

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, NOVEMBER 7, 2019

7:00 p.m.

In

Senior Center

806 Massachusetts Avenue

First Floor

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Janet Green

Jim Monteverde

Laura Wernick

Slater W. Anderson

Maria Pacheco, Zoning Secretary

Ranjit Singanayagam, Commissioner

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1 inform other attendees at that meeting that a recording is
2 being made.

3 And I wish to advise that not only one, but two
4 recordings are being made this evening, at least two. Our
5 stenographer records to assist her when she prepares the
6 transcript of the meeting, and a citizen of the city has
7 left his tape recorder there, so he's recording it as well.

8 Is there anyone here, anyone else here recording
9 this -- plan to record this meeting? No. So we have just
10 two.

11 Okay, with that I'll call the one and only
12 continued case. Case Number 017148 -- 900 Cambridge Street.
13 Anyone here wish to be heard on this matter? I have to tell
14 you, I'm not a very happy camper with this case.

15 HANNAH KILSON: Okay.

16 CONSTANTINE ALEXANDER: We gave you explicit
17 instructions what we wanted for this evening.

18 HANNAH KILSON: Yes.

19 CONSTANTINE ALEXANDER: We wanted parking with the
20 spaces there and dimensions.

21 HANNAH KILSON: Yes.

22 CONSTANTINE ALEXANDER: I don't -- not the one --

1 the one I've seen; I don't see any dimensions on mine.

2 CLARA FRADEN: The one I submitted, yes has
3 dimensions on all of the parking spaces, on every parking
4 space.

5 THE REPORTER: Can I have you state your name?

6 CLARA FRADEN: Yes, of course.

7 CONSTANTINE ALEXANDER: Oh, yeah, I'm sorry.

8 CLARA FRADEN: My name is Clara Fraden, Clara C-l-
9 a-r-a Fraden, F-r-a-d-e-n, of the Cambridge Housing
10 Authority.

11 CONSTANTINE ALEXANDER: The other issue is that it
12 looks like these parking spaces, some of them, are too close
13 to the lot line. You need zoning relief for that, and
14 that's not been advertised.

15 HANNAH KILSON: Sorry. My name is Hannah Kilson,
16 K-i-l-s-o-n of Nolan Sheehan Patten. So the point on the
17 location of the parking spaces, those locations were
18 established by the original comprehensive permit.

19 CONSTANTINE ALEXANDER: They were?

20 HANNAH KILSON: Yeah, and so, we're not changing

21 --

22 CONSTANTINE ALEXANDER: Okay, good.

1 HANNAH KILSON: -- the location of any of our
2 parking permits.

3 CONSTANTINE ALEXANDER: Okay. The original
4 application for the comprehensive permit, did they have
5 dimensions for the parking spaces?

6 HANNAH KILSON: That's a good question.

7 CONSTANTINE ALEXANDER: I was just curious why
8 there -- if we did it at that time, why it wasn't done at
9 this time. That's --

10 CLARA FRADEN: In 1993?

11 CONSTANTINE ALEXANDER: Whenever it was, I don't
12 know.

13 CLARA FRADEN: I don't believe there are
14 dimensions testified on every single parking space in 1993,
15 but it was a detailed conversation about the distance from
16 the lot line.

17 CONSTANTINE ALEXANDER: Yeah. That's the setback
18 requirement.

19 CLARA FRADEN: Right.

20 CONSTANTINE ALEXANDER: Just to visualize, you're
21 too close to the lot line, unless you got relief.

22 CLARA FRADEN: Right. And that relief was covered

1 --

2 CONSTANTINE ALEXANDER: It was covered? Good.

3 CLARA FRADEN: -- in 1993, comprehensive permit.

4 CONSTANTINE ALEXANDER: Good.

5 CLARA FRADEN: So we are back here tonight to
6 request an amendment to the comprehensive permit to specify
7 that 18 of the 90 spaces, former Roosevelt Towers for 900
8 Cambridge Street, are in fact on the lot directly across the
9 street, as opposed to being on site on the lot of 900
10 Cambridge Street.

11 [Technical difficulties]

12 CLARA FRADEN: Well, all I was saying was that so
13 we are here tonight requesting an amendment to the existing
14 comprehensive permit to specify that 18 of the 90 parking
15 spaces set aside for 900 Cambridge Street are in fact on a
16 lot directly across the street, not on the lot of 900
17 Cambridge Street.

18 CONSTANTINE ALEXANDER: Just out of curiosity, how
19 did this problem arise?

20 HANNAH KILSON: So to clarify Clara's point a
21 little bit, the project as approved in 1993 had parking
22 built on the site itself, and on Willow Street. So the

1 Willow Street parking lot was always part of the parking
2 spaces that were taken account of.

3 When we were here back in the summer, I think that
4 we thought we had been clear on that point, the decision
5 that the Board rendered made it clear that we hadn't been
6 clear on that point, because the language of the decision
7 said the 90 parking spaces had to be provided all from one
8 Lot 2, and the 90 parking spaces were never provided by Lot
9 1 and Lot 2; they're provided by Lot 1, Lot 2 and the 155
10 Willow Street.

11 And so we were just seeking to have that decision
12 amended to clarify that point.

13 CONSTANTINE ALEXANDER: Got it. Thank you.
14 Questions from members of the Board? I'll open the matter
15 up to public testimony. Is there anyone here wishing to be
16 heard on this matter? Apparently not. I'll close public
17 testimony. Seems to be quite clear that this is an
18 inconsequential amendment to what we approved last time.

19 So I'll make a motion, unless people want to have
20 discuss.

21 The Chair moves that we approve the parking on
22 Willow Street as well as Lots 1 and 2 Zoning, on the

1 configuration that's shown on the plans submitted by the
2 petitioner and initialed by the Chair. All those in favor,
3 please say, "Aye."

4 THE BOARD: Aye.

5 [All 5 vote YES]

6 CONSTANTINE ALEXANDER: Five in favor.

7 CLARA FRADEN: Thank you.

8 HANNAH KILSON: Thank you.

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2 (7:09 p.m.)

3 Sitting Members: Slater W. Anderson, Constantine Alexander,
4 Janet Green, Jim Monteverde and Laura
5 Wernick

6 CONSTANTINE ALEXANDER: The Chair will call the
7 regular meeting to order, and the first case we have is 11
8 -- is Case Number is 1 -- I'll have to try again -- 017192
9 -- 117 Walden Street. Anyone here wish to be heard on this
10 matter?

11 THE REPORTER: Name and address for the record?

12 CONSTANTINE ALEXANDER: Name and address for the
13 stenographer.

14 ADAM COSTA: Thank you, Mr. Chairman. My name is
15 Adam Costa. I'm an attorney with the firm of Mead, Telerman
16 and Costa here on behalf of the applicant, Matthew Hayes,
17 who's here with me as well this evening. So thank you for
18 hearing us tonight.

19 CONSTANTINE ALEXANDER: We have no choice. You
20 filed an application; we have to hear it.

21 ADAM COSTA: That is true. Thank you nonetheless.
22 So I think that to some extent, the administrative appeal

1 speaks for itself, and I'm going to do my best to provide a
2 brief overview as to the substance of it.

3 I know that the Building Commissioner is in
4 attendance tonight. This of course is a challenge to a
5 determination of a building permit revocation by him.

6 I've also been brought up to speed, I haven't been
7 involved in prior proceedings, but I've been brought up to
8 speed on what has occurred previously with respect to a
9 different but related appeal, probably which prompted the
10 revocation of the building permit by a number of neighbors,
11 one neighbor in particular, who is present tonight as well,
12 and I know that she submitted correspondence to the Board in
13 advance of tonight's meeting.

14 So I'm not going to spend much time rebutting
15 others' arguments, but I am going to address briefly at the
16 end some of the arguments that are brought forth in that
17 correspondence.

18 So I mentioned a moment ago that we've got a
19 building permit revocation. This is a building permit that
20 issued for the property for the construction of a second
21 dwelling unit on the property, and specifically the part of
22 the appeal we filed was raising concerns with the vagueness

1 of the order that issued revoking that permit. It was
2 unclear as to the basis for the revocation.

3 I will say that I'm in receipt of the Building
4 Commissioner's correspondence dated November 4. It does
5 provide some of that clarification. So I don't think I need
6 to get into the issue of the vagueness, because I now
7 understand, as I suspected was the case, the basis for that
8 revocation.

9 This relates to -- and I'm sure you're familiar
10 with it -- a specific provision in your zoning ordinance,
11 Section 5.21.1. That section is entitled, "lot area and
12 width." We've quoted that section within the correspondence
13 that we've submitted in support of our appeal.

14 But I'm going to read it again because it's really
15 critical, and it's the issue that is before the Board
16 tonight.

17 So that section says, "On lots of less than the
18 required area for the district, in which they are located,
19 and which had been duly recorded by plan or deed with the
20 Registry of Deeds before the date of passage of the
21 applicable provisions of this or any prior ordinance, the
22 minimum lot size and lot width regulations need not apply.

1 "But the floor to area ratio, a minimum lot area
2 regulations for each dwelling unit shall be applicable.

3 "In case of such lots of less than the required
4 width, the sum of the two required side yards need not be
5 more than 30% of the lot width, except that each side yard
6 shall be a minimum of 7 feet 6 inches."

7 It was the belief of the applicant and the client
8 in the circumstance that that provision was satisfied in
9 this case, on that basis the building permit issued.

10 On that basis, and pursuant to the building permit
11 that foundation was installed. There was an appeal that was
12 filed toward the end of the 30-day appeal period. That
13 appeal has since been withdrawn, due to the revocation,
14 essentially moving the appeal.

15 As I understand it from the Building
16 Commissioner's letter, I believe you have a copy of this
17 dated November 4 --

18 CONSTANTINE ALEXANDER: I have a copy sir, yeah.

19 ADAM COSTA: Okay, that's great. So that -- it
20 appears that the basis -- and again, we had sort of
21 anticipated this in our correspondence that the basis for
22 the revocation is an issue of interpretation of this

1 provision.

2 CONSTANTINE ALEXANDER: Right.

3 ADAM COSTA: And it seems that what's said in this
4 letter, this property is not undersized as the lot area,
5 since 5,000 square feet is required and the property
6 consists of 6,552 square feet. Accordingly, the property is
7 not eligible for the lot area, and with the exemption set
8 for this in the zoning ordinance section 5.21.1.

9 So it appears that the current interpretation --
10 and I know, and certainly the Building Commissioner being
11 present tonight can speak for himself -- and I do not
12 intent to put words in his mouth -- but I do note that the
13 letter says that following the appeal by Ms. Howard, it
14 says, "Upon my review of Building Permit 44750, the zoning
15 applicable to the property of the zoning ordinance and in
16 consultation with the Law Department -- "

17 So my sense here is that the appeal was filed.
18 There was a second look taken at the building permit, and
19 consultation was had with the Law Department -- and maybe
20 the Law Department provided some advice, although I haven't
21 seen anything in writing, suggesting that the interpretation
22 that was being given to this provision was incorrect.

1 The concern that we have is that the
2 interpretation -- our interpretation of this provision -- is
3 consistent with, we believe, the historic interpretation of
4 this provision; that we're not just dealing with undersized
5 lots with respect to square footage, we're also dealing with
6 lots that are of inadequate lot width.

7 We had occasion -- and on note that in Ms.
8 Howard's correspondence, she seemed to suggest that we have
9 not submitted any evidence of this alleged historic
10 interpretation.

11 Well, you know, we went through just within the
12 past half dozen years or so the records of the city to look
13 at other properties similarly situated, in zones that
14 require 5,000 square feet, and we found a series of
15 properties where lot areas exceed the minimum lot area of
16 5,000 square feet, but have insufficient width, and permits
17 are issued for second dwelling units on those properties.

18 CONSTANTINE ALEXANDER: Sir, with regard to that

19 --

20 ADAM COSTA: Yes.

21 CONSTANTINE ALEXANDER: -- that's true. I mean,
22 I've been with -- it's my understanding that's exactly the

1 case. That's how the commissioner used to interpret 5.211.
2 But there was never any controversy regarding those other
3 cases.

4 Here, there was a vociferous controversy, and so,
5 that caused the commissioner to go back and revisit how we
6 should interpret 5.21.1, and it seems to me absolutely
7 crystal clear that he was doing it wrong before, and he's
8 correcting it now. And that's your case before us.

9 So I don't see what the basis is for the history,
10 unless you're going to suggest some sort of estoppel
11 argument. And you should -- you know, I know as a
12 practicing attorney, that estoppel does not apply to acts of
13 public officials.

14 ADAM COSTA: Correct.

15 CONSTANTINE ALEXANDER: So he's not estopped from
16 changing his mind. He's taken a harder look at the facts
17 and situation, particularly in view of the very vigorous
18 neighborhood opposition. And he reached the conclusion.
19 And I don't see how that conclusion is wrong.

20 ADAM COSTA: So we've advanced two arguments in
21 that respect.

22 CONSTANTINE ALEXANDER: Yeah.

1 ADAM COSTA: The first argument is a true legal
2 argument, and we do believe the current interpretation is
3 wrong. And I don't want to beat the same drum.

4 My predecessor, Sarah Rhatigan, has submitted some
5 correspondence previously to you, and I'm not going to
6 reinvent the wheel. I'm going to quote specifically from
7 the letter that she submitted to this Board back on
8 September 9.

9 And she went back into the history of this
10 particular provision of the Zoning Board, back in 1943, when
11 lot area and lot width were first introduced into the city
12 zoning ordinance.

13 And her position -- and it's my position too, and
14 I appreciate the analysis here -- is that lot width and lot
15 area were considered one and the same. They were actually
16 -- they were one column within the zoning.

17 CONSTANTINE ALEXANDER: But again, sir, that may
18 be true in 1943. But zoning approaches evolved. And now
19 you have to deal with the language as it's -- the section as
20 it is written.

21 ADAM COSTA: Mm-hm.

22 CONSTANTINE ALEXANDER: And as it is written, to

1 me it is absolutely clear. The commission was incorrect
2 when he issued the building permit the first time, and then
3 correct when he revoked it.

4 ADAM COSTA: And Mr. Chairman, with all due
5 respect to you, that may be your position, and if that's
6 your position, I guess I know your vote tonight. My goal,
7 obviously, is to persuade this Board that that's not the
8 case. I don't believe that interpretations can change when
9 the language hasn't.

10 So I understand that zoning evolves. I understand
11 zoning evolves. Zoning is amended with great regularity in
12 most communities, it happens here in Cambridge all the time.

13 When interpreting a zoning provision, there's a
14 hierarchy of things that courts look at. They begin by
15 looking at the source of the language. They look at the
16 plain language, but then they look at the source of the
17 language.

18 They also look at the consistency of
19 interpretation by Ms. Howard. I appreciate that municipal
20 estoppel doesn't generally run against public officials.

21 CONSTANTINE ALEXANDER: Right.

22 ADAM COSTA: But what the courts have said, is

1 when there's consistency of interpretation, when there's
2 ambiguity in how a particular provision should be
3 interpreted, courts will look at the consistency of
4 interpretation.

5 CONSTANTINE ALEXANDER: Sir, your argument might
6 resonate with me more if you didn't know the facts of this
7 case, and maybe you don't, or this whole situation. Let me
8 recap, we've done this more than once at this Board.

