different kind of case. I understand the nature of the

relief being sought.

Are you prepared to proceed on the case on this basis? Because at the end of the day we're going to get to the same issues, the underlying issue. And the case I think has been properly advertised. But I'll defer to you and other members of the Board as to what you want to do.

TAD HEUER: So we would be moving forward on two different record and in fact owners?

CONSTANTINE ALEXANDER: We would be going forward on the basis -- that's right, two different owners, separate owners but by -- if we did so. By undoing the merger we would be legitimizing from the Zoning point of view the two lots because they were non-conforming lots presumably I think you'll present evidence, they were non-conforming before. There's no merger. They continue to be legal non-conforming

lots.

BRENDAN SULLIVAN: Probate cannot undo Zoning.

CONSTANTINE ALEXANDER: No. Legal ownership and Zoning are two different silos. Two separate silos.

TAD HEUER: Then it's more a technical question that the Petitioner is in one name.

ATTORNEY VINCENT PANICO: The petition is for one lot -- well, for one lot of land. I'll explain that in more detail if you want. Is David here?

JAMES OLEY: No. He's probably working.

ATTORNEY VINCENT PANICO: David is estranged from the family.

CONSTANTINE ALEXANDER: David is, just give me a relation.

ATTORNEY VINCENT PANICO: David is the owner of the property that has a building

on it. Okay?

CONSTANTINE ALEXANDER: Right.

ATTORNEY VINCENT PANICO: He didn't want to sign the ownership form because he thought something was fishy. David's a little tiny bit suspicious. And it took me weeks to convince him that no, there's no harm. We're going to visit on you. All we want you to do is show that you own this piece of property. And he said well, give me a separate piece of paper with my name on it and I'll take it to my lawyer. And he did. He took it to the lawyer. And the lawyer said yeah, that's all they wanted to do. He signed it and brought it back.

TAD HEUER: So we're hearing a petition brought by only one of three owners?

ATTORNEY VINCENT PANICO: No, we have all the owners. One of the owners has signed one form.

TAD HEUER: Yes.

ATTORNEY VINCENT PANICO: And the three other owners have signed the other form.

TAD HEUER: Here I only have Petitioner James J. Oley.

JAMES OLEY: That's me.

ATTORNEY VINCENT PANICO: And if you'll note -- if you'll read the form correctly, the form says by the owner or representative. He is representing the other two nieces. But they all signed --

TAD HEUER: He does?

ATTORNEY VINCENT PANICO: On the ownership form it shows the other two nieces.

TAD HEUER: So on the ownership forms I have the signature of James, Eva and a third. Who's the third party?

ATTORNEY VINCENT PANICO: Mary Riekler (phonetic) a resident of Florida who is not here.

TAD HEUER: Okay. So as far as that

goes, I guess I get that. I'm still --

CONSTANTINE ALEXANDER: I think there may be people in the audience who may want to speak to this issue. Maybe it will help you. Is there anyone who wishes to speak with regard to the issue -- if you can follow what we're talking about, the issue about the ownership and whether merger is the appropriate relief being sought tonight?

Please, you have to come forward and give us your name and address.

UNIDENTIFIED MALE: Well, there's people wishing to speak about the buildable lot. As to the ownership, I don't think.

CONSTANTINE ALEXANDER: You'll have a chance. If we go forward with the case tonight, you'll have a chance to give your comments. We have a preliminary issue that we're trying to work through.

UNIDENTIFIED MALE: I get that. There's people who interested in buildable.

CONSTANTINE ALEXANDER:

Ms. Hoffman, do you want to speak to the issue that Mr. Heuer has raised?

HEATHER HOFFMAN: Hi. My name is Heather Hoffman. I live at 213 Hurley Street, across the street from a pair of lots that except for the question of having properly devised to different people, are in exactly the same position as this.

In fact, the owner tried to undo the merger by conveying one of the no longer existing lots.

CONSTANTINE ALEXANDER: Are you referring to the Sciarappa Street case?

HEATHER HOFFMAN: No. I'm referring to Hurley. 220-226 Hurley Street.

CONSTANTINE ALEXANDER: The case that came before us, let's be precise, the city took the position that there had been a merger.

