

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, NOVEMBER 21, 2019

7:00 p.m.

In

Senior Center

806 Massachusetts Avenue

First Floor

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Vice Chair

Janet Green

Andrea A. Hickey

Jim Monteverde

Laura Wernick

Slater W. Anderson

Ranjit Singanayagam, Commissioner

Sisia Daglian, Assistant Building Commissioner

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3 (7:01 p.m.)

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

7 JAMES RAFFERTY: Thank you. Good evening Mr.
8 Chairman and members of the Board. For the record, my name
9 is James Rafferty. I'm an attorney with offices located at
10 907 Massachusetts Avenue in Cambridge, appearing on behalf
11 of the applicant.

12 In this case, the applicant appears to be the
13 architect, believe it or not. But at any rate, this is a
14 case that was continued by the Board, but I think it must
15 have been a case not heard.

16 CONSTANTINE ALEXANDER: Apparently, it was a case
17 heard, because that's why this gentleman is here.

18 AUDIENCE: I was told I had to be here, so.

19 JAMES RAFFERTY: Yes, okay. So I don't know the
20 benefit, having been here. I recall --

21 CONSTANTINE ALEXANDER: The first hearing you
22 weren't here --

1 JAMES RAFFERTY: That's right.

2 CONSTANTINE ALEXANDER: -- we heard it. And then
3 we continued it and you showed up.

4 JAMES RAFFERTY: Right. So hopefully the Board
5 has had an opportunity to see that there's been a
6 significant redevelopment or redesign of the plan.

7 The prior plan contained -- it's a two-family
8 house in the Res B District on Huron Avenue. It was a bit
9 of an ambitious plan to add two large, non-dormer guideline
10 dormers to the property, and the neighbors expressed
11 reservations -- objections.

12 We came and called, met with the owner. The plan
13 to revise to a single dormer, and the single dormer is
14 extremely modest, only intended to allow for headroom for a
15 stairway into the third-floor attic area.

16 Currently, the stairway -- one that isn't code-
17 complaint was very, very small. But the net reduction in
18 change in square footage -- exactly is -- and if you examine
19 the dormer, you can see the dormer simply accommodates the
20 stairway, nothing else.

21 The balance of the living space exists in the
22 attic, so it amounts -- in fact one begins to think of this

1 Brookline case that's making its way around becoming
2 popular, but I think I often get accused of perhaps
3 overstating modest, but in this case I think 14-foot
4 property is textbook modest in terms of its impact on the
5 neighbors, and it will allow simply for better access to
6 existing space that's in the second floor.

7 So that's the extent of the case. Because the
8 house is not conforming, it requires relief. But the no
9 nonconforming is being increased -- I shouldn't say it that
10 way -- 14 feet additional GFA represents the additional
11 nonconforming.

12 But it is a house that sits among a row of two-
13 family houses up and down Huron Avenue, many of which have
14 dormers -- in most cases, quite larger than this. So the
15 relief is the hardship needed to get a code-complaint
16 stairway to the third floor living space. I mean, the
17 hardship is related to that.

18 CONSTANTINE ALEXANDER: You mentioned there was
19 neighborhood opposition -- abutter opposition, really --
20 when the original proposal was made. Have you spoken to
21 them, or someone --

22 JAMES RAFFERTY: My office has, and we've sent

1 them a copy of the plans, and I notice that at least one of
2 the abutters is here. So I haven't heard directly.

3 We offered to host a meeting, and I think the
4 preference was expressed that they'd rather we send the
5 plans, and they would be in touch with us.

6 CONSTANTINE ALEXANDER: Questions from members of
7 the Board at this point? I'll open the matter up to public
8 testimony. We have no letters in our files one way or
9 another -- at this point, one way or another. Do you wish
10 to speak, sir?

11 THE REPORTER: Just need you to spell your name
12 and give your address.

13 DAN JUDSON: My name is Dan Judson. I live at 492
14 Huron Avenue, right next door. Our primary objection is
15 that the dormer, it is smaller, and that's -- we're happy
16 about that. But it contains a window.

17 And that's of importance because of the -- they're
18 creating another bathroom. So we only have one window on
19 that side of the house, and this is looking straight into
20 our bathroom.

21 Additionally, our neighbor downstairs, she has a
22 bedroom on the second floor. Our windows are aligned. So

1 her daughter's window, her 7-year-old daughter, it's looking
2 down on her 7-year-old daughter's bedroom. So there's
3 concern on both of our part.

4 I understand the need for access for the stairway,
5 but does there need to be a window there? For years there
6 has never been one. So --

7 CONSTANTINE ALEXANDER: But at the risk of being
8 flip, have you ever thought about shades?

9 DAN JUDSON: Sure. Yeah, we do have shades, but
10 it's just a little concerning. We don't want to keep our
11 window -- our bathroom window closed all the time, because
12 this is now looking straight in.

13 So that -- I mean that's our concern. I mean, you
14 know, and I think it's -- I understand the need, but why is
15 there a need for a window there when there's a skylight on
16 the other side? They thought about a skylight, so.

17 CONSTANTINE ALEXANDER: Thank you. Laura?

18 LAURA WERNICK: I just have a -- so I don't have
19 good drawings in front of me, Mr. Rafferty. What is the
20 height of that window in relationship to the stair? Is it a
21 window that's over the stair? The dormer that's over the
22 stair that's --

1 JAMES RAFFERTY: Yes. So it is not in a room. It
2 is only in the stairway.

3 LAURA WERNICK: Uh-huh.

4 JAMES RAFFERTY: So I understand the concern. One
5 of the things they looked at was not to have a room where
6 someone would be inclined to be standing or looking out that
7 window. I don't even think that --

8 LAURA WERNICK: What's the height of the building?

9 JAMES RAFFERTY: Yeah, I'm looking -- I don't have
10 the plan in front of me.

11 LAURA WERNICK: Yeah, I mean about the floor.

12 JAMES RAFFERTY: Yeah. I think the question
13 being, "At what point would someone on the stairs be able to
14 see out the window?" I don't have that plan in front of me,
15 but. If there's a way to scale back the size of the window,
16 to be sensitive to that issue, I imagine that -- the window
17 is there to provide natural light into the stairways.

18 CONSTANTINE ALEXANDER: Sure.

19 LAURA WERNICK: Yeah. I see that.

20 JAMES RAFFERTY: And a windowless dormer I think
21 looks probably a little odd, even from your perspective.

22 CONSTANTINE ALEXANDER: You took the legal

1 position once upon a time the windowless dormer is not a
2 dormer.

3 JAMES RAFFERTY: No, someone else did. I took the
4 position -- I took great exception to the fact that the
5 dormer -- the provisions in Article 8 would allow for
6 dormers to go onto the second story of a nonconforming
7 setback meant that you could do it as-of-right, and one of
8 your colleagues who's --

9 CONSTANTINE ALEXANDER: My colleague's --

10 JAMES RAFFERTY: -- very educated --

11 CONSTANTINE ALEXANDER: -- a member of --

12 JAMES RAFFERTY: -- no, a member of the Board,
13 because I -- well, I take it back. Well, so I appealed,
14 because they said, "Well, then now you need a special permit
15 to put a window on a nonconforming wall."

16 And I said, "Well, wait a minute. But that
17 cancels out the exception for the dormer. How can you
18 possibly have a dormer?"

19 And it was the last time -- it was many years ago,
20 that I appealed the commissioner. Because I said, "You
21 know, it's hard to get four out of five people to tell the
22 guy who advises them on the code that he's wrong."

1 So that one I said, "I'm appealing." And I didn't prevail.
2 So -- and I was told, "Just apply for the special permit and
3 you'll get your window." I said, "No, it's the principle. I
4 don't care how much money it cost my client, and how much
5 time. I am not going to apply for that window for the
6 special permit." But, that's the case. That's my
7 involvement with windows.

8 Because I made the claim that by its very
9 definition the fact that the ordinance under Article 8
10 allowed for such a dormer, it implied that there had to be a
11 window, because dormers have windows by definition.

12 CONSTANTINE ALEXANDER: Right. Sir?

13 LAURA WERNICK: So the landing is -- I think of
14 the dormer having depth to it -- the landing is back from
15 the face, so someone -- to look out the window, someone
16 would be standing at the landing. Once you start going down
17 the stairs, you can no longer look out the windows.

18 So you'd be standing on the landing, looking out
19 the window, but you really are looking pretty vertically.
20 We can't really look down, because it's not -- you're not
21 near the window, if you follow what I'm saying?

22 DAN JUDSON: Yep.

1 LAURA WERNICK: So it was -- and I don't have a
2 section, I can't tell you exactly what it is --

3 DAN JUDSON: Sure.

4 LAURA WERNICK: But it's not someone standing
5 directly in -- at the face where the window is, who could
6 then look anywhere from that window. You're standing back
7 from the face, so you have limited color vision from that
8 landing.

9 DAN JUDSON: Yeah, I mean -- you -- so I also --

10 LAURA WERNICK: We could ask --

11 DAN JUDSON: I also have a statement from a
12 neighbor downstairs, I don't know if you want me to read it,
13 if I'm allowed to read it even?

14 CONSTANTINE ALEXANDER: Sure.

15 DAN JUDSON: Okay. So this is from Tine, T-i-n-e
16 Christensen, C-h-r-i-s-t-e-n-s-e-n. And so, she wrote, "I
17 live at 490 Huron Ave, and my second-floor bedrooms face the
18 proposed alterations and zoning variation at 500 Huron
19 Avenue that will be discussed tonight.

20 "I'd like to oppose the addition of the third-
21 floor window. It will raise the profile of my home. And
22 the one I'm particularly concerned about is that the

1 requested variance for a third-floor window will provide
2 direct view of my daughter's bedroom and a partial through
3 my bedroom. This feels intrusive, and I would like to
4 oppose the request for a variance."

5 And I just want to say, you know, this is a
6 classic case of, you know, we've been living there for 10
7 years. We're used to a certain amount of privacy with our
8 neighbors.

9 A developer comes in, puts something in, it's a
10 classic -- and now respectfully for the elderly folk.
11 People who live there for 100 years prior did not need this
12 variance, did not need a window there. And a person who's
13 not even going to live there has left us with this by
14 surprise.

15 So I would just like that to be known, that that's
16 not --

17 BOARD MEMBER: Jim, can I see the plan there? The
18 drawing.

19 LAURA WERNICK: So one thing that you might ask is
20 that the architect actually do a careful section right
21 through the window, through the house, so that you can see
22 exactly what someone would be able to see out of that

1 window.

2 I don't think you're going to be able to see the
3 second story, the first or second story from that window the
4 way I'm reading it. But I think to have an accurate section
5 so you can be reassured that someone could not see out.

6 JAMES RAFFERTY: This is the architect.

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

9 ERIC ZACHARY RISON: Eric ZACHARY rison, Context,
10 1 Ludlow Street in Boston.

11 THE REPORTER: Could you spell the name, please?

12 ERIC ZACHARY RISON: Z-a-c-h-r-i-s-o-n, and the
13 firm is Context. You're correct, the current window is --

14 [Technical difficulties conversation]

15 ERIC ZACHARY RISON: The window is three feet off
16 the ground, so not high. We could raise it up if we wanted
17 to -- initially, we wanted it to look like other windows in
18 the building, but it wouldn't be uncommon for a stair window
19 to be narrower, taller, higher up on the landing.

20 I think we -- I mean, we added the window in order
21 to comply with the zoning -- the dormer guidelines, but we
22 could look at a different window configuration, where we're

1 open to that.

2 The main thing -- he's correct, the stair -- the
3 people have lived in this building for a long time, but they
4 signed up eight-and-half inch risers that were on eight-inch
5 treads, and we wanted to make that more accessible.

6 JIM MONTEVERDE: So would you consider a shade or
7 translucent glass or something on that window, so that the
8 view is -- I mean, frankly it's an environment -- everybody
9 can buy shades, but --

10 ERIC ZACHARY RISON: Right. But we could consider
11 it -- we could put in -- there's no guarantee that the next
12 person isn't going to place the --

13 CONSTANTINE ALEXANDER: That's a different issue.
14 But it's not -- we may require you to do that, and then if
15 someone else does it, then they'll be violating the zoning,
16 unless someone catches them.

17 ERIC ZACHARY RISON: I think we would be very
18 amenable to that.

19 CONSTANTINE ALEXANDER: A translucent window, the
20 one that's not -- that you can't see through?

21 ERIC ZACHARY RISON: Yeah, if that's --

22 JAMES RAFFERTY: Yeah, the bottom slats could be

1 obscured.

2 ERIC ZACHARY RISON: Yeah. It'll bring in light
3 to the stairway.

4 DAVID MILTON: Does that work?

5 ERIC ZACHARY RISON: Yes.

6 JAMES RAFFERTY: Yeah. Could we make an amendment
7 to the plan?

8 CONSTANTINE ALEXANDER: Well, I think we'll just
9 say it's translucent. The dimensions will be the same, if I
10 understand it.

11 JAMES RAFFERTY: Oh yeah, yeah.

12 ERIC ZACHARY RISON: Right.

13 CONSTANTINE ALEXANDER: It's just a matter of the
14 material. Sir, did you want to speak?

15 DAVID MILTON: Yes, I do. Thank you.

16 CONSTANTINE ALEXANDER: Thank you for coming down.

17 DAVID MILTON: My name is David Milton. I live at
18 502, I'm the owner of Huron Avenue, which is the abutter on
19 the other side. And I object to the plan in its entirety.
20 Again, it's not -- you know, the standards much better than
21 I do, but the burden is on them to show a hardship and to
22 show why, you know, to meet all the criteria, rather than us

1 needing to explain why, okay, it's not that bad, or this is
2 just --

3 CONSTANTINE ALEXANDER: Well, excuse me Mr.
4 Rafferty, give up explaining the hardship being as an
5 inaccessible access to the third-floor loss of living space,
6 and the only solution apparently is -- not the only, but the
7 best solution is a dormer, a modest dormer in terms of size.
8 It raises privacy issues, as we're hearing. You're on the
9 other side though, right?

10 DAVID MILTON: Yes.

11 CONSTANTINE ALEXANDER: So there's no privacy
12 issue for you?

13 DAVID MILTON: Well not for me, no. Again, it's
14 not my burden to show, you know, that I'm personally
15 injured, as opposed to --

16 CONSTANTINE ALEXANDER: No, no, no.

17 DAVID MILTON: -- initial time, and I'd like to be
18 -- which the -- their claim that they need to have the
19 dormer to accommodate the stairs, they have not shown that
20 this is the only solution, as you recognized.

21 They could have, you know, changed something
22 internally to change the stairs, rather than, you know,

1 remake the stairs on the assumption that they're going to
2 get a variance.

3 So I don't think there's actually a hardship.
4 They've just made one themselves by, you know, what they --
5 what their preference is.

6 Second, the reason they give, you know, specific
7 to them, you know, the second criteria of something specific
8 to the shape or topography or land or structures, that
9 criteria, all they say is that the hardship is related to
10 the aging condition of the structure, including the slope of
11 the roof. The slope of the roof is a slant.

12 There's no -- it is, as they said, it's similar to
13 -- you know, other rooves in the neighborhood. There's
14 nothing particular about this roof, you know, that requires
15 the -- you know, a variance from the standards that apply to
16 everyone else.

17 And again, a lot of houses in the area are old.
18 They're all about 100 years old. And I -- again, these are
19 -- you know, if this were an expanding family, these are
20 developers with literally no stake in the neighborhood.

21 And to the extent, you know, it's equitable relief
22 that you all are granting, the manner in which this entire

1 development project has proceeded has been, you know, just
2 -- pardon me, has been disrespectful of us in terms of
3 multiple, you know, construction violations.

4 And -- as well as, not the, one of the co-owners
5 of the property, the gentleman back there, has been -- has
6 misrepresented his interest in the property -- to my wife on
7 multiple occasions and to others in the neighborhood,
8 introducing himself as our new neighbor, and walking one of
9 our neighbors around and saying, you know, "This is my
10 house. This is where I'm going to live."

11 Which -- again, I don't know where that goes. I
12 don't know how stupid he thinks we are, but, you know, I
13 mean to the extent these -- you know, trying to gain some
14 advantage through dishonesty, I think that's worth noting.

15 Also, again, I'm going to -- the plans themselves
16 that have been submitted do not accurately represent the
17 current state of the -- I mean obviously the dormer is
18 proposed.

19 But the representation of the slope of the roof --
20 I mean of my side, of the side that I -- you know, that
21 abuts my house, does not contain -- there's a dormer already
22 on that side.

1 And that is not shown here, leading -- giving the
2 misleading impression that, oh, we're just adding, you know,
3 a single dormer to this house, when there already is a
4 dormer on the other side.

5 And second, they have put in on the new roof --
6 they're -- and it was a slate roof, and they redid it to
7 asphalt, and there are currently, as you can see in the
8 pictures, the counsel is holding.

9 They have also put in -- I think it's two
10 skylights on that roof, which -- again, I assume -- and for
11 the Board to make a proper decision based on the facts, I
12 would assume that they would want to submit a fair
13 representation of the property.

14 So for a lot of reasons, I submit that they should
15 not be granted what should be extraordinary relief.

16 CONSTANTINE ALEXANDER: Well, is it fair to say
17 that you're proposing any change in structure?

18 DAVID MILTON: It is fair to say. I mean, when
19 there's not a hardship. I mean, I'm not -- you know, out
20 there --

21 CONSTANTINE ALEXANDER: Well, you've heard the
22 hardship.

1 DAVID MILTON: Well, the hardship, I don't believe
2 that is one. It's basically -- and there's cases, you know,
3 saying that their inability to maximize the -- you know,
4 profitability of the property is not grounds for a hardship.

5 And the -- again, they -- if there is a hardship
6 as to the nonconforming stairs, it's self-imposed. One,
7 they bought the property, and that was how it was.

8 But two, more importantly, they have apparently
9 proceeded with construction on the inside assuming that they
10 would get this variance when -- you know, surely there's
11 another way -- I'm not an architect -- to access that living
12 space.

13 And again, if it was an attic, then, you know,
14 it's not even necessarily already kind of baked into the
15 property as living space. They clearly -- they're going to
16 -- you know, sell it as two condos, and the hardship is
17 they're not going to be able to get as much money on the
18 resale.

19 CONSTANTINE ALEXANDER: Yeah. I have to say that
20 you're really -- what the bottom line is you're opposed to
21 this, because the developer is changing the structure.
22 That's what -- if this were a young family coming in, and

1 they needed a dormer, because they want access to the third
2 floor, would I hear the same objections?

3 DAVID MILTON: If it were -- I don't know. I
4 mean, it's likely if they treated us with respect and
5 interest in the neighborhood, then, you know, I don't -- I
6 can't say. It's hypothetical.

7 But in terms of the manner in which they have
8 treated us and with respect -- or lack of respect, rather,
9 that they've shown to the neighborhood, and, you know, even
10 on its own terms, it's just not persuasive what they've
11 offered.

12 Again, it's not my obligation to, you know, show
13 that to be reasonable and to, you know, and I'm not trying
14 to be unreasonable for its sake, but they have just simply
15 not met sort of clearly defined requirements. And, you
16 know, my motivations are largely irrelevant.

17 CONSTANTINE ALEXANDER: Okay. Comments up front
18 for members of the Board?

19 JIM MONTEVERDE: No, I was advising my client it
20 would be best not to speak.

21 CONSTANTINE ALEXANDER: I'll open -- any other
22 public comments, or anyone else wishing to comment on this

1 case, I should say? Apparently not. And as I said, we have
2 no letters in the file. So any final comments?

3 JAMES RAFFERTY: Just briefly. Thank you. While
4 it is certainly the case that the burden in this hearing
5 rests solely with the property owner, it is also of
6 significance that while abutters enjoy a presumption of
7 standing, it is a requirement that there be some
8 demonstrated agreement in the case of abutters who are
9 opposing this.

10 So how one's property interest could be adversely
11 affected by this wouldn't be a legal standard that a court
12 would examine.

13 So in this case, it is extremely modest. It is
14 directly related to creating code-compliant access to space
15 that already exists.

16 So how Mr. Milton's use and enjoyment of his
17 property would be benefitted by the occupants of this
18 property going up the existing noncompliant stairway, I
19 would say is a burden he could not sustain, if this went
20 toward further judicial review.

21 So I believe the applicant has met his burden
22 here. I think it's a significant change, highly responsive

1 to the issue as raised by the neighbors and the Board in the
2 prior hearing. I would urge the Board to grant the
3 variance.

4 CONSTANTINE ALEXANDER: My only comment would be
5 the notion of standing, as you know. There's a legal
6 standard that will apply if the case came to court.