9 Your client acquired a three-fam -- I think it's a
10 three-family house, and -- four?

11 ADAM COSTA: Two.

12 CONSTANTINE ALEXANDER: Two. Okay, miscounting.
13 A two-fam house and renovated it, and in outward appearance
14 did a very nice job. But there's a lot of vacant land in
15 the back. And the neighborhood was concerned that it was
16 going to have a second building that was being put on that
17 lot.

18 And as I understand it from my memory from prior
19 testimony, that had happened in the lot next door, years
20 earlier, that a second lot was built.

21 And they were concerned about that. They were
22 opposed to that. They approach your client, "what are you

1 going to do with that back lot?" He wouldn't deal with it.
2 He did not deal with it. We had our case for the special
3 permit, which we granted, to relocate windows within the
4 setback.

5 Then your client went and filed -- again, not even
6 speaking to the mayors -- filed an application for a
7 building permit. Mr. Singanayagam saw it as a routine
8 matter and granted the building permit.

9 Then the neighborhood and your client, before the
10 30-day appeal period ran, immediately started building. So
11 that's not -- if you put it into context, I know what was
12 going on. He was trying to get there and then have an
13 argument started, you've got to let me finish. Otherwise,
14 they're going to have a big hole in the ground.

15 So anyway, the neighbors complained, or appealed
16 or whatever to Mr. Singanayagam. He looked at it, thought
17 about it some more, talked I guess to the Legal Department,
18 that's what his letter says, and came to the conclusion that
19 the old interpretation is not the correct interpretation,
20 under the circumstances.

21 And let me -- I tell you, I read that language
22 it's crystal clear to me that that old interpretation -- I

1 don't know where it came from, but it was not right -- this
2 is -- what he did now is the right thing.

3 So you have a situation here where your client
4 doesn't come, frankly, with altogether clean hands. I may
5 be sympathetic to granting the relief if I saw a person who
6 was -- who just got blindsided by a change in
7 interpretation. That's not the case here, sir. So that's
8 why I am not going to vote in favor of granting relief.

9 ADAM COSTA: Well, that's fair. But obviously,
10 we've got other members who intend to speak, correct? So
11 the concern I have with the explanation you just gave is I
12 think what I'm hearing -- aside from the construction at
13 risk -- is that my client is being penalized, or potentially
14 being penalized, for not cooperating with the neighbors as
15 the Board would have him cooperate, not being as forthright
16 with the neighbors as he could have been with respect to his
17 intentions.

18 CONSTANTINE ALEXANDER: He not being penalized.
19 He would not be in this position if he had been more
20 forthright. But, you know, he didn't have to -- there's
21 nothing in the zoning ordinance that requires a person who
22 wants to do something to a land or structure has to get the

1 approval of the neighbors. We listen to the neighbors, but
2 that's not the requirement.

3 It's just the whole conduct of this property and
4 how they've proceeded takes away from, in my point of view,
5 the equities in its favor. And I go back to then a plain
6 reading of the statute, and the statute to me is crystal
7 clear. It may have been interpreted differently in earlier
8 years, but today this is the statute we have before us.

9 And if the Building Commissioner is going to do it
10 consistently going forward, interprets this as he has in
11 your client's case, so be it. He's entitled to do that.
12 And I think he's -- and I think we should uphold it if he
13 does that. He has to.

14 ADAM COSTA: So one of the unusual things about
15 the interpretation that is now being attributed to this
16 provision is that properties that are larger than 5,000
17 square feet in this particular district but are narrower
18 than the 50 feet required will be permitted --

19 CONSTANTINE ALEXANDER: Because that's just what
20 the ordinance says. The ordinance 5.211 is, it says specify
21 that. We're going to -- if you got a big lot, more than
22 5,000 square feet, but it's a little too narrow, maybe you

1 can get relief.

2 But you know, in your -- but if you have a lot
3 that is big enough, i.e., over 5,000 square feet, you don't
4 get into -- you don't get any benefit, any relief per the
5 statute by virtue of what you want to do.

6 ADAM COSTA: So I -- and I guess that's my exact
7 point, that a more rigorous standard that is being applied
8 to lots that are larger, versus lots that -- well, that are
9 smaller. If this lot was undersized, if this lot was 4,900
10 square feet, then we'd qualify?

11 CONSTANTINE ALEXANDER: Yeah. That's what the
12 City Council that drafted the ordinance decided. I mean, I
13 don't know why or how or -- they decide they're going to
14 draw a line at 5,000 square feet lots. And we'll be a
15 little bit more amenable to allowing another building to be
16 built on a lot that's too narrow, if the lot is otherwise
17 the size.

18 That's not our situation, your situation. That's
19 not the case before us tonight.

20 ADAM COSTA: No, understood.

21 CONSTANTINE ALEXANDER: I knew you understood.

22 ADAM COSTA: Sure, sure. So again, the concern

1 that I've got is revealing with the same ordinance
2 provisions substantially the same. There are a few words
3 that have changed. It was adopted in 1943.

4 And I think what I'm being told is zoning needs to
5 adapt, and therefore a new interpretation is appropriate,
6 even though the history of interpretation is quite
7 different?

8 CONSTANTINE ALEXANDER: Slightly different. I'm
9 saying that the old interpretation doesn't bind going
10 forward. The Commissioner, or who's ever interpreting the
11 ordinance, is free to reinterpret the section in light of
12 what he or she thinks, is the correct analysis. That's all.

13 ADAM COSTA: And aside from the fact that I
14 disagree with the analysis of the Law Department, and I'm
15 free to do that, I also question whether the best practice
16 is to retroactively apply a new interpretation.

17 So I appreciate that municipalities from time to
18 time recognize errors within their zoning ordinances and
19 bylaws, and decide to correct those errors and interpret
20 them.

21 And in fact in the correspondence that Ms. Howard
22 submitted, she indicates that just because you've been doing

1 something wrong for years, doesn't mean you can continue to
2 do things wrong.

3 So again, reserving my argument that I don't
4 believe anything's been done wrong, even if it had been, I'm
5 not saying that the city isn't free to make a correction.
6 But it should be making that correction then retroactively
7 applying it, to revoke permits that have previously issued.

8 I mean, this is a unique circumstance where I
9 appreciate that Ms. Howard has had a right to appeal and she
10 did appeal. That appeal's now withdrawn, and that's not the
11 appeal that's now before you. What's before you now is a
12 revocation of the building permit.

13 So what we have separate and apart from the appeal
14 that was filed is a building permit that issued, work that
15 began under that building permit -- albeit at risk -- work
16 that began under that building permit, and then a revocation
17 of the building permit based upon a new interpretation of a
18 provision in the ordinance that had been interpreted
19 differently for -- what, approximately 60, 70 years?

20 CONSTANTINE ALEXANDER: So I don't know how many
21 cases there were in that 60 or 70 years.

22 ADAM COSTA: I don't know, we didn't go back that

1 far. We were able to find six cases within the past six to
2 eight years.

3 CONSTANTINE ALEXANDER: So one every 10 years.

4 ADAM COSTA: Well, no, just we were able to find
5 six cases just within the past six or eight years. So one a
6 year.

7 CONSTANTINE ALEXANDER: I'd feel much more
8 sympathetic if your client had waited the 30-day appeal
9 period, and had talked to his neighbors. And that zoning is
10 -- obviously, you know, legal.

11 But there's also a human element to it,
12 particularly impacts on the neighborhood. And from the
13 beginning, the client has not behaved as well to the
14 neighborhood as he should, been secretive in his approach to
15 the whole project.

16 And that doesn't put him in a good -- to my mind
17 -- in a good spot to getting to a dry, legal analysis of
18 this subject. The fact of the matter is the language is
19 clear. The interpretations in the past presumably were too
20 generous -- and I'm incorrect, but that doesn't mean we
21 should preserve them, continue them, just because it was
22 done in the past.

1 ADAM COSTA: And I recognize that point.
2 Obviously, I disagree on how much it would apply to these
3 particular circumstances. You know, I appreciate the
4 chronology here. I've had numerous conversations with prior
5 Council with my client about what's occurred here.

6 But I do take some exception to, you know, what I
7 consider to be, you know, repeat statements, whether they're
8 being made by you, Mr. Chairman, or being made by the former
9 appellant about the secretive nature of the work that
10 proceeded on this property.

11 As you acknowledged earlier, there is no
12 requirement in zoning --

13 CONSTANTINE ALEXANDER: Absolutely.

14 ADAM COSTA: -- that an individual behave a
15 particular way. In an ideal world, would every developer go
16 and speak with all of his or her neighbors in advance and
17 get complete buy-in? Sure. That's not often how it works
18 in the real world. So --

19 CONSTANTINE ALEXANDER: Actually in Cambridge that
20 is the real world. Not all the time, but in most -- at
21 least based on my experience sitting on this side of the
22 table, most developers and owners of the property when they

1 want to do something, and there's a zoning issue, they talk
2 to the neighbors.

3 Now, I can show you case after case where we get
4 letters of support or opposition. But they do talk to the
5 neighbors. And they do seem to -- we pay attention to that.
6 It's not controlled, by any means. The ordinance is what
7 controls it. And that's --

8 ADAM COSTA: And I will tell you as a matter of
9 practice, and as somebody who represents 20 municipalities,
10 I recommend to applicants, when I represent applicants --
11 speak in advance of special permit applications, variance
12 applications, administrative appeals, that they speak to
13 their neighbors and they get the support that they need.

14 CONSTANTINE ALEXANDER: Right.

15 ADAM COSTA: This is a bit different. There
16 wasn't zoning relief that was sought for this proposal.
17 There was a building permit that was sought and the building
18 permit that issued for the proposal.

19 I think my clients may be faulted for proceeding
20 too quickly on that building permit, and within the appeal
21 period. But again, there's nothing in the law that
22 indicates that you're required within 30 days before you

1 begin to do work pursuant to the permit.

2 CONSTANTINE ALEXANDER: You're absolutely right,
3 it just changes the equities of the situation, that's all.

4 ADAM COSTA: Fair enough.

5 CONSTANTINE ALEXANDER: You're absolutely right.
6 It's not a requirement.

7 ADAM COSTA: I'd just like to -- I said at the
8 beginning that I would address Ms. Howard's recent
9 correspondence, also dated November 4. I'm not going to go
10 into great detail, but I want to be sure that this Board
11 appreciates, regardless of what it's decision might be, the
12 scope of what's before you.

13 Because it appears, and the language is sort of
14 carefully crafted and speaks to the Commissioner's order
15 being issued as part of the appeal process. It talks about,
16 "I therefore herewith file under this new Case Number a
17 binder of documents."

18 CONSTANTINE ALEXANDER: I'm sorry, and what are
19 you reading from?

20 ADAM COSTA: I'm reading from Ms. Howard's
21 correspondence.

22 CONSTANTINE ALEXANDER: Okay.

1 ADAM COSTA: So the suggestion, or at least the
2 sense that I got in reading it, was that Ms. Howard is
3 trying to allege -- and I know that she is, because if she
4 gets into proposed factual findings and proposed legal
5 findings, she's asking this Board to issue a series of a
6 dozen different factual findings, three different legal
7 findings that go far beyond the scope of the administrative
8 appeal that's before you.

9 I understand that she previously brought her
10 appeal to this Board. That appeal has been withdrawn. It
11 was rendered moot, because the building permit was revoked.

12 And so, the idea that this Board in the context of
13 this proceeding would get into issues of other potential
14 zoning noncompliance or --

15 CONSTANTINE ALEXANDER: With regard to that
16 letter, I agree -- there's -- on this one, I agree with you.
17 There's a lot of issues that have been raised that are
18 irrelevant to the legal issue before us. So you don't have
19 to go any -- from my point of view, you don't have to go any
20 farther with that. I agree with you.

21 ADAM COSTA: Okay. So I think the Board
22 understands my position. I appreciate, Mr. Chairman, that

1 you disagree.

2 I do believe that the Law Department's
3 interpretation of this provision, even though you believe
4 it's clear, is incorrect. I believe it's incorrect in light
5 of what was intended back in 1943, I believe it's incorrect
6 in light of the way that that's been interpreted in the
7 intervening years.

8 I appreciate and recognize that the interpretation
9 can change, but I don't think it should be retroactively
10 applied, even in these circumstances, even where my client
11 wasn't as forthright as you would like to have him to have
12 been.

13 I still think in these circumstances, even the
14 recent history -- again, six cases that I've found even
15 within the past six years, circumstances much like these
16 lots, you know, over 5,000 square feet, but with 45 feet of
17 frontage, on which they have been permitted second
18 dwellings.

19 I think that the same rules should apply to the
20 circumstances. Thank you.

21 CONSTANTINE ALEXANDER: Thank you. Questions from
22 members of the Board at this point?

1 COLLECTIVE: No.

2 CONSTANTINE ALEXANDER: No? Okay, I'm going to
3 open the matter up to public testimony. Ms. Howard, I
4 haven't even gotten a chance to finish my comments, all
5 right? I'm going to ask that -- we've heard these stories
6 over and over again. I'm going to ask you to be brief and
7 not to repeat those when you speak second, third or fourth
8 repeat what someone earlier has said.

9 And we're want to be educated by good comments, we
10 don't want to hear bombast or propaganda or whatever,
11 however you want to kind of characterize it. Now, Ms.
12 Howard, the floor is yours.

13 SUSANNE HOWARD: My name is Sue Howard, and I live
14 at 111 Walden Street, and it's a pleasure to see the Board
15 again. We hope to make this succinct.

16 CONSTANTINE ALEXANDER: Good.

17 SUSANNE HOWARD: And I will start with thanking
18 the Commissioner for his September 10 order, for correcting
19 the mistake. It takes a lot to do that. I really
20 appreciate that.

21 I also want to acknowledge the receipt of this
22 letter November 4, to say that I support its conclusion, and

1 that further zoning relief is required and urge The Board
2 reject the appeal that's before you now as totally without
3 merit, and unanimously confirm the revocation order of the
4 commissioner on the basis stated in his letter.

5 I submitted my response to Mr. Costa's letter
6 before I received the analysis that came forth from the
7 Commissioner and agree that that would be a sound basis for
8 rejecting this appeal, and for upholding the revocation of
9 the building permit.

10 I do note that there are more issues that were
11 raised in that letter than those raised by Mr. Costa, and
12 I'm sure that if the Board decides to uphold it, that it
13 will take into effect all the ideas that are expressed in
14 his letter.

15 I did submit for the record a blue binder, and it
16 does have the information from my appeal. It has been a
17 long haul here for us. This is our seventh hearing on this
18 subject, and it took me a long time to sort of get
19 everything together, so I thought it might be helpful if you
20 have something to add.

21 And if it does come to a place where this is
22 appealed again, we will have everything in one place. I do

1 have just two small items to correct in the Commissioner's
2 letter. One is that my appeal was filed on June 19, not the
3 twentieth.

4 So I note that sometimes these errors get carried
5 forward, and the deadline was the twentieth, but I did get
6 in the day before.

7 And also, that there is another nonconformity on
8 the existing house, which is height. It is 38 feet.

9 CONSTANTINE ALEXANDER: Excuse me, but that's a
10 nonissue. That's not an issue before us tonight. If you
11 want --

12 SUSANNE HOWARD: Okay. I was just -- the letter
13 just says -- it just says that there are only two. So I am
14 just saying there's another. In the interest of time, I'm
15 going to turn this over to my neighborhood, who would like
16 to be able to read, which is very short, a petition from the
17 neighbors. I think it succinctly sets out everything that
18 they want to say and feel that they want to be heard on, and
19 --

20 CONSTANTINE ALEXANDER: That's fine. I would ask
21 that whatever you're going to say be relevant to the issue
22 before us tonight, as to whether the Commissioner's

1 revocation of the building permit was proper. Beyond that,
2 I --

3 SUSANNE HOWARD: Let me just say one thing on
4 that, which is that there has been no discussion about the
5 fact that there were some misleading statements made to the
6 Commissioner as well, that might have led him in another
7 direction earlier to see other issues if they were disclosed
8 in the building permit.