HEATHER HOFFMAN: That's correct.

CONSTANTINE ALEXANDER: And the Petitioner, in that case, Mr. Azzam took the position that there was no merger because the definition of lot in our Zoning By-Law. He didn't go to the question about what's here before us tonight. It was solely whether that the merger doctrine had been overridden at least in his case.

HEATHER HOFFMAN: Could I respectfully disagree with you since you did not sit on the panel that originally adjudicated this and I was here?

So, in fact, in that case, there were at the time that the petition finally came before this Board, there were several owners who had never signed any petition because three of the condo units had been sold. Those owners never joined in. In addition, Mr. Azzam had bought the property in a trust, the 220-226 Hurley Street Realty Trust. And when he was told that there was merger, he

tried to undo it by conveying the part of the property to himself individually.

That -- none of that made any difference. In fact, the lot was merged. Those separate parcels had ceased to exist as separate parcels for Zoning purposes. And I actually discussed this with Commissioner Bersani and the man who is now Commissioner

Mr. Singanayagam, and I asked these specific questions and the position of ISD then, and I assume it was the position of the City of Cambridge was that you could not effect merger as you said by conveying because otherwise everybody would do it.

CONSTANTINE ALEXANDER: No, no, we understand that. I'm sorry, that's not the issue tonight. He's not trying to undo the merger by separate conveyances. He's accepting the fact that merger happened from the Zoning point of view with respect to the deceased and now seeking a Variance to

eliminate the merger. And the reason we're having this debate now is whether this case can properly be heard tonight given the way the property is owned. Because nobody through the conveyance has tried to defeat the merger doctrine. That was the issue in your Hurley Street case even before my time.

HEATHER HOFFMAN: Well, what I would say is that the motivation behind changing ownership was different but the fact that the ownership was not identical is the same in both of these cases.

CONSTANTINE ALEXANDER: And we know that.

HEATHER HOFFMAN: But that's what I wanted to bring up. So the city has actually considered this and considered it nonetheless a merger case.

CONSTANTINE ALEXANDER: And this case before us is the merger case.

HEATHER HOFFMAN: Okay, I wanted to

explain that that was -- that you in fact have a precedent. It's been all the way to the Appeals Court too, and the city has been upheld on that.

CONSTANTINE ALEXANDER: Thank you very much.

Anyone else wishing to be heard on this question at this point talking about?

(No response.)

CONSTANTINE ALEXANDER: No one else wishes to be heard.

Tad, do you have any further comments?

TAD HEUER: So essentially what we're looking at in the land -- in the legal analogies, you're looking for a Zoning Board petition, right?

ATTORNEY VINCENT PANICO: I'm looking, yes, I'm looking for relief from the Zoning Board because there's nothing we can do with this property. This property cannot be used.

TAD HEUER: Right, but as opposed for subdivision which is two sets of -- a willing owner who wants to subdivide this property which is what the decedent should have done but didn't do for presumably for understandable reasons not knowing. Or being in situation where you have a request for a subdivision now from just half of the owners. I guess my concern is that the request I think would have to come from all of the -- the petition would have to come from all of the owners, not just the declaration of the ownership being evidenced to me from all of the owners. But essentially what you're looking for is a petition action sounding in the Zoning which would allow the single subset of the owners to demand either contrary or not contrary to the unwilling owner that we subdivide to the interest of the applying party.

CONSTANTINE ALEXANDER: But,

Mr. Panico, has the non-signing party objected to what's going on?

ATTORNEY VINCENT PANICO: I represent to you as an attorney that I represent all three owners. They are all 100 percent in favor of this and anxiously awaiting a decision.

TAD HEUER: But my question is don't we need -- doesn't the application have to be brought by the fourth owner because it affects his interest? And if not, I mean, I can't imagine when this has possibly risen before or when it will possibly rise again, but you're asking for what legally operates as partition not subdivision. If you were doing this in the real property context, you'd be moving for partition. Where three of you want this to happen, one of them either wants it to happen or doesn't -- we don't know, but hasn't said anything. Without all the owners going forward --

BRENDAN SULLIVAN: Because in a subdivision all the owners have to recognize that they have a fiduciary interest in the property in toto?