7 JAMES RAFFERTY: Correct.

8 CONSTANTINE ALEXANDER: The standing is not
9 necessarily what is standing. It's not to me relevant for
10 us to make our decision. We could evaluate --

11 JAMES RAFFERTY: I'm not saying it's dispositive,
12 but I do think it's a legal concept that is --

13 CONSTANTINE ALEXANDER: No, or you can just -- the
14 judge, we can make our judgment about the impact.

15 JAMES RAFFERTY: Sure. That's all. That's the
16 only purpose I offer.

17 DAVID MILTON: Sir, if I could just clarify. I
18 mean, my -- again, I think at this stage my motives are
19 largely irrelevant. And it is an anchor, and I apologize if
20 I didn't make this clear, that I am not aggrieved just
21 because it's not on my side.

22 It is -- there are not a lot of houses in the

1 neighborhood with two dormers, and this just enlarges the
2 silhouette of the house -- and, again, I mean, that's more
3 of a -- I mean, again, I'm not -- it's not like a view into
4 my bathroom or my daughter's bathroom. But, you know, I
5 like the way the neighborhood looks now and it doesn't need
6 to be enlarged.

7 JAMES RAFFERTY: Just to be clear, that's your
8 house, right?

9 DAVID MILTON: Yeah.

10 JAMES RAFFERTY: So that's the abutter's house.
11 Since he raised the issue of silhouette profile --

12 CONSTANTINE ALEXANDER: I'm sorry, which is your
13 house, sir?

14 DAVID MILTON: The large left --

15 JAMES RAFFERTY: On the right.

16 CONSTANTINE ALEXANDER: On the right? Yeah.

17 DAVID MILTON: The large one on the right, yeah.

18 So as far as mass and silhouette profile are concerned, I
19 would say that contest is won by the abutter.

20 CONSTANTINE ALEXANDER: Where's the file. I have
21 the file. I think you concluded your findings?

22 DAVID MILTON: I have, thank you.

1 CONSTANTINE ALEXANDER: Discussion?

2 JANET GREEN: It -- I find it surprising that -- I
3 mean, I appreciate the fact that the petitioner has taken
4 the advice of this Board, gone back, looked at the those
5 dormers, said agreement -- we can make this dormer
6 significantly smaller, not just a little squeeze in a foot
7 or two, but significantly smaller to be used only for that
8 staircase. And to make that safer it doesn't seem to me
9 like that's a big ask.

10 And the window, as you said, is in the dormer
11 guidelines to have a window like that. I think there's been
12 the statement made that maybe the glass could be shaded in
13 at the bottom or something, so that it would be like that.

14 And I don't think that we should not have that.
15 But I do think that this is not a big ask, and I think it
16 fits within our ability to improve this.

17 CONSTANTINE ALEXANDER: I agree, by the way. I'm
18 planning to vote in favor. I think the petitioner has made
19 every effort to listen to the neighborhood. What we have
20 now is a far departure from what we had originally.

21 And I think the impact is -- I mean, with the
22 translucent glass that's not see-through, and the ability to

1 access the third floor with code-complaint stairs carries
2 the day.

3 Yes, you could tear up the floor and redesign the
4 whole inside of the house, so you could have an interior
5 staircase, but for what purpose? I mean why -- I don't see
6 the need for it, myself. So I would vote for granting the
7 relief as well. Anyone else wishing to be heard? No? Ready
8 for a vote? Okay.

9 The Chair moves that we make the following
10 findings with regard to the variance being requested: That
11 a literal enforcement of the provisions of the ordinance
12 would involve a substantial hardship, such hardship being is
13 that the building in its current form does not have a code-
14 complaint staircase to the third floor, and therefore for
15 the structure cannot be affected, at least legally.

16 And this problem is not peculiar to the person who
17 is buying the house now, but to anyone who owns that house.
18 There is a need to straighten out the stairs to the third
19 floor. The hardship is owing to the shape of the structure
20 and its location on the lot.

21 And in particular, this is an older structure that
22 predates zoning, and the relief may be granted without

1 substantial detriment to the public good, or nullifying or
2 substantially derogating the intent or purpose of the
3 ordinance.

4 Again, as to the things we've already cited, what
5 is being done here improves the safety and the accessibility
6 of the structure. And again, at least in my opinion, is
7 modest in nature. We're talking about the addition of 14 --
8 roughly 14 square feet.

9 So on the basis of all of these findings, the
10 Chair moves that we grant the variance requested on the
11 condition that the work proceed in accordance with plans
12 prepared by context -- my eyesight's not right there, what's
13 the last one? Dated --

14 JIM MONTEVERDE: 10/14/19.

15 CONSTANTINE ALEXANDER: -- teen. Subject, however
16 to the modification that the window that will appear in this
17 dormer will not be transparent, but in some fashion, I wish
18 it could admit light, but -- and not impose upon the privacy
19 of the persons in the structure abutting that dormer window.

20 BRENDAN SULLIVAN: Can we say that at the very
21 least that the bottom sash be obscure glass? That if the
22 upper sash were regular glass, that would allow more light.

1 But that the bottom sash being obscure would not have --
2 allow visual to the adjoining properties.

3 Does that seem to work? I'm just thinking that --
4 obscure glass in both those is going to look odd, and serves
5 really no purpose.

6 The bottom sash being obscured -- I'm looking for
7 some feedback here from our architects -- would serve the
8 purpose, and the upper sash being regular glass and give you
9 some sunlight and -- definitely light.

10 SLATER ANDERSON: My preference would be to have
11 it all translucent. Because you're going to have people
12 coming down the stairs.

13 BRENDAN SULLIVAN: Yes. All obscure?

14 SLATER ANDERSON: All obscure.

15 CONSTANTINE ALEXANDER: Yeah, I'm the same way. I
16 would --

17 JAMES RAFFERTY: Well, I asked for the input and I
18 got it, so that's fine.

19 CONSTANTINE ALEXANDER: Okay. So we're not --
20 you're withdrawing that suggested change?

21 JAMES RAFFERTY: Let's go with my suggestion,
22 correct?

1 CONSTANTINE ALEXANDER: Yeah.

2 SLATER ANDERSON: Yeah.

3 JAMES RAFFERTY: Yes.

4 JANET GREEN: Okay.

5 CONSTANTINE ALEXANDER: Okay. All those in favor
6 of granting the variance on this basis, please say, "Aye."

7 THE BOARD: Aye.

8 CONSTANTINE ALEXANDER: Five in favor, variance
9 granted.

10 [All vote YES]

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2 (7:32 p.m.)

3 Sitting Members: Constantine Alexander, Brendan Sullivan,
4 Janet Green, Jim Monteverde, Andrea Hickey

5 [SLATER ANDERSON LEFT, ANDREA HICKEY REPLACES]

6 CONSTANTINE ALEXANDER: Before the Chair calls the
7 next case, next continued case, I'd like to read a
8 statement. After notifying the Chair, any person may make a
9 video or audio recording of our open sessions, or may
10 transmit the meeting through any media, subject to recent
11 requirements that the Chair may impose as to the number,
12 placement and operation of equipment used, so as not to
13 interfere with the conduct of the meeting.

14 At the beginning of the meeting, the Chair will
15 inform other attendees at that meeting that a recording is
16 being made, and I wish to advise that not one -- not only
17 one but two recordings are being made, at least two.

18 Our stenographer is making a recording to assist
19 her in preparing a transcript of the meeting, and a citizen
20 of the city is making a recording, he's left his tape
21 recorder on the table.

22 Is there anyone else here planning to make a

1 recording video or tape recording of our proceedings

2 tonight? No one is indicated, so we'll now --

3 BOARD MEMBER: I think we have one extra.

4 ANDREA HICKEY: Yeah, I don't -- Laura, I don't
5 think you're on this case. It's a continued case.

6 LAURA WERNICK: Okay.

7 ANDREA HICKEY: Just FYI.

8 LAURA WERNICK: Okay.

9 ANDREA HICKEY: So.

10 CONSTANTINE ALEXANDER: Well, she could still sit
11 there.

12 ANDREA HICKEY: Yeah. Thank you.

13 CONSTANTINE ALEXANDER: The point is, Laura's been
14 disqualified. So the five of us are going to be
15 deciding this case. With that, the Chair will now call Case
16 Number -- if I can find my notes -- Case Number 017185 -- 87
17 Washington Avenue. Anyone here wishing to be heard on this
18 matter?

19 MICHAEL WIGGINS: Good evening Mr. Chairman,
20 Michael Wiggins -- W-i-g-g-i-n-s in the firm of Weston
21 Patrick, One Liberty Square, in Boston, Massachusetts. This
22 is a variance case, and it's supposed to be heard tonight,

1 but in the interim, we've done some research, and we've
2 determined that we think that this project would be built
3 either as-of-right, or with a special permit.

4 It's an extension of prior nonconforming use, and
5 we don't believe that there's going to be any increase in
6 any of the nonconformities. It is over 25 percent, without
7 the recent caseload. We'd have to get a variance, but we
8 think we -- because of the interpretation of working a
9 Section 6, as applied to this case. We will be able to
10 either obtain a special permit or as-of-right.

11 So we have filed an application supporting for a
12 special permit, and I understand it's going to be scheduled
13 for January 9.

14 So what we'd like to do is continue this case. I
15 have notified attorney for the abutters, most principally in
16 opposition this morning, so we didn't have to --

17 CONSTANTINE ALEXANDER: So January 9 is when you
18 think your special permit case will be heard?

19 MICHAEL WIGGINS: Yes.

20 CONSTANTINE ALEXANDER: So we'll continue this
21 case until January 9?

22 MICHAEL WIGGINS: Yes.

1 CONSTANTINE ALEXANDER: If --

2 JANET GREEN: Let me --

3 CONSTANTINE ALEXANDER: Make sure everybody can
4 make it. I can --

5 JANET GREEN: I think I can make it.

6 CONSTANTINE ALEXANDER: Laura doesn't count.
7 Everyone else can make it?

8 ANDREA HICKEY: I'm just checking.

9 CONSTANTINE ALEXANDER: Yep.

10 ANDREA HICKEY: Yes, I can make it.

11 CONSTANTINE ALEXANDER: Okay. The Chair moves
12 that we continue this case again as a case heard until 7:00
13 p.m. on January 9, subject to the following conditions. One
14 already has been satisfied, a waiver of time for decision,
15 that's been signed before.

16 JANET GREEN: No, wait a minute. I'm sorry, I'm
17 sorry. I'm not back then. I thought I was.

18 CONSTANTINE ALEXANDER: Okay, then what's the one
19 after January 9?

20 SISIA DAGLIAN: Thirtieth.

21 CONSTANTINE ALEXANDER: January 30.

22 SISIA DAGLIAN: Yes.

1 CONSTANTINE ALEXANDER: We'll continue to January
2 30. Because you've got -- unless you want to proceed with
3 four?

4 MICHAEL WIGGINS: Oh, okay. But that means we
5 could still go ahead with --

6 CONSTANTINE ALEXANDER: Oh, yeah, oh, yeah. This
7 is -- my guess is we're never going to hear this case.

8 MICHAEL WIGGINS: I'm hoping that will be --

9 CONSTANTINE ALEXANDER: No. Okay. And the Chair
10 now moves that the case would be continued as a case heard
11 until 7:00 p.m. on January 30, subject to the following
12 conditions, the first of which is you've already satisfied a
13 waiver of time for decision.

14 The second is that the posting sign that's there
15 now be replaced or modified to reflect the new date, January
16 30, and new time 7:00 p.m. -- just as you did for the
17 hearing tonight.

18 And lastly, to the extent that new plans, or
19 modified plans or specifications or dimensional requirement
20 forms are necessary in connection with the continued case,
21 that these must be in our files no later than 5:00 p.m. on
22 the Monday before January 30. All those in favor of

1 continuing the case on this basis, please say, "Aye."

2 THE BOARD: Aye.

3 [All vote YES]

4 CONSTANTINE ALEXANDER: Five in favor, we'll see
5 you in January. We'll see you earlier in January! Twice in
6 January, maybe. Thank you.

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(7:38 p.m.)

Sitting Members: Constantine Alexander, Brendan Sullivan,
Janet Green, Jim Monteverde, Andrea
Hickey

CONSTANTINE ALEXANDER: The Chair will now call
Case Number 017196 -- 1001 Mass Ave. Anyone here wishing to
be heard on this matter? Sir, give your name and address
with the mike --

ZACHARY BURKE: Sure.

CONSTANTINE ALEXANDER: -- for the benefit of the
stenographer, please.

ZACHARY BURKE: Hi, it's ZACHARY ary Burke.

CONSTANTINE ALEXANDER: Excuse me.

AUDIENCE: We would like to be heard also. So
should we be heard after the --

CONSTANTINE ALEXANDER: Well, it's their case. I
think she would be heard afterwards, yeah.

ZACHARY BURKE: It would be helpful if my client
came up here and sat with me.

CONSTANTINE ALEXANDER: Of course!

ZACHARY BURKE: In case you had any questions for

1 him?

2 CONSTANTINE ALEXANDER: Sure, sure. You can have
3 your neighbors, your friends come -- whoever you want.

4 ZACHARY BURKE: I actually invited my wife. All
5 right. Good evening, Zachary Burke from Saul Ewing Arnstein
6 and Lehr, 131 Dartmouth Street in Boston, on behalf of Sira
7 Naturals, Inc. And I'm here with --

8 MICHAEL DUNDAS: My name is Michael Dundas. I
9 live on 15 Moreland Avenue in Newton. I am the founder and
10 President of Sira Naturals.

11 THE REPORTER: Could you spell your last name,
12 please?

13 MICHAEL DUNDAS: D-u-n-d-a-s. Thank you.

14 CONSTANTINE ALEXANDER: Yeah.

15 MICHAEL DUNDAS: As you may know, this is an
16 appeal --

17 CONSTANTINE ALEXANDER: We do know.

18 MICHAEL DUNDAS: Yeah. -- the Inspectional
19 Services Department Cease and Desist Order of September 17,
20 2019, to my clients, Sira Naturals. As we've stated in our
21 letter, the Cease and Desist Order should be declared void
22 and non-enforceable, because it really arises out of a

1 misinterpretation or misapplication of a local zoning
2 ordinance. And I think if I may --

3 JANET GREEN: We can't quite hear you in the back,
4 so we just need to --

5 ZACHARY BURKE: Sure, I'm sorry.

6 CONSTANTINE ALEXANDER: Just get closer to the
7 mic, that's all. There you go.

8 ZACHARY BURKE: So I think if I may, at the
9 beginning it would be helpful to give you a little bit of
10 background about how we got to this.

11 CONSTANTINE ALEXANDER: Sure.

12 ZACHARY BURKE: Sira Naturals is what's called a
13 Registered Marijuana Dispensary, also known as an RMD, which
14 means it's a state-licensed medical marijuana retail
15 establishment.

16 Sira obtained a special permit from Cambridge on
17 August 17, 2016, to operate as an RMD at 1001 Massachusetts
18 Avenue. And then it's been lawfully selling medical
19 marijuana at that location since March 10, 2017, without --
20 I mean, until this issue without any issues or problems.
21 And that's about two and a half years it's been operating
22 here.

1 In May 2019, Sira underwent a recapitalization
2 that affected its equity structure. So in other words, it
3 had a -- basically a shareholder change.

4 And specifically what happened was the original
5 shareholders of Sira -- it was an entity called, "Green
6 Partners Investors, LLC" and another entity called, "Green
7 Partners Sponsor 1 LLC."

8 What that -- what happened was those two LLCs sold
9 their shares to a new LLC, CSAC Acquisitions, LLC. That's
10 all that happened.

11 CONSTANTINE ALEXANDER: Who -- are the owners of
12 CSAC -- I'm just going to refer to them as CSAC -- are they
13 the same persons who own Green?

14 ZACHARY BURKE: Well, Mike could probably answer
15 that.

16 MICHAEL DUNDAS: They are -- they include the same
17 persons, but --

18 CONSTANTINE ALEXANDER: Include, but are they --

19 MICHAEL DUNDAS: -- there are additional people as
20 well.

21 CONSTANTINE ALEXANDER: Okay. And who -- one --
22 do the people who controlled Green before control CSAC,

1 whatever the name of it is?

2 MICHAEL DUNDAS: No.

3 CONSTANTINE ALEXANDER: No. So there's been a
4 change in control of the premises, the dispensary, at 1001
5 Mass Ave?

6 MICHAEL DUNDAS: I would say that there was a
7 stock change.

8 CONSTANTINE ALEXANDER: Change and control. The
9 people who controlled Sira do not control Sira after this
10 recapitalization, whatever you want to --

11 MICHAEL DUNDAS: I would say that's accurate,
12 yeah. Because --

13 CONSTANTINE ALEXANDER: Okay.

14 ZACHARY BURKE: Yes, that's accurate. What did
15 not change was the management team has not changed. Mr.
16 Dundas has remained as the CEO, the CFO Eric Wardrop, is
17 still the CFO. The Board of Directors, it had five members
18 previously. Those five members are still on the Board of
19 Directors. They added one additional member.

20 CONSTANTINE ALEXANDER: Right.

21 ZACHARY BURKE: Other than that, there has been
22 no changes.

1 ANDREA HICKEY: So all the officers are the same?

2 JANET GREEN: No.

3 ZACHARY BURKE: Correct, except for one additional
4 member of the Board of Directors.

5 JANET GREEN: Not --

6 ZACHARY BURKE: Yes, the officers are the same.
7 That's accurate.

8 ANDREA HICKEY: Okay. And there's one additional
9 board member?

10 ZACHARY BURKE: Correct.

11 ANDREA HICKEY: And the equality shareholders,
12 there's been a difference there as well?

13 ZACHARY BURKE: I mean, I believe what Mike said
14 was, "Yes, there are new shareholders in the LLCs that own
15 --

16 CONSTANTINE ALEXANDER: Right.

17 ZACHARY BURKE: -- Sira Naturals.

18 CONSTANTINE ALEXANDER: There's an LLC that owned
19 --

20 ANDREA HICKEY: Right, I get it.

21 CONSTANTINE ALEXANDER: Okay.

22 ZACHARY BURKE: So that's what happened in May of

1 2019. Sira went ahead under the state regulation with the
2 Cannabis Control Commission as the state regulatory body
3 that regulates these businesses. One of their regulations
4 requires approval of, you know, changes in officers,
5 Directors, things like that.

6 Sira went ahead, notified the CCC of these
7 changes, the CCC reviewed it and approved it in May. On the
8 date that this transaction occurred, Sira went ahead, and
9 its lawyer at the time sent a letter to the ISD just to
10 inform them this is what's going on.

11 And they didn't think they had an obligation to do
12 that. They thought -- you know, they intended to do it out
13 of good faith for purposes of transparency, being a good
14 partner of the City of Cambridge. So they did that.

15 There was no communication from the ISD for four
16 months after that -- nothing whatsoever no investigation, no
17 questions, nothing.

18 ANDREA HICKEY: How was that notice sent?

19 ZACHARY BURKE: I have a copy of it here.

20 CONSTANTINE ALEXANDER: I'm sorry, I didn't hear
21 your question.

22 ANDREA HICKEY: I asked how was that notice sent?

1 The letter to the city?

2 ZACHARY BURKE: By e-mail and regular mail.

3 ANDREA HICKEY: And the city has acknowledged
4 receipt of that?

5 ZACHARY BURKE: Yes.

6 ANDREA HICKEY: Okay, thank you.

7 ZACHARY BURKE: So four months passed. Sira
8 continued to operate the same way it had been operating for
9 two years prior to that. Nothing happened. Then on
10 September 18, 2019, it was served with the letter from the
11 ISD -- the Cease and Desist letter.

12 And the Cease and Desist letter alleged two
13 violations of the ordinances and the special permit. So I
14 just wanted to walk you through the notes.

15 CONSTANTINE ALEXANDER: Sure.

16 ZACHARY BURKE: And before I get there actually --
17 so what the Cease and Desist letter has actually done, it's
18 resulted in the closure of Sira for the past two months.

19 And not only has Sira not been able to do
20 business, which is obviously a negative impact, it had to
21 lay off employees, as employees that are out of work.

22 It has patients who rely on Sira's products for

1 their medical treatment -- and this is not my delivery,
2 where Sira is selling, you know, Budweiser or Coors -- they
3 cultivate their own product. So they use specific strains
4 of cannabis that certain medical patients rely on. It's
5 different that they can't get anywhere else. So they haven't
6 had access to that through this Cambridge location.

7 Now, the Cease and Desist -- like I said at the
8 beginning, should be vacated, because it's based on
9 misapplication of the zoning ordinances and the special
10 permit.