9 CONSTANTINE ALEXANDER: Well, all I --

10 SUSANNE HOWARD: All that information is in the
11 record. So I won't repeat that, and it's in the petition.
12 We do have, since I note we've been here many times, but we
13 do have some pictures of the site for you, so you can take
14 it in and be available, have some notion of what that is.

15 So Nancy Brickhouse is going to do that, and then
16 we'll do the petition and then hopefully we will be done.
17 Thank you very much.

18 Oh, I think I have one other question, which if
19 you don't let me come back up, I want to be sure I just --

20 CONSTANTINE ALEXANDER: Right.

21 SUSANNE HOWARD: -- just get in, which is that we
22 understand that the building -- and maybe this just relates

1 to the commissioner, but because the determination relates
2 to the entire lot, the question I have is whether or not --
3 and this can be directed to you to maybe follow up with the
4 Commissioner, which is that the building permit for the
5 first lot, for the first building, has been closed out
6 before this hearing and before other matters relating to the
7 lot. And maybe he can explore that.

8 CONSTANTINE ALEXANDER: That's not relevant to the
9 case tonight. That can be another case, but hopefully we're
10 not going to have another case like 117 Walden Street. But
11 no, the issue tonight is, as this gentleman has very well
12 put forth, is whether the Commissioner's decision revoking
13 the building permit was correct. That's the issue.

14 I don't want to hear anything -- I don't want to
15 hear anything more about all other ancillary issues, okay?

16 SUSANNE HOWARD: Okay. Well, I will just say --

17 CONSTANTINE ALEXANDER: Unless other members of
18 the Board want to.

19 COLLECTIVE: No, sir.

20 SUSANNE HOWARD: The revocation of the permit
21 rationale that was given in the letter, which I think is
22 relevant to what we're talking about, did say that new

1 construction on a nonconforming lot is not permitted, unless
2 it is authorized under the zoning ordinance, unless there is
3 zoning relief. I agree with that, but it does talk about,
4 "on the lot" so --

5 CONSTANTINE ALEXANDER: Thank you. Ma'am?

6 NANCY BRICKHOUSE: Hello.

7 CONSTANTINE ALEXANDER: Name and address for the
8 record.

9 NANCY BRICKHOUSE: Nancy Brickhouse, B-r-i-c-k-h-
10 o-u-s-e at 113 Walden Street. So my house is next door to
11 117 Walden Street. So we are the direct abutters. The two
12 houses were built as twins, and in the early 1890s. Our
13 house has the same four nonconformities as 117, two side
14 setbacks, the height and the lot width.

15 The previous owner of our house installed the
16 foundation of the back yard after the neighbors complained
17 to the city, he was told he could not build a house in the
18 back as-of-right. This was before we bought it, when we did
19 actually see the foundation back there before he filled it
20 in.

21 My husband told Matt the story in the spring.
22 Matt said nothing of his intentions at that time about

1 building a second house. On June 2, my husband e-mailed
2 Matt. At that time, the building permit had been issued,
3 and we had heard rumors, but had not yet obtained a copy.
4 Susanne Howard's appeal was June 19.

5 So from June 2, this is the e-mail from my
6 husband, who's sitting here, Andrew Szentgyorgyi.

7 "Dear Matt, there are rumors circulating that you
8 are planning on building a totally new structure on the back
9 of the lot at 117. I have to warn you that the previous
10 owner of my house tried that and the neighbors stopped him
11 dead. Even if you prevail in the face of protest, a legal
12 wrangle has got to hurt your bottom line -- just a heads up.

13 "The foundation was installed the week of July 12.
14 The loss of open space is a concern to many of us. I want
15 to pass around pictures from the Google Sky -- "

16 CONSTANTINE ALEXANDER: Well that's not, you can
17 pass them around, but it's not necessarily relevant to the
18 case.

19 NANCY BRICKHOUSE: Well, it's relevant to how we
20 feel about --

21 CONSTANTINE ALEXANDER: Oh, I understand that.

22 NANCY BRICKHOUSE: -- whether there should be a

1 house back there --

2 CONSTANTINE ALEXANDER: I understand that.

3 NANCY BRICKHOUSE: -- or not. And I haven't been
4 able to give them in the last seven times that I've been
5 here -- six times that I've been here.

6 "The Google photo shows the tops of a dozen or so
7 trees that are at least 50 feet high that were chopped down
8 before the March 11 moratorium on tree cutting. The tree
9 canopy was considerable.

10 "There were racoons living on a second-floor
11 porch, and they did not -- they came down from trees, they
12 didn't walk up from the bottom, I saw them. And I have an
13 e-mail exchange with the City Councilor about what could we
14 do about these racoons.

15 "I also have a picture of the foundation, taken
16 from my backpack. So I also want to say that that
17 foundation was put in, but this week I don't have enough
18 copies for everybody, but now there's fencing and other
19 things that have been added to it.

20 "And also, for some really inexplicable reason,
21 the windows that you approved at the last hearing have now
22 been boarded up on our side. Rumors, which have been

1 correct so far, have it that tenants are moving in soon.

2 That might explain the fence as a safety precaution, not --"

3 CONSTANTINE ALEXANDER: And again, this is --

4 NANCY BRICKHOUSE: I really --

5 CONSTANTINE ALEXANDER: -- this is not relevant.

6 NANCY BRICKHOUSE: -- haven't had a chance to

7 talk.

8 CONSTANTINE ALEXANDER: No, this is not relevant,

9 ma'am.

10 NANCY BRICKHOUSE: It is, because that foundation

11 is still back there.

12 CONSTANTINE ALEXANDER: I didn't -- that's true.

13 NANCY BRICKHOUSE: Yes.

14 CONSTANTINE ALEXANDER: Yes, but back to the --

15 what does the Board on the --

16 NANCY BRICKHOUSE: What's he doing? Is he going

17 to have --

18 CONSTANTINE ALEXANDER: That's not the issue.

19 NANCY BRICKHOUSE: That is the issue. If tenants

20 are moving in and there's the foundation in the back that's

21 open all winter, it has a lot of concern for the

22 neighborhood.

1 I urge you to confirm the revocation of the
2 building permit and to do whatever's possible to get the
3 foundation removed as soon as possible, and I thank you for
4 your patience with us and for your attention on this matter.

5 CONSTANTINE ALEXANDER: Thank you. Give it to
6 someone else who wishes to speak, if he's standing up. Sir.
7 Name and address, as you know. You've been here before too.

8 HURST HANNUM: My name is Hurst Hannum, H-u-r-s-t
9 H-a-n-n-u-m, and I live at 9 Walden Mews. I'd just like to
10 make a very short statement, in essence to reinforce and to
11 expand on what you, Mr. Chairman, have already said. And
12 that's with respect to the so-called detrimental reliance
13 that Mr. Hayes has suffered, because of the revocation of
14 this permit.

15 Just let me note four ways in which that clearly
16 is not the case.

17 First, as you yourself noted, there were separate
18 applications for the two buildings that ended up being
19 closed, the second of which noted -- claimed that the
20 building was on a vacant lot, which was not the case.

21 The second, which I think you've also alluded to,
22 is the fact that the digging for the foundation under the

1 second house began during the period for appeals. Mr. Hayes
2 has done many houses in this neighborhood and in this city.
3 He knows very well what the deadline for appeals is. And
4 so, clearly this was at risk.

5 Worst of all was that even after the appeal by Ms.
6 Howard had been filed, he then began to pour concrete. And
7 he spent 12 days until he was stopped by a temporary stop
8 work order, which was subsequently made permanent.

9 Finally -- I think this is the case, I can't say
10 it's true, but over the last few days it appears that part
11 of the fencing that has been put up in the house includes
12 fence between the parts of the back yard, one of which
13 seemed to fence off the main house from what is now a
14 foundation.

15 Mr. Hayes' lawyer has alluded to the beliefs of
16 the applicant, which should be taken into account. He
17 suggested that Mr. Hayes was being penalized.

18 I'm not a property lawyer, although I happen to be
19 a lawyer in a very different field, and I just want to say
20 that I hope that the Board will not in any way whatsoever
21 take the bait of suggesting that equity demands that Mr.
22 Hayes' work -- quote, unquote -- "be recognized."

1 At every occasion when he's had a chance of not
2 acting at risk, he's chosen to take that risk. That risk is
3 his responsibility, it is not the City of Cambridge's and it
4 certainly shouldn't be neighbors' either. We are due to
5 sustain the revocation of the permit. Thank you.

6 CONSTANTINE ALEXANDER: Thank you for the taking
7 the time to come down. I think I saw another person. Sir,
8 did you want to speak, or not? I wasn't pointing to you,
9 but you can speak anyway.

10 MARK BOSWELL: Hi, good evening. My name is Mark
11 Boswell. That's B-o-s-w-e-l-l at 105 Walden Street. And
12 so, I have the -- a copy of the petition that Ms. Howard
13 mentioned, which has about 27 signatures from the neighbors,
14 so this is a pretty good summary of the problem and our
15 feelings, and it's a chance for them to be heard, and I'm
16 trying to be brief if you'll let me.

17 CONSTANTINE ALEXANDER: Please.

18 MARK BOSWELL: So the other side, very concerned
19 neighbors, strongly urge the members, the Board of Zoning
20 Appeals to unanimously support the Commissioner's September
21 10 revocation of the building permit and reject the
22 developer's appeal, because the Commissioner, after

1 consulting with the City Solicitor, made the correct legal
2 response in the context of previous appeal of this building
3 permit, when he revoked the permit and stopped work on the
4 house in the back yard of the existing two-family home at
5 117 Walden Street.

6 "As neighbors, we have observed, several days on
7 117 Walden Street is not a vacant lot, as the developers
8 finally state. The back yard has a large green space of
9 trees, or was a large green space with trees -- open to the
10 sky, enjoyed by more than a dozen neighbors, whose lots back
11 onto the yard.

12 "The developer and his architects' defiant choices
13 and misleading statements and omissions to the neighbors and
14 to the city in developing this lot require firm action by
15 the BZA to deter future actions, stress, negative
16 consequences to our community of behavior that feels to many
17 of us like bullying.

18 "In particular, we're aware of a pattern of
19 ignoring rules, such as installation of numbers windows in
20 the same lot, contrary to filed permit plans; failure to
21 disclose the existence of a second building to neighbors
22 before the bulldozer arrived, pretending to be forthcoming;

1 stating on this application that it was a vacant lot,
2 stating the existing two-family home has zero open space,
3 and several inconsistent permit filings for the same project
4 on that lot, and failing to correct the -- state all
5 nonconformities on the lot that would have triggered greater
6 review in initial permit issuance.

7 "And, despite full notice and awareness of
8 neighbors appealed hearing on July 26, the developer
9 defiantly dug and poured a concrete foundation in the weeks
10 before the hearing, July 12 to 24.

11 "As neighbors and concerned citizens of Cambridge,
12 we see the following zoning violations by the developer:
13 failure to view the Cambridge Zoning Ordinance as a
14 harmonious whole in a neighborhood context, beginning with
15 dimensional violation of Article V.

16 "In particular, as noted, the prior appeal to
17 developer cannot use the open space of the existing building
18 to meet the requirements of the second building, Section
19 '512536,' as both the second house proposal and newly poured
20 foundation create new open space violations for the front
21 building that previously did not exist.

22 "There are also two side yard violations, which

1 are not eligible for exemption in Section 5.21, since the
2 lot area exceeds required 5,000 square feet.

3 "And finally, we ask you please firmly confirm
4 revocation of the building permit '447502019' and other
5 developer -- and order the developer to remove the
6 foundation as a current zoning violation and restore use of
7 existing space for the front house, so as to have full
8 compliance with zoning, before allowing any certificate of
9 occupancy for the front units on the same lot. Thank you."

10 CONSTANTINE ALEXANDER: Let me make a comment
11 here, because other people have alluded to this as well.
12 The case before us is whether we should -- whether the
13 Commissioner was correct in revoking the building permit.

14 Should we agree with that conclusion, that's where
15 our responsibility ends. We're not going any order to fill
16 up the hole or whatever else. That's between the city, as
17 represented by the Commissioner, and the petitioner. We're
18 not there. We're not going to go there.

19 So I just want to be very clear, crystal clear,
20 that yes you've got a big hole back there, and maybe the
21 hole shouldn't be there, but that's not our issue to
22 resolve. The city officials will resolve that in whatever

1 fashion they think is appropriate.

2 MARK BOSWELL: Understood. We just wanted you to
3 be aware of the feeling that --

4 CONSTANTINE ALEXANDER: I am well aware of your
5 feelings, I can assure you. Thank you, sir, for coming
6 down. Anyone? Sir?

7 ANDREW SZENTGYORGYI: Hi, I'm Andrew Szentgyorgyi.
8 Andrew, spelled the way it usually is, S-z-e-n-t-g-y-o-r-g-
9 y-i. So I just, I -- you know, one quick picture, I think
10 you've got this, but -- you know, this was sort of the
11 neighborhood we lived in. It was kind of this big green
12 patch around all the people who are discussing this with you
13 today.

14 I have to say that in many ways I've enjoyed
15 having -- working with Matt. You know, we've had some good
16 times. I gather that he was instrumental in helping -- what
17 is her last name?

18 COLLECTIVE: Morrow.

19 ANDREW SZENTGYORGYI: Morrow -- you know, finding
20 assisted living. You know, so there -- you know, it's been
21 a very mixed deal. I think the important thing here is that
22 we're in a negotiation, and I know that you make decisions,

1 but you can also make recommendations.

2 And so, I think the issue as far as I'm concerned
3 is, you're going to give an up-down decision, but along with
4 the up-down decision, you might, you know, make -- offer
5 some Council --

6 CONSTANTINE ALEXANDER: We might, but I'm not
7 going to do that.

8 ANDREW SZENTGYORGYI: Anyway, but all I'm trying
9 to say is that I think that -- you know, where we are at
10 right now, we're sort of at an impasse.

11 And, you know, the reason I gave you that picture
12 is that there is a lot of green space that has been -- you
13 know, you've kind of nuked it, but we could build it back
14 again.

15 And so, if we were to imagine, you know, there's
16 some cement in the ground, which cost you some money, but
17 maybe if we were to explore --

18 CONSTANTINE ALEXANDER: Again sir, come on, let's
19 move on.

20 ANDREW SZENTGYORGYI: No, I'm just saying that if
21 you were to recommend that we enter in --

22 CONSTANTINE ALEXANDER: We're not going to make

1 recommendations, I just said that.

2 ANDREW SZENTGYORGYI: Okay, well then --

3 CONSTANTINE ALEXANDER: Okay. We're going to
4 decide up or down with regard to the appeal. And that's
5 where our responsibility ends.

6 CONSTANTINE ALEXANDER: Fair enough. But I think
7 that negotiation is possible between the builder and the
8 neighborhood.