TAD HEUER: Correct. Whereas in a petition one party can oppose that. But the Court will say we will partition and allow the division to happen even though all parties don't agree. And I guess this is more of a technical question of do we need all four people to be petitioning?

CONSTANTINE ALEXANDER: In my view we do not. And, again, I may be wrong. In my view we do not because I don't think anything we do tonight would adversely affect the interests of the person who hasn't signed the petition. And further we have a representation from Mr. Panico that he although he -- otherwise represents the interests of the non-signing party, and that non-signing party will have -- he or she has

not signed the petition.

ATTORNEY VINCENT PANICO: No, let me clarify.

CONSTANTINE ALEXANDER: Sure.

ATTORNEY VINCENT PANICO: We were talking about the three owners?

TAD HEUER: There are four owners of the property, correct?

ATTORNEY VINCENT PANICO: We were talking about the three owners. I represented to the Board that I have -- I represent those three owners.

TAD HEUER: Right.

ATTORNEY VINCENT PANICO: The only thing I can represent to the Board is that I fully discussed this with David the owner of the other parcel. When we finally got him to sign, he said he had no objection to what his father was trying to do.

CONSTANTINE ALEXANDER: So to follow Mr. Heuer's point, if we don't allow

the case to go forward until we get David's signature and David refuses to sign, your stymied, you and your clients are stymied from a Zoning point of view?

ATTORNEY VINCENT PANICO: Correct. The only other -- and I explained this to David also. The only other alternative would be to bring a petition to partition in the Probate Court which I don't think would ever happen. Because my clients do not have any money.

CONSTANTINE ALEXANDER: For what it's worth your issues are relevant. But I'd get on to the merits tonight and I think we can go forward. And the chips will fall where they may with regard to David who has now signed with regard to the relief that's being granted or not granted tonight.

ATTORNEY VINCENT PANICO: And I'm suggesting if he had any objection to this, all he had to do was just not sign the

ownership form. And that would have stopped it cold.

TAD HEUER: All right.

CONSTANTINE ALEXANDER: Other members of the Board have views on this? Do you want to not hear the case or hear the case tonight?

BRENDAN SULLIVAN: I would hear it. Scott and David did sign the ownership form is what you're saying?

ATTORNEY VINCENT PANICO: I'm sorry?

THOMAS SCOTT: David did sign the ownership form?

ATTORNEY VINCENT PANICO: He signed it there and I notarized it.

CONSTANTINE ALEXANDER: Tim?

TIM HUGHES: I think we can go forward based on the idea that since David did sign that form, he's aware of the meeting and chose not to represent himself here at the

meeting.

CONSTANTINE ALEXANDER: It's up to you. I mean, if you do not think we should go forward obviously you can abstain from the case. It's up to you.

TAD HEUER: I can abstain from the vote.

CONSTANTINE ALEXANDER: You would abstain when you came to the vote.

TAD HEUER: You've got your four.

CONSTANTINE ALEXANDER: We've got the four. If you want to plead your case, not your case, but your issue further, I'm willing to hear it.

TAD HEUER: No.

CONSTANTINE ALEXANDER: You want to go forward?

TAD HEUER: If we have a vote.

CONSTANTINE ALEXANDER: The Chair moves that the case be heard despite the fact that one of the parties directly affected by

the decision has not signed the application for the case before us.

All those in favor of continuing to hearing the case on its merits tonight, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Scott.)

CONSTANTINE ALEXANDER: Opposed?

TAD HEUER: Opposed.

CONSTANTINE ALEXANDER: One opposed.

With that, we'll now get to the merits of the case.

ATTORNEY VINCENT PANICO: I think essentially you heard just about all the facts. These are two separate lots that go before 1940.

CONSTANTINE ALEXANDER: Before

when? I didn't get the year.

ATTORNEY VINCENT PANICO: My records go back as far as 1940. They were separate lots. And I think you have a survey plan in the file. That plan has -- was referred to in the 19 -- the outline of that plan was referred to in the 1940s and was on the record with the city.