11 So I wanted to start with the zoning ordinance and
12 what I'm going to be referring to is Section 11.802.3, which
13 the ISD has said requires Sira to obtain a special permit.

14 CONSTANTINE ALEXANDER: Right.

15 ZACHARY BURKE: I have a copy of that, if it would
16 be helpful to anybody.

17 CONSTANTINE ALEXANDER: I have a copy.

18 BOARD MEMBER: Me too.

19 CONSTANTINE ALEXANDER: So do you.

20 ZACHARY BURKE: So I'm just going to read it. It
21 says, "Limitation of approval. A special permit authorizing
22 the establishment of a Registered Marijuana Dispensary shall

1 be valid only for the registered entity to which the special
2 permit was issued, and only for the site on which the
3 Registered Marijuana Dispensary has been authorized by
4 special permit.

5 "If the registration for a Registered Marijuana
6 Dispensary has not been renewed, or has been revoked,
7 transferred to another entity -- "

8 CONSTANTINE ALEXANDER: Stop right there.

9 "Transferred to another controlling entity -- " that's,
10 those are the key words for tonight's hearing.

11 ZACHARY BURKE: Yes. Those are the key words.
12 And don't think they apply in this instance.

13 CONSTANTINE ALEXANDER: Well, okay.

14 ZACHARY BURKE: For several reasons. First of
15 all, the first sentence of this paragraph is really talking
16 about the circumstances in which a special permit can be
17 invalidated -- a previously issued special permit. It says,
18 "First -- " and I'm quoting it -- "it's valid only for the
19 registered entity to which the special permit was issued."

20 And here, the special permit was issued to Sira,
21 it remains with Sira, it hasn't change. So it's not invalid
22 under that section.

1 Number two, it's valid, "only for the site under
2 which the RMV has been authorized by the special permit."
3 That hasn't changed either. The second sentence of this
4 can't be read in isolation. What it is, is it's providing
5 specific examples of what's referred to --

6 CONSTANTINE ALEXANDER: Oh sir, I'm not sure I buy
7 that. I don't buy that one bit. That's the way -- it
8 doesn't say that. If you were right, it would say, "for
9 further clarification, if the license or registration --
10 blah, blah, blah. This is a freestanding, self-operative
11 sentence. And I don't think you need to read it -- you
12 should read it -- in combination with the prior sentence.

13 ZACHARY BURKE: Well, I think it's a -- you know,
14 a principle of statutory construction. Everything has to be
15 read in context.

16 CONSTANTINE ALEXANDER: Yeah.

17 ZACHARY BURKE: When you read it in context, it's
18 clearly modifying or referring back to the first sentence.

19 CONSTANTINE ALEXANDER: Clearly to you, not
20 clearly to me.

21 ZACHARY BURKE: Well, I think there are reasons --
22 there are other reasons why I think that's clear. First of

1 all, it says, "If the registration has not been permitted
2 with transfer." Okay? The registration hasn't been
3 transferred to anybody. It remains with Sira.

4 CONSTANTINE ALEXANDER: You're not reading it --
5 we're going to get to this later. You're not reading the
6 statute the way it is. It's transferred to another
7 controlling entity. Those are the key words, "Another
8 controlling entity." To be sure, Sira remains as Sira, still
9 has a license, but that's not the way the ordinance is
10 written.

11 ZACHARY BURKE: Well, there's another reason. I
12 just obviously disagree with your reading of it. I think
13 this is referring to the actual transfer of the registration
14 to another entity. That hasn't happened.

15 But in addition to that, I don't think it can mean
16 what the ISD says it means, and I think what you're
17 suggesting it means, because it wouldn't make any sense.

18 So if -- let's say the registration was held by an
19 individual rather than --

20 CONSTANTINE ALEXANDER: Right.

21 ZACHARY BURKE: -- or the shares were held by an
22 individual, rather than an entity -- well then, this doesn't

1 apply. The controlling shareholder, who's an individual,
2 can just transfer --

3 CONSTANTINE ALEXANDER: It's not --

4 ZACHARY BURKE: -- 100% to whoever.

5 CONSTANTINE ALEXANDER: You're right. But that's
6 not our fault.

7 ZACHARY BURKE: But that's what I'm saying.
8 That's -- you can read it in the context of the first
9 sentence. That's what they're referring to. They're
10 talking about a permit that's been revoked; reason what --
11 you know, a permit that's been relocated to a different
12 site. These are all reasons that would invalidate the
13 permit.

14 And we don't have the registered entity -- you
15 know, transfer of this to a different registered entity,
16 which is what this references in the first sentence. So I
17 think they've misapplied this. Now --

18 CONSTANTINE ALEXANDER: Are you going to speak to
19 the court decision that has come down, with regard to this
20 case?

21 ZACHARY BURKE: Yes, I'm happy to speak about
22 that. That is -- first of all, it's a preliminary

1 injunction decision. It's not a final judgment.

2 CONSTANTINE ALEXANDER: To be sure.

3 ZACHARY BURKE: And, you know, obviously Sira
4 intends to continue to pursue that case, and bring that case
5 to a final judgment. That was a decision rendered on short
6 notice five days of filing.

7 And one of the primary arguments, there was this
8 preliminary injunction should issue to at least suspend the
9 Cease and Desist Order to allow patients to get their
10 medical treatment.

11 CONSTANTINE ALEXANDER: That's true, but the
12 awarding of the decision is not to go beyond that. The
13 decision says

14 [Technical difficulties conversation]

15 CONSTANTINE ALEXANDER: The decision says -- and
16 it's in reference to the sentence you're talking about,
17 where a transfer to another -- the permit has been
18 transferred to another controlling entity -- the court says,
19 "applying the clear language of the regulations -- " they're
20 referring to the state regulations -- "and the ordinance --
21 " they're referring to our zoning ordinance -- "the transfer
22 of ownership to CSAC was a transfer to another controlling

1 entity." That's what the court said in this decision.

2 ZACHARY BURKE: Right. And respectfully, and the
3 judges get it wrong, I get it wrong, I'm sure occasionally
4 you guys may get it wrong too.

5 CONSTANTINE ALEXANDER: We're going to get it
6 right, though.

7 ZACHARY BURKE: Yeah, hopefully you get this one
8 right. But respectfully, I think the judge got that wrong.
9 The case -- she has another chance to consider this,
10 because, again, it's not a final judgment. This is just a
11 preliminary determination. And if there is an appeal of
12 this decision, it's a de novo review.

13 So the Appeals Court, a paneled Appeals Court,
14 will hear this independently -- regardless -- sorry,
15 regardless of what the Superior Court judge has ruled.

16 CONSTANTINE ALEXANDER: Hasn't this case been
17 appealed?

18 ZACHARY BURKE: It was an interlocutory appeal,
19 really appealing preliminary judge's decisions.

20 CONSTANTINE ALEXANDER: And that appeal was
21 denied?

22 ZACHARY BURKE: And those were denied.

1 CONSTANTINE ALEXANDER: It was denied?

2 ZACHARY BURKE: It was denied.

3 CONSTANTINE ALEXANDER: Okay. And your client
4 made a decision as to whether it's going to pursue the case
5 at a regular trial, without -- on the merits, if you will?

6 ZACHARY BURKE: Yes. Right now they're planning
7 to pursue it. They've also, they're in the process of
8 submitting a new special permit application just to keep
9 the ball rolling, so they can --

10 CONSTANTINE ALEXANDER: Why don't you continue
11 this case until that court decision -- a final decision in
12 the courts has been rendered?

13 ZACHARY BURKE: One of the arguments from the city
14 in that case is that Sira has failed to exhaust its
15 administrative remedies by coming before this Board.

16 CONSTANTINE ALEXANDER: Right.

17 ZACHARY BURKE: So in the end event that the judge
18 decides to say that, you know, that's happened, obviously we
19 need to proceed with that, and that's why we're doing that
20 now.

21 CONSTANTINE ALEXANDER: Okay. I'm sorry to
22 interrupt. Go ahead.

1 ZACHARY BURKE: So I mean I think -- you know,
2 obviously it's statutory interpretation. People can look at
3 it several different ways. But I think the way I read it is
4 the most logical interpretation of it. And also, you know,
5 practically speaking, that's -- you know, it can set a poor
6 precedent for the City of Cambridge the way this has been
7 interpreted.

8 Basically, anytime someone wants to change
9 shareholders, someone -- you know, if an individual owns the
10 company and they die, or a member dies and has to transfer
11 shares to their -- you know, family member, well then all of
12 a sudden, they Cease and Desist, they're out of business?

13 CONSTANTINE ALEXANDER: No, no, they just file --
14 the new owners just file for a new permit.

15 ZACHARY BURKE: Right. But the business will have
16 to close until that.

17 CONSTANTINE ALEXANDER: I don't know how long it
18 takes to resolve, or to act on a decision. That's how --
19 and you may find it unfair. It may be unfair in the real
20 world, but we have to deal with the ordinance.

21 ZACHARY BURKE: Right.

22 CONSTANTINE ALEXANDER: And the ordinance --

1 ZACHARY BURKE: And I'm sorry, I don't mean to --

2 CONSTANTINE ALEXANDER: Sorry.

3 ZACHARY BURKE: I think my point is, you know,
4 obviously this needs to be interpreted per the terms of it,
5 and as it was intended, and I don't think it could be
6 intended.

7 CONSTANTINE ALEXANDER: Well, let me challenge
8 that. I find the words absolutely crystal clear. And I
9 think they justify the decision of the Commissioner. The
10 key words, as you point out, just a few letters -- a few
11 words -- has the "license been transferred to another
12 controlling entity"?

13 Now, to be sure, it doesn't say the license had
14 been transferred to another entity, or has been transferred.
15 It's "to another controlling entity."

16 And with the testimony I've heard tonight, is at
17 the time the permit was granted, there was a control group
18 who owned ownership interests in Sira.

19 Now, there's been a transfer to another entity,
20 which has a different control group. I don't know whoever
21 they are. Seems to me there's been a transfer to another
22 controlling entity. Period, end of story.

1 ZACHARY BURKE: I respectfully disagree with the
2 reasons that I've already stated. In addition, I don't --
3 there hasn't been -- nothing's been transferred.

4 CONSTANTINE ALEXANDER: Yes, it has. The -- yes,
5 the ownership --

6 ZACHARY BURKE: The entities.

7 CONSTANTINE ALEXANDER: No, but it doesn't say
8 the entities. You're reading the statute the way you want
9 it to be read.

10 ANDREA HICKEY: Didn't the shareholders change?

11 CONSTANTINE ALEXANDER: Yeah, they changed.

12 ANDREA HICKEY: And don't they control the entity?

13 ZACHARY BURKE: They do. Yes, yes, but there was
14 no assignment of the registration to anybody.

15 CONSTANTINE ALEXANDER: But that doesn't --

16 ANDREA HICKEY: I don't think that's what it says.

17 CONSTANTINE ALEXANDER: That's not what that --

18 BRENDAN SULLIVAN: You're reading too much into
19 it.

20 ZACHARY BURKE: Right.

21 BRENDAN SULLIVAN: The registration is one thing.

22 CONSTANTINE ALEXANDER: Yeah.

1 BRENDAN SULLIVAN: The operation of Sira is one
2 thing. A controlling entity is something else.

3 CONSTANTINE ALEXANDER: Something else, exactly.

4 ZACHARY BURKE: Well, I respectfully disagree, for
5 the reasons that I've stated.

6 CONSTANTINE ALEXANDER: Okay.

7 ZACHARY BURKE: In addition to that, there's
8 another reason why this is improper. Supreme Judicial Court
9 in Massachusetts has said that cities and towns cannot adopt
10 regulations of ordinances, et cetera that second-guess
11 things that are issues that are specifically given to a
12 regulatory body.

13 And in this instance, the Cannabis Control
14 Commission has the authority from the legislature to license
15 marijuana dispensaries and to review their ownership
16 structures. The Cannabis Control Commission in this case
17 reviewed it and approved it.

18 So now, the City of Cambridge wants to come in and
19 say, "Well, we don't care what the Cannabis Control
20 Commission did, we're going to review it ourselves and
21 decide whether or not this business can operate."

22 CONSTANTINE ALEXANDER: I don't --

1 ZACHARY BURKE: And that is a violation of the law
2 under the Town of Wendell case. It's a supreme judicial
3 court decision.

4 CONSTANTINE ALEXANDER: If it is, this is not the
5 body that's going to resolve that legal issue. You take a
6 prior case in court, and maybe you'll win and maybe you'll
7 not. We have to deal with the ordinance that's been given
8 to us.

9 And we deal with the words that are in the
10 ordinance. And no one is, by the way you didn't challenge
11 the ability of Cambridge to issue permits when you got the
12 original permit. It was fine. You applied, you went
13 through the process, as you did with the state, and you got
14 the necessary permits, both from the state and from the City
15 of Cambridge. Now you're working under our ordinance.

16 And again, it talks about transferring to another
17 controlling entity -- not to another entirely. I understand
18 and I agree that there's been no assignment by Sira.

19 But the fact is, there is a controlling entity.
20 It was a group who controls Sira. That group does not
21 control CSAC. As a result, there's been a transfer to
22 another controlling entity.

1 ZACHARY BURKE: And I'm not going to go over what
2 I've already said. I think it needs to be read in the
3 context of the first sentence in that paragraph.

4 The other point I wanted to just mention briefly
5 was, the ISD also found that there was a violation of the
6 terms of the special permit.

7 Nothing in the special permit, and in none of the
8 permit applications itself, required any disclosure of the
9 equity structure, the management or anything of the sort
10 from Sira Naturals. The ISD cites the paragraph one of the
11 special permit -- the first condition, which requires Sira
12 to, "operate" with substantial conformance with the
13 application documents.

14 And again, nothing about Sira's operations has
15 changed. In addition to that, you know, I submit that
16 adding one additional Board member and swapping LLC
17 shareholders doesn't mean that Sira is failing to operate
18 substantial compartments with the application documents --
19 which, again, didn't specifically require any disclosure of
20 the management structure.

21 It was submitted in connection -- you know, they
22 had to submit all of their application that they filed with

1 the CCC. So that was given.

2 But it wasn't one of the special permit criteria,
3 had anything to do with the ownership structure.

4 CONSTANTINE ALEXANDER: That may. So if you are
5 correct, that that part of the Commissioner's order is
6 inappropriate, you're still left with the other part, which
7 we're spending all our time on.

8 And have you transferred -- has Sira transferred,
9 or the group that controls Sira, made a transfer to another
10 controlling entity? And if that's the case, then your
11 argument here is irrelevant.

12 You don't -- maybe it was a belt and suspenders
13 argument by the Commissioner that doesn't work. But the
14 fact of the matter is, it doesn't have to work. As long as
15 the first part of his decision, or his order, is legally
16 appropriate, I think the case is over, frankly.

17 ZACHARY BURKE: Well, if that's your
18 interpretation of it, that's --

19 CONSTANTINE ALEXANDER: Well, that's mine. I'm
20 only one of five, so.

21 ZACHARY BURKE: You know, the only other point
22 I'll make on that is, you know, we cite a case in our brief

1 that says that, "change of shareholders is not a transfer of
2 license."

3 CONSTANTINE ALEXANDER: Exactly, but that's not
4 what our -- you do -- typically, typically a transfer of
5 ownership of an entity that has a license does not trigger
6 need for relief. And you can do it without going through
7 it. But here the words are special. "Another controlling
8 entity."

9 ZACHARY BURKE: And I respect your reading of it.
10 I disagree.

11 CONSTANTINE ALEXANDER: Okay.

12 ZACHARY BURKE: Like I said, it's going to be read
13 in the context of the first sentence.

14 CONSTANTINE ALEXANDER: Okay. Questions from
15 members of the Board? Open the matter up to public
16 testimony? Anyone here wishing to be heard on this matter?
17 Ms. Glowa? You can just slide over if you like. There's
18 plenty of chairs. Come on, Megan.

19 THE REPORTER: Can you spell your name for the
20 record, please?

21 NANCY GLOWA: Nancy Glowa, G-l-o-w-a, City
22 Solicitor. And with me is Assistant City Solicitor.

1 MEGAN BAYER: Megan Bayer, B-a-y-e-r.

2 CONSTANTINE ALEXANDER: Your name is fleeting.

3 They don't know who you are.

4 NANCY GLOWA: Good evening Mr. Chair, members of
5 the Board. Lovely to see you all. I recognize that it's
6 somewhat unusual for us to appear before you in this
7 posture.

8 I wanted to -- so the reason that we did come and
9 submit to you a memorandum in advance of tonight's hearing
10 is because of the somewhat unusual circumstances for this
11 actual determination that is the subject of this appeal
12 before you tonight is already the subject of litigation,
13 what has been discussed a little bit by you and the
14 petitioner's counsel.

15 So we just wanted to make sure that the Board was
16 aware of the litigation and the posture of that litigation.

17 I would take issue with a few of the arguments
18 that were made, and simply point out to the Board that as
19 Mr. Chair stated, the Superior Court judge found that the
20 language of the ordinance is quite clear and consistent with
21 the state regulations.

22 So with respect to the argument that the zoning

1 ordinance is somehow inconsistent with state law, the
2 Superior Court judge specifically found that Sira has failed
3 to demonstrate that the ordinance is inconsistent with the
4 statute governing medical and recreational marijuana
5 facilitates, or violates the home rule amendment to the
6 Massachusetts constitution.

7 So what I really wanted to point out to the Board
8 for your consideration, and I recognize that this is your
9 decision entirely, and all this.

10 We're here in part because we're representing Mr.
11 Singanayagam and the city in the lawsuit that has been
12 brought by petitioners, we of course also represent the
13 Board, and if the Board goes whichever way it goes, and
14 there is further proceedings, we go represent the Board as
15 we always do.

16 But I did want to bring to your attention that the
17 language in the ordinance is quite clear, and was in fact
18 the subject of much discussion before the City Council,
19 which is the legislative body that sets the policy. And
20 there was discussion about composition of owners of these
21 facilities, these types of facilities.

22 And I believe it was at least discussed that there

1 was an interest in making sure that special permits would be
2 given to the particular applicant, and not carried through
3 two successive ownership controlling entities, et cetera.

4 So I'm really here just in case you have any
5 questions for us, and to make those few points. So I'm here
6 to --

7 CONSTANTINE ALEXANDER: I have none. Anybody have
8 questions?

9 JIM MONTEVERDE: No.

10 CONSTANTINE ALEXANDER: No? I just would make an
11 ad hoc comment, though. As I think the ordinance, which we
12 have to interpret tonight, with regard to this issue before
13 us is less than crystal clear.

14 I think it could have been drafted a lot -- not
15 your criticism of you of the Legal Department, but it could
16 have been -- it could have been drafted in a more clearer
17 fashion than it is. But I think -- to my mind, it's clear
18 enough for tonight's case.

19 But I would urge that someone go back and revisit
20 this language, and maybe tighten it or improve upon it, so
21 that issues like we have tonight don't arise again. Okay?

22 I'm sorry, I didn't mean to cut you -- and I don't

1 mean to be rude or lecture. Okay. Thank you, Nancy. You
2 can stay here if you like. Anyone else wishes to be heard
3 on this matter? No one wishes to be heard?

4 We have no written -- I don't think any written
5 communications beyond what's been referred to in the
6 presentations. So I'll close public testimony, and time for
7 discussion and decisions.

8 I think I've made my views clear. I think the
9 wording of the statute, of the ordinance, however it is, is
10 clear on this issue. There has been a transfer to another
11 controlling entity, that a group of stockholders who control
12 Sira, now Sira, or the new CSAC, is controlled by a
13 different entity. And that's the language. And therefore I
14 think the Commission's decision was correct.

15 Anyone wishes to be heard? Yeah.

16 JIM MONTEVERDE: Just one, an aside. That all
17 said, if I heard you correctly that you'll be applying for
18 the special permit today, can we square all this away? Is
19 that correct?

20 ZACHARY BURKE: It should be submitted next week.

21 JIM MONTEVERDE: Yeah. So I take that as the
22 glass half full part of it, glass half empty and the rest of

1 the proceedings. It seems to be a way to really rectify it
2 and move forward.

3 CONSTANTINE ALEXANDER: Just out of curiosity, I
4 might mention, how long is the process? If the application
5 is filed next week, when would you expect to get a decision?

6 MICHAEL DUNDAS: Probably about 90 days.

7 CONSTANTINE ALEXANDER: 90 days. Okay, so you
8 would remain closed for -- let's say 90 days, and maybe
9 later if that decision is appealed by someone?