9 CONSTANTINE ALEXANDER: Oh, that's -- I'm with
10 you, I'm not saying do not --

11 ANDREW SZENTGYORGYI: Okay.

12 CONSTANTINE ALEXANDER: But that's not -- we're
13 not going to be part of that negotiation, that's all I'm
14 saying. Thank you very much.

15 ANDREW SZENTGYORGYI: Thank you.

16 RICHARD ARTHUR: Good evening. Richard Arthur, 34
17 Hubbard Ave. I live right behind the big hole and the
18 cement, and to address your particular issue, yes and no, I
19 would just like to suggest or recommend as a neighbor and a
20 resident city person, I understand your role and
21 responsibility in dealing with this issue, but just as one
22 who appreciates the natural aesthetics of where I'm living

1 and what has been done is depreciating the value of the
2 neighborhood.

3 So if you can make a decision -- excuse me -- in
4 dealing with the neighborhood being the Zoning Board and the
5 Commissioner being here, I do appreciate that you make the
6 decisions that will advocate for the neighborhood and not
7 necessarily the developer and the making of more money or
8 stacking people on top of people, because that's how I feel
9 when you have the intention to put a five-unit or three-unit
10 condo in my back yard.

11 So if you can just address those particular issues
12 as the Zoning Board, I would say thank you.

13 CONSTANTINE ALEXANDER: Thank you. Anyone else
14 wishes to be heard on this matter? Apparently not. I will
15 close public testimony, give you the opportunity to have any
16 final comments.

17 ADAM COSTA: Thank you, Mr. Chairman, members of
18 the Board. I'll be brief, I know you have a lengthier
19 agenda tonight and we're the first on it, so -- but I want
20 to bring it back to what we had discussed in terms of the
21 scope of the appeal that's before you and just touch upon
22 two things that were said by the residents in their public

1 comment.

2 So we spoke, Mr. Chairman, you and I, about the
3 equities, and we heard some of that. We heard terms like
4 "detrimental reliance" and I heard somebody say that my
5 client definably dug a foundation. And I guess I just want
6 to bring it back. I understand that there's a history here.
7 We've recounted some of that.

8 Proceeding to dig a foundation with a building
9 permit is not defiantly digging a foundation. Is it digging
10 a foundation at risk? Is it digging a foundation knowing
11 that there has been an appeal, sir?

12 I have many a client that proceed at risk when
13 they're issued building permits or special permits, because
14 they recognize, often after consultation with me, that
15 municipalities are entitled to a great degree of deference,
16 with respect to the permits that they had been issued, and
17 they're willing to take that chance.

18 This is a unique circumstance, because my client
19 proceeded at risk of an appeal by a neighbor, but it's not
20 the appeal by the neighbor that is why we're before you
21 tonight. What happened is as a consequence of that appeal,
22 ISD did something I would say rather unusual.

1 I don't know how often it's done in the city, but
2 rather unusual statewide, which is that before that appeal
3 was adjudicated by this Board, ISD decided to take a second
4 look and to reverse the determination they had issued.

5 And so, now my client finds itself in a position
6 where the at-risk construction of a foundation, which was at
7 risk with the expectation that the building permit would be
8 entitled to a great degree of deference that building
9 permits are entitled to, now we're dealing with the
10 revocation of the building permit that's entitled to a great
11 degree of depth.

12 So it does sort of change the game a bit, and I
13 think that that's something that I hope would be recognized
14 by the Board.

15 The second point I want to make -- and the
16 Building Commissioner has chosen not to speak and he's under
17 no obligation to speak in this hearing -- and so I guess
18 this is sort of a rhetorical question as much to him as it
19 is to the Board, but I mentioned before that part of the
20 concern I have is the precedent -- the fact that there are
21 a series of cases, at least six that I've identified in the
22 last six or eight years, where this exact provision has been

1 interpreted to allow construction on a lot much like my
2 client's in.

3 I guess the question I've got is, if the
4 interpretation now by ISD, by the Building Commissioner, by
5 your Law Department, is that, "Well, we've been doing it
6 wrong all these years, zoning has to adapt," to use your
7 words, Mr. Chairman, and so, "We're going to now interpret
8 it differently" well, if that is now the binding
9 interpretation, what does that mean for these other permits
10 that have issued?

11 As you know, there's a 60-year statute of
12 limitations on permits that issue, rightful building permits
13 that issue under zoning act -- state law. They can be
14 challenged for a period of up to six years, even when issued
15 pursuant to a lawful, even when construction occurs pursuant
16 to a lawfully issued building permit.

17 So I just hope that ISD, I hope the Building
18 Commissioner, I hope this Board is sort of recognizing the
19 effect of what it's doing here, rendering a new
20 interpretation, applying that new interpretation
21 retroactively, is problematic not just for my client -- and
22 obviously I'm advocating for my client -- but it's

1 problematic in the sense that these other cases that exist
2 out there, they're not subject to challenge, because you've
3 chosen to interpret, or the Building Commissioner has chosen
4 to interpret a particular provision, differently than it has
5 been in the past. And that's concerning to me.

6 CONSTANTINE ALEXANDER: I can only comment that I
7 have to assume -- and I do not know -- that the Commissioner
8 took that into consideration when we revoked his decision.
9 I don't know how many cases that have six-year statutes
10 open. I'm sure the Legal Department took that into
11 consideration, and they rendered a decision when they
12 rendered their decision.

13 ADAM COSTA: Fair enough, thank you.

14 CONSTANTINE ALEXANDER: Your point's well taken.
15 But I mean, that's been considered presumably, and their
16 position is what their position is.

17 Okay. I think I'm going to close all public
18 testimony. Ranjit, I take it -- did you want to speak or
19 not?

20 RANJIT SINGANAYAGAM: I have nothing to add.

21 CONSTANTINE ALEXANDER: You have the letter.

22 RANJIT SINGANAYAGAM: Yes.

1 CONSTANTINE ALEXANDER: It speaks for itself in
2 your opinion? Your letter speaks for itself, right?

3 RANJIT SINGANAYAGAM: Yeah.

4 CONSTANTINE ALEXANDER: Okay. All right. Time
5 for a decision.

6 LAURA WERNICK: I have one question for the
7 Commissioner about how frequently are building permits
8 revoked?

9 RANJIT SINGANAYAGAM: Not that often, and only if
10 they're provided some falsification in the application
11 along.

12 THE REPORTER: I'm sorry, could you speak into the
13 microphone?

14 CONSTANTINE ALEXANDER: You need to speak into the
15 microphone in front of you.

16 RANJIT SINGANAYAGAM: No problem. They have
17 already done their falsification in the application, the
18 zoning violation.

19 CONSTANTINE ALEXANDER: Thank you. And any other
20 questions from Ranjit? Okay. Decision time. Discussion?

21 JANET GREEN: I have a question, and my question
22 is, how much do we consider that the cement foundation is in

1 the ground now, based on the permit, and how much it matters
2 that he jumped the claim, so to speak, and put the
3 foundation in before?

4 Did we consider that, as part of our decision, or
5 do -- is that irrelevant to what we're thinking about now?

6 CONSTANTINE ALEXANDER: I would suggest everybody
7 makes their own -- on this board, everybody makes their own
8 judgment on that. I mean, it's -- I don't think there's a
9 right or wrong answer. I mean, even the Councilor supports
10 one position.

11 My view is that's the way it works. I mean, the
12 fact of the matter is, is that public officials often -- not
13 often, hopefully not often, have the responsibility of
14 changing decisions they've made in the past, that they
15 believe that the decisions they've made in the past are
16 wrong. And if it works an apparent unfairness on a specific
17 party, then so be it.

18 The city's greater interest is involved here. The
19 greater interest is to get that zoning ordinance properly
20 interpreted. And if there's been a mistake in the past, and
21 now the mistake has been realized, to go forward on that
22 basis. That's my view. That's my personal point of view.

1 I can make the motion, or --

2 JIM MONTEVERDE: Yep.

3 CONSTANTINE ALEXANDER: It's a very simple motion.
4 The Chair moves that we grant the appeal made by the
5 petitioner and revoke the revocation of the building permit
6 that's in question here. All those in favor, please say,
7 "Aye."

8 THE BOARD: Aye.

9 [All vote NO]

10 CONSTANTINE ALEXANDER: None in favor. Obviously,
11 the motion doesn't carry. We need to take a second vote as
12 to why we took the vote that we took. So let me -- I'll
13 suggest something -- but please add/subtract other Board
14 members.

15 The Commissioner's decision to revoke the building
16 permit granted to the petitioner was correct and justified.
17 The lot in question has a lot width of 45 feet, but our
18 orders are for lot width of 50 feet in the Residential C
19 Zoning District.

20 Although Section 5.21 provides an exemption to the
21 lot width requirement, it does so only for undersized lots.
22 The lot in question is just 6352 square feet. The

1 Residential C1 Zoning District requires that a lot be
2 comprised only of 5,000 square feet. The lot is not
3 undersized.

4 It is true that the petitioner began excavation
5 and reliance on the building permit granted to it. But the
6 petitioner did so prior to the expiration of the period
7 during which the grant of a building permit may be re
8 challenged, and with full knowledge that neighbors were
9 actively and strongly opposed to the petitioner's proposed
10 construction.

11 The petitioner proceeded knowing the risks the
12 building permit might be revoked. It has to accept the
13 consequences of its decision. Changes? Okay. All those
14 in favor of that justification for our decision, please say
15 aye?

16 THE BOARD: Aye.

17 [All vote YES]

18 CONSTANTINE ALEXANDER: Five in favor, the case is
19 over.

20 COLLECTIVE: Thank you.

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2 (8:20 p.m.)

3 Sitting Members: Slater W. Anderson, Constantine Alexander,
4 Janet Green, Jim Monteverde and Laura
5 Wernick

6 CONSTANTINE ALEXANDER: The Chair will call Case
7 Number 017184 -- 215 Prospect Street. Anyone here wishing
8 to be heard on this matter? How time flies. A year ago --

9 MELISSA GARCIA: You missed us. One year ago.
10 You missed us. We came back.

11 CONSTANTINE ALEXANDER: All right. Name and
12 address for the stenographer.

13 COLIN MCCONVILLE: My name is Colin McConville.
14 I'm from Fino Design Group. I'm -- do you want me to spell
15 it? C-o-l-i-n last name M-c-C-o-n-v-i-l-l-e, and I'm joined
16 with Melissa Garcia.

17 So I'm here representing Christopher Vuk, who's
18 the petitioner for Rock and Roll Daycare, for 215 Prospect.
19 This is in regards to the existing facility at 215. It's
20 being revisited because Rock and Roll Daycare was granted a
21 temporary special permit, as you remember, for the relief of
22 three out of six required off-street spaces, which is labs.

1 Since the last hearing, it was discovered that we
2 were only required to have two off-street parking spaces,
3 since this building falls under the exception (sic) of
4 6.12.c under the Cambridge zoning bylaws, leaving us on the
5 first floor out of the six required off-street spaces.

6 As you can see on the parking plan that was in the
7 packets, the building takes up most of the site. The
8 remainder of the site is devoted to three tandem, off-street
9 parking spaces. So we're seeking relief from the second
10 off-street.

11 JANET GREEN: We can't quite hear you in the back,
12 so if you could just keep it a little closer --

13 COLIN MCCONVILLE: So yeah. So we're seeking
14 relief from the second required off-street. So also, a
15 recent poll of the current --

16 CONSTANTINE ALEXANDER: Let me just fill in the
17 spaces in your rather terse presentation. When we heard the
18 case the last time, there was some neighborhood opposition,
19 and personal letters that I recall, saying -- concerned
20 about parking, lack of parking, the traffic impact on the
21 neighborhood.

22 And for that reason, we granted -- we still felt

1 the special permit might be warranted, but we wanted to have
2 a second look. So we gave it for a one-year period.

3 COLIN MCCONVILLE: Mm-hm.

4 CONSTANTINE ALEXANDER: And so, one year has run.
5 Have you -- well, I'll ask the neighbors -- we have no
6 letters in our file. They were saying the situation is
7 terrible, you can't let this go on any longer. Have you
8 heard anything from the neighbors or other interested
9 parties opposed to the parking situation here? There needs
10 to more on-site parking.

11 COLIN MCCONVILLE: I have not, personally.

12 CONSTANTINE ALEXANDER: Okay. We'll get them from
13 the neighbors if there are any, so I just wondered.
14 Questions from members of the Board so far? I'll open the
15 matter up to public testimony.

16 Is there anybody here wishing to be heard in this
17 matter? Apparently not. We have no letters in our files,
18 so we're going to take it from that that the neighborhood
19 does not have any problems, that you were right, that the
20 parking is not going to be an issue.

21 So with that, I will close public testimony. I'm
22 going to propose that we take away the one-year limitation

1 that we filed, grant the special permit in perpetuity, if
2 you will, subject to compliance with the conditions of the
3 special permit, based on the parking plan you submitted
4 right here.

5 So, the Chair moves that we grant the special
6 permit requested, and in so doing, we incorporate the
7 findings made a year ago with regard to the special permit
8 we granted a year ago, subject to the condition that the
9 petitioner proceed -- the parking situation proceeds in
10 accordance with the plan prepared by the petitioner and
11 initialed by the Chair. All those in favor, please say,
12 "Aye."

13 THE BOARD: Aye.

14 [All vote YES]

15 CONSTANTINE ALEXANDER: Five in favor.

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2 (8:26 p.m.)

3 Sitting Members: Slater W. Anderson, Constantine Alexander,
4 Janet Green, Jim Monteverde and Laura
5 Wernick

6 CONSTANTINE ALEXANDER: The Chair will now call
7 Case Number 017188 -- 8 Van Norden Street. Anyone here
8 wishing to be heard on this matter?

9 MICHAEL WIGGINS: My name is Michael Wiggins from
10 the law firm of Weston Patrick in Boston, and I'm here with
11 Larry Hudson, who is the --

12 CONSTANTINE ALEXANDER: Your name and address,
13 now.

14 MICHAEL WIGGINS: I'm just getting it. So just to
15 introduce you basically -- Larry and his mother and his
16 grandparents lived in this house, in this --

17 CONSTANTINE ALEXANDER: Excuse me -- we've got a
18 big problem at the outset. So I do not want to get into any
19 discussion of --

20 MICHAEL WIGGINS: Okay.

21 CONSTANTINE ALEXANDER: The problem is this, are
22 you familiar with the dormer guidelines that are proposed by

1 the Community Development Department? Probably not. And I
2 don't think the architect is.

3 MICHAEL WIGGINS: Well --

4 CONSTANTINE ALEXANDER: The Community Development
5 Department for a number of years has put out guidelines for
6 dormers on properties that are seeking zoning relief; how
7 big they can be, where they're going to be located.

8 MICHAEL WIGGINS: Right.

9 CONSTANTINE ALEXANDER: The plans we have here do
10 not come close to compliance with dormer guidelines. And
11 particularly, the dormer guidelines say the dormer can't get
12 any longer than 15 feet. My judgment is it's over 20 feet
13 long on each side, those dormers.

14 I said, but does this doesn't mean we are close to
15 granting any relief --

16 MICHAEL WIGGINS: Right.

17 CONSTANTINE ALEXANDER: But I think this has got
18 to go back to the drawing boards, and you've got to come
19 back with new plans that show dormers that comply, or are
20 very close to complying, with the dormer guidelines.

21 If you go any further on this case, and I think
22 we're going to end up at the same place, we're not going to

1 grant relief tonight, then we have to continue the case to a
2 night where all five of us can be present, and that could be
3 weeks and weeks and weeks.