The owner never knew. He bought these two parcels by separate deeds. He never knew that they were merged. He died not knowing they were merged, and he gave them to two different people. My clients have no plans to develop this property for two reasons:

One, they have no money. And secondly, Mr. Oley sitting to my right is not in good health and all he wants to do is try to sell it and leave some money to his wife.

I understand in cases of this nature the Board likes to see a set of plans. We have none because he's not going to develop. He

just wants to if possible sell --

CONSTANTINE ALEXANDER: If we grant the relief you're seeking, two lots that would be created?

ATTORNEY VINCENT PANICO: Two lots would be created -- well, there are two lots, no. The Zoning imperfection would be removed.

CONSTANTINE ALEXANDER: That's right. So we would be remaining two undersized lots? Roughly 3,000 square foot lots I believe.

ATTORNEY VINCENT PANICO: That's correct. Just as they are on that.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY VINCENT PANICO: And these are taxed as separate lots. And my clients cannot do anything with that vacant land. They are just locked in there. And as I said, the merger was an accidental thing. That is the hardship. The hardship, it was

accidental, and there's just nothing they can do with the land.

CONSTANTINE ALEXANDER: If I may, let me comment and we're going to have a lot of other comments. Comment on this question of the accidental merger and the hardship, and these are comments as much for other members of the Board as for you and members of the audience. All these merger cases that we hear are accidental. Almost all of them.

ATTORNEY VINCENT PANICO: I understand.

CONSTANTINE ALEXANDER: And I'm sympathetic to that, because it's a legal trap for the unwary, particularly for the legally unsophisticated and even legally sophisticated people as we saw from the property on Ash Street. And we will hear and a number of merger cases. We had one on Ash Street which we granted a Variance for, but it was a unique circumstance. It was granted

to preserve a significant historic structure. We have accidental merger. We have a continued case at Sciarappa Street which may or may not go forward, accidental merger. And it looks like we're going to have at the next session another accidental merger case involving the Jesuits. I think we need as a Board, this is designed to other members, we need to have a consistent policy with regard to demerger which is what you're seeking relief for tonight. And we have to start with the following propositions:

One is that the city, the merger which is a common law doctrine, serves a useful purpose. In the courts have recognized it and that's why they applied merger. It eliminates undersized lots in the community by forcing them to merge to be conforming lots. But the courts have made it clear that a city can override this merger doctrine to the Zoning By-Law. And we had a case before

us not too long ago involving Hurley Street, a slightly different set of facts, but someone trying to demerge two lots. We received a memo from the Legal Department and Mr. Singanayagam strongly suggesting that merger is very useful in Cambridge and that the City Council has made no desires, prevents no desire to override the merger doctrine. So we have the fact that we've been told by the city officials that merger doctrine is good for the city, and it is intended to be in fact enforced. If that's the case, in an attempt to your case or any case before us for a Variance, we've got to find three requirements. And the third is what we often gloss over, but it's one that says that granting the relief, in your case a demerger, would not substantially be detriment to the public good or nullifying or substantially derogating from the intent or purpose of the Ordinance.

The intent of the Ordinance is to have merger. How can we grant a Variance? We would be going -- we would not be meeting that third requirement. So I need to be convinced that we can grant a Variance, put us -- forget the hardship, which you've also have to convince us on. How do we deal with the three prong of this three part test? Because the city told us we like merger, we want merger, we want to get rid of undersized lots. So in my mind that's where I'm sort of hamstrung. I don't know how I guess passed that issue. And I get myself boxed in, that's my view.

ATTORNEY VINCENT PANICO: Yes. I think at some point the -- you have to consider the equitable aspects of different situations. I don't think you can just write across the Board this is what we're going to do from now on.

CONSTANTINE ALEXANDER: I don't mean to interrupt you, but why is your

situation any different from anybody else's? Every merger case is a matter of accident, legally unsophisticated people, through wills, through buying a neighboring lot not knowing the consequences. And they're equities are strong. I don't deny that. The equities are strong, why should we be penalizing people who don't have a sophisticated real estate lawyers. The city has told us we should do that because it serves a better good, a greater good; namely, getting rid of undersized lots. And what you're asking us to do tonight -- and I'm not trying to beat up on you. You're asking us to do tonight is legally create and memorialize two undersized lots. And that flies in my mind directly in face of this intent of our Zoning By-Law. I could be convinced, but that's my dilemma. And I don't know how I get around it. Maybe other members of the Board and you can persuade me

to get around it.