10 MICHAEL DUNDAS: Right.

11 CONSTANTINE ALEXANDER: So it's not necessarily a
12 speedy process.

13 MICHAEL DUNDAS: Understood. But there's a path.

14 CONSTANTINE ALEXANDER: Yeah. There is a path,
15 absolutely.

16 MICHAEL DUNDAS: If I might ask, perhaps -- and I
17 apologize. I don't have clarity on this issue. One of the
18 interesting things about this particular case is that it
19 happened in conjunction with an ordinance that was passed
20 several days later by the City Council, essentially putting
21 a moratorium on medical marijuana dispensaries like Sira
22 from converting to adult-use marijuana dispensaries for two

1 years.

2 And it's unclear to me from the language of the
3 ordinance, but I think there is a question as to whether or
4 not -- let me take a step back and say the ordinance creates
5 two classes of business that will ever be allowed to operate
6 as adult-use dispensaries in the City of Cambridge. One of
7 those classes involves what we call Economic Empowerment
8 Social Equity groups.

9 The other of those classes involves existing RMDs,
10 and there's language in the statute -- and I would ask the
11 solicitor if she'd be willing to opine on this -- perhaps
12 you will, perhaps you won't?

13 That might lead one to the conclusion that if an
14 RMD was not open and operating at the time of ordination of
15 that ordinance, that they would fall outside of the group of
16 RMDs that would ever be allowed to convert for adult-use.
17 So when you say, "Are we applying for a new special permit
18 for our medical use?" we are, and to move forward
19 presumably, if that permit is granted, we would -- you know,
20 over several months get that permit to operate again.

21 The question is, because we were not open and
22 operating at the time of ordination of that new ordinance,

1 would we not be eligible to operate ever in the city of
2 Cambridge as an adult-use RMD. And I would point out simply
3 that it's my understanding that the -- after informing the
4 city four months prior, they didn't hear anything from the
5 city.

6 And then the day that the City Council met in its
7 Ordinance Committee to essentially finalize that ordinance
8 was the same day mere hours after ISD came into our special
9 permit. So they closed us we would say hours before the
10 ultimate decision was made.

11 Now the actual decision where this was ordained
12 the following Monday, I believe this all happened on a
13 Wednesday or a Thursday, but it was certain less than a week
14 after our special permit was taken, after a period of notice
15 of four months that this happened. And so, it simply -- ask
16 if she has an opinion on that or not, or if she would be
17 willing to comment on that.

18 CONSTANTINE ALEXANDER: Well, let me -- before
19 Nancy answers that question -- that's not before us tonight.

20 MICHAEL DUNDAS: I understand.

21 CONSTANTINE ALEXANDER: It's a legitimate
22 question. I'm not saying -- but that's not the province of

1 that hearing.

2 MICHAEL DUNDAS: Understood.

3 CONSTANTINE ALEXANDER: And I don't want to waste
4 -- waste -- I don't want to spend time on this question.

5 MICHAEL DUNDAS: And I apologize if this is
6 improper. I only say that -- and I don't mean to put you on
7 the spot. Obviously, if you don't want to comment on that,
8 that's fine. But you asked essentially -- you're going to
9 wait another 90 days, no harm no foul, I simply wanted to
10 make reference to that as well.

11 CONSTANTINE ALEXANDER: Okay. Thank you.

12 MICHAEL DUNDAS: In that context.

13 ANDREA HICKEY: I can just say I don't think the
14 City Solicitor's response to your question -- and I think
15 it's an excellent question, and I understand it completely,
16 but I don't think it's germane to the proceeding reports
17 today. So that's really all I have to say.

18 CONSTANTINE ALEXANDER: And as I said, I agree
19 with that. Anyone else want to comment, or ready for a
20 vote?

21 BRENDAN SULLIVAN: No. It's clear to me, given
22 all of the correspondence in front of us --

1 JANET GREEN: I think Brendan --

2 CONSTANTINE ALEXANDER: Yeah, yeah, Brendan, take
3 it.

4 BRENDAN SULLIVAN: -- it's clear to me given all
5 the correspondence in front of us from the petitioner's
6 attorney to the Board, the Commissioner to the Board, and
7 the memorandum from the Solicitor's office, that the
8 Commissioner acted properly.

9 CONSTANTINE ALEXANDER: Thank you. I'll make a
10 motion. It'll be very simple. The Chair moves that we
11 grant the appeal of the petitioner, and rescind, revoke the
12 Cease and Desist Order issued by Mr. Singanayagam. All
13 those in favor of that outcome, please say "Aye." None?
14 All opposed?

15 [ALL FIVE OPPOSED]

16 CONSTANTINE ALEXANDER: Five opposed. And I think
17 we have to give a reason why, it's not apparent in the
18 discussion before. I will suggest, as I've suggested, that
19 we overtly so far, I think the language of the ordinance, as
20 applied to these facts, is quite clear. There's been a
21 transfer from one entity to another -- one controlling
22 entity to another controlling entity.

1 If that's the case, then under 10 11.802.3 of our
2 ordinance, a new special permit is required. Anybody want
3 to add or subtract to that, or is that sufficient? All
4 those in favor of the reasons for our decision, please say,
5 "Aye."

6 COLLECTIVE: Aye.

7 [ALL FIVE VOTE YES]

8 CONSTANTINE ALEXANDER: Five in favor. Thank you.

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2 (8:13 p.m.)

3 Sitting Members: Constantine Alexander, Brendan Sullivan,
4 Janet Green, Jim Monteverde, Andrea
5 Hickey

6 CONSTANTINE ALEXANDER: Is Mr. Rafferty here?

7 Well, he may be out in the back room. Why don't you just
8 call him in.

9 BRENDAN SULLIVAN: There's more to it, then --

10 CONSTANTINE ALEXANDER: Actually, Jim said they're
11 probably going to withdraw the case tonight, as they should.
12 Were you on the case in '86? In '86, the --

13 BRENDAN SULLIVAN: I think so.

14 CONSTANTINE ALEXANDER: -- he sought a variance
15 for a three-family and was turned down.

16 BRENDAN SULLIVAN: Turned it down.

17 CONSTANTINE ALEXANDER: Mr. Rafferty, you're just
18 in time for me to call Case Number 017116 -- oh, I'm sorry,
19 the wrong one. 017164 -- 141 Prospect Street.

20 JAMES RAFFERTY: Good evening Mr. Chair and
21 members of the Board, James Rafferty on behalf of the
22 applicant. We filed a request today for a continuance.

1 There has been one prior continuance. I recognize the
2 Board's policy. This would be the final continuance, and
3 candidly, it may be the final time the Board sees the case.

4 I'm exploring the use of the property with the use
5 of the property with the Building Commissioner, but there
6 are some unresolved issues at the moment that would, I would
7 suggest, warrant this one last continuance, and I would say
8 we could pick a date whenever the Board cares to give it to
9 us.

10 CONSTANTINE ALEXANDER: Is this a case heard? I
11 don't have my sheet.

12 JAMES RAFFERTY: Is the case heard?

13 CONSTANTINE ALEXANDER: Is it a case heard, Sisia?

14 COLLECTIVE: Yes.

15 CONSTANTINE ALEXANDER: Yes. Okay. And the five
16 of us sat on the original case. Or is it --

17 COLLECTIVE: No, Laura.

18 CONSTANTINE ALEXANDER: All right. We'll have to
19 pick a date for Laura. She's not here. We sent her home.
20 You have a date you would like?

21 JAMES RAFFERTY: January? February?

22 CONSTANTINE ALEXANDER: Fine by me. How about

1 January 30?

2 SISIA DAGLIAN: Laura's here on the thirtieth.

3 CONSTANTINE ALEXANDER: I'm sorry?

4 COLLECTIVE: Laura is available on the thirtieth.

5 CONSTANTINE ALEXANDER: Okay.

6 JAMES RAFFERTY: So January.

7 CONSTANTINE ALEXANDER: Yeah.

8 JAMES RAFFERTY: I was hoping you weren't working
9 the thirtieth.

10 CONSTANTINE ALEXANDER: [Laughter] All right. The
11 Chair moves that we continue this case -- again, as a case
12 heard until 7:00 p.m. on January 30, subject to the
13 following conditions -- and you know, Mr. Rafferty, that for
14 the purpose of the record a waiver of time for decision must
15 be filed, and that's already been done, so that's done.

16 Second, that the posting sign be modified, or a
17 new one be obtained, to reflect the new date and the new
18 time. The last time around, your client didn't change the
19 time.

20 So make sure it's 7:00 p.m. on January 30, and to
21 the extent that new plans, drawings, dimensional forms are
22 going to be submitted in connection with the continued case,

1 they must be in our files no later than 5:00 p.m. on the
2 Monday before January 30. All those in favor, please say,
3 "Aye."

4 THE BOARD: Aye.

5 [All vote YES]

6 CONSTANTINE ALEXANDER: Five in favor, see you in
7 January.

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2 (8:15 p.m.)

3 Sitting Members: Constantine Alexander, Brendan Sullivan,
4 Janet Green, Jim Monteverde, Andrea Hickey

5 CONSTANTINE ALEXANDER: The Chair will now call
6 Case Number 017194 -- 101 Trowbridge Street. Anyone here
7 wishing to be heard on this matter?

8 TIMOTHY BURKE: Good evening Mr. Chairman and
9 members of the Board.

10 CONSTANTINE ALEXANDER: Good evening.

11 TIMOTHY BURKE: My name is Timothy Burke, spelled
12 B-u-r-k-e. I'm the architect for the project, and I'm going
13 to let my other compatriots here introduce themselves.

14 MADISON MITCHELL: Hi, my name is Madison
15 Mitchell, M-i-t-c-h-e-l-l. I am the Interior Designer and
16 Project Manager of this project.

17 CODY ADAMSON: Hi, my name is Cody Adamson, A-d-a-
18 m-s-o-n, and I work for Timothy Burke Architecture. And
19 with us is Michael Ferzoco, who is also the designer and he
20 has no voice this evening.

21 CONSTANTINE ALEXANDER: So you're going to stand
22 behind him and prop him up, right?

1 THE REPORTER: Could you spell his name?

2 CODY ADAMSON: Oh, F-e-r-z-o-c-o.

3 CONSTANTINE ALEXANDER: The floor is yours.

4 TIMOTHY BURKE: Thank you. I'm representing the
5 owner, Helin Wei, who is unable to be here tonight. She's
6 traveling on business.

7 Mrs. Wei bought the house about a year ago now.
8 It was -- had been used as sort of a three and a half, four-
9 family structure with a sort of in-law had some apartment in
10 there.

11 We're proposing to use it as a three-family, as
12 part of the work we went through the Historic Commission
13 review process, and during that process we heard comments
14 from the neighbors.

15 We made some changes in fenestration, and pulled
16 back the north elevation of the entry, proposed side entry
17 that we have, to try to address the concerns of the
18 neighbors.

19 The reason we're here tonight is that the house
20 became nonconforming in 1941, and the proposed addition
21 would result in 15.4 percent increase over the size of the
22 house when it became nonconforming, which requires a special

1 permit.

2 We're excited about the project, because the house
3 was not in great shape. We're restoring a lot of the
4 historical elements. We removed asbestos siding. We're
5 going to be doing all new wood clapboards and things that
6 were approved by Historic.

7 We are introducing a new stairway on the back that
8 replaces half outdoor, half indoor stair, which was not very
9 well designed. And that's where most of the addition is, at
10 that northwest corner of the building.

11 The -- I think that it, you know, gives you an
12 understanding of the project. And we did hold a meeting at
13 the house last week, where we invited all of the abutters.
14 And it was very -- we heard a lot of concerns about how
15 things will be handled during the construction process,
16 which we will address.

17 There is a concern with rodents in the
18 neighborhood. We will use a professional service to bait
19 traps and try to control the rodents, and also, issues of
20 noise in trapping. We promise to work with the neighbors to
21 address those items.

22 So I'd be happy to answer any questions.

1 CONSTANTINE ALEXANDER: Questions from members of
2 the Board? This is a special permit. It's a conforming
3 addition to a nonconforming structure.

4 TIMOTHY BURKE: That is correct, yes.

5 CONSTANTINE ALEXANDER: I'll open the matter up to
6 public testimony. Is there anyone here wishing to be heard
7 on this matter? Sir?

8 FRANCIE MELENDEZ: Francie Melendez of 41 Irving
9 Street. We are contiguous abutters. We are contiguous
10 abutters. Our back side and their back side are friends.
11 And I would say that we were delighted to attend the
12 neighborhood meeting. I have seldom seen a more
13 professional presentation.

14 They froze us to death because the inside of the
15 building is down to the studs, but it was a -- I think it
16 was a very clever plan, moving from three and a half to
17 three, and with the owner living on the first floor, which
18 we had been told would be the case, and a relative of the
19 second floor. And I think this is a significant enhancement
20 to the neighborhood, and we are certainly in favor of it.

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

1 FRANCIE MELENDEZ: You can pay me later.

2 CONSTANTINE ALEXANDER: Anyone else wishes to be
3 heard on this matter? Ma'am?

4 MARGARET GELIN: Okay, my name is Margaret Gelin,
5 G-e-l-i-n. I live at 105 Trowbridge Street, Unit #4 and I'm
6 one of six abutters from the north side of the property.
7 And we've raised these concerns at the time of the
8 Historical Commission hearing.

9 The main entryway currently is on the front of the
10 house on Trowbridge Street, and two of the three new units,
11 the entryway is going to be on the north side of the house
12 on the right side of the house.

13 I see lights, I see fences, and the other thing I
14 see is the big air conditioners are also going to be on my
15 side of the house; more noise, heat.

16 I don't know what kind of recourse we have here
17 about this design. I mean, does this represent a nuisance
18 to us as citizens of the city.

19 BOARD MEMBER: Can you put the microphone to your
20 mouth?

21 CONSTANTINE ALEXANDER: Yeah.

22 MARGARET GILEN: Yeah. Does this represent a

1 nuisance to us as the city?

2 CONSTANTINE ALEXANDER: But one of the findings --
3 I'm just -- to assist you because you asked, you didn't know
4 what was necessary, one of the findings we'll have to make
5 to grant the special permit that's being sought is that,
6 "the continued operation of or development of adjacent uses
7 -- "which is you "-- as permitted in the ordinance, will not
8 be adversely affected by what they're proposing to do."

9 MARGARET GELIN: Right, that's point C I think
10 you're saying there. and I'm saying point D too is it's a
11 nuisance to those of us who live on those properties.

12 CONSTANTINE ALEXANDER: Well congestion has it or
13 substantial change in established character. That's the
14 other one, B.

15 MARGARET GELIN: I'm sorry?

16 CONSTANTINE ALEXANDER: What your -- you said the
17 one before that --

18 MARGARET GELIN: I'm saying D is --

19 CONSTANTINE ALEXANDER: Oh, D, I'm sorry. I
20 thought you said B. My mistake. "-- nuisance or hazard,
21 which will be created to the detriment of the health, safety
22 and/or welfare of occupant --," which is not you, "-- or the

1 citizens of the city." That's you, that's for sure. But
2 you're claiming it would be a nuisance or a hazard?

3 MARGARET GELIN: I'm saying it would be a
4 nuisance. I'm talking about noise. I'm talking about light
5 at night. I'm talking about heat generated by three air-
6 conditioning tubs that are proposed. Those are just some of
7 my issues. I mean, otherwise, I think it's a great plan,
8 you know?

9 CONSTANTINE ALEXANDER: Just put it on the other
10 side --

11 MARGARET GELIN: I just don't want those guys --
12 on the other side of the house, I don't want it to stand on
13 front of the houses of Trowbridge Street.

14 CONSTANTINE ALEXANDER: Mr. Burke, have you
15 considered -- are you aware of her problems?

16 TIMOTHY BURKE: Yes.

17 CONSTANTINE ALEXANDER: And have you considered
18 how you're going to solve them?

19 TIMOTHY BURKE: These were brought up at the
20 Historic Commission. Also at our abutters meeting. The
21 addition that we're proposing is a stairway. So it won't
22 have anyone looking out towards their house.

1 We also did shadow studies, to make sure it
2 wouldn't be an effect on them, which it is not.

3 CONSTANTINE ALEXANDER: Did you share the studies
4 with the --

5 TIMOTHY BURKE: No, we just did those. I have
6 them here, I would be happy to share them. And there's
7 almost 48 feet of distance from our proposed building to
8 their house. So it's a significant amount of space between
9 houses.

10 We propose to use a Mitsubishi heat pump system,
11 which is considered the quietest -- usually I think a 54-
12 decibel rating, when it's at full power. Their supply, you
13 can't even hear them usually. So I don't think there's an
14 issue with sound or heat from these units.

15 And I think by having the stairway there, it's
16 actually an improvement. There's no living space that's
17 looking towards their house.

18 And these units are -- they're high-end units.
19 They're not going to be students. It's going to be
20 professional people who live here. I don't anticipate wild
21 parties or excessive noise.

22 CONSTANTINE ALEXANDER: Thank you. You want to

1 respond or comment further?

2 MARGARET GELIN: Okay. That's good to hear about
3 the air-conditioning units. But I don't think it addresses
4 the question of people coming and going and lights on at
5 nighttime for people to be able to see to get them in and
6 out of their units.

7 TIMOTHY BURKE: All of the lighting that will be
8 used will be a dark sky type lighting. So we don't
9 anticipate any light thrown onto any neighbor's property.
10 And as I mentioned, a residential use is the least intensive
11 of all building issues. We don't expect there to be a lot
12 of traffic through the store.

13 CONSTANTINE ALEXANDER: Well, I would -- my own
14 personal observation is whenever you do modifications to
15 structures, you are going to have more lighting, or
16 different lighting impacts. You're going to have more
17 traffic. That's how a city grows and thrives. I mean, you
18 can't put it in plastic and preserve it the way it is now.
19 And --

20 TIMOTHY BURKE: We're actually reducing the
21 density of this structure. There will be fewer people.

22 CONSTANTINE ALEXANDER: Anyone else wishes to be

1 heard on this matter? Sir?

2 THE REPORTER: Spell your name and give your
3 address, please?

4 BRUCE GELIN: Hi. My name is Bruce Gelin, G-e-l-
5 i-n, also residing at 105 Trowbridge Street. I'm afraid my
6 comments are going to have no effect on this hearing. I
7 mean, I think it's going to go through, and I'd just like
8 the Board to recognize this is an enormous house, and it
9 just keeps growing. When are we going to put a stop to it?

10 The last addition that was made -- what, 10 years ago
11 -- was an enormous raise in the height of the house, right
12 in front of our window, affecting the shade.

13 And I mean, I guess this is not an enormous
14 change, but I must -- I just need to express my frustration
15 that this house is enormous, and it just keeps getting more
16 so. I'm sorry.

17 CONSTANTINE ALEXANDER: No, don't be sorry. It's
18 a legitimate comment, on the hands that he's changed -- code
19 -- sir, if you can, all right go ahead.

20 THE REPORTER: Can you just state your name again,
21 please?

22 FRANCIS DONOVAN: Francis Donovan, 42 Irving

1 Street. My comment was related to the -- I think unusually
2 high level of accommodation that this organization has shown
3 so far.

4 And I'm confident that they will work something
5 out with the Gelins that a lot of the contractors would not
6 have. I think I'd be very surprised if this doesn't turn
7 out to be a very tolerable change to the neighborhood, both
8 from our standpoint.

9 We just had our back yard refinished and tile
10 covered and landscaped, and it's getting -- we're going to
11 be using it agree deal more. We're just over the fence from
12 this, and I'm confident that these people will accommodate
13 us, as they will accommodate the other neighbors.

14 CONSTANTINE ALEXANDER: Okay. Thank you again for
15 coming down. Thank you as well for your participation.
16 Anyone else wishing to be heard on this matter? Apparently
17 not. I don't think we have any -- I don't believe we have
18 any letters in our file from other persons who have not
19 appeared tonight. So I'll close public testimony.

20 BRENDAN SULLIVAN: The plan there, I just want to
21 see it again one more time.

22 CONSTANTINE ALEXANDER: Before I close, I'll let

1 you get a chance to --

2 BRENDAN SULLIVAN: Yeah, no, no, go ahead.

3 ANDREA HICKEY: Can I just ask one question? Can
4 you tell me in your submissions, is there a site plan
5 showing the proposed footprint? I see the plot plan of the
6 existing footprint. But I didn't see in the submissions,
7 "proposed." I saw elevations, I saw floor plans.