4 I would suggest -- we had the same case, by the
5 way, same fact pattern, at the last hearing. We had someone
6 come in and it was a builder, was not aware of the dormer
7 guidelines and he had dormers actually bigger than yours.

8 And I'm sorry you didn't know about the dormer
9 guidelines and it wasn't brought to your attention when you
10 filed the application. But they are there, and we pay
11 serious attention to them.

12 MICHAEL WIGGINS: Could we just look for a second
13 at the plans and see what length those --

14 CONSTANTINE ALEXANDER: It's over 20 feet.

15 MICHAEL WIGGINS: 25 feet.

16 CONSTANTINE ALEXANDER: 25 feet.

17 PETER SANDORSE: So I was going to ask the board
18 if we -- if we did move --

19 THE REPORTER: Could you state your name?

20 CONSTANTINE ALEXANDER: Introduce your name,
21 please.

22 PETER SANDORSE: My name is Peter Sandorse,

1 Phoenix Architects out of Wakefield.

2 THE REPORTER: Could you spell your last name for
3 me, please?

4 PETER SANDORSE: S-a-n-d-o-r-s-e. I'm sorry,
5 Sandorse. I apologize, my easel didn't work this evening.

6 So what I was going to ask the Board is if we
7 agreed -- this plan can work with the dormers being 12 feet?
8 It's not a problem.

9 CONSTANTINE ALEXANDER: But when he -- I'm glad to
10 hear that.

11 PETER SANDORSE: Yes.

12 CONSTANTINE ALEXANDER: But the fact of the matter
13 is, we need the final plans, or plans for the -- to grant
14 the relief, so that the Building Department can then make
15 sure that you're building something in accordance with the
16 plans that we approved.

17 PETER SANDORSE: I understand.

18 CONSTANTINE ALEXANDER: So we need -- if you think
19 you can do it, you want to take a recess occasion and go
20 outside, and you can mark changes to those plans on the
21 dormer guidelines to comply --

22 PETER SANDORSE: Yes.

1 CONSTANTINE ALEXANDER: -- and we'll hear the case
2 later this evening, fine.

3 PETER SANDORSE: I can do that.

4 CONSTANTINE ALEXANDER: That wouldn't hurt the
5 case.

6 PETER SANDORSE: That would be great, thank you.

7 CONSTANTINE ALEXANDER: So we'll take a recess for
8 now, and don't go too far. There's a room over there where
9 you can work.

10 PETER SANDORSE: Thank you.

11 CONSTANTINE ALEXANDER: I'm sorry the Board made
12 -- you weren't made aware of the dormer guidelines.

13 MICHAEL WIGGINS: No, I knew that it was 15 -- I
14 didn't -- frankly, I didn't know that it was beyond 15 feet.
15 I thought we were in compliance.

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1 there for many years. There was then an intervening
2 preschool for a year or two, and then in 19 - I'm checking
3 the date on this -- in 1990? Their special permit
4 authorizing their use in the district occurred -- was issued
5 by this Board in 1989, July of 1989. They've operated
6 pursuant to this special permit.

7 What's involved in tonight's application is
8 seeking approval to construct a conforming addition for a
9 nonconforming structure.

10 It's a rather straightforward case. The property
11 is nonconforming due to the height of the roof, like many
12 homes of this vintage constructed well before the adoption
13 of zoning, with the height in excess of the 35-foot
14 limitation that first appeared in the 1924 edition of our
15 zoning ordinance.

16 The actual height I think is closer to 38.

17 MICHAEL WIGGINS: 36.10.

18 JAMES RAFFERTY: Yeah.

19 MICHAEL WIGGINS: Yeah.

20 JAMES RAFFERTY: You know, I always forget to
21 introduce the people that are paying my fees, so as I turn
22 to the architect -- pardon me -- it wasn't your -- the guy

1 on the left there, I think, you know, maybe I better let you
2 know who that is. So this --

3 THE REPORTER: Can you spell your name for the
4 record, sir?

5 JAMES RAFFERTY: My name? Okay, so I'm about to
6 do that for you, yeah. So you got me, Rafferty, right?

7 MICHAEL WIGGINS: Yes.

8 JAMES RAFFERTY: Okay. So to my left is George
9 McCarthy, M-c-C-a-r-t-h-y. Mr. McCarthy is the President
10 and CEO of the Lincoln Land Institute. And to my right is
11 Randy Kreie. You have Mr. Kreie's card there. And he's an
12 architect with DiMella Shaffer, and he's the architect for
13 the project.

14 So the property is located in the old Cambridge
15 Historic District. So we did go through a process with the
16 Historical Commission, who received a certificate of
17 appropriateness.

18 What's proposed here is the original house has an
19 addition put on it in the 1950s, kind of an L-shaped
20 addition, and it has served the school well, but it is
21 narrow, it limits accessibility.

22 And sight lines and seminars that occur there are

1 constrained by the limitations of this space.

2 So the proposal is to essentially remove three
3 walls of that space, and meeting with the Park Service,
4 which owns and operates the Historic Longfellow House, they
5 ask that the façade facing them not be changed.

6 So that's a condition of the certificate of
7 appropriateness, and the architects and engineers will use
8 means and methods to preserve that face of the building.

9 If you look at the site plan, I think it's the
10 best way to tell the story, you can see -- I've shaded in
11 where the addition is.

12 So you'll see the replacement addition has a
13 footprint slightly larger than the original addition. The
14 square footage increase is approximately 2,500 square feet,
15 but still slightly below the allowed FAR.

16 So the institutional use has been established for
17 many years through the special permit issued by the Board.
18 This represents an enlargement of the physical property,
19 but, as Mr. McCarthy can explain to you, it doesn't really
20 represent intensity of the use.

21 This isn't likely to change the way in which the
22 property is operated. It's not like additional students or

1 participants will be coming, it will just allow for -- and
2 we can go through the details.

3 CONSTANTINE ALEXANDER: Well, looked at the plans,
4 I see offices that are going in.

5 JAMES RAFFERTY: Well, that's correct. Right.

6 CONSTANTINE ALEXANDER: It's obvious there also
7 has got to be a buildup of people but more people -- there's
8 going to be more foot traffic, more use of the building.
9 Not the case?

10 GEORGE MCCARTHY: No. Should I speak into the
11 microphone?

12 CONSTANTINE ALEXANDER: Yes, please.

13 GEORGE MCCARTHY: Okay.

14 JAMES RAFFERTY: Just give your name.

15 GEORGE MCCARTHY: Right. So my name is George
16 McCarthy. I'm the President of Lincoln Institute Land
17 Policy. So one thing is that we're not adding a significant
18 number of offices, we're changing the configuration of the
19 space, but there are two or three things that limit our
20 ability to add offices.

21 One is that the new zoning requirement -- the new
22 building requirements require that we do ADA compliance now

1 on the interior and ADA compliance now on the interior, so
2 we have to widen all the hallways, we have to widen the
3 doorways, and we have to add bathrooms.

4 We only have bathrooms now in the basement, and we
5 now have to add additional bathrooms and make them ADA
6 compliant as well.

7 And so, we're going to lose a lot of space in the
8 passageways through --

9 CONSTANTINE ALEXANDER: You're also running a café
10 on the main floor, aren't you?

11 GEORGE MCCARTHY: Well, we're -- we're not adding
12 it, we're just moving it from the basement up to the --

13 CONSTANTINE ALEXANDER: Oh.

14 GEORGE MCCARTHY: -- to the main floor.

15 CONSTANTINE ALEXANDER: There's a kitchen on the
16 plans.

17 GEORGE MCCARTHY: Yeah, yeah. There's a -- we had
18 a kitchen before, and now we're just moving it --

19 CONSTANTINE ALEXANDER: The kitchen was a café is
20 what you're saying?

21 GEORGE MCCARTHY: Well, I was -- yeah, I guess.

22 JAMES RAFFERTY: Yeah, it accommodates employees

1 as well as --

2 CONSTANTINE ALEXANDER: Yeah, I guess --

3 GEORGE MCCARTHY: No, no, it's not a public café.
4 No, no, no. But anyway, so the -- we're actually reducing
5 the classrooms in the building, so there's going to be fewer
6 large meetings, but the one larger classroom is going to be
7 more amenable to modern education.

8 The classroom we have now is very long and narrow,
9 we really can't use the whole thing, because of its length.
10 It was built in the '50s, and it was actually multiple
11 classrooms for the boy's school that was there before.

12 CONSTANTINE ALEXANDER: Give me a sense of the
13 foot traffic on a typical day in that building. How many
14 people come in and out?

15 GEORGE MCCARTHY: Maybe 50.

16 JAMES RAFFERTY: Well, maybe you could describe.
17 There's two categories of occupants. There are the people
18 that go there every day to work --

19 GEORGE MCCARTHY: Right.

20 JAMES RAFFERTY: -- and maybe you could give that
21 number.

22 GEORGE MCCARTHY: So yeah, so there's about 50

1 people who go there to work, right? And not there all the
2 time, because many of us travel a lot. So on average, maybe
3 two-thirds of the people who work there will be there at any
4 given time.

5 CONSTANTINE ALEXANDER: And the roughly 50 people
6 who work there now, 50 will work there --

7 GEORGE MCCARTHY: We're not planning to add head
8 count in Cambridge. We have offices in Beijing, China, we
9 have one in Phoenix, we have offices in Washington D.C.

10 CONSTANTINE ALEXANDER: What's that office not too
11 far down on -- I forget the name of the street, Phillips
12 Place.

13 GEORGE MCCARTHY: Phillips Place, yeah. We have
14 those offices there as well, right? Yeah.

15 CONSTANTINE ALEXANDER: What do you use those
16 offices for?

17 GEORGE MCCARTHY: As offices, so there's --

18 CONSTANTINE ALEXANDER: As offices.

19 JAMES RAFFERTY: Administrative, yeah. And then
20 you have your seminars, right?

21 GEORGE MCCARTHY: So we have seminars. Generally,
22 we have them at lunchtime. We have sometimes distance

1 learning that we host there. But the distance learning is
2 really focused outside. We don't have a lot of people
3 coming in for the distance learning. But we have the people
4 who are teaching and other people who are present in the
5 room.

6 Generally, depending on the nature of the topic,
7 the people who come for one of our lunchtime seminars might
8 range from 30 to 70.

9 CONSTANTINE ALEXANDER: Open to the public?

10 GEORGE MCCARTHY: Yeah, they're open to the
11 public, yeah. And they're generally advertised in advance.
12 And we get a lot of frequent fliers.

13 So there are people who know us, who like to come
14 for a free lunch, and there are others who have an interest
15 in the topics that we cover, so it just depends, yeah.

16 And then we also -- we host joint tours with the
17 Longfellow House. The first one we had just a few weeks
18 ago, where we want to feature the sisters. And so, since
19 two of the sisters own two of the houses -- we own 115
20 Bradley as well -- we now do these joint tours and we're
21 planning one at Christmas.

22 We're going to have an open house on December 13,

1 and then the scheduled tours every half an hour with the
2 park service on the fourteenth.

3 We're anticipating on the thirteenth probably
4 about 250 people generally come through, and we'll have
5 carolers who will be over at 115 Brattle for that, right?
6 But that's just a one-time event once a year.

7 And then we also have a Christmas party for the
8 staff once a year that generally has 70 or 80 people there.

9 JAMES RAFFERTY: But to my earlier point, it's not
10 anticipated that the intensity of the use will be altered
11 significantly, as the result of the enlarged addition.

12 It would make a more efficient space and more
13 accessible and code-complaint, but in addition, we have had
14 extensive outreach with neighbors, hosted an open house.
15 Mr. Sorenson sent a very supportive letter to the Historical
16 Commission. I didn't see anything in this pile --

17 CONSTANTINE ALEXANDER: No, nothing in that pile.

18 JAMES RAFFERTY: -- but the certificate of
19 appropriateness from the Historical Commission has been
20 issued, and I note that's in the file as well. So Mr. Kreie
21 could take you through the architectural elements of the
22 addition if you like, or you could rely upon our submission.

1 It's --

2 JANET GREEN: I'm pretty comfortable.

3 CONSTANTINE ALEXANDER: I'm comfortable too.

4 JIM MONTEVERDE: I'm good.

5 CONSTANTINE ALEXANDER: Okay, no need.

6 JAMES RAFFERTY: He prepared for hours.

7 CONSTANTINE ALEXANDER: Fine.

8 JAMES RAFFERTY: But I caution --

9 CONSTANTINE ALEXANDER: He can go back; he's going
10 to look in the mirror and do your presentation.

11 JAMES RAFFERTY: I'm good. He's fine. I told
12 him. But we understand the imposition on your time,
13 although I must say we made a rapid increase from the first
14 case to the next two, so we were thinking we were going to
15 be here much longer.

16 So I think that's all I should say at this point.
17 Okay. I've thrown enough platitudes at the Board, as is my
18 practice, I think --

19 CONSTANTINE ALEXANDER: Yes.

20 JAMES RAFFERTY: -- to ingratiate myself
21 sufficiently. It's a fine institution, Lincoln Land
22 Institute. Ironic or coincidental, it studies land use in

1 an area that this Board deals with all the time. So to have
2 them here in Cambridge is really quite a good resource.

3 So having said all that, we would respectfully
4 suggest that we've met the criteria needed for the issuance
5 of the relief being sought, and because the only issue is
6 the height of the roof.

7 And were we to reduce the height of the roof, this
8 would be a conforming project, but the Historical Commission
9 would not look favorably upon the situation, so.

10 That represents our hardship, the historic nature
11 of the existing structure.

12 CONSTANTINE ALEXANDER: Well, you're not making
13 that building any higher, you're --

14 JAMES RAFFERTY: No, right, that's my -- it's a
15 conforming addition.

16 CONSTANTINE ALEXANDER: Yeah.

17 GEORGE MCCARTHY: I mean, they -- enough said.

18 JAMES RAFFERTY: That applies to both of us,
19 apparently.

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

22 JAMES RAFFERTY: No.

1 CONSTANTINE ALEXANDER: I'll open the matter up to
2 public testimony. Is there anyone here wishing to be heard
3 on this matter? Apparently not. So I will close public
4 testimony. Discussion, or ready for a vote?

5 COLLECTIVE: Ready.

6 JANET GREEN: I'm ready.

7 CONSTANTINE ALEXANDER: Everybody's good. Okay.
8 The Chair moves that we make the following findings with
9 regard to the variance being sought: That a literal
10 enforcement of the provisions of the ordinance would involve
11 a substantial hardship, such hardship being that this is an
12 older building that took on, performed a very useful public
13 function, and is necessary to reconfigure and add to the
14 space, well add to the space to allow a reconfiguration, to
15 allow the petitioner to better apply the public services
16 that it does now provide, and maybe even some new ones.

17 The hardship is owing to the -- basically the
18 shape of the lot. It's an oval lot, and any kind of relief
19 we're forced to go up, and that could get you the height
20 issue that we talked about, which is not true.

21 But in any event, you do meet the requirements
22 relating to the but the soil condition, shape or topography

1 of the land.

2 And that relief may be granted without substantial
3 detriment to the public good, or nullifying or substantially
4 derogating the intent or purpose of the ordinance.

5 In this regard the relief being granted will allow
6 the petitioner to better provide to the community -- both
7 the Cambridge community and the national community, and
8 maybe even the international community -- do a better job of
9 presenting their services and doing it in a more productive
10 way.