ATTORNEY VINCENT PANICO: I think the thrust of your remarks is what if somebody tries to build something on this lot? This lot has severe limitations. It's questionable whether anything can be built upon it. But if you grant subdivision, at least they have an opportunity to sell it. There is a residential development next-door. Not the one on the adjacent lot, maybe they would want it. Not that they can build upon it. But by -- unless you grant a subdivision, there's nothing they can do with it.

CONSTANTINE ALEXANDER: I've talked too much already. So I'll leave comments by other members of the Board or we can go to the audience.

BRENDAN SULLIVAN: I think you're right as far as a lot of the merger petitions that come down before us and, yes, they are

all accidental. And you say, you know, what makes them different? Well, I think there are two different type of merger/petitions that come before us. And most of them, if not all of them, usually have a building on each lot. And to me what we're doing at that point is we are putting a line, an imaginary line, a line on a piece of paper, but on the surface and to the general public nothing has really ever changed. And I've always been supportive of that because I think every structure should be on its own lot for a variety of reasons. The uniqueness, the difference with this is that there is no structure on this.

CONSTANTINE ALEXANDER: On some of the lots. There is on one lot.

BRENDAN SULLIVAN: On one of the lots. That's right, it's a parking area or what have you.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: And then I think you're correct that now it flies in the face of Zoning because yes, it's going to -- both of them are undersized lots, but the caveat here to me is the frontage which is grossly undersized and there's a reason why there is a 50 foot frontage. The frontage on this would be 38 feet I believe. The other one being 50, total of 88. And then I think you're right on when you say that that really flies in the face of Zoning. And the reason why they -- and I go back to a case years ago that we had on Hurley Street almost very similar where they wanted to add a little bit to a three-family house, and there was an undersized lot. And we thought that by granting this, that they could not build anything on that lot, that it was going to be undersized and it would have to come back before the Board for approval. And in fact the courts found that no, we created that lot.

That was a buildable lot. And, yes, there were constraints to it, and there's a house and it was never the intent of the Board to allow that without some review or input. But anyhow, so I think there are two type of merger lots. This one here is somewhat unique, unique that has problems as far as granting relief to it.

CONSTANTINE ALEXANDER: Other members of the Board wish to comment?

TIM HUGHES: In the few years that I've been on the Board and my recollection of merger is that we've never done a subdivision that left both lots undersized. So at least one lot has always been, you know, a lot that of the minimum lot size. And they were -- and also they were, there was there was always a building on both pieces of property. That's my recollection. I have trouble believing that this property could be any more appealing as two undersized lots

then it could be if it was sold as a whole. Maybe the family can't get together and sell the thing and split the money. But I'm not sure that subdividing the lot or demergering it or whatever phrase we're using now is in the interest of the city.

CONSTANTINE ALEXANDER: Other members of the Board wish to comment? Don't have to. You'll have another chance.

Anyone here wishing to be heard on this matter? Please come forward.

RICHARD CLARY: My name is Richard Clary, Chairman of the North Cambridge Stabilization Committee and on the May 26th we considered this matter and those in attendance, about 13 or 14 people were unanimously against this petition and requesting that the Board deny it for all the reasons that you've already stated. This appears to be an attempt to use the Variance statute to avoid the law of merger which would

be pretty radical if it were allowed.

With regard to the value of a lot, there are many enterprises close by that are very deficient in parking. Not only is Washburn Ave. deficient but many business enterprises that need parking and it would seem to me that this undersized lot would have value for that use.

CONSTANTINE ALEXANDER: Thank you, sir.

Anyone else wishing to be heard?

ROBERT O'REILLY: My name is Robert O'Reilly. I live on Washburn Ave.

CONSTANTINE ALEXANDER: We have a letter from you.

ROBERT O'REILLY: I didn't know if I would be able to get here today.

CONSTANTINE ALEXANDER: I can read the letter.