8 AUDIENCE: There was a site plan --

9 ANDREA HICKEY: Proposed?

10 AUDIENCE: Yes.

11 CONSTANTINE ALEXANDER: Probably caused the plans
12 -- you want to see them?

13 ANDREA HICKEY: I'd like to see them.

14 CONSTANTINE ALEXANDER: Show her. One second
15 while we examine your plans.

16 BRENDAN SULLIVAN: Well, I guess the thought that
17 I have, Tim, is what's driving the project? Obviously to
18 upgrade the property, but is it to add more space, or is it
19 a tweaking or a realignment of the interior space or
20 something, or -- what actually is driving this?

21 TIMOTHY BURKE: Yeah, the primary part is a
22 reorganization of the plan, which has some --

1 BRENDAN SULLIVAN: So you've got the basic
2 envelope?

3 TIMOTHY BURKE: Yes.

4 BRENDAN SULLIVAN: And that the layout of it just
5 doesn't seem to work or needs -- I don't mean to be putting
6 words into your mouth, but I agree this is possible -- an
7 upgrading, and as such, a realignment of the deck chairs, if
8 you will, or repositioning of rooms, walls, that work
9 better, the floor works better. Is that sort of driving
10 this?

11 TIMOTHY BURKE: That is correct. And also, to
12 create a much better stairway. The existing stairway was,
13 you know, half outside and half inside.

14 BRENDAN SULLIVAN: Which tends to expand the
15 balloon a little bit if you --

16 TIMOTHY BURKE: Correct, yeah. It would actually
17 be much further away from the lot line once we remove that
18 exterior stair.

19 CONSTANTINE ALEXANDER: Let's wait for Andrea.

20 ANDREA HICKEY: I'm all set.

21 CONSTANTINE ALEXANDER: Let me have the plan back.

22 ANDREA HICKEY: Yeah.

1 CONSTANTINE ALEXANDER: Finish up. Make sure you
2 get them back. I will close public testimony. Any final
3 comments you want to make?

4 TIMOTHY BURKE: No, thank you.

5 CONSTANTINE ALEXANDER: Okay. Discussion? And
6 I'll move to a vote.

7 ANDREA HICKEY: I'm ready.

8 CONSTANTINE ALEXANDER: Everybody ready?

9 COLLECTIVE: Mm-hm.

10 CONSTANTINE ALEXANDER: Brendan, you look like --

11 BRENDAN SULLIVAN: Yeah, no, no. It's okay. No,
12 I'm just trying to think. I think -- you know, in any one
13 of these projects you get into it and, you know, you look at
14 the space, and you're going to spend -- you're going to
15 spend a lot of money redoing it, upgrading it, and so on and
16 so forth.

17 And then you're looking to say, "Well, you know,
18 if this wall were here, instead of there, then this space
19 becomes better." Well then, one thing affects another,
20 affects another.

21 And, you know, eventually you get to the finish
22 line, but I see I guess in this project a lot of that. Even

1 though it's adding some more square footage, it's probably
2 necessary square footage in order to get the total package
3 to justify the expense of that dollars and cents, I guess.

4 And it's not necessarily a monetary gain as much
5 it is that you're going to have to spend x number of dollars
6 to bring this house up to a certain standard, and as such
7 that standard then requires some additional space and
8 reworking of the interior spaces. That's how I read the
9 thing.

10 CONSTANTINE ALEXANDER: All right, thank you. I'm
11 ready. I think we're ready for a vote now?

12 COLLECTIVE: Yes.

13 CONSTANTINE ALEXANDER: The Chair moves that we
14 make the following findings with regard to the special
15 permit being that's being sought:

16 That the requirements of the ordinance cannot be
17 met, unless we grant you the special permit.

18 That traffic generated or patterns in access or
19 egress resulting from what is being proposed will not cause
20 congestion, hazard, or substantial change in established
21 neighborhood character.

22 That the continued operation of, or the

1 development of adjacent uses, as permitted in the ordinance,
2 will not be adversely affected by the nature of what is
3 being proposed, and we have comments from the neighbor who
4 challenged that, which said there would be an adverse
5 effect.

6 But I think on the other hand, the petitioner has
7 presented their views on whether there would be an adverse
8 effect, and we'll have to make that call ourselves.

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

12 And again, we've had neighborhood comment to say
13 that therapy would be a detriment, but at least I'll speak
14 for myself, I don't frankly see this as a detriment to the
15 health, safety and/or welfare of the citizens of the city,
16 should we grant the relief being sought.

17 And that generally, what is being proposed will
18 not impair the integrity of the district or adjoining
19 district, or otherwise derogate the intent and purpose of
20 this ordinance.

21 So on the basis of all these findings, the Chair
22 moves that we grant the special being sought on the

1 condition that the work proceeds in accordance with plans
2 prepared by Timothy Burke Architecture, dated --

3 JIM MONTEVERDE: Need my help here?

4 CONSTANTINE ALEXANDER: Yeah.

5 JIM MONTEVERDE: I've got my trifocals on.

6 CONSTANTINE ALEXANDER: All right. We're right
7 there. What's the date?

8 JIM MONTEVERDE: Yeah, there's nothing there.
9 It's blank. There is no date. Oh, I'm sorry. It's
10 February 15, 2019.

11 CONSTANTINE ALEXANDER: Correct. As Mr.
12 Monteverde said, February 15, 2019. All those in favor of
13 granting the special permit on this basis, please say,
14 "Aye."

15 THE BOARD: Aye.

16 [All vote YES]

17 CONSTANTINE ALEXANDER: Five in favor, special
18 permit granted.

19 TIMOTHY BURKE: Thank you very much.

20 CONSTANTINE ALEXANDER: Thank you.

21

22

1 * * * * *

2 (8:35 p.m.)

3 Sitting Members: Constantine Alexander, Brendan Sullivan,
4 Janet Green, Jim Monteverde, Andrea Hickey

5 CONSTANTINE ALEXANDER: The Chair will now call
6 Case Number 017195 -- 133 Appleton Street. Anyone here
7 wishing to be heard on this matter? Before you proceed, I
8 think there's an issue we have to resolve, to determine
9 whether we have to continue this case or not.

10 Appleton Street -- wait a minute. You have a
11 different form than I do. Mine was misspelled Appleton.
12 Never mind. I withdraw my --

13 BOARD MEMBER: Mine did too.

14 CONSTANTINE ALEXANDER: Yours too?

15 BOARD MEMBER: That's misspelled up there.

16 CONSTANTINE ALEXANDER: Anyway, he misspelled
17 Appleton.

18 JAMES RAFFERTY: Who did?

19 CONSTANTINE ALEXANDER: Somebody did. We didn't.

20 JAMES RAFFERTY: Well, not on the application.

21 CONSTANTINE ALEXANDER: Okay, well then, the
22 zoning office did.

1 JAMES RAFFERTY: I didn't want to say that, but I
2 mean the application is correct. But if you're referring to
3 the --

4 CONSTANTINE ALEXANDER: No, I'm just teasing a
5 bit. That way the case can proceed, whoever made the
6 mistake. Go ahead.

7 JAMES RAFFERTY: Thank you. Good evening Mr.
8 Chair. For the record, my name is James Rafferty. I'm an
9 attorney with offices located at 907 Massachusetts Avenue.

10 I'm appearing this evening on behalf of the
11 applicants Kevin and Ciara, C-i-a-r-a Borden, B-o-r-d-e-n.
12 Also with us is the Project Architect, Amy Semmes, S-e-m-m-
13 e-s, Semmes.

14 Semmes is right, yes?

15 So, as I'm sure the Board has discovered, this is
16 an application to allow for an expansion of a two-family
17 house on Appleton Street. And the proposed design -- this
18 is the home of Mr. Borden night and day his wife. They've
19 lived here for about three years, and they have one child,
20 who is a year and a half, and are expecting a second child
21 in May.

22 CONSTANTINE ALEXANDER: Congratulations.

1 JAMES RAFFERTY: Mrs. Borden grew up on Lexington
2 Avenue, and she went off to business school in Chicago and
3 met Mr. Borden. And she said if there was going to be a
4 future, he'd have to return to Cambridge. So he agreed to
5 do that. He's from Orange County, California, and this is
6 his third winter in Cambridge, so.

7 CONSTANTINE ALEXANDER: And he's still here?

8 JAMES RAFFERTY: He's fine. So the house is
9 rather distinctive. It's a somewhat standard two-family
10 house, except the pitch of the roof is exceptionally low,
11 and as Ms. Semmes looked at the it, the obvious place to
12 think about how to potentially explore some additional
13 living space, as we know in the homes of this style tend to
14 be with dormers.

15 In this case, given the pitch of the roof, a
16 dormer would not work. So what's proposed here -- and Ms.
17 Semmes can go through the details, but it's basically put a
18 new roof on the house.

19 And the additional GFA is occurring nearly
20 entirely on the third floor, and it's GFA that currently is
21 below five feet, so it does not get included in the current
22 FAR calculation.

1 This particular image on page A13 kind of shows
2 where the addition is occurring, the area. There's one
3 small corner where there's a notched input that's taking
4 place.

5 So it's also going to reconfigure the home into
6 more of a townhouse style. It's particularly appealing to
7 the Bordens because it makes the rear unit where they intend
8 to live with access to a very nice yard feel frankly a lot
9 more like a single-family dwelling.

10 So the renovation itself won't change the number
11 of units. The front unit is the smaller of the two, it will
12 be a rental unit.

13 The Bordens intend to live here. They have
14 enjoyable the relationships with two sets of tenants since
15 they've owned the property, and were expressing regret that
16 their current tenants are going to have to relocate during
17 construction, but they're optimistic that they will continue
18 to have a second.

19 So their intention is to maintain it as a second
20 family -- a two-family dwelling, and the dimensional
21 information has the detail, as it represents an additional
22 square foot of approximately 390 square feet of additional

1 GFA.

2 One thing about the project itself or the
3 application is it enjoys widespread abutter support. We
4 have filed 10 letters from abutters on all sides, including
5 across the street, the former mayor.

6 CONSTANTINE ALEXANDER: We have them in our files,
7 so.

8 JAMES RAFFERTY: His letter counts twice, he tells
9 us. So we were grateful to receive it. But it is a -- it's
10 a neighborhood that the Bordens really enjoy. They've
11 established strong relations there, and are excited about
12 the opportunity to create a home for themselves and their
13 growing family.

14 CONSTANTINE ALEXANDER: And it's closer from
15 Washington, too. What more could you ask for?

16 JAMES RAFFERTY: Not for long. He's going to
17 Fresh Pond Market.

18 CONSTANTINE ALEXANDER: Is he going to, or is he
19 going to keep the old --

20 AUDIENCE: Keeping the old one.

21 CONSTANTINE ALEXANDER: I think he's going to keep
22 both.

1 JAMES RAFFERTY: I'll have to speak to him.

2 COLLECTIVE: [Laughter]

3 JAMES RAFFERTY: Okay, but yes, you're right. It
4 is supposed to -- the street gets a little challenging down
5 there, but it is a great neighborhood, and it's a type of --
6 a pattern of redevelopment that's occurring with older, two-
7 family houses. And it really is an exciting opportunity,
8 and the Bordens are very eager and optimistic.

9 The design I think the Board would have to agree
10 is especially thoughtful. There are some new windows being
11 added. They're relocated, but if you compare the existing
12 elevation to this elevation, one side of the house, the
13 right-hand side, the non-Broadway side, is a little shy in
14 the rear as well.

15 But the overall net change is probably -- it's
16 probably little, in fact in terms of the increased number of
17 the openings from a cursory analysis, it looks to be
18 slightly less than what's there now

19 But both abutters on those sides of the house,
20 including the rear abutter, have sent letters of support.
21 So they have no -- the rear -- the back yard is 18 feet
22 deep, so technically the wall there should be 25.

1 But the reorganized windows are no -- well, there
2 are a few more on the back, but there's no real privacy
3 impact, and the -- as I said, the rear abutters have been
4 very supportive of the project.

5 We have Ms. Semmes who has boards and designs, if
6 you'd care for her to walk you through that, or --

7 ANDREA HICKEY: Do you have anything different
8 than what's in our file?

9 COLLECTIVE: No, no.

10 CONSTANTINE ALEXANDER: Okay. While Mr.
11 Sullivan's looking that over, anyone here -- I'll open the
12 matter up to public testimony. Anyone here wishing to be
13 heard on this matter? Apparently not.

14 As Mr. Rafferty has said, there are numerous
15 photos of support, which I'll identify in a second when Mr.
16 Sullivan gives me back the file, and while we're waiting,
17 let me -- before we go into the vote, let me identify the --
18 in some fashion --

19 ANDREA HICKEY: Excuse me --

20 CONSTANTINE ALEXANDER: You're seeking two forms
21 of relief?

22 BRENDAN SULLIVAN: I don't mean to disparage your

1 --

2 JAMES RAFFERTY: The windows I'm referred to are
3 subject to the special permit?

4 BRENDAN SULLIVAN: I don't mean to disparage your
5 house, but that house has always sort of reminded me of the
6 style of a railway station where that -- sort of flat --

7 COLLECTIVE: Yeah.

8 BRENDAN SULLIVAN: -- rail type thing, you know?
9 So -- and it sort of stood out as being unique --
10 distinctive.

11 COLLECTIVE: [Laughter]

12 JAMES RAFFERTY: Thank you.

13 BRENDAN SULLIVAN: And possibly in the wrong way.
14 Because then, it -- it's exactly --

15 COLLECTIVE: Yeah, we see.

16 BRENDAN SULLIVAN: So its distinctiveness prevents
17 you from accessing, you know, that space without having to
18 blow it out. Anyhow.

19 JAMES RAFFERTY: And the profile of nearly all the
20 other houses on the street are --

21 BRENDAN SULLIVAN: Correct.

22 JAMES RAFFERTY: -- more typical of gable, which

1 is like Ms. Semmes has designed.

2 CONSTANTINE ALEXANDER: Well, as I mentioned, we
3 do have, there are -- I mean, as you mentioned, there were
4 letters of support. There was one from David P. Mayer, who
5 resides at 120 Appleton Street.

6 "I respectfully write to you as a 33-year resident
7 of 120 Appleton Street. I live diagonally across the street
8 from Kevin Borden and his family. I am pleased to offer my
9 full support for the variance that Mr. Borden and his wife
10 are requesting for their property at 133 Appleton Street.

11 "I've had the opportunity to review Mr. Borden's
12 plans and blood that the project, as designed, gives both
13 the neighborhood scale and character.

14 "These alterations will allow Kevin and his family
15 to continue to live and raise a young family in Cambridge,
16 while enjoying the comforts and conveniences of modern day
17 living."

18 CONSTANTINE ALEXANDER: And we have a letter of
19 support from Peggy Harney, H-a-r-n-e-y, who resides at 132
20 Appleton Street. She writes to support her full support for
21 what is being proposed.

22 And then we have a formal petition signed by

1 Candace Dunlock, M.J. Jensen and John Jensen, who reside at
2 270 and 232 Huron Avenue. Again, if I haven't said that,
3 they write they have no objections.

4 Another one, similar document, from Laurence -- L-
5 a-u-r-e-n-c-e Roy Palmeri, if I got it right, P-a-l-m-e-r-i.
6 Another from Kathleen with a K Garvey, who resides at 42
7 Blakeslee Street, and from Patricia Chappell -- C-h-a-p-p-e-
8 l-l -- who resides at 264 Huron Avenue, Number 1. And
9 another from Frederic Hewett, H-e-w-e-t-t and Cheryl, if I
10 get it right, Mazaik -- M-a-z-a-i-k -- who resides at 127
11 Appleton Street #2. And again from Angela Cheng and
12 Christopher, if I get it right, Sokolonski -- S-o-k-o-l-o-n-
13 s-k-i, who resides at 264 Huron Avenue.

14 Continuing with one from Victoria Oliva, O-l-i-v-
15 a, who resides at 40 Blakeslee Street, and one more time
16 from Emily Hom, H-o-m, who resides at 258 Huron Avenue. So
17 there is substantial and unanimous neighborhood support for
18 the project. Ready for a vote, or ready for a discussion?

19 COLLECTIVE: Ready.

20 CONSTANTINE ALEXANDER: Ready for a vote. We're
21 going to do the variance first. The Chair moves that we
22 make the following findings with regard to the variance

1 being sought: That a literal enforcement of the provisions
2 of the ordinance would involve a substantial hardship, such
3 hardship being that this structure is in need of a redesign
4 and expansion.

5 And this would apply not only to the current
6 occupants, but whoever may occupy this structure in the
7 future; that the hardship is owing to the shape of the lot,
8 and that relief may be granted without substantial detriment
9 to the public good, or nullifying or substantially
10 derogating the intent or purpose of the ordinance.

11 And to this, note that it is unanimous and
12 substantial neighborhood support for the project, and what
13 it will do, it will allow a young couple to remain in the
14 city in the structure they have been occupying so far, and
15 which they want to continue to occupy.

16 So on the basis of all these findings, the Chair
17 moves that we grant the variance requested on the condition
18 that the work proceeds in accordance with plans prepared by
19 Amy Semmes, S-e-m-m-e-s, dated 10/31/19, the first page of
20 which has been initialed by the Chair. All those in favor,
21 please say, "Aye."

22 THE BOARD: Aye.

1 [All vote YES]

2 CONSTANTINE ALEXANDER: Five in favor, variance
3 granted.

4 Moving onto the special permit, the Chair moves
5 that we make the following findings with regard to the
6 special permit being sought -- and this special permit,
7 again, this with regard to new window openings as part of
8 the construction project -- that we make the following
9 findings. The findings are as follows:

10 That the requirements of the ordinance cannot be
11 met unless we make, we grant the special permit.

12 That traffic generated or patterns in access or
13 egress resulting from these change of window openings will
14 not cause congestion, hazard, or substantial change in
15 established neighborhood character.

16 And again, I will refer back to letters of support
17 for the relief being sought tonight. I read into the file,
18 or to the record, with regard to the variance that we
19 granted.

20 That the continued operation or development of
21 adjacent uses, as permitted in the ordinance, will not be
22 adversely affected by what is being proposed. And again, I

1 refer back to the support for the variance.

2 No nuisance or hazard will be created to the
3 detriment of the health, safety and/or welfare of the
4 occupant of the proposed use, or the citizens of the city.

5 And generally, what is proposed will not impair
6 the integrity of the district or adjoining district, or
7 otherwise derogate the intent and purpose of this ordinance.

8 So on the basis of all these findings, the Chair
9 moves that we grant the special permit requested, again, on
10 the condition that the work proceed in accordance with plans
11 referred to with the variance we earlier granted. All those
12 in favor, please say, "Aye."

13 THE BOARD: Aye.

14 [All vote YES]

15 CONSTANTINE ALEXANDER: Five in favor, good luck.

16 COLLECTIVE: Thank you very much.

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2 (8:49 p.m.)

3 Sitting Members: Constantine Alexander, Brendan Sullivan,
4 Janet Green, Jim Monteverde, Andrea Hickey

5 CONSTANTINE ALEXANDER: The Chair will now call
6 Case Number 017198 -- 32-34 Sparks Street. Anyone here
7 wishing to be heard on this matter?

8 LEON NAVICKAS: Good evening and thank you for
9 having us. My name is Leon Navickas, and this is Sophia
10 Navickas, N-a-v-i-c-k-a-s. We are here to request a special
11 permit to enlarge three basement windows on a property that
12 we're renovating for the purpose of increasing light,
13 ventilation and egress for life safety.

14 CONSTANTINE ALEXANDER: Did you -- are you aware
15 of a letter of opposition that's in our files?

16 LEON NAVICKAS: No, I'm not.

17 CONSTANTINE ALEXANDER: Okay. It's from Tony --
18 I'm sorry, Toby Rodes, R-o-d-e-s.

19 LEON NAVICKAS: Okay.

20 CONSTANTINE ALEXANDER: And she expresses the view
21 that -- first of all, why do you need three windows? And
22 further, but I think more important is those window openings

1 are only 18 inches from the window well, 18 inches that --
2 there's a four-foot fence that is 18 inches from the window
3 wall. So how is it going to -- if the fence is that close,
4 how is it providing --

5 LEON NAVICKAS: I'm sorry, I don't believe there's
6 a fence involved in this project.

7 CONSTANTINE ALEXANDER: I'm sorry?

8 LEON NAVICKAS: There's no fence involved in this
9 project.

10 CONSTANTINE ALEXANDER: No, but there is a -- I'm
11 sorry, I see you have your hand up.

12 TOBY RODES: I'm happy to clarify that we are the
13 letter writers. We're happy to let them speak, and then
14 voice our concerns.

15 CONSTANTINE ALEXANDER: Let's do that. Fine.
16 Thank you. You see, the message in any event is there is
17 some opposition, to what you want to do.