11 So on the basis of all of these findings, the
12 Chair moves that we grant the variance requested on the
13 condition that the work proceed in accordance with plans
14 prepared by DiMella Shaffer, S-h-a-f-f-e-r, the first page
15 of which has been initialed by the Chair. All those in
16 favor, please say, "Aye."

17 THE BOARD: Aye.

18 [All vote YES]

19 CONSTANTINE ALEXANDER: Five in favor, variance
20 granted.

21 AUDIENCE: Thank you very much.

22

1 * * * * *

2 (8:45 p.m.)

3 Sitting Members: Slater W. Anderson, Constantine Alexander,
4 Janet Green, Jim Monteverde and Laura
5 Wernick

6 CONSTANTINE ALEXANDER: The Chair will now
7 reconvene Case Number 017188 -- 8 Van Norden Street.

8 MICHAEL WIGGINS: Mr. Chairman, let me introduce
9 the people. Peter Sandorse, who's the architect, and Larry
10 Hudson, who's my client. And do you need me to spell those
11 names?

12 THE REPORTER: Yeah, could you spell them?

13 LARRY HUDSON: Larry Hudson, H-u-d-s-o-n.

14 PETER SANDORSE: Peter Sandorse, S-a-n-d-o-r-s-e.

15 MICHAEL WIGGINS: I think we should cut to the
16 chase about the dormer issue early on here and show you what
17 we've done to --

18 CONSTANTINE ALEXANDER: What we're going to have
19 to do by the way is I'm going to show it, but then you're
20 going to have to mark them on the plans in our file, because
21 this will be what's fully --

22 MICHAEL WIGGINS: Okay. He's marked them here so

1 you see it first.

2 PETER SANDORSE: So on the third floor -- I went
3 onto the third floor, and I held the dormers just in space
4 where the bedroom exists, which is 12 feet. And I just ran
5 them equally on each side. I removed -- excuse me the
6 additional footage forward. So they tend to --

7 CONSTANTINE ALEXANDER: So how long are the
8 dormers, they're 12 feet did you say?

9 PETER SANDORSE: 12 feet.

10 CONSTANTINE ALEXANDER: And the dormer, it does go
11 -- it doesn't go to the ridgeline, which also is good?

12 PETER SANDORSE: Yeah, go to the ridge line, it's
13 held in, has a --

14 MICHAEL WIGGINS: Right.

15 PETER SANDORSE: And so, all of this is gone --

16 CONSTANTINE ALEXANDER: Okay.

17 PETER SANDORSE: Both sides. And I'll show it to
18 you on the other side. And I -- what I thought I would do
19 if the Chair wants, I -- we dated these to hand them in
20 tonight as well.

21 CONSTANTINE ALEXANDER: Well, I mean what I'd like
22 you to do is walk those changes that are on there on here to

1 tie into this plan. While you're doing that, why don't you
2 continue with your presentation.

3 MICHAEL WIGGINS: Okay. As I was starting to say,
4 this house has been in the same family for over 100 years.
5 Unfortunately, there was a tragedy last December. The house
6 burned basically beyond -- past any -- to rebuild it. So
7 the Hudson wants very much desperately to move back in.
8 They're living out of town and have been for some time.

9 And regarding --

10 CONSTANTINE ALEXANDER: That building --

11 MICHAEL WIGGINS: Say again?

12 CONSTANTINE ALEXANDER: The building they're
13 proposing to build now is bigger than what was there before?

14 MICHAEL WIGGINS: It is a little larger --

15 CONSTANTINE ALEXANDER: And more nonconforming
16 than the other building was, and it shouldn't be.

17 MICHAEL WIGGINS: Right. We are maintaining the
18 -- we're not invading the side yard anymore, it's basically
19 -- so -- and the front, we're not invading the front yard,
20 as you will hear from Peter.

21 I have -- in the file I think we should have a
22 picture of the house as it was, and the intent of the family

1 is basically to conform to the neighborhood. We have a
2 couple of houses on either side. This is the one on the
3 left, and this is the one on the right.

4 And in the back, you'll see a very large apartment
5 building, which is separated from locus by about a 12-foot
6 fence. We have unanimous support from all of the neighbors,
7 including the apartment building in the back.

8 To the extent that the FAR is increasing, it is
9 toward the rear, and certainly is not going to impact those
10 neighbors at all and they're really supportive.

11 I'd like Peter to just walk you through the plans
12 and explain why --

13 CONSTANTINE ALEXANDER: Go ahead.

14 MICHAEL WIGGINS: -- we need the extra yard to
15 make this a habitable building.

16 PETER SANDORSE: So I had -- when I started to
17 develop the house, I wanted to make sure that the stair
18 systems especially worked, as per today's code; also for
19 Larry's mother, who is elderly, to make sure I had space for
20 her to manipulate in the first-floor apartment.

21 Also having the ability to have it handicapped-
22 accessible in the future, that allowed the extra square

1 footage allowed me to have a proper --

2 JANET GREEN: She needs you to put the microphone
3 just a little bit more --

4 PETER SANDORSE: Closer?

5 JANET GREEN: Yeah.

6 PETER SANDORSE: The rear extension allowed me to
7 have a proper stairway down into the basement; also a better
8 means of egress up; no winders, no tight stairways that
9 affected us in the front, it affected us in the rear.

10 What I did try to do is hold the extension of the
11 front of to house exactly where the old porch was, so that
12 I'm holding the front line where the front line was before,
13 and Mike had said, pull the rear of the house back to allow
14 for the stairways in the back.

15 No additional growth right to left; everything was
16 held exactly as the old house was. We just made this change
17 now up on the top, containing the dormer to the bedroom.

18 This represents the [1:32 indiscernible floor
19 four port? elevations. I tried to do a house that looked
20 very similar to the house that was there, without all the
21 that was indiscernible just try to simplify the frame as
22 well as the shape.

1 And then I'm just going to -- so here we're
2 looking at the proposed front, the proposed left, his
3 proposed rear, proposed right, small landing at the back to
4 go in towards the means of egress.

5 And then finally the rendering of the house, which
6 is very similar to the house that was there before;
7 hopefully fit into the neighborhood.

8 CONSTANTINE ALEXANDER: This is going to be a two-
9 family house?

10 PETER SANDORSE: Correct.

11 CONSTANTINE ALEXANDER: And I think I understand
12 from earlier in your presentation, one of the units is going
13 to be occupied by a family member?

14 LARRY HUDSON: My mother is going to be on the
15 first floor, myself and my niece and my great niece will be
16 on the second floor.

17 CONSTANTINE ALEXANDER: Any questions for members
18 of the Board?

19 LAURA WERNICK: What's the total addition
20 extension, length into the rear?

21 CONSTANTINE ALEXANDER: The original plans you
22 submitted would add another 569 feet.

1 PETER SANDORSE: Correct.

2 LAURA WERNICK: I'm just curious about the
3 additional plans.

4 PETER SANDORSE: The distance here?

5 MICHAEL WIGGINS: The distance here?

6 LAURA WERNICK: The distance.

7 PETER SANDORSE: It's approximately five feet,
8 five feet.

9 MICHAEL WIGGINS: We still -- we have 27.6 to the
10 -- so it's well within the rear-yard setback. I think the
11 other thing that Peter -- a couple of things that he was
12 mentioning when he talked to me was the cost of dealing with
13 these notches, maybe you can speak to that -- as well as
14 making this habitable for Mrs. Hudson, who is in her late
15 '70s now and wants to age in place there too. Part of this
16 has to do with making it habitable.

17 CONSTANTINE ALEXANDER: I would just go soft on
18 those, because that's not a justification for planning --

19 MICHAEL WIGGINS: Understood, understood. I just
20 wanted to -- so you understood the motivation of the plan.

21 CONSTANTINE ALEXANDER: I have it in the
22 background.

1 MICHAEL WIGGINS: Okay.

2 CONSTANTINE ALEXANDER: I understand what's going
3 on.

4 MICHAEL WIGGINS: Okay.

5 PETER SANDORSE: Just that it becomes costly to do
6 a foundation that has a lot of [1:34:27 same indiscernible
7] it simplifies -- becomes less costly.

8 CONSTANTINE ALEXANDER: So that's sort of the
9 equivalent from the zoning point of view. We have to --
10 we're going to grant the variance, and we're going to say
11 it's due to the soil conditions and the like.

12 And this is not technically a soil condition, but
13 it has the effect of a soil condition in terms of you have
14 to -- you can't use the old foundation.

15 PETER SANDORSE: That's right.

16 CONSTANTINE ALEXANDER: Okay.

17 PETER SANDORSE: Right.

18 CONSTANTINE ALEXANDER: Got it.

19 MICHAEL WIGGINS: I'd also like to submit a
20 petition that this has been signed by virtually all the
21 neighbors.

22 CONSTANTINE ALEXANDER: We also have a letter, a

1 separate letter in the file, which I will read.

2 PETER SANDORSE: Hand this back in again. I've
3 made the changes to this plan.

4 CONSTANTINE ALEXANDER: Just hoping to see if it's
5 clear what the changes are, and it is. You've got one of
6 them? Anything else? Or I'll open the matter up to public
7 testimony.

8 MICHAEL WIGGINS: Let me see -- I think that's it.

9 CONSTANTINE ALEXANDER: Okay. Questions from
10 members of the Board at this point? No? I'll open the
11 matter up to public testimony. Is there anyone here wishing
12 to be heard on this matter? Apparently not. Any comments?
13 No? Okay.

14 JIM MONTEVERDE: One comment.

15 CONSTANTINE ALEXANDER: Hm?

16 JIM MONTEVERDE: One comment, if I may.

17 CONSTANTINE ALEXANDER: Oh, go ahead. Of course.

18 JIM MONTEVERDE: No, I'd just like to thank you
19 for rebuilding the house, staying -- committing to being in
20 the city, finding a reasonable way to do it. Good work.

21 MICHAEL WIGGINS: Thank you.

22 CONSTANTINE ALEXANDER: As indicated by Counsel,

1 we do have a petition signed by one, two, three, four, five,
2 six, seven -- one more eleven residents, all in support of
3 the relief being sought.

4 And also, we have a letter from Alana Mallon, M-a-
5 l-l-o-n. "I'm writing on behalf of a Lounsbury family, who
6 submitted a variance request after tragically losing their
7 home at 8 Van Norden Street in North Cambridge to a fire on
8 December 23, 2018." What a time to have a fire!

9 "Since its fire, the Lounsburys' home -- the
10 Lounsburys have struggled to navigate a complex and
11 intensive city system, while dealing with the loss of their
12 home and personal belongings, many of which are
13 irreplaceable.

14 "I support the variance requested, as receiving
15 these small variances would allow the Lounsburys to proceed
16 with rebuilding their home and their lives in an expedited
17 fashion.

18 "The Lounsburys are long-time Cambridge residents
19 and public servants in both the Cambridge Police Department
20 and the Cambridge public schools. I encourage the Board to
21 grant this variance."

22 That's all we have. Discussion, or are we ready

1 for a vote? Ready for a vote?

2 SLATER ANDERSON: I'm just going to make one
3 observation.

4 CONSTANTINE ALEXANDER: Go ahead.

5 SLATER ANDERSON: Substantive -- no, it's fine.
6 The stair on the back, and the windows on the back, they
7 don't match up to the layout that's on the floor plan.
8 They're reversed.

9 PETER SANDORSE: Yes.

10 SLATER ANDERSON: There's an extra window on one
11 of them.

12 PETER SANDORSE: Thank you.

13 SLATER ANDERSON: Just so someone doesn't build it
14 the wrong way.

15 PETER SANDORSE: Thank you.

16 CONSTANTINE ALEXANDER: Okay. Ready for a vote.
17 The Chair moves that we make the following findings with
18 regard to the variance being sought: That a literal
19 enforcement of the provisions of the ordinance would involve
20 a substantial hardship, such hardship being as that a result
21 of this tragic fire, we have an empty lot, and that -- so
22 someone's going to have to do something with that lot, and

1 it's not just peculiar to the petitioner before us, it runs
2 with the land, if you will.

3 That the hardship is owing to circumstances
4 relating in this case to the soil conditions; soil
5 conditions really -- you know, I'm interpreting that broadly
6 -- the soil conditions include the existing foundation for
7 the burnt-out building, which requires some modification.
8 You just can't build exactly what was there before.

9 And the petitioner is taking advantage of that to
10 build a more user-friendly and functional for the petitioner
11 and anybody else who owns that property building.

12 And that relief may be granted without substantial
13 detriment to the public good, or nullifying or substantially
14 derogating the intent or purpose of the ordinance. And my
15 colleague here, Mr. Monteverde, made that point very
16 succinctly when he congratulated you on rebuilding the
17 property. It's good for the city, and so it will be good
18 for you.

19 So on the basis of all these findings, the Chair
20 moves that we grant the variance requested on the condition
21 that the work proceed in accordance with plans prepared by
22 Phoenix Architects, the first page -- the cover page is

1 dated 09/25/19, and it's been initialed by the Chair.

2 All those in favor, please say, "Aye."

3 THE BOARD: Aye.

4 [All vote YES]

5 CONSTANTINE ALEXANDER: Five in favor, relief

6 granted. Good luck.

7 COLLECTIVE: Thank you.

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(8:59 p.m.)

Sitting Members: Slater W. Anderson, Constantine Alexander,
Janet Green, Jim Monteverde and Laura
Wernick

CONSTANTINE ALEXANDER: The Chair will now call
Case Number 017191 -- 147 Otis Street. Is there anyone here
wishing to be heard on this matter?

GREG LEPPERT: For a short presentation, if that's
okay, but if you prefer not, we can just go straight to
discussion.

CONSTANTINE ALEXANDER: Members of the Board, do
they want to see the slide presentation, or do you --

LAURA WERNICK: I think we should just go to your
presentation after some serious questions or something?
Maybe we could come back.

GREG LEPPERT: All right, that sounds good.

CONSTANTINE ALEXANDER: That's an interesting
suggestion.

LAURA WERNICK: No questions? Move right through
it.

GREG LEPPERT: All right, great. Hello. My name

1 is Greg Leppert, from 147 Otis Street. That's L-e-p-p-e-r-
2 t, and this is my wife Kate. We bought the house at 147
3 about a year ago. It's a unique property. The minute we
4 saw it, we were intrigued by it.

5 It has a former corner store that's attached to
6 it, that had not been used for some time. They closed the
7 door in the '70s and essentially let it go to seed. So
8 we've been renovating it and talking to the community in the
9 process.

10 And there were three things that we were hoping to
11 have as part of our plans that we've come before you today
12 to seek variances for. The first of those is a deck.

13 If you see in the documents that we handed in, I
14 did some research on the store, and at the turn of the
15 century, around the time the store was built, there was a
16 railing that went all around the top of the store.

17 And we would like to put a railing back in that
18 location, and have a deck that goes to the top of the store,
19 in large part -- in part to restore the aesthetic of the way
20 the store would have looked, it looks better anchored at the
21 top.

22 But what it would also do is help alleviate it's a

1 nonconforming structure. It does not have a lot of private,
2 open space, and having a deck there would do a lot to give
3 us some room to have that privacy outdoors.

4 The second thing we're seeking is a dormer. We have a
5 stairwell that goes to a half story at the top, there's a
6 bedroom up there. And the ceiling height at the top of the
7 stairs is not tall enough for me to stand up. It's -- I'm
8 5' 10" it's about five foot. And so, we're seeking a dormer
9 to improve the usability and safety of that stairwell.