ROBERT O'REILLY: Why don't we do this. It seems there's murkiness around

this whole thing that Mr. Heuer brought up that I was never aware that existed around demergering these things. And I always find murkiness to be a problem to these things in the long run. I addressed anything I wished to say.

CONSTANTINE ALEXANDER: Do you wish to comment or do you want me to read the letter?

ROBERT O'REILLY: Read the letter.

CONSTANTINE ALEXANDER: A letter to the Board from Robert O'Reilly at 34 Washburn Avenue. "I live on Washburn Avenue a few doors up and across the street from the lot where the owner is seeking a Variance. I feel that the Variance requested by the owner is not in the interest of the neighborhood and I must oppose it. If the BZA grants a Variance, it will lead to the construction of multi-family dwelling that will add more cars to the neighborhood. In addition, the

resulting lot would be too small and any dwelling unit will in effect be jammed into a small space. Washburn Avenue is a very densely populated narrow street with limited parking. As you may know, the parking is restricted to only one side of the street and the street is not wide enough to allow for parking on both sides. When you combine a new dwelling on Washburn with unknown number of cars, anywhere from a couple to a dozen, and the fact that there is other residential construction going on nearby, the parking situation can only deteriorate. The increased number of residential units will also increase traffic and congestion. On weekday mornings there is significant traffic on Washburn Avenue by persons who want to avoid the intersection of Route 16 and Massachusetts Avenues. Many of the drivers wants to turn left and this is difficult and causes backups of the three to five cars of

intersection of Washburn and Massachusetts Avenue. Adding more cars to the street will only make this problem worse. The resulting lot would be too small. In effect, the structure would be jammed on the lot with little or no space in between it and the adjacent structures. This will add to the density of the neighborhood and reduce the amount of green and open space. Washburn Avenue is already densely populated. Adding to that density will be a detriment to the neighborhood. I encourage the BZA to reject the requested Variance."

Did I read your letter okay?

ROBERT O'REILLY: You did fine.

Thank you.

CONSTANTINE ALEXANDER: Sir.

CHARLES TEAGUE: I'm here  
because --

CONSTANTINE ALEXANDER: Name and  
address, please.

CHARLES TEAGUE: My name is Charles Teague. I'm at 23 Edmund Street which is just across from Washburn across Mass. Ave.

ATTORNEY VINCENT PANICO: How do you spell your last name?

CHARLES TEAGUE: T-e-a-g-u-e.

I was involved in the down zoning of the Marino restaurant site which was a bit of spot zoning. And we worked very, very hard at that because even -- because we've just had a hundred units of construction over the past couple of years, and now on Edmunds Way you can always get a space. We have people from the condos at Cedar Street and Mass. Ave. parking for a week at a time. And now we're getting 40 more units with, you know, one space per unit at Cameron and Mass. Ave. at the old Rounder Records site. So you look at the Marino site, you can have -- my calculations are like 31 units. At the Valvoline went residential, it would be 24

units. It's extremely dense already. I counted the number of units from Mass. Ave. to Washburn Terrace up Washburn. It's 50 units. Without this parking lot, there's only 17 off-street spaces for 50 units that exist. There's about 11 in this parking lot. And I think by my calculations for Res B this three-family is already on a non-conforming lot even with both lots because -- just by square footage. So it's already non-conforming, to make it more non-conforming. And then the application in some places says to build two units and in some places it says to build three units. People have done a lot of work trying to -- trying to get this under control. And every time we do, another 40 units go within a couple of blocks. It's very, very difficult. This is adding more units and less parking spaces is really the wrong thing to do here. And I think there was -- and the

fact that, you know, and there's, you know, if this isn't divided to be a buildable lot, you know, that's what it has to be divided as. It doesn't -- there's -- unfortunately I hate to -- you know, this is really sort of family counseling. It's like they have to break down, get a mediator and conduit it out. And you can sell, you know, that's the way to partition it. They have to -- they don't need to be -- this is not the forum. The forum is some sort of other room with other people in it resolving the family issues.

CONSTANTINE ALEXANDER: Thank you, sir.