18 LEON NAVICKAS: Okay. So what we're trying to do
19 is basically increase the size of these basement windows.
20 The increase in size is all going to be below grade, and
21 they'll be enclosed by window wells, which --

22 CONSTANTINE ALEXANDER: Originally, your plans you

1 submitted to the building Department had one window wall.

2 LEON NAVICKAS: That's correct.

3 CONSTANTINE ALEXANDER: And why -- it's okay, you
4 can change it, but why?

5 LEON NAVICKAS: Because we're in the process of
6 renovating, and as we are doing that project, we see the
7 opportunity to do some other things that we didn't
8 anticipate.

9 CONSTANTINE ALEXANDER: What are the other things?

10 LEON NAVICKAS: Increasing the window sizes and
11 bringing more light into that area.

12 CONSTANTINE ALEXANDER: Okay.

13 LEON NAVICKAS: I mean, it's -- and so if we get
14 permission for these windows, we'll obviously make the
15 change to the plans and go to the Historical, Neighborhood
16 Conservation Commission and so forth.

17 CONSTANTINE ALEXANDER: They also, by the way --
18 I'm sure the folks will speak to it as well, that they see
19 some safety issues with what you want to do. "The window
20 well will be 18 -- I'm reading from the letter -- will be 18
21 inches from our property line, and less than 10 feet from
22 our building."

1 And what the petitioner did not note, is that
2 there's an existing walkway that is 36 inches from the
3 window well." And their concern is safety. When they
4 excavate for the window wells, -- I'm going to just read
5 father what it said, without comment --

6 "The one current excavation begun prior to the
7 submission of this petition for a special permit is vertical
8 in unsupported earth three feet deep, eight inches from the
9 property line, and 26 inches from our existing walkway.

10 "We have been informed that, 'a vertical cut in
11 the earth that is deeper than the horizontal distance risks
12 undermining the walkway and support.'

13 "That support should have been provided to avoid
14 loss of compaction under the walkway. The normal geotech
15 specs says that a 2:1 slope is a maximum, and so three feet
16 down should be six feet away, not eight inches." That's the
17 comment. You want to address that?

18 LEON NAVICKAS: I'm not an engineer, so I really
19 can't address that.

20 CONSTANTINE ALEXANDER: Okay.

21 LEON NAVICKAS: But I will say that we have begun
22 to do some of the excavation work; that is absolutely

1 correct. That excavation work is being protected by some
2 fencing, so that we can avoid any accidents that could
3 potentially occur by people inadvertently stepping into the
4 hole.

5 CONSTANTINE ALEXANDER: But I think the point was,
6 the walkway on their property, which is the other side of
7 the fence --

8 LEON NAVICKAS: Yes.

9 CONSTANTINE ALEXANDER: -- will collapse.

10 LEON NAVICKAS: No, well, we're planning to put
11 window wells in that would include a six-inch wide concrete
12 barrier that will provide the necessary support, and it's
13 fully code-complaint from the standpoint of being what the
14 engineer, or architect, has specified. So I believe that's
15 going to be fine.

16 And also, I believe I mentioned to Mr. Rodes that
17 we intend to cover these window wells with something that
18 not only can be removed if it has to be by people who are
19 maybe trying to get out from inside, because an emergency,
20 but also protect anyone from stepping in.

21 So I don't believe there should be any risk of any
22 kind of hazard from anyone walking by and accidentally

1 falling in.

2 BRENDAN SULLIVAN: So it's a grate? You're going
3 to put a grate over them?

4 LEON NAVICKAS: Yes. A grate or some other kind
5 of structure. We haven't yet finalized that aspect of the
6 plan. But absolutely, because of the walkway, we don't want
7 to have the liability or the risk of having anyone
8 inadvertently trip and fall. I want to take care of that.

9 CONSTANTINE ALEXANDER: Anything further you want
10 to say at this point, or -- it's up to you. Do you want to
11 reserve some --

12 LEON NAVICKAS: No, I think that's pretty much our
13 thing.

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

16 ANDREA HICKEY: I just have one question.

17 CONSTANTINE ALEXANDER: Sure.

18 ANDREA HICKEY: What's the intended use of the
19 basement area, once it's sort of past all this --

20 LEON NAVICKAS: It'll be building space.

21 ANDREA HICKEY: Okay. As part of the first-floor
22 unit?

1 LEON NAVICKAS: Yes.

2 ANDREA HICKEY: Okay.

3 CONSTANTINE ALEXANDER: Not a separate apartment?

4 LEON NAVICKAS: No. It's not a separate
5 apartment.

6 ANDREA HICKEY: Is there a bathroom in the
7 basement?

8 LEON NAVICKAS: Yes.

9 CONSTANTINE ALEXANDER: I'll open the matter up to
10 public testimony. Want to come forward? Or you can use
11 this if you like, or you can use that mic, whichever.

12 TOBY RODES: Use this one. My name is Toby Rodes,
13 abutter, 36-38 Sparks Street. The spelling of my last name
14 is R-o-d-e-s, no h. Chairman, Board, I'm here to say that
15 the Navickases have embarked upon an ambitious project, and
16 they're very -- there are several components of it which
17 we've been well informed of and we're quite supportive of.

18 So I just would like to be clear that we are not
19 --quote, unquote -- "on a warpath." Our primary concern
20 here is safety, and the protection of our property rights,
21 as contiguous property.

22 As you are well aware, space is tight in

1 Cambridge, and it helps to think about safety. So for us,
2 our hierarchy of safety is in this petition asking for three
3 egress windows.

4 Our question that we'd like you to consider is --
5 we have the right to put up a four-foot fence that doesn't
6 exist, but we have the right to do it -- and so, our
7 question is, does -- do these windows work as a safe egress,
8 should we exercise our property rights and put up a fence,
9 or has our property been sort of privatized?

10 In other words, the safe egress of whoever happens
11 to be in these living spaces, do they need our property to
12 make a safe egress? And that's a serious concern for us.
13 So that's number 1.

14 A corollary to that is, you know, the plans have
15 been evolving, we understand that. We saw in this
16 submission some air conditioner pads. Those haven't been
17 through any other review process. They're sort of new
18 information to us. Where they're placed, should we put up a
19 fence? Might block a potential alley for egress.

20 If we have three of these, and two people are out,
21 and we have open holes and there's smoke, I think we've got
22 a real -- something that needs to be considered.

1 CONSTANTINE ALEXANDER: The problem with -- the
2 consideration, I think your point is for them. I mean,
3 obviously you have a right to put up a four-foot fence
4 should you choose. And that might affect the safety if you
5 will that's going to be created by the window wells. We'll
6 have to take that into consideration.

7 TOBY RODES: Well, my question after having been
8 guided by someone well versed in these rules is, you know,
9 it might be sensible to have the Fire Department consider
10 this from a safety perspective, and whether they would have
11 sufficient ability to access these living spaces, should we
12 put up a wall, given that it's a very hard to access place
13 -- not only to exit, but perhaps to have fireman enter this
14 piece --

15 CONSTANTINE ALEXANDER: I would think it's 18
16 inches from the wall, the fireman's going to have a tough
17 time getting down that pathway.

18 TOBY RODES: Well, this is --

19 CONSTANTINE ALEXANDER: Or people emerging from
20 the window wells, I don't have a problem with it.

21 TOBY BODES: Agree on both points. And so,
22 without trying to sound hard nose, we're just trying to

1 figure out if our property is actually essential to the
2 safety egress, the safe egress of this living space, and
3 whether that constitutes a hazard to those that are living
4 in that space, or it constitutes a -- you know, an
5 imposition on us as the contiguous.

6 CONSTANTINE ALEXANDER: You have a right to do
7 with your property what the law allows you to do, which
8 includes, I presume, a four-foot fence. They have a right
9 to put window wells in with our approval.

10 TOBY RODES: Mm-hm.

11 CONSTANTINE ALEXANDER: Have you had a discussion
12 with -- I mean, to try to come up with solutions that
13 satisfy both of you?

14 TOBY RODES: There's some complicated history
15 here, where we've made some best efforts to share
16 information, and owing to unfortunate communication, I
17 didn't know about these window wells, until I almost fell in
18 the hole on the edge of my property.

19 JANET GREEN: A bad start.

20 TOBY RODES: Not the best start, no.

21 CONSTANTINE ALEXANDER: Well, without it make
22 sense, you know, if you're amenable, to continue this case,

1 to allow you folks to have some -- maybe you can do it
2 tonight, but if not some other time, to have some
3 discussion, some frank exchange of views, and then come back
4 with whatever you want to do, and you can either agree or
5 not agree or whatever?

6 TOBY RODES: I think that sounds amenable to us.

7 LEON NAVICKAS: Well, I'd like to respond to your
8 --

9 CONSTANTINE ALEXANDER: Go ahead. That's what
10 we're here for.

11 LEON NAVICKAS: First of all, I appreciate Mr.
12 Rodes's concern for us --

13 CONSTANTINE ALEXANDER: [Laughter].

14 LEON NAVICKAS: -- having an issue with egress
15 problems. But we don't think that's an issue.

16 CONSTANTINE ALEXANDER: So you're comfortable with
17 if there's a four-foot fence sitting 18 inches from your --

18 LEON NAVICKAS: Yes.

19 CONSTANTINE ALEXANDER: -- window wells, that's
20 okay with you?

21 LEON NAVICKAS: Totally comfortable with that,
22 because first of all these window wells are going to be

1 covered with some kind of grate. So once they're open,
2 people can walk from one to the next to the other. There
3 are ways to get out. There's not a problem in terms of
4 getting it, both in the front of the building and in the
5 rear of the building.

6 So I think, you know, I'm not concerned about
7 that. If there were a liability issue for me, I would
8 certainly be --

9 CONSTANTINE ALEXANDER: So you see no need to have
10 further -- to continue this case and have further
11 discussions with your neighbors?

12 LEON NAVICKAS: Well, I would like to have an
13 amicable arrangement --

14 CONSTANTINE ALEXANDER: I hope so.

15 LEON NAVICKAS: -- arrangement where something
16 works, and I'm not objecting to a fence, if that's what he
17 wants to do. And if he's saying that he's concerned about
18 my egress plans in the case of an emergency, I'm saying I'm
19 not. So I appreciate that, but --

20 ANDREA HICKEY: So I have a concern about setback.
21 So I think the setback is measured from the outer plane of
22 the window well. And if there is a very narrow space

1 between the outer plane of the window well and the lot line,
2 don't we have an issue there with compliance?

3 LEON NAVICKAS: So maybe we can get an expert
4 opinion on that, but I believe the window wells, because
5 they are below grade, and there's no projection, they're not
6 -- there's no setback requirements for window wells.

7 ANDREA HICKEY: May I see the site plan?

8 BRENDAN SULLIVAN: Yeah. If you were to put a
9 railing around them, then that triggers a violation of
10 zoning.

11 LEON NAVICKAS: That's right.

12 ANDREA HICKEY: Or a grate that's above grade in
13 any way, or a bubble that's above grade.

14 TOBY RODES: If I could add, I think that we're
15 pleased that -- we're pleased that they're thinking --
16 ultimately that's largely about trip hazard, it seems to me.

17 CONSTANTINE ALEXANDER: A big what?

18 TOBY RODES: Trip hazard.

19 CONSTANTINE ALEXANDER: Trip hazard.

20 TOBY RODES: So that's looking -- my father
21 happens to live on the first floor, and so I -- this is why
22 I'm concerned. We've got garden parties and a lot of people

1 with walkers. So that these grates -- it's a nice
2 concession, and it helps all the trip hazard.

3 What I'm worried about is the egress hazard too.
4 And the reason why I worry about it, is I think about the
5 way water flows. It always seeks the fastest way out. And
6 right now we don't have a fence.

7 If I'm getting out from underneath that basement
8 living space, I'm definitely running into my yard -- my yard
9 -- to get out.

10 What I'm worried about is if I leave a rake and
11 somebody trips in my property getting out of that living
12 space, am I liable? Again, it comes back to this concept,
13 has my property been explicitly or quasi-privatized for
14 preventing a hazard of the use of that living space?

15 JANET GREEN: So this is not an apartment, right?
16 In the basement?

17 CONSTANTINE ALEXANDER: No.

18 JANET GREEN: Presumably it's like a play area for
19 children -- I don't know if you have grandchildren, whoever
20 you have, or something like that that would be downstairs.
21 There's no kitchen, there's no fireplace, there's no
22 anything like that?

1 ANDREA HICKEY: And I don't see in the City
2 Assessor's records that they recognize a bathroom down
3 there. The house is listed in Assessor's, which is not
4 necessarily controlling as a three-bathroom house being one
5 bathroom on each level. So just a point of information.

6 JANET GREEN: So but anyway my point is about how
7 you would think about fire, and how you would think about an
8 emergency. There doesn't seem to be anything in that space
9 where that would be likely to happen. I mean, not that it
10 couldn't, but I think you can always --

11 TOBY RODES: A boiler and furnace, and all systems
12 -- you know, the things that cause fire are electric and
13 where --

14 JANET GREEN: Yeah.

15 TOBY RODES: -- heat happens.

16 LEON NAVICKAS: The building is going to be
17 sprinkled, with an NFPA 13-compliant sprinkler system.
18 That's better than every other house I think adjacent to
19 this one. It's going to be all brand-new construction.
20 Everything will be new and modern.

21 ANDREA HICKEY: And you don't plan any bedrooms in
22 that basement area?

1 LEON NAVICKAS: There will be bedrooms in the
2 basement, yes. That's why the egress is important. But
3 also, I think light and ventilation is equally important,
4 and I don't -- we don't expect those window wells to be used
5 for egresses, frankly.

6 TOBY RODES: Which is why I'm concerned.

7 LEON NAVICKAS: It's an emergency belt and
8 suspenders design. There's an egress through a doorway
9 that's also possible from that area as well.

10 So, again, we going above and beyond what is
11 needed here. We try to do something above and beyond for --
12 to make the building better, safer, cleaner, nicer to live
13 in, and so forth.

14 And on the exterior, where these windows are going
15 to be expanding in size, which is what we're asking for --
16 we're asking to expand the size of the window. The window
17 well, I believe, is by right, if I'm not mistaken. We can
18 dig window wells below grade up to the property line by
19 right.

20 So --

21 TOBY RODES: Sorry, point of clarification --

22 LEON NAVICKAS: -- that's kind of where we are --

1 TOBY RODES: -- up to the property line? Not by
2 right, this is -- that's why we're here. That's a special
3 permit. You --

4 LEON NAVICKAS: No, it's the windows.

5 TOBY RODES: It's the windows.

6 LEON NAVICKAS: -- that are here for the -- we're
7 here to talk about the windows. Increasing the size of the
8 windows, that's what's triggering the need for a special
9 permit; not the window wells. The window wells are -- and
10 oh, by the way, they're going to be, you know --

11 TOBY RODES: Right.

12 LEON NAVICKAS: -- code-complaint for egress
13 purposes. And you're also going to be 18 inches from the
14 property line. They're going to be three feet wide.
15 There's plenty of room for people to get in and out and by,
16 especially when they're covered with grates.

17 And if there's a four-foot fence in front of it,
18 we don't really mind. If that's what would make the
19 neighbors feel better, no objection.

20 CONSTANTINE ALEXANDER: What did you --

21 TOBY RODES: What I've highlighted in orange are
22 the -- and I ask this as a question -- are the air

1 conditioner paths that appear to be at the end of this 18-
2 inch alleyway that I think would impair egress, should we
3 put up a fence?

4 And so, I'm glad you're comfortable with it. But
5 if you build in such a way and we decide to exercise a right
6 to put up a fence, and people are running in an 18-inch
7 smoky alley, and somebody dies, I'm glad you don't think
8 that's on you.

9 CONSTANTINE ALEXANDER: Well it's not. In fact,
10 it's not on you. If he wishes to do that and run that risk,
11 and that risk comes to pass, that's his problem.

12 TOBY RODES: I -- so you're telling me that I'm
13 forcing that risk upon him by exercising my property --

14 CONSTANTINE ALEXANDER: Well, no, I don't mean it
15 as dispositive. What I'm saying is that --

16 JANET GREEN: It's his choice --

17 CONSTANTINE ALEXANDER: Yeah.

18 JANET GREEN: -- to make his risk assessment for
19 him on his property.

20 TOBY RODES: Fair enough.

21 JANET GREEN: I mean, that's what he's -- I think
22 that's what he's asking you.

1 CONSTANTINE ALEXANDER: Exactly.

2 TOBY RODES: And I guess what I'm saying is --

3 BRENDAN SULLIVAN: I think what you're -- if I
4 read between the lines is that by his project, by his
5 putting in these window wells by the pads for the condensers
6 and what have you, it's restricting the use of his property
7 along there, and that anybody who happens to have to travel
8 -- emergency or by chance -- then without the fence there,
9 it winds up on your property.

10 And, you know, why should my property now become
11 public property because of the actions of this?

12 TOBY RODES: Precisely my point.

13 BRENDAN SULLIVAN: Yeah.

14 TOBY RODES: That my property is --

15 CONSTANTINE ALEXANDER: The solution to that is
16 put up a fence.

17 JANET GREEN: Put up a fence -- yeah. Put up a
18 fence.

19 CONSTANTINE ALEXANDER: If you're concerned about
20 that, that people are going to trespass over your property,
21 put up a fence that prevents that. I mean, nothing stops
22 you from doing that. It may minimize -- in your opinion, at

1 least, maybe actually, the utility of those window openings,
2 but that's his issue. If he wishes to deal with it, he
3 does.

4 TOBY RODES: And I will accept that. And then I
5 should just come back to the question about how this space
6 is being used. We now have -- I guess optionality. We have
7 six window wells. There are three windows in the basement
8 per plan.

9 The building plan presently in front of ISD
10 includes just the one window well, and the two others -- one
11 was specified to be blocked in the plans, and then the other
12 was to remain as is.

13 Just -- we've been through four iterations of
14 plans, some of them we've gotten by accident, some of them
15 by going to the ISD. Given the -- just how tight some of
16 these tolerances are, and the fact that we anchor on, "there
17 will be one." And then all of a sudden, we come to a
18 hearing and then there's going to be three.

19 CONSTANTINE ALEXANDER: So they're entitled to
20 change their mind and --

21 TOBY RODES: Yeah.

22 CONSTANTINE ALEXANDER: -- plans before us tonight

1 and should we grant relief, the plans they'll have to comply
2 with, are the ones with the three window wells. They may
3 have had an earlier iteration with one window well, but
4 that's ancient history.

5 TOBY RODES: Okay. So I leave you with one last
6 question. Is the consideration of whether this plan is a
7 hazard to the occupants of this building something for you
8 to consider?

9 CONSTANTINE ALEXANDER: That's for us to consider.

10 TOBY RODES: Yeah.

11 CONSTANTINE ALEXANDER: It's nice of you to
12 volunteer it, but it's our call --

13 TOBY RODES: Right.

14 CONSTANTINE ALEXANDER: -- and his call, not your
15 call.

16 TOBY RODES: Very good.

17 LEON NAVICKAS: Well, we'll be willing to make a
18 concession, if he's willing to make a concession, which is
19 that we can -- we could live with one window well.

20 CONSTANTINE ALEXANDER: I going to suggest that at
21 some point, but you beat me to the punch.

22 LEON NAVICKAS: I'm trying to --

1 CONSTANTINE ALEXANDER: I understand.

2 LEON NAVICKAS: -- resolve tonight in an amicable

3 --

4 CONSTANTINE ALEXANDER: We don't have the
5 dimensions of that. What's the dimensions of that window
6 well?

7 TOBY RODES: I believe I submitted the plans to
8 you and --

9 CONSTANTINE ALEXANDER: The only ones we have are
10 the ones that are before us tonight with the three window
11 wells.

12 TOBY RODES: Right, so --

13 ANDREA HICKEY: So if you were to keep one --

14 TOBY RODES: -- so --

15 ANDREA HICKEY: -- it would be the same position
16 as one of the three proposed?

17 LEON NAVICKAS: That's correct.

18 CONSTANTINE ALEXANDER: And the same dimension?

19 The same size.

20 LEON NAVICKAS: That's correct.

21 TOBY RODES: Right.

22 ANDREA HICKEY: And you would just cross out your

1 request for two, presumably?

2 CONSTANTINE ALEXANDER: Okay.

3 LEON NAVICKAS: Yes.

4 TOBY RODES: That's --

5 CONSTANTINE ALEXANDER: Thank you.

6 JANET GREEN: -- with the two additional?

7 TOBY RODES: And just to confirm, that would be
8 the one where you've already started the uniform --

9 LEON NAVICKAS: That's correct.

10 TOBY RODES: To be honest, that's a fine solution.

11 And, you know, we would appreciate that, and as we have
12 interacted, we have been supportive of a lot of things that
13 you've shown us. It's been the surprises that maybe bring
14 us here.