10 CONSTANTINE ALEXANDER: And that dormer -- the
11 size of it approximately?

12 GREG LEPPERT: The size of it, it's a seven-foot
13 interior and eight-foot exterior.

14 CONSTANTINE ALEXANDER: Well within our dormer
15 guidelines in terms of --

16 GREG LEPPERT: Yep.

17 CONSTANTINE ALEXANDER: Okay, good.

18 GREG LEPPERT: That's right. And then the last
19 thing we're seeking from the Board is a parking spot. We do
20 have --

21 CONSTANTINE ALEXANDER: Can I stop you right
22 there?

1 GREG LEPPERT: Oh, sure.

2 CONSTANTINE ALEXANDER: I notice you have in the
3 file, your application makes no reference to parking. So we
4 can't consider parking --

5 GREG LEPPERT: Oh, it does.

6 CONSTANTINE ALEXANDER: Well, I --

7 GREG LEPPERT: So we have three things we're --

8 CONSTANTINE ALEXANDER: -- the advertisement says
9 --

10 JIM MONTEVERDE: It has a parking space.

11 CONSTANTINE ALEXANDER: -- oh, I'm sorry. I
12 misread it. I apologize.

13 GREG LEPPERT: That's okay. So we've -- we're
14 seeking relief for a parking spot. The shape of our
15 building is such that we are a corner lot, so we have two
16 front yards, with two front setbacks. But it is an L-shaped
17 building with a little nook in it, that a car would fit
18 perfectly.

19 The size of that parking spot that we've listed on
20 our plans is seven and a half feet by 16 feet, which is the
21 size of a compact parking spot. And as you know, you can be
22 granted a compact parking spot until you have five normal-

1 sized parking spots.

2 Well, we certainly aren't going to have room for
3 five normal-sized parking spots, so that is also part of the
4 relief.

5 And then the third part of the relief is simply
6 having a parking spot there would change our ratio of open
7 space. So -- and our reasons for wanting a parking spot is
8 we have a 2-year-old kid.

9 We've lived in Cambridge for nearly 10 years, and
10 are well familiar with Cambridge streets in terms of the
11 safety of getting a kid into and out of a car on the
12 streets. And so, having a parking spot would help us feel
13 and be safer getting him into and out of the car.

14 And we'd also like the opportunity to phase out
15 our petroleum-based car in the future and have a place to
16 park an electric car that we could charge on site.

17 CONSTANTINE ALEXANDER: You submitted something
18 that indicated that there always was a parking space on the
19 lot.

20 GREG LEPPERT: Oh, no that was the dormer --
21 sorry, not the dormer, the deck that previously there had
22 been a railing and that --

1 CONSTANTINE ALEXANDER: I remember it was going --
2 all right. I could have sworn you had something else. You
3 had a drawing, and you tracked down someone who lived in the
4 house in the 1970s.

5 AUDIENCE: That was us.

6 JANET GREEN: That's the next one.

7 AUDIENCE: We're next.

8 CONSTANTINE ALEXANDER: Okay.

9 GREG LEPPERT: I would like that. Yeah. There's
10 always been a parking spot at this location.

11 JIM MONTEVERDE: No, there couldn't have been,
12 because it was a recess, correct?

13 GREG LEPPERT: That's right.

14 JIM MONTEVERDE: It's a step-down. So there never
15 could have been a parking space.

16 GREG LEPPERT: That's right, yep. Yep. It was
17 recessed, and we'll be filling in part of that --

18 JIM MONTEVERDE: Right.

19 GREG LEPPERT: -- for a variety of reasons, but
20 parking --

21 CONSTANTINE ALEXANDER: Okay. Questions from
22 members of the Board? I'll open the matter up to public

1 testimony. Is there anyone here wishing to be heard on this
2 matter? No? Apparently not. I'll close public testimony.
3 I'll report them.

4 We are in receipt of numerous letters of support,
5 including one from the Pastor at the Sacred Heart Church
6 across the street. So you have ecclesiastical support, as
7 well as lay support.

8 COLLECTIVE: [Laughter]

9 CONSTANTINE ALEXANDER: No. And I didn't see any
10 letters of opposition. And no one's appeared tonight to
11 oppose it. I don't propose to read the letters, they're
12 long and they're heartfelt -- some of them are very good.
13 But I don't see any need for doing that tonight.

14 So I'll close public testimony, unless you have
15 anything further you want to add? Ready for a vote? The
16 Chair moves that we make the following findings with regard
17 to the variance being sought:

18 That a literal enforcement of the provisions of
19 the ordinance would involve a substantial hardship, such
20 hardship being this is a much older structure, in need of
21 substantial renewal or improvement, and that would be true
22 whether it's you folks or anybody who would come along and

1 bought the property.

2 So -- and the important thing here is the hardship
3 has got to run with the land. It just can't be hardship for
4 you and not anybody else. And you said -- the finding I'm
5 proposing is that you satisfy that requirement.

6 The hardship is owing to the -- basically the
7 shape of the lot. It's an odd-shaped lot, and it causes
8 some complexities in terms of designing the structure that
9 will work for family like yours.

10 And that relief may be granted without substantial
11 detriment to the public good, or nullifying or substantially
12 derogating the intent or purpose of the ordinance.

13 What you're proposing will actually improve the
14 housing stock of the city, it will allow a couple like
15 yourselves to stay in the city and raise children in this
16 city.

17 So on the basis of all these findings, the Chair
18 moves that we grant the variance requested on the condition
19 that the work proceeds in accordance with plans submitted by
20 the petitioner, the first page of which has been initialed
21 by the Chair.

22 To be clear, as you go along the way and you

1 decide you want to change some of these plans in any
2 material way, you're going to have to come back before us.
3 You sign -- you signed off of these plans, this is it. You
4 can come back, but it's a better use of your time to come
5 and see us again.

6 GREG LEPPERT: I've had such a good time.

7 JANET GREEN: It's informative.

8 CONSTANTINE ALEXANDER: All those in favor of
9 granting the variance on this condition, please say, "Aye."

10 THE BOARD: Aye.

11 [All vote YES]

12 CONSTANTINE ALEXANDER: Five in favor, relief
13 granted. Good luck.

14 COLLECTIVE: Thank you.

15 JANET GREEN: Good luck.

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(9:07 p.m.)

Sitting Members: Slater W. Anderson, Constantine Alexander,
Janet Green, Jim Monteverde and Laura
Wernick

CONSTANTINE ALEXANDER: The Chair will call Case
Number 017193, 315 Columbia Street. Anyone here wishing to
be heard on this matter? Name and address to the
stenographer, please.

LINDSEY LOCKS: Sure. My name is Lindsey Locks --
last name L-o-c-k-s, and this is my husband James
Steinhilber, and we own the property at 315 Columbia Street.

JAMES STEINHILBER: Sure. S-t-e-i-n-h-i-l-b-e-r.

CONSTANTINE ALEXANDER: Thank you. What's up?

LINDSEY LOCKS: So in brief, we bought this
property over the summer, with plans to make it our primary
residence, start a family in this house. We've been working
with an architect for the last couple of months about the
revision that we wanted to make to the house.

While we had originally hoped to save a lot of
money and to keep everything on the interior and working
with our structural engineer, it was brought to our

1 attention that there were some serious safety and structural
2 concerns, and they actually -- and given a lot of the
3 changes that we wanted to make, in particular the roof is
4 nonconforming, and apparently not very stable.

5 And so, our structural engineer and architect
6 eventually recommended that we rebuild the structure in
7 exactly the same footprint and exactly the same foundation.

8 And that would enable us to do things like widen
9 the walls for better insulation, improve the roof, things
10 like that.

11 I think that the big change to the outside is that
12 currently the gable is not over the whole house. It over
13 about 60% of the house.

14 And we were told that that's not a good way to
15 design a gable, and that they recommend centering it over
16 the house, but that we can't retain the same height; that it
17 would be substantially more expensive and less stable to
18 keep the gable the same height, as opposed to keeping the
19 same angle, which would ultimately increase the gable by
20 about two feet.

21 So it's basically rebuilding the property in its
22 current footprint, but fixing the gable. And I'm -- yeah,

1 happy to answer questions.

2 CONSTANTINE ALEXANDER: I just want to check the
3 -- because I see the dimensional form, it seems the only
4 relief you need it setback, and you're not going to go over
5 the FAR, and I'm looking at the height. Did you mention the
6 height? Yeah, you're going to be 28.5, well within the 35
7 feet. Okay.

8 LINDSEY LOCKS: Okay.

9 CONSTANTINE ALEXANDER: So just in a sense minor
10 zoning relief.

11 LINDSEY LOCKS: Yeah.

12 CONSTANTINE ALEXANDER: Questions or comments for
13 members of the Board.

14 JIM MONTEVERDE: Curiosity, and it's really not a
15 zoning issue, but are you doing a passive house, or anything
16 super insulated or -- I'm just looking at the elevation.
17 That's the wrong one? Wrong plan?

18 JAMES STEINHILBER: No, that's the right house.

19 LINDSEY LOCKS: Yeah. Chair, that's our house.
20 But --

21 JAMES STEINHILBER: Sorry, neither of us are
22 architects. Could you explain what a -- a little more what

1 your --

2 GREG LEPPERT: It's a lack of windows, there.

3 JAMES STEINHILBER: Oh, I see.

4 LINDSEY LOCKS: Oh, that's the side that -- that's
5 the side that faces the property next door, but the setback
6 -- it's nonconforming.

7 JAMES STEINHILBER: Yeah.

8 LINDSEY LOCKS: We're, like, basically, like two
9 and a half feet from the other property. So we're actually
10 just getting rid of the windows on that side because it
11 looks into an alley.

12 JIM MONTEVERDE: And there's no objection from the
13 neighborhood, or -- obviously not in the file.

14 JAMES STEINHILBER: You can see with the file we
15 submitted just a record of the neighbors we reached out to
16 -- about 10 in total, I believe. None of them offered any
17 objections.

18 JIM MONTEVERDE: Okay, thanks.

19 CONSTANTINE ALEXANDER: Yeah. We have no letters
20 in our files from that neighborhood. I notice that as well.
21 Thank you. I'll open the matter up to public testimony. Is
22 there anybody here wishing to be heard in this matter?

1 Apparently not. So I'll close public testimony. Yes?

2 LINDSEY LOCKS: Can I ask you about the parking
3 issue, or just clarify the parking? Which I know we're not
4 allowed to formally apply for parking and that was a mistake
5 for our project.

6 CONSTANTINE ALEXANDER: Yeah, but we -- whether
7 you -- the point is it wasn't advertised. The parking issue
8 --

9 LINDSEY LOCKS: Right.

10 CONSTANTINE ALEXANDER: -- was not advertised.
11 Therefore, we can't consider it at all.

12 LINDSEY LOCKS: Totally understand. We, I think
13 would need to come back at a later date to request a
14 nonconforming parking spot.

15 CONSTANTINE ALEXANDER: If we build it -- if the
16 building -- if the Inspectional Services Department
17 determines that you do need a parking space and you don't
18 have it, yes, you'll have to come back with a separate
19 petition.

20 LINDSEY LOCKS: Okay. And just so I understand, I
21 mean we do currently have the curb cut and we put the
22 supplemental materials in there that we know are not

1 relevant to today's case, but do you -- just so that we are
2 prepared as a committee, do you see any major rent feelings
3 if we were to get the construction approved today? Come
4 back with our --

5 CONSTANTINE ALEXANDER: I don't want to go there.
6 we can't -- we shouldn't comment on something like that.
7 You'll have to deal with the Inspectional Services
8 Department first.

9 LINDSEY LOCKS: Okay.

10 CONSTANTINE ALEXANDER: And if they see a problem,
11 they just will tell you have to go back to the Zoning Board.

12 LINDSEY LOCKS: Okay.

13 CONSTANTINE ALEXANDER: But I know what you're
14 asking. I'd like to be able to help you, but it's not
15 appropriate for us to do that.

16 JAMES STEINHILBER: -- I don't believe so, yeah.
17 Great.

18 CONSTANTINE ALEXANDER: Discussion? Ready for a
19 vote?

20 COLLECTIVE: Ready.

21 CONSTANTINE ALEXANDER: Okay. The Chair moves
22 that we make the following findings with regard to the

1 variance being sought: The variance is actually that a
2 literal enforcement of the provisions of the ordinance could
3 create a substantial hardship, such hardship being as that
4 the nature of the structure is such that substantial
5 modification is required, and that will be required whether
6 it was you folks or anybody else who owns the property.

7 That the need for a variance -- or to do the
8 construction is a result of -- is owing to circumstances
9 relating to the shape of the lot, really, and where the
10 structure is now, you are too close to the lot line. So any
11 modification of the structure requires zoning relief.

12 And that relief may be granted without substantial
13 detriment to the public good, or nullifying or substantially
14 derogating the intent or purpose of the ordinance. And this
15 is a situation where citizens of the city are seeking to
16 upgrade the housing stock of the city by improving the
17 structure where they now live.

18 And I would -- we have no letters at all, have you
19 talked to your neighbors at all?

20 LINDSEY LOCKS: We did. We talked to neighbors,
21 and I think we I called a list of neighbors --

22 JANET GREEN: A list of how you approached them --

1 LINDSEY LOCKS: -- and then we do have one letter
2 that we received from one of our neighbors today.

3 CONSTANTINE ALEXANDER: We'll read it into the
4 record, so --

5 LINDSEY LOCKS: Sure.

6 CONSTANTINE ALEXANDER: The letter is from Abdul
7 Ahad, who resides at 310 Columbia Street. "I live across
8 the street, and am neighbors with Mr. James Steinhilber and
9 his family.

10 "I would like to confirm my support for their own
11 expansion project. Thank you for your time and consideration
12 for the construction project. Please let me know if you
13 have any questions." We have none.

14 Ready for a vote?

15 JANET GREEN: Yes.

16 CONSTANTINE ALEXANDER: The Chair moves that we
17 make the following findings -- we already made the findings,
18 didn't we? Yeah, we did do the findings.

19 JANET GREEN: Yeah, we did the findings.

20 CONSTANTINE ALEXANDER: All we need is to take a
21 vote.

22 CONSTANTINE ALEXANDER: The Chair moves that based

1 on these findings, that we grant the variance requested on
2 the condition that the work proceed in accordance with plans
3 prepared by Kanda, I-Kanda Architects, LLC, and dated
4 10/09/19, the first page of which has been initialed by the
5 Chair.

6 All those in favor, please say, "Aye."

7 THE BOARD: Aye.

8 [All vote YES]

9 CONSTANTINE ALEXANDER: Five in favor, good luck.

10 LINDSEY LOCKS: Thank you for your time.

11 JAMES STEINHILBER: Thank you very much.

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1 agreements that we reached.

2 So if that affects your support for the project.

3 I want you to know that at the outset, and if you want to
4 reconsider support -- I'm assuming support -- no, okay. I'm
5 sorry, I just want to get that on the record, so it's a
6 private deal, hopefully for better and not for worse.