Anyone else wishing to be heard?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one else wishes to be heard. I'm going to close public testimony. You'll have a chance Mr. Panico. And I would also note that as I said, the only letters we have

in the file is the one letter from Mr. O'Reilly that I've already read into the record.

Public testimony being heard, Mr. Panico, you have an opportunity to comment further.

ATTORNEY VINCENT PANICO: I said the general trust is a bad parking situation here. And additional structure on the land would not be a good thing. Now, as I've told you from the outset, one of the hardships is there's nothing we could do with this land. We have also applied for relief from Section 5.31(j). Okay? That's a crippling addition to this lot. There's nothing -- unless you give that relief, there's practically nothing you can do. You can't build on the lot. If you don't give that relief, you can't build on the lot. My request to you is give us the subdivision, don't give us the relief under (j). And at

least that way they talk -- maybe it can be used for parking. Maybe they can sell it as parking in the neighborhood.

CONSTANTINE ALEXANDER: Actually I meant to ask you that question, you brought it up, that's good. If we were to -- let's assume, just assume for now we were to deny the Variance. Do you still want to go forward with the Special Permit?

ATTORNEY VINCENT PANICO: I think it would be useless.

CONSTANTINE ALEXANDER: I think so as well but I wanted you to confirm that. Thank you. Otherwise your comments are acknowledged. Anything else you wish to add at this point?

ATTORNEY VINCENT PANICO: No, I think that's it.

CONSTANTINE ALEXANDER: Now public and petitioner testimony is closed. Any further comments from members of the Board at

this point or do you want to go to a vote?  
Hearing no comments, I think we're ready for  
a vote. Tad?

TAD HEUER: So I presume that when  
you said nothing can be done with it, that's  
nothing to be done with it without (j).

ATTORNEY VINCENT PANICO: If you  
read 5.31(j), the additions it imposes,  
unless you get a Special Permit, are so  
crippling, that there's nothing that can be  
built on that lot.

TAD HEUER: And if you didn't get  
(j), do you have the -- could you use it as  
a parking lot now for instance?

ATTORNEY VINCENT PANICO: As a legal  
parking lot?

TAD HEUER: Yes.

ATTORNEY VINCENT PANICO: I don't  
think so.

BRENDAN SULLIVAN: Who parks there?  
There's been cars parked there during the

day.

ATTORNEY VINCENT PANICO: Who's parking on the lot now?

JAMES OLEY: We have six cars. Right now I only have two.

UNIDENTIFIED FEMALE: People park there whether they have a spot or not. They just park there to go in Dunkin' Donuts.

CONSTANTINE ALEXANDER: It sounds to me that parking is there on a legal non-conforming basis. That's probably before the requirements of the Zoning By-Laws. Or if not, there's an enforcement issue. So far I take it the parking restrictions have not been enforced against your petition. And if they are, assuming the Variance is denied, you'll have an opportunity to come back before the Board and challenge that. But I think you're right, at least in my judgment, is that if we don't grant the Variance, there's no basis, no need

to go Special Permit and we should just withdraw that and we'll hear it another day. If necessary.

I haven't seen any -- there's no indication in the file that the city's been rushing to enforce parking restrictions with regard to this lot. Parking has been going on as you've said for a very long time.

Satisfied or you want more questions?

TAD HEUER: Yes, I guess I would be somewhat concerned if the lot were not allowed to be used for any use. Start moving the lot becomes useless. If there's a use for parking that could only be allowed if we were to grant a merger for Zoning purposes -- to grant a deed for Zoning purposes subject to petition, I think I would be more persuaded by the need for one. If there can be parking on the lot now without any need for a subdivision, probably because it's grandfathered or for any other reason,

predominantly because it would be grandfathered, if that's the case, I wouldn't really see a need to subdivide the lot for the similar reasons that Mr. Sullivan just raised. That in subdividing a lot to create a building on one lot and an empty lot on another, there's the very real possibility that we would be opened up to the claim that we have by doing so created a buildable or although undersized lot throughout our equitable authority as a Zoning Board to do so. I mean, we are authorized if we wish to make an undersized lot buildable. And if the act of subdividing primarily to allow the built portion of the lot to become its own lot as the unintended consequence of making the unbuilt portion undersized as it is buildable, I think that's not the situation we want to place ourselves in under any circumstances because that would be entirely contrary to the first Ordinance as well as the

indication that the Council's given.