15 Could I add in a neighborly way more disclosure of
16 your iterative process, so that we don't suffer more of
17 these surprises. I would be grateful.

18 CONSTANTINE ALEXANDER: I'm sorry to interrupt --
19 if we grant relief tonight, it would be tied to these plans,
20 with one window well.

21 TOBY RODES: Yes.

22 CONSTANTINE ALEXANDER: So if he wants to change

1 it, he has to come back before us, and you would get notice.

2 So you don't have to worry about what you're worried about.

3 TOBY RODES: Without going into the history, that
4 would help me agree --

5 CONSTANTINE ALEXANDER: It's not about the history
6 --

7 TOBY RODES: -- to this right now. Yeah, and
8 that's right, I have forgotten about the history. There's a
9 lot I haven't introduced. And so, I will say let's move
10 forward. I agree this one window well to the plans as
11 before the ISD are acceptable to us.

12 CONSTANTINE ALEXANDER: Good. Thank you, and
13 thank you. We haven't granted relief yet, so it may be
14 premature.

15 TOBY RODES: Well, I'm --

16 CONSTANTINE ALEXANDER: Anyone else wishes to be
17 heard on this matter? Apparently not. Anything further you
18 want to say at this point?

19 LEON NAVICKAS: I would just appreciate your
20 serious consideration of our proposal.

21 CONSTANTINE ALEXANDER: You can assume that.

22 I will close public testimony. Discussion, or ready for a

1 vote?

2 BOARD MEMBER: Ready.

3 ANDREA HICKEY: I'm ready.

4 BOARD MEMBER: I'm ready.

5 ANDREA HICKEY: So are we voting on a --

6 CONSTANTINE ALEXANDER: One window.

7 ANDREA HICKEY: -- a single window, and if so,
8 which one.

9 CONSTANTINE ALEXANDER: Would it make a
10 difference, if one of the three --

11 JANET GREEN: No, no --

12 LEON NAVICKAS: We dug a hole.

13 JANET GREEN: -- because he said that they've
14 already surveyed.

15 LEON NAVICKAS: So the one we would prefer is the
16 one that we've already started, which is up against the rear
17 of the property, by the driveway. It's the furthest from
18 Sparks Street.

19 JIM MONTEVERDE: Yeah, that's Sparks.

20 LEON NAVICKAS: Yes.

21 JIM MONTEVERDE: It's the one closer to the --

22 LEON NAVICKAS: In the northwest corner.

1 JIM MONTEVERDE: We just want to be able to
2 indicate it on the plans.

3 CONSTANTINE ALEXANDER: Well, I got it indicated
4 on the plans we have right here, sir.

5 LEON NAVICKAS: Yeah, exactly.

6 CONSTANTINE ALEXANDER: Okay. That's what I would
7 have thought. Got it. Okay. The Chair moves -- I think
8 we're ready for a vote, I hope we are.

9 COLLECTIVE: Yes.

10 CONSTANTINE ALEXANDER: The Chair moves that we
11 make the following findings with regard to the special
12 permit you are seeking: That the requirements of the
13 ordinance cannot be met unless we grant you the special
14 permit.

15 That traffic generated or patterns in access or
16 egress resulting from what is being proposed will not cause
17 congestion, hazard, or substantial change in established
18 neighborhood character, and with regard to hazard, this is -
19 - they're instructed that the plans that we will approve,
20 should we grant the special permit, will deemed, or it shall
21 be determined to not create hazard, as expressed by your
22 neighbor.

1 That the continued operation or development of
2 adjacent uses will not be adversely affected by what is
3 being proposed, and no nuisance or hazard will be created to
4 the detriment of the health, safety and/or welfare of the
5 occupant of the proposed use, or the citizens of the city.

6 And generally, what is being proposed will not
7 impair the integrity of the district or adjoining district,
8 or otherwise derogate the intent and purpose of this
9 ordinance.

10 So on the basis of all of these findings, the
11 Chair moves that we grant the special permit requested on
12 the condition that the work proceed in accordance with two
13 pages of plans initialed by the Chair, and except that with
14 regard to the first of those two plans, there will only be
15 one window opening, and it will be the one that's circled,
16 as I circled on the plan before us.

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

18 THE BOARD: Aye.

19 [All vote YES]

20 CONSTANTINE ALEXANDER: Five in favor, good luck.

21 LEON NAVICKAS: Thank you. And just to be clear

22 --

1 CONSTANTINE ALEXANDER: Sure.

2 LEON NAVICKAS: -- it's one on the north side.

3 TOBY RODES: You tell me.

4 LEON NAVICKAS: Well, there are other window wells
5 on the building that have already been approved.

6 CONSTANTINE ALEXANDER: I circled it. Did I
7 circle the right one?

8 LEON NAVICKAS: There will be a total of four
9 window enlargements, and ones (sic) are by right, because
10 they're facing the street.

11 JIM MONTEVERDE: Yeah.

12 CONSTANTINE ALEXANDER: One is circled.

13 JIM MONTEVERDE: The one we circled.

14 LEON NAVICKAS: Correct.

15 TOBY RODES: Yeah, that's correct.

16 CONSTANTINE ALEXANDER: That's it?

17 JIM MONTEVERDE: That's only one you're seeking
18 relief for?

19 LEON NAVICKAS: That is the one, yeah. Thank you
20 very much.

21 CONSTANTINE ALEXANDER: Thank you.

22 JANET GREEN: Thank you.

1 JIM MONTEVERDE: Take a brief recess?

2 CONSTANTINE ALEXANDER: Sure. We're going to take
3 a five-minute recess.

4 [BREAK]

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1 are not any windows being proposed, and this is a condition
2 that was already there.

3 Also, the size of the addition, we -- the initial
4 plans had a much deeper third-floor addition. We modified
5 that and pulled it back to preserve some light and air into
6 the adjacent structure.

7 So you'll see that the overall FAR went from 0.74,
8 which is allowed, to 0.68. So we've actually reduced the
9 size of the structure to accommodate this third floor.

10 But the nature of the relief is setback. So we
11 are conforming in terms of FAR, we're below what's allowed.
12 We're conforming in terms of height. But it's the setbacks
13 on all sides. And because the structure is narrow in and of
14 itself, any of the changes, except for those allowed by
15 under Article 8 request relief.

16 So we believe that it's going to be -- the
17 structure, part of the purpose is to provide a three-bedroom
18 dwelling. Oftentimes we will see a third bedroom off in the
19 basement. The goal was to bring all the bedrooms out of the
20 basement, and if you're going to build family housing, we
21 don't really put bedrooms in basements. They don't usually
22 end up for people with small children.

1 So under our current configuration we have three
2 bedrooms above grade. The basement is already close to
3 eight feet, but we're just proposing a playroom, not any
4 basement space in the lower level. We believe that the rear
5 yard is going to be a benefit.

6 I would say too, though, there's a park there on
7 the block. There's also another school on Elm Street. And
8 so, we do believe that this house once renovated will lend
9 itself to hopefully a family that moves in. But it will
10 have all the characteristics of the -- more generally the
11 single families you see on Elm Street.

12 CONSTANTINE ALEXANDER: So the current owner of
13 the property is not the person who occupies the structure
14 now? Somebody bought it and looking to renovate it and put
15 it on the market?

16 SEAN HOPE: For 174 Elm?

17 CONSTANTINE ALEXANDER: Yeah.

18 SEAN HOPE: So I am the current owner.

19 CONSTANTINE ALEXANDER: Oh, okay.

20 SEAN HOPE: When I filed initially, I had it under
21 agreement, I hadn't closed. So now I'm the owner of the
22 structure. No one's occupied it. The owner, just by the

1 way, back had been there for about 20 years.

2 CONSTANTINE ALEXANDER: But you can -- you plan to
3 -- continue to be the owner, at least for the foreseeable
4 future, or are you going to flip it?

5 SEAN HOPE: Yeah. So I'm developing the property.
6 So I'm not looking to occupy it as my personal residence.

7 CONSTANTINE ALEXANDER: Okay.

8 SEAN HOPE: I'm going to be renovating it and
9 listing it for sale.

10 CONSTANTINE ALEXANDER: Okay. Questions from
11 members of the Board?

12 COLLECTIVE: Uh-huh.

13 CONSTANTINE ALEXANDER: I'll open the matter up to
14 public testimony. Is there anyone here wishing to be heard?
15 A couple. One at a time. Sir, the blue shirt.

16 THE REPORTER: Spell your name and give your
17 address, please.

18 DAVID LASATER: D-a-v-i-d L-a-s-a-t-e-r. Address
19 is 194 Elm Street. That's it, right? So we were here about
20 10 years ago to do a similar renovation of one of the city
21 family houses about four houses down from this one.

22 Just really here, my husband and I, to voice our

1 tremendous support. This house is, as you can tell from the
2 pictures, it's been in horrible, dilapidated condition --
3 rats, safety hazards.

4 So when we saw these plans and then not only that
5 it was going to be fixed up and renovated, but actually
6 brought back to the character of the neighborhood, myself
7 and all the neighbors that we've spoken to are incredibly
8 excited about it. So I just wanted to lend my support.

9 CONSTANTINE ALEXANDER: Good. Thank you for
10 taking the time to come down. Sir you wanted to speak?

11 ERIC CONNALLY: Eric C-o-n-n-a-l-l-y, 217 Elm.
12 Just want to echo David's comments. We've worked with Adam
13 on that house seven years ago, I think, six years ago. A
14 really good experience. We're really excited to see this
15 house renovated.

16 The former owner, we know him, nice fellow, didn't
17 seem able to take care of it. It is really crumbling. It's
18 going to be really nice to have the Portuguese Center
19 redeveloped, and then this house redeveloped. It just feels
20 like it will be a real benefit to the neighborhood.

21 So we're expressing -- my wife and I -- our
22 complete support.

1 CONSTANTINE ALEXANDER: Thank you.

2 ERIC CONNALLY: Thank you.

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

5 ERIC CONNALLY: Thank you.

6 CONSTANTINE ALEXANDER: Anyone else wishes? Yes,
7 sir. No, no, no -- sir.

8 NELSON OLIVEIRA: I'm an owner of 178 Elm Street.
9 I work.

10 THE REPORTER: Spell your name, please?

11 NELSON OLIVEIRA: Nelson Olivera O-l-i-v-e-i-r-a.
12 I worked with Sean on some details. He made some
13 modifications on the plans.

14 He was good enough to work with me, so we dropped
15 the height of the building, and we removed the proposed deck
16 from some of those plans, and the first part we moved away
17 from the proper (sic) line. And that's it. So that's the
18 plan he has here, right?

19 SEAN HOPE: Yeah.

20 CONSTANTINE ALEXANDER: Thank you. Is there
21 anyone else? Anyone wishes to be heard? No, go ahead.

22 SEAN HOPE: Okay. So as Nelson mentioned, we met.

1 So we lowered the building height. So the plans you have in
2 front of you have a building height of 32 feet.

3 CONSTANTINE ALEXANDER: Right.

4 SEAN HOPE: We met a couple times. When he did
5 the actual measurements and noticed the impact of the light,
6 he requested that we lower the building another additional
7 foot to 31. So I actually have a copy of those plans here.
8 Unfortunately, it was after the Monday deadline.

9 But in reality, this is what it is. I mean the --
10 it's a foot different, and that's the only change that is to
11 the proposal.

12 CONSTANTINE ALEXANDER: Can you give me those?

13 SEAN HOPE: Sure.

14 CONSTANTINE ALEXANDER: For the file.

15 SEAN HOPE: And understanding the Board's
16 deadline, but this is one of those things that even on the
17 plans sometimes you can't quite fully understand the impact.
18 But the other changes are in the plans. So we did move the
19 deck. But we did change the -- move the deck, lowered the
20 high roof and lowered the low roof.

21 So really the changes that are on these plans
22 that aren't in the file are just the change of the foot of

1 the height of the building. This will reflect that.

2 CONSTANTINE ALEXANDER: Yep, good it. Okay.

3 Anyone else wishes to be heard on this matter? Apparently
4 not. Questions from members of the Board

5 COLLECTIVE: No.

6 CONSTANTINE ALEXANDER: We have letters of some
7 issue. For the record, we do have letters of support -- or
8 letters anyway, I think they are of support. We have a
9 letter from Eric Connally and -- yeah, I know, he already
10 spoke, and so, we don't need to read that letter. And I saw
11 another one, from Norbert --

12 AUDIENCE: Norbert --

13 CONSTANTINE ALEXANDER: Yeah, Norbert Malamud and
14 Lunden Nguyen, who resides at 209 Elm Street.

15 "I reviewed the plans for the proposed work by GCD
16 Architects at 174 Elm Street, and I support zoning relief
17 for this design. The proposed work is thoughtfully designed
18 to accommodate the content -- context -- of the
19 neighborhood, and will greatly enhance and improve the
20 streetscape.

21 "The current condition of the structure is
22 extremely poor, to the extent that it is an eyesore. The

1 addition will allow for a three-bedroom dwelling that will
2 accommodate a growing family. The lot is so narrow that any
3 functional addition would need zoning relief, because of the
4 required setbacks.

5 "Cambridge has a shortage of renovated family
6 properties, and a renovated 174 Elm Street will increase the
7 Cambridge aging housing stock."

8 CONSTANTINE ALEXANDER: And we have a letter from
9 Campbell Ellsworth. "I wish to express my -- " who resides
10 at 264 Norfolk Street "-- I wish to express my support for
11 this case. I live in the neighborhood at 267 Norfolk
12 Street. My children use the playground just right near this
13 property at the corner of Elm and Hampshire Street, and I
14 often walk down Elm Street heading towards Cambridge Street.

15 "I know this street well, and I am in full support
16 of the proposal. I've reviewed the drawings, and they are
17 well thought through. Most evident on this project is the
18 fact that this is a very narrow and undersized lot. And any
19 improvement beyond the existing envelope of the building
20 would require significant relief.

21 "The proposed plans make a very good use of a
22 challengingly narrow building (just over 15 feet wide) and

1 will create a wonderful home for a family. This is a
2 creative reuse of a piece of Cambridge's old housing stock,
3 which I fully support."

4 CONSTANTINE ALEXANDER: And I think just one more,
5 hopefully -- yeah, one more. A letter from Charles Cherney,
6 C-h-e-r-n-e-y. "I am the owner-occupant of 189 Elm Street
7 in Cambridge. I live there with my wife and our 17-year-old
8 daughter. We have lived in the house since just before our
9 daughter was born in 2002. I attended Harvard College and
10 then returned to Cambridge in 1997."

11 I guess that's supposed to give weight to his
12 comments.

13 "I am writing with regard to 174 Elm Street. I've
14 reviewed the drawings and support the overall proposal and
15 third floor addition. I find it is an improvement for the
16 streetscape and future occupants of the dwelling.

17 "The proposal is consistent with the pattern of
18 development of this street, that are mostly 2.5 to three-
19 story dwellings. But the renovated park at the corner and
20 the Cambridgeport School on Elm Street, I believe a three-
21 bedroom residence at this residence would be popular with
22 families with children. I have dreamed of a renovation like

1 this happening to this house for nearly 20 years. It has my
2 full support.

3 "As a local realtor, with a deep awareness of
4 residential properties, I believe this proposed plan is for
5 the best."

6 May I ask is he listing your property, or are you
7 --

8 SEAN HOPE: He's trying, he's trying.

9 CONSTANTINE ALEXANDER: That's the substance of
10 the comments. Discussion, or ready for a vote?

11 COLLECTIVE: Ready.

12 CONSTANTINE ALEXANDER: Everybody's ready. The
13 Chair moves that we make the following findings with regard
14 to the variance being sought:

15 That a literal enforcement of the provisions of
16 the ordinance would involve a substantial hardship, such
17 hardship being that this is a very old structure, built on a
18 very narrow lot and they proposal to use the structure for
19 family living is very, very restricted, and there is a need
20 for an expansion of the structure, which is the subject of
21 the variance proposal tonight.

22 That the hardship is owing to the shape of the

1 lot. It's a very, very narrow lot, which -- again, requires
2 just going up. Can't go sideways, not without bumping into
3 another house.

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

7 On the basis of all of these findings, the Chair
8 moves that we grant the relief being sought on the condition
9 that the work proceed in accordance with plans prepared by
10 GCD Architects dated November 18, 2019, as amended, or as
11 supplemented by two other pages of drawings -- again,
12 prepared by GCD Architects, both of which have been
13 initialed by the Chair, one of which is marked, A2.2, and
14 the other is marked A2.4.

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

16 THE BOARD: Aye.

17 [All vote YES]

18 CONSTANTINE ALEXANDER: Variance granted.

19 SEAN HOPE: Thank you.

20 CONSTANTINE ALEXANDER: Thank you.

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2 (9:36 p.m.)

3 Sitting Members: Constantine Alexander, Brendan Sullivan,
4 Janet Green, Jim Monteverde, Andrea Hickey

5 CONSTANTINE ALEXANDER: The Chair will now call
6 Case Number 017197 -- 18 Norumbega Street.

7 ALLISON HUBERLIE: 10 Norumbega. It's 8-10
8 Norumbega Street.

9 CONSTANTINE ALEXANDER: Oh. The advertisement
10 says just 10.

11 ALLISON HUBERLIE: Yeah, that's the unit that I
12 live in. Hi, everyone. My name is Ali Huberlie, or Allison
13 Huberlie. My husband and I --

14 THE REPORTER: Can you spell that?

15 ALLISON HUBERLIE -- Sorry?

16 THE REPORTER: Could you spell your name, please?

17 ALLISON HUBERLIE: Yep. A-l-l-i-s-o-n H-u-b-e-r-
18 l-i-e. We own the property at 8 through 10 Norumbega
19 Street. We reside in #10. My husband apologizes that he
20 can't be here tonight. He's a seventh-grade math teacher
21 and taking master's classes at night, so he's over at BU.

22 And I'm joined by our architect, David, and our

1 contractor, Paul. So the context for why we're here is we
2 purchased the property last January. It's our first home
3 together.

4 CONSTANTINE ALEXANDER: Congratulations.

5 ALLISON HUBERLIE: And we have a very old garage
6 on the property. It is unusable currently for anything but
7 putting trash cans in. There's no door on the front, and
8 it's extremely old and quite an eyesore.

9 And we are seeking relief to demolish the garage
10 and rebuild in exactly the same footprint and build more or
11 less an identical structure.

12 It is -- the reason that we are seeking relief is
13 because the structure of where the garage is currently is
14 very close to the neighbors, and also close to the house.
15 But if we were to conform the zoning, it would cease really
16 to be useable, because it would be so small you wouldn't be
17 able to fit cars.

18 We've spoken to many of our neighbors, and they're
19 supportive of this idea. It is not -- you know, it's really
20 going to prove an eyesore in the neighborhood. And it's
21 going to be an identical structure.

22 So it's not going to -- you know, pose any

1 hardship. In fact, if anything, it actually may be better,
2 because currently water runs off of the property onto our
3 neighbors' yards, and our architect has designed a structure
4 where the water will run off and collect. And so, we hope
5 that this will actually be an improvement to the
6 neighborhood.

7 CONSTANTINE ALEXANDER: Thank you. A nice,
8 succinct presentation. Questions from members of the Board?
9 I'll open the matter up to public testimony. Is there
10 anyone here wishing to be heard on this matter? Apparently
11 not, so I'll close public testimony. And I think the key
12 is, as you pointed out, is you've got to build on the exact
13 same footprint.

14 ALLISON HUBERLIE: Yep.

15 CONSTANTINE ALEXANDER: Okay. Ready for a vote, I
16 assume? I assume correctly.

17 BOARD MEMBER: Yes.

18 CONSTANTINE ALEXANDER: The Chair moves that we
19 make the following findings with regard to the variance
20 being sought: That a literal enforcement of the provisions
21 of the ordinance would involve a substantial hardship, such
22 hardship being is that the garage now is very old and in

1 dilapidated condition, and any rebuilding or even
2 modification of that garage on the site where it's now
3 located, which is the only place for a functional garage, is
4 necessary.

5 And that's the hardship. And it's a hardship
6 that's not peculiar to you or anyone who owned this
7 property. You need a new garage.

8 And that the hardship is owing to the shape of the
9 lot and where the current structure is located. It is
10 located too close to the lot line -- again, requiring the
11 need for zoning relief, and that relief may be granted
12 without substantial detriment to the public good, or
13 nullifying or substantially derogating the intent or purpose
14 of the ordinance.