7 MARCELO TIMOR HERNANDEZ: My name is Marcelo Timor
8 Hernandez.

9 BETSY HARPER: My name is Betsy Harper, 67 Stearns
10 Street.

11 MARCELO TIMOR HERNANDEZ: We -- so Betsy purchased
12 this property about a year and a half ago, with the
13 intention of redeveloping it as a Passive House -- all
14 electric. One of the issues we have with the basement is
15 that it is flooding. And the hardship that we're
16 encountering are the soil condition. On the second page --
17 does anybody want another copy, or --

18 BETSY HARPER: No, we're good here.

19 MARCELO TIMOR HERNANDEZ: No?

20 AUDIENCE: I'll take one.

21 MARCELO TIMOR HERNANDEZ: Sure.

22 AUDIENCE: Thank you.

1 MARCELO TIMOR HERNANDEZ: Part of the intention is
2 to also create a little bit of relief between the two
3 buildings. Since we're going to be replacing the basement,
4 we wanted to -- there was some concern with the neighbors
5 with excavating down, to install new footings.

6 So in a way, we have an opportunity to create a
7 little bit of spatial relief between the abutters, and avoid
8 any possibility of doing any damage to the existing abutter.

9 The third page shows some of the thinking behind
10 the process, where we wanted to maintain modal alignment,
11 along the neighborhoods so that we preserve the character of
12 the street, have a continuance or porches as well as
13 preserve green space in the back.

14 This is all very much part of the negotiation
15 process with the neighbors.

16 We're also seeking -- it's kind of a technical
17 height relief, but the building is -- the ridge is at 35 --
18 it's just under 35 feet proposed, but because of the stairs
19 going down in the basement, Ranjit over ISD has asked us to
20 tabulate the height, the exact height at grade, or where the
21 building meets the ground.

22 CONSTANTINE ALEXANDER: Yeah, I was going to

1 comment on that as well.

2 I mean, you're almost a foot higher than permitted
3 by our zoning -- according to your dimensional form, 35.93
4 feet high. I mentioned that because this Board pays a lot
5 of attention to the height of the buildings.

6 It's one of the Board's -- and we don't like to
7 grant variances for buildings higher than 35 feet, and
8 that's been our consistent practice for the years that I've
9 been on this Board.

10 Is there any reason why you couldn't have made
11 that with -- given how Ranjit wants you to compute the
12 height, you couldn't have lowered the height of the building
13 by less than a foot?

14 MARCELO TIMOR HERNANDEZ: It would be possible.
15 We were just trying to maintain eight-foot ceilings,
16 basically. And we're also trying to -- there's an
17 additional -- the DPW wants us to raise the foundation
18 walls, because of the floodplain, which has been recently
19 published information, which kind of drives the whole
20 building up, so.

21 CONSTANTINE ALEXANDER: So it was a conscious --

22 JIM MONTEVERDE: If I look at the section in the

1 attic --

2 JANET GREEN: Can you use the microphone, so that
3 people who are here --

4 JIM MONTEVERDE: Well, I did. Yes, I did. So
5 just help me understand. This section, right, if I see the
6 now six-foot person standing there, that's well over eight
7 feet. Is there no opportunity, as the Chair has suggested,
8 to drop the ridgeline a foot, to be combined?

9 MARCELO TIMOR HERNANDEZ: Yes. Yes, there would
10 be.

11 JIM MONTEVERDE: Would you consider that?

12 MARCELO TIMOR HERNANDEZ: We would.

13 LAURA WERNICK: So -- and that can be done without
14 lowering your eight-foot ceilings?

15 MARCELO TIMOR HERNANDEZ: That is correct.

16 JANET GREEN: What would the change be?

17 MARCELO TIMOR HERNANDEZ: The pitch.

18 JIM MONTEVERDE: The pitch.

19 JANET GREEN: Just the pitch?

20 MARCELO TIMOR HERNANDEZ: Yeah. The pitch has
21 also been designed to have kind of an optimal relationship
22 to the sun, so that we would get the most efficiency out of

1 solar panels. So it's not a 12, it's like a 10.2 pitch,
2 something based on solar orientation. But I would like to
3 note that from the street perspective, or from the average
4 grade, it is under 35 feet. So

5 CONSTANTINE ALEXANDER: All right. I think the
6 comment Mr. Monteverde made still stands.

7 MARCELO TIMOR HERNANDEZ: Understood.

8 CONSTANTINE ALEXANDER: We just do not like the
9 set a bad precedence when we come to building heights.

10 JANET GREEN: I'm sorry. I didn't understand your
11 comment -- I didn't understand your comments exactly about
12 the pitch and what having it this much higher isn't that
13 much different than having it down, for what it looks
14 visually. It -- all it changes from your point of view is
15 the relative relationship to being able to use the solar
16 panels most effectively?

17 MARCELO TIMOR HERNANDEZ: That is correct.

18 CONSTANTINE ALEXANDER: Okay. Keep going.

19 MARCELO TIMOR HERNANDEZ: On the fourth page, we
20 have the angle of friction, which basically -- you know,
21 demonstrates the structural narrative in the soil's
22 conditions and the -- basically the angle at which it

1 becomes dangerous to excavate with our -- you know, up
2 against our neighbor.

3 And then we -- the remaining pages are just
4 drawings as well as the structural narratives, and soils
5 varying. We also have our letters here, but I imagine you
6 have those as well.

7 CONSTANTINE ALEXANDER: Oh, yeah, yeah.

8 MARCELO TIMOR HERNANDEZ: Okay.

9 CONSTANTINE ALEXANDER: So the reason for
10 completely building a new structure is not due to a fire or
11 some -- you just want to improve the energy efficiency of
12 the building, is that correct?

13 MARCELO TIMOR HERNANDEZ: That's correct.

14 CONSTANTINE ALEXANDER: Okay. Questions from
15 members of the Board?

16 JIM MONTEVERDE: No, I just want the mike. I have
17 the plans, I have them. So I'm looking at your sheet, page
18 2, which is the demolition plan, the existing. Obviously,
19 we have the footprint of the existing building of the
20 property and the dashed lines, the dashed lines are the
21 setback lines?

22 MARCELO TIMOR HERNANDEZ: Yes.

1

2 JIM MONTEVERDE: Correct? And then on your sheet
3 01, basically it's showing how the proposed building then
4 steps over that setback line to the plan left and plan
5 right?

6 MARCELO TIMOR HERNANDEZ: Correct.

7 JIM MONTEVERDE: Right. So can you describe the
8 -- is there a hardship? Is there any rationale, or is there
9 any possibility that you could do that within the setback
10 requirements and not have to step beyond that?

11 MARCELO TIMOR HERNANDEZ: Yeah. It would require
12 the building to be longer and narrower, which would then
13 create the building to be gabled, thereby not having any
14 solar gains, or the gains required to meet the Net Zero
15 requirement that we're trying to achieve, as well as start
16 to encroach on the green space that we're trying to preserve
17 along the back.

18 So it's -- you know, you can see the existing
19 footprint, existing and proposed on the civil, and the
20 neighbors were really hoping that we would maintain --

21 CONSTANTINE ALEXANDER: The comments of that
22 maintain that green space in the back was very important to

1 the neighborhood.

2 MARCELO TIMOR HERNANDEZ: Right, correct.

3 JIM MONTEVERDE: So that's why you did what you
4 did.

5 CONSTANTINE ALEXANDER: Motion?

6 LAURA WERNICK: I would just add that I'm very
7 pleased that you're doing the past -- following the past
8 house. And I think that's a terrific addition for Cambridge
9 and a model for other homeowners.

10 CONSTANTINE ALEXANDER: I'll open the matter up to
11 public testimony. Is there anyone here wishing to be heard
12 on this matter? Sir. You have to come forward and give
13 your name and address.

14 ADAM MITCHELL: I'll speak loudly.

15 THE REPORTER: I need you to --

16 CONSTANTINE ALEXANDER: She's recording it, and it
17 won't work.

18 ADAM MITCHELL: All right.

19 CONSTANTINE ALEXANDER: She's got earphones on.
20 You've got to speak into them.

21 ADAM MITCHELL: So I'm Adam Mitchell. I'm the
22 neighbor two houses down, 48 Stearns Street. I'm also

1 Architect Principal at Cambridge Seven. I've lived in
2 Cambridge for a very long time, and I've been very involved
3 in discussions with the Timor and Betsy about the house.

4 And I'm quite passionate about the house that's
5 been proposed with a zillion appeals that have been
6 presented. I really care about the neighborhood fabric, and
7 by right, the house that they would build would be very
8 different from what's been proposed.

9 The house would be pushed back on the site, would
10 not align with other houses. It would fundamentally change
11 the feeling of the street.

12 And so, through this very careful discussion we've
13 had over the last year, we've come to a place that has now
14 aligned to the neighborhood structures, maintains the
15 character of the street. And I think this is really
16 essential. A lot of changes happening in this part of
17 Cambridge, the houses are small. They have less
18 significance than other parts of the city, and so, they're
19 easy targets to be torn down over a place with -- you know,
20 the minimum zoning instructions.

21 So by engaging this really difficult, intense and
22 sometimes hard conversation, we've been able to come up with

1 a really I think positive addition to the street. There's a
2 lot of resistance to tearing the house down. The house is
3 -- the existing house is beloved, and there is a lot of fear
4 that the changes would change the entire neighborhood.

5 I'm confident that while we all maybe can have
6 difference of opinions about the aesthetic of the proposed
7 house, the absolute essential structure of the house and the
8 way it sits on the site is perfectly in character with
9 what's there now. And so, in that respect, I'm very
10 supportive of this appeal.

11 CONSTANTINE ALEXANDER: And in fact, there's a
12 house right up the street that's been torn down and being
13 rebuilt.

14 ADAM MITCHELL: That's correct. There's several
15 of these happening on our street. And I guess I won't speak
16 to that, those houses, because I think it's a different
17 issue. But yes, I think this is part of the concerns that
18 we have.

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

21 ADAM MITCHELL: Sure. It's my pleasure.

22 CONSTANTINE ALEXANDER: Anyone wishes to be heard?

1 I guess not. We do have numerous correspondence regarding
2 this project, including the MOU that I previously discussed,
3 and the request that for those who are for the project that
4 the petitioner be -- well, we can incorporate in our
5 decision the revisions of the MOU, so as to increase or
6 enhance the enforceability of them, and as I've indicated,
7 that is not a practice that we do.

8 So MOU will stand on the private document with
9 regard to you and residents of the neighborhood. I don't
10 propose to read the letters in the file. Okay. Ready for a
11 vote, or ready for discussion?

12 JIM MONTEVERDE: Did you agree to drop the ridge
13 by a foot?

14 JANET GREEN: No.

15 CONSTANTINE ALEXANDER: I think I heard that.

16 JANET GREEN: Wait a minute.

17 JIM MONTEVERDE: Do you need to modify?

18 JANET GREEN: I thought -- wait a minute, I
19 thought by dropping it, it was going to change the angle?

20 ADAM MITCHELL: It will.

21 CONSTANTINE ALEXANDER: Yeah.

22 JANET GREEN: And that people wouldn't be able to

1 see the change in that one foot, and they would get extra
2 solar energy from having it at that angle to the sun.

3 I mean, I thought there was a real reason for it,
4 that the Board should take into consideration, because we
5 often look at the changes that people are trying to make to
6 get energy from alternative sources.

7 CONSTANTINE ALEXANDER: Well, is it clear that the
8 changes we talked about will dramatically change the energy
9 that we provided?

10 MARCELO TIMOR HERNANDEZ: It will have some
11 impact. I don't have the mathematical determination of what
12 that would be, --

13 LAURA WERNICK: Yeah, it's pretty minimal.

14 MARCELO TIMOR HERNANDEZ: -- but I would also like
15 to comment -- I'd like to just add that most developers are
16 building buildings to the 35 foot (sic).

17 CONSTANTINE ALEXANDER: Right.

18 MARCELO TIMOR HERNANDEZ: And the zoning doesn't
19 give us any credit for creating vacant buildings. So, you
20 know, it's -- we're taking a big spatial hit by creating a
21 more historically sensitive building. So we feel that maybe
22 there could be some kind of tradeoff.

1 We're not asking for a lot. It's really nine
2 inches or something.

3 CONSTANTINE ALEXANDER: That's right. But -- no,
4 probably more than that. Nine-twelfths of twelve inches. I
5 guess that's nine inches. Sir?

6 ADAM MITCHELL: I would just like to add given the
7 other changes in the neighborhood, where another lot across
8 the way from this house, they are building up to the full
9 flat-roof height, and it's really a pretty big change, and
10 really impacting a lot of the houses around it.

11 The gable roof in this location is very similar to
12 what's -- very close to what the existing house has. The
13 nine inches of it is diminutive. It's not going to be
14 noticed. I think as -- speaking as an architect, reduction
15 above the roof of nine inches --

16 THE REPORTER: Could you come up and use the mic,
17 please?

18 ADAM MITCHELL: I'm sorry. I'll try to be
19 briefer. The reduction by nine inches, in reducing the
20 pitch of the roof I think will have an effect on the
21 appearance of the house; it will be less like the existing
22 house in that regard, which has sort of a late 19th-century

1 feel to it; the higher, steeper pitch. And the nine inches
2 I think is diminutive, and more --

3 CONSTANTINE ALEXANDER: So you would not want --
4 support the notion that we should --

5 ADAM MITCHELL: I would not support it. But the
6 aesthetic --

7 LAURA WERNICK: To reduce it, you'd not support --

8 ADAM MITCHELL: I would not support reducing
9 height, yes, speaking for myself.

10 CONSTANTINE ALEXANDER: Anyone wishes to be heard?
11 Before I make the motion, what is our position with regard
12 to the -- anyone else wishes to be heard? Before I make a
13 motion, what is our position, with regard to the nine
14 inches?

15 SLATER ANDERSON: I tend to agree -- I don't think
16 we need to reduce it. When you -- if you draw a plane at 35
17 feet, we're talking about a small triangle --

18 CONSTANTINE ALEXANDER: Right.

19 SLATER ANDERSON: -- then it violates the height.

20 CONSTANTINE ALEXANDER: Okay.

21 SLATER ANDERSON: There are other good reasons why
22 it is the way it is.

1 CONSTANTINE ALEXANDER: Okay. The Chair moves
2 that we make the following findings with regard to the
3 relief being sought:

4 That a literal enforcement of the provisions of
5 the ordinance would involve a substantial hardship, such
6 hardship being is that this structure has got more issues,
7 and what is being proposed will be much more energy
8 efficient and a real step forward in terms of providing
9 energy for the home.

10 That the hardship is owing to the fact that the
11 shape of the lot and the water table underneath the lot, and
12 that relief may be granted without substantial detriment to
13 the public good, or nullifying or substantially derogating
14 the intent or purpose of the ordinance.

15 In this regard, the Chair would note that after
16 some negotiation, the project seems to have unanimous
17 neighborhood consent; that it will certainly improve the
18 housing stock of the city by creating a much more energy
19 efficient structure than is there now.

20 And so, on the basis of all of these findings, the
21 Chair moves that we grant the variance requested on the
22 condition that the Board proceed in accordance with plans

1 put there by group Design-Build.

2 JIM MONTEVERDE: 08/26/19.

3 CONSTANTINE ALEXANDER: 08/26/19 and initialed by
4 the Chair. All those in favor, please say, "Aye."

5 THE BOARD: Aye.

6 [All vote YES]

7 CONSTANTINE ALEXANDER: Five in favor, variance
8 granted. Good luck.

9 COLLECTIVE: Thank you so much.

10 [09:34 p.m. End of Proceedings]

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CERTIFICATE

Commonwealth of Massachusetts

Middlesex, ss.

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

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

In witness whereof, I have hereunto set my hand this _____ day of _____, 2019.

Notary Public

My commission expires:

August 6, 2021