ATTORNEY VINCENT PANICO:

Mr. Chairman, I believe it's within your authority to make a condition in your Variances and a condition that there can be nothing but parking on the lot.

CONSTANTINE ALEXANDER: On which lot? You're asking the demerger, there's two lots. If we grant you the relief you wanted, you'll have two lots.

ATTORNEY VINCENT PANICO: Grant the relief and one of the conditions granting the relief is that there can be no construction on the lot of any residential --

CONSTANTINE ALEXANDER: On the lot that is -- that's being created a vacant lot created by the demerger. I'll make a motion with that condition and we'll see how the vote goes.

Unless people want further discussion. Ready for a vote.

TIM HUGHES: How big is the lot now?

CONSTANTINE ALEXANDER: 6,000.

6500 feet.

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: The Chair is going to make a motion. The Chair moves that the Board make the following findings:

That with respect to the request to separate into two lots, one vacant lot that has been merged per the common law merger document. That a literal enforcement of the provisions to the Ordinance would involve a substantial hardship to the Petitioner. Such hardship that the Petitioner at least has represented to us that the lot would not be readily developable and would, and with a corresponding financial impact with the ability to enjoy the benefits of the lot from a financial point of view.

The hardship is owing to circumstances relating to the shape of such lot, being the

fact that the lots are undersized now. Two lots are both undersized, and that the only reason you're here before us is because of a merger that occurred inadvertently. And that relief may be granted without substantial detriment to the public good or substantially derogating from the intent or purpose of the Ordinance.

On the basis of these findings a Variance would be granted on the further condition that the lot created by the Variance that is now vacant would remain vacant and not be subject to any construction. In short, it would continue to be used for parking purposes or recreational purposes only.

On the basis of the foregoing all those in favor of the granting the Variance, say: Aye."

(No response.)

CONSTANTINE ALEXANDER: None in

favor.

All opposed?

(Show of hands.)

CONSTANTINE ALEXANDER: Five  
opposed.

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

CONSTANTINE ALEXANDER: The Chair  
would propose that we make the further  
findings.

That granting the relief would nullify  
or substantially derogate from the intent or  
purpose of the Ordinance because it would  
result in the creation of two undersized  
lots. Two undersized lots with insufficient  
street frontage. The result of this would be  
to potentially increase the density of the  
neighborhood that's already dense.

That the hardship has not been  
demonstrated to other requirement for relief  
has not been demonstrated to our

satisfaction.

Really the hardship results from the apparent dysfunction within the family that doesn't allow them to get together and come to a unified decision as to how this merged lot can be disposed of. And on the basis of those findings is why we denied relief tonight.

Anything further?

TAD HEUER: And also potentially in addition that there's been no hardship shown that the use of the lot in its current state as a vacant lot for parking is not possible under other circumstances may provide --

CONSTANTINE ALEXANDER: That's an additional finding to add.

All those in favor of those findings, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor, case closed.

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

CONSTANTINE ALEXANDER: We have the  
Special Permit part of the case.

It's my understanding that the  
Petitioner in view of the decision on the  
Variance chooses not to go forward at this  
time with the Special Permit request. Am I  
correct?

ATTORNEY VINCENT PANICO: Correct.

CONSTANTINE ALEXANDER: That's been  
withdrawn. I guess we should take a vote on  
that.

I move that we accept the withdrawal of  
the request for a Special Permit in this case.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in  
favor. Special Permit withdrawn.

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

(At 9:55 p.m., the meeting adjourned.)

**C E R T I F I C A T E****COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.**

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

I am not related to any of the parties  
in this matter by blood or marriage and that  
I am in no way interested in the outcome of  
this matter.

I further certify that the testimony  
hereinbefore set forth is a true and accurate  
transcription of my stenographic notes to the  
best of my knowledge, skill and ability.

**IN WITNESS WHEREOF**, I have hereunto set  
my hand this 21st day of June 2010.

---

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

My Commission Expires:  
April 23, 2015

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