15 So on the basis of these findings, the Chair moves
16 that we grant the variance requested on the condition that
17 the work proceeds in accordance with plans prepared by
18 Slocum -- Slocum, S-l-o-c-u-m Hall Design Group, Inc. dated
19 September 4, 2019, the first page of which has been
20 initialed by the Chair.

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

22 THE BOARD: Aye.

1 [All vote YES]

2 CONSTANTINE ALEXANDER: Five in favor, variance

3 granted.

4 ALLISON HUBERLIE: Thank you very much.

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2 (9:40 p.m.)

3 Sitting Members: Constantine Alexander, Brendan Sullivan,
4 Janet Green, Jim Monteverde, Andrea Hickey

5 CONSTANTINE ALEXANDER: The Chair will now call
6 Case Number 017169 -- 45 Orchard Street. Anyone here
7 wishing to be heard on this matter? Good evening.

8 THE REPORTER: Can you spell your name?

9 DIMITER KOSTOV: Hi, thank you. My name is
10 Dimiter Kostov. I'm the architect and the petitioner on
11 behalf of Abigail Lipson, the property owner. My name is
12 spelled D as in David -- i -- m as in Michael, i -- t as in
13 Tom -- e-r. Last name is Kostov -- K-o-s-t-o-v.

14 CONSTANTINE ALEXANDER: Okay. I was looking for
15 your name on the plans, and it's not on there.

16 DIMITER KOSTOV: I put it on the plans. I put it
17 on the application.

18 CONSTANTINE ALEXANDER: Okay.

19 DIMITER KOSTOV: Thanks.

20 CONSTANTINE ALEXANDER: Go ahead.

21 DIMITER KOSTOV: So we are here this evening
22 because there is an existing bar structure on the property

1 at 45 Orchard Street, which is currently overused.

2 It effectively is a glorified storage shed. It's
3 an original horse barn. It used to stand at 30 x 40 feet in
4 size. It was cut some time ago to half of that footprint.
5 But all of the original imprints from the horses are still
6 there.

7 The homeowner lives on the property. There is a
8 two-family home there currently. She occupies one of the
9 units. She is recently retired, and is looking to convert
10 the barn into a dwelling unit where she can move in. We
11 have designed the space with the intent for her to age in
12 place.

13 The space is a story and a half with a loft, and
14 we are proposing to add two small additions -- one to
15 accommodate some living space and staircase up, and the
16 second one what can be actually converted to a bedroom for
17 single-story living, where the bedroom on the second floor
18 can become a live-in help space.

19 We have looked at a couple of different options,
20 in how to design a space in a way that minimizes the impact
21 on the immediate abutters. The proposed additions to the
22 structure are single-story and are not really providing

1 obstruction to the views of the neighbors. The barn sits in
2 the rear of the property that is partially screened from the
3 street by the main structure. In the documents that we have
4 submitted, you can see what the view would be from the
5 street side.

6 The intent of the project is to optimize the
7 efficiency of the back-yard space, which be still used by
8 all three units. The -- as part of this application, we're
9 also requesting relief from adding the zoning required third
10 off-street parking space, so that we do not minimize that
11 free and open space.

12 That's the essence of the project.

13 CONSTANTINE ALEXANDER: Okay. Questions from
14 members of the Board at this point?

15 JIM MONTEVERDE: Just one.

16 CONSTANTINE ALEXANDER: Yeah.

17 JIM MONTEVERDE: Unless I missed it, I didn't see
18 any floor plans. I saw a site plan.

19 DIMITER KOSTOV: There are floor plans.

20 JIM MONTEVERDE: But I missed this?

21 DIMITER KOSTOV: Yes.

22 JIM MONTEVERDE: Because in the electronic version

1 I looked at, I didn't --

2 CONSTANTINE ALEXANDER: identify that?

3 JIM MONTEVERDE: Because I just wanted to
4 understand what it was that -- it's fine. Just what the
5 expansion to the barn --

6 ANDREA HICKEY: Yeah, you're right. The
7 electronic version doesn't have --

8 JIM MONTEVERDE: It didn't, yeah. That's why I
9 have copies here, so --

10 ANDREA HICKEY: But I saw the paper file.

11 JIM MONTEVERDE: Okay, right.

12 DIMITER KOSTOV: There are floor plans, yes. So
13 the two single-story additions that are proposed, one is on
14 the front of the barn.

15 CONSTANTINE ALEXANDER: That's going to have a
16 study. That's where --

17 DIMITER KOSTOV: That's the study, which will be
18 the future bedroom for her. And the second is a 10 x 14
19 bump out on the site with a shed, which is what you see in
20 the rendering. And that is to create the living space, so
21 that we have one open floor plan that is accessible.

22 CONSTANTINE ALEXANDER: Want some more time, or

1 I'll open up?

2 DIMITER KOSTOV: No, that's good.

3 CONSTANTINE ALEXANDER: We're going to have a lot
4 of comments here.

5 JIM MONTEVERDE: I know.

6 BRENDAN SULLIVAN: If you renovate this, and
7 you're moving into it, are you going to retain the other two
8 units, or are you going to have a condo situation?

9 ABIGAIL LIPSON: No, I'm planning to retain the
10 other two units. Right now they're split.

11 THE REPORTER: I'm sorry, could you just spell
12 your name?

13 ABIGAIL LIPSON: Sorry. I'm Abigail Lipson, last
14 name L-i-p-s-o-n, first name Abigail, A-b-i-g-a-i-l. And
15 right now, the front of the house, unlike some Cambridge
16 houses that are split horizontally, it's split front and
17 back so they're both vertical units. I live in the front
18 and rent the back. I would expect to rent those units.

19 BRENDAN SULLIVAN: Okay. So you'll maintain two
20 rentals, and --

21 ABIGAIL LIPSON: Live in them, yes.

22 BRENDAN SULLIVAN: -- then you'll move into this.

1 The purpose --

2 CONSTANTINE ALEXANDER: Of course, that can change
3 as another owner comes along.

4 BRENDAN SULLIVAN: I'm sorry?

5 CONSTANTINE ALEXANDER: Things all could change.

6 BRENDAN SULLIVAN: Well, yeah. And the purpose
7 for you moving into the barn is to -- I say the barn -- is
8 to utilize the structure and eliminate stairs?

9 ABIGAIL LIPSON: But there are stairs in the
10 proposed barn. So I don't really see the age in place
11 benefit, frankly.

12 JANET GREEN: Because the -- no, wasn't there the
13 piece in the front that's going to be the bedroom --

14 CONSTANTINE ALEXANDER: Right.

15 JANET GREEN: -- once she can no longer go up the
16 stairs, that's built into the --

17 BRENDAN SULLIVAN: Right.

18 JIM MONTEVERDE: Correct.

19 BRENDAN SULLIVAN: Okay.

20 ABIGAIL LIPSON: It's an open floor plan, with an
21 area that could be a bedroom.

22 CONSTANTINE ALEXANDER: Could be or will be?

1 DIMITER KOSTOV: It will be. It's currently
2 tagged as a study, but it will eventually become --

3 CONSTANTINE ALEXANDER: What's it going to be --
4 what the second floor off the top of the stairs being used
5 for?

6 DIMITER KOSTOV: Live-in help as necessary.

7 CONSTANTINE ALEXANDER: What?

8 DIMITER KOSTOV: It will be live-in help or a
9 guest space.

10 CONSTANTINE ALEXANDER: Live-in help?

11 JANET GREEN: It's sort of like sometimes people
12 are doing the basements now.

13 CONSTANTINE ALEXANDER: Sorry?

14 JANET GREEN: To be able to have that help.

15 CONSTANTINE ALEXANDER: Well, I was just
16 challenging the aging in place. The person who -- elderly
17 person doing the cleaning, wouldn't have to walk the stairs,
18 but not the petitioner.

19 JANET GREEN: Right.

20 CONSTANTINE ALEXANDER: Okay. Any other questions
21 for members of the Board at this point?

22 CONSTANTINE ALEXANDER: I will open the matter up

1 to public testimony. Anyone here wishing to be heard?

2 PAMELA WINTER: Yes.

3 CONSTANTINE ALEXANDER: Come up and speak into the
4 mic.

5 PAMELA WINTER: We have seven neighbors here,
6 actually, that --

7 CONSTANTINE ALEXANDER: Well, they're going to
8 have the opportunity to speak.

9 THE REPORTER: Could you spell your name for the
10 record, please?

11 PAMELA WINTER: Um--

12 JANET GREEN: You have to give your name --

13 PAMELA WINTER: I know.

14 JANET GREEN: -- and address.

15 PAMELA WINTER: I was on the Planning Board for 15
16 years, so I know how this works.

17 COLLECTIVE: Very good.

18 PAMELA WINTER: So anyway, dear members of the
19 Board, my husband and I reside at 41 Orchard Street.

20 COLLECTIVE: Ma'am, name and address.

21 PAMELA WINTER: I'm sorry, Pamela Winters. I live
22 at 41 Orchard Street. We are immediate abutters to the two-

1 family dwelling at 45 Orchard Street that is the subject of
2 the above-captioned application.

3 We strongly oppose this variance request, as there
4 is no hardship in this case, that would warrant waiving the
5 fundamental use limitations in the Residence B district,
6 that only permits single and two-family dwellings.

7 As the Board knows, use variances face a very high
8 legal standard for hardship. The application seeks to
9 create a third development in the back yard of this
10 property, that will have an adverse impact on our property
11 and that of our neighbors.

12 The barn is nonconforming already as an accessory
13 structure, since it does not comply -- and I made an error
14 here -- with a five-foot side and rear setback requirements,
15 and significantly exceeds the 15-foot height limitation.

16 With this application, this nonconforming building
17 would be expanded into a full-sized, single-family home.
18 Allowing a back yard accessory structure to become a single-
19 family home derogates from the intent of the dimensional and
20 use requirements of the Res B Zoning District.

21 The intensity of this use in a structure with
22 limited setbacks will have negative impacts on the privacy

1 of abutters, and disrupt their use and enjoyment of their
2 own back yards.

3 Lastly, there appears to be some inaccuracies in
4 the dimensional form. The applicant has ignored that after
5 the first 5000 square feet of lot value, of lot area, the
6 FAR and lot area per dwelling unit calculations are adjusted
7 from 0.5 and one per 2500 square feet to 0.35 and one per
8 400 square feet, respectively.

9 This means the allowed GFA is 3545 square feet,
10 not the 3994 square feet shown on the application. The
11 proposed GFA is 1167 square feet over the allowed figure.

12 It should be noted that recent amendments to the
13 zoning ordinance might allow for the creation of an
14 accessory dwelling unit in the existing building. Such an
15 application would require a special permit issued by the
16 Board, and would be a far more appropriate form of zoning
17 relief than this variance.

18 We urge you to deny this request, due to the
19 absence of a hardship, as required by our zoning ordinance
20 and Chapter 40A of the General Laws. Thank you for your
21 time and attention to this important issue.

22 CONSTANTINE ALEXANDER: Thank you.

1 PAMELA WINTER: I also have a couple of
2 photographs that I just want to show, which I just did not
3 understand this at all in terms of -- I'll just bring this
4 over here, thanks -- this was a picture that was given to us
5 by the applicant. This is not our street. We have bump
6 outs and we have traffic on our street.

7 My husband took a picture two days ago. This is
8 what our street looks like, and you can see the bump outs in
9 the -- do you want this passed around, can everybody see?

10 ANDREA HICKEY: Most of us have been to the
11 street.

12 PAMELA WINTER: Pardon?

13 JANET GREEN: We've been there.

14 ANDREA HICKEY: Most of us have been by.

15 CONSTANTINE ALEXANDER: Yeah.

16 PAMELA WINTER: And I also have 16 signatures for
17 people that are opposing this, from abutters and abutters of
18 abutters. So I will give those to the Chair now.

19 CONSTANTINE ALEXANDER: I'll put them in the file.

20 PAMELA WINTER: Who's the Chair?

21 BRENDAN SULLIVAN: I'll take them. Well, I'll
22 pass them down.

1 ANDREA HICKEY: Okay. Thank you, sir. Okay, do
2 you want my letter too?

3 CONSTANTINE ALEXANDER: We have your letter in the
4 file.

5 PAMELA WINTER: And so I also have other neighbors
6 that want to --

7 CONSTANTINE ALEXANDER: We have a number. I don't
8 know, maybe you have the same. I suspect we have those
9 letters already in our file.

10 PAMELA WINTER: Your do.

11 CONSTANTINE ALEXANDER: If you submitted them to
12 the Inspectional Services --

13 PAMELA WINTER: I did.

14 CONSTANTINE ALEXANDER: They're in our file, so
15 we've read them, so.

16 PAMELA WINTER: You've read them already? Okay.

17 CONSTANTINE ALEXANDER: Well, I know I have. I
18 can only speak for myself.

19 PAMELA WINTER: Okay. Would you like to hear from
20 any of them?

21 CONSTANTINE ALEXANDER: If they wish to speak,
22 yeah, they took their time to come down and stay here until

1 10:00 at night, sure.

2 PAMELA WINTER: It's -- given the time --

3 CONSTANTINE ALEXANDER: It's up to you, folks.

4 PAMELA WINTER: That's okay.

5 SHERAN OLLIVER: I'll say something.

6 PAMELA WINTER: Okay. Sometimes we wouldn't get
7 home until midnight on the Planning Board, I have to tell
8 you.

9 BRENDAN SULLIVAN: Name and address.

10 SHERAN OLIVER: I am Sheran, S-h-e-r-a-n, or
11 Sherry, Oliver, 49 Orchard. I'm a direct abutter and I am
12 here to oppose converting the barn to a third dwelling, for
13 all the reasons that they said, obviously.

14 But I think that it -- I mean I have a fear that
15 it could set a precedent. I don't know all these
16 regulations at the end of this.

17 But, you know, Cambridge is so -- we're one of the
18 densest cities in the country, and I just -- I don't know.
19 I have concerns that anybody -- any homeowner that has an
20 unoccupied building in their back yard might start thinking,
21 "Hey, this could get turned into a rental unit." You know?
22 And we really treasure our green space. And so, I'm sorry,

1 but I am in opposition.

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

4 SHERAN OLIVER: My pleasure, thank you.

5 CONSTANTINE ALEXANDER: Anyone wishes to be heard?
6 Sir?

7 HARY SHAPIRO: H-a-r-y S-h-a-p-i-r-o, 41 Orchard
8 Street. I'm an abutter at 45 Orchard Street. Let me say
9 that I understand the rationale for the application with
10 respect to the nonconforming lot size, the nonconforming
11 rear setback, and the side setback, the nonconforming FAR
12 and parking. There's a lot there.

13 But I have significant concerns. I think the
14 addition of a third unit will noticeably reduce green space
15 in the neighborhood, which really has already lost a great
16 deal of. The nearby garden or park on Mass Ave next to the
17 church has been sacrificed to a large condominium
18 development.

19 20+ years ago, two additional units were built in
20 the rear yard of 164 Elm Street, directly abutting my
21 property, encroaching on my privacy. And something after
22 that, Ms. Lipson added what is now a second unit on her

1 property. So on two adjacent properties to mine, we've
2 already lost green space and are living with increased
3 population density.

4 Further, you know, the proposed addition of the
5 detached third dwelling unit on the abutting property is
6 going to further reduce my privacy negatively, my enjoyment
7 of the back yard.

8 I want to say some things about parking in the
9 neighborhood. Parking is already tight in the neighborhood.
10 And in fact, competition for street parking is increased for
11 three reasons. The bump outs have already been mentioned.
12 They really kind of ate up a number of the parking spaces.

13 What's key to understand is that there are three
14 churches in the area almost right next to each other and
15 they're all very active. Until this year, one of those had
16 a lowered off-street parking lot for its parishioners.

17 That lot no longer exists. It's become part of
18 the footprint of a large residential project that
19 encompasses part of Elm Street and Mass Ave. I think it's
20 1991 Mass Ave.

21 Of the two other churches, one has absolutely no
22 off-street parking. And the other has a very small off-

1 street lot with nine spaces. So this is not very much --
2 nine spaces for three churches that are active and have a
3 lot of parishioners. There's a lot of competition.

4 And the other issue with respect to parking is the
5 new residential development on Mass Ave. I think we'll have
6 46 units, if I'm not mistaken, with onsite garage parking
7 for one vehicle per unit.

8 Many couples and many families have more than one
9 car, and some of them of course therefore are going to be
10 competing for parking on our street.

11 As I stated, I do understand the rationale for the
12 proposal. You know, currently there are two units on the
13 lot. The owner rents out the smaller one and resides in the
14 larger one. Adding a third unit into which she would move
15 will give her the opportunity to at least double her rental
16 income from the property.

17 And should she eventually leave the neighborhood,
18 selling what could amount to three condominiums is certainly
19 more profitable than selling two.

20 So in conclusion, the owner will benefit
21 substantially from adding a third, nonconforming unit, but
22 quality of life in the neighborhood will certainly be

1 negatively impacted.

2 CONSTANTINE ALEXANDER: Thank you. Anyone wishes
3 to be heard? You're first.

4 JAMES WEITZ: My name is James Weitz, 53 Orchard
5 Street. I'm an abutter of an abutter.

6 THE REPORTER: Could you spell your last name,
7 please?

8 JAMES WEITZ: W-e-i-t-z, and I oppose the project
9 for two reasons. The first is parking, the second -- I'm
10 sorry, first is parking. The second is that I'm afraid
11 it'll set a precedent that any structure on someone else's
12 property can be turned into a single-family dwelling. Thank
13 you very much.

14 CONSTANTINE ALEXANDER: Thank you. Sir, you
15 wanted to speak?

16 THE REPORTER: Spell your name and address,
17 please.

18 JOHN MITARACHI: Hi. My name is John Mitarachi,
19 M-i-t-a-r-a-c-h-i. I live at 164 Elm Street, unit 2. I am
20 a direct abutter. We have a complex of three -- two
21 townhouses, one that Hary was complaining about, and the
22 three of us -- the three units -- object to this project,

1 because of -- one of the -- everything that Pam said was.

2 Also, this might not make any difference in your
3 eyes, but it certainly does in mine. The view will be
4 greatly impacted from the back of our property. I look out
5 onto Orchard Street, and I look out onto the barn. And to
6 add a relatively large extension changing the roofline, I
7 was being looking at an awful lot of roof.

8 I do -- also there is a maple tree, which is quite
9 large and quite old, and I believe these structures -- the
10 structure was probably there before the tree was. And if
11 they have to excavate very close to this tree, I can imagine
12 that that tree will die, which then could fall on a number
13 of properties.

14 I have on my iPad a photo of my view and the
15 townhouse next to me. And this is my property here, here,
16 the two townhouses are here --

17 JIM MONTEVERDE: Yep.

18 JOHN MITARACHI: The extension would come out and
19 very close. So --

20 JIM MONTEVERDE: Yep, I get it.

21 JOHN MITARACHI: For the property that's -- for
22 the garden it's right there. You will be looking at an L of

1 buildings, basically. Because to the right there's already
2 a carriage house which is very close. So anyway, thank you
3 for your time.

4 CONSTANTINE ALEXANDER: Thank you for taking the
5 time to come down. We appreciate all the neighbors coming
6 by speaking pro or con for the desired relief. Anyone else?
7 You don't have to.

8 LELE WINSLOW: I know. I'll be quick. I promise
9 you. I won't stay. Hi, my name is Lele Winslow. I'm also
10 an abutter of an abutter. Nothing against you, Abigail, but
11 I also do support not supporting this project as a
12 precedent.

13 I believe what Pam has brought to the Board and,
14 you know, there are two things -- I do believe it would set
15 a precedent that I think we do not support, and that I do
16 believe it's -- you know, having something like this is a
17 hardship, and I don't think there is a hardship here, based
18 on what you call hardship.

19 And it's also a single-family area, and double
20 area, and this would be going into three. So thank you.

21 CONSTANTINE ALEXANDER: Thank you.

22 ANDREA HICKEY: Could we just ask you to give your

1 address for the stenographer?

2 LELE WINSLOW: Yes, it's 53 Orchard Street.

3 ANDREA HICKEY: Thank you.

4 CONSTANTINE ALEXANDER: Anyone else? I will close
5 public testimony. We have a number of letters in the file,
6 almost all of which oppose the relief. Many of the letters
7 are from persons who've spoken this evening. So there's no
8 need to repeat them. So --

9 ABIGAIL LIPSON: Did you also have the packet of
10 letters?

11 CONSTANTINE ALEXANDER: I said most of them were
12 -- we have those in support.

13 ABIGAIL LIPSON: Okay.

14 CONSTANTINE ALEXANDER: I don't -- the ones I just
15 turned the page -- look like they were opposed, but I did
16 see some in support. So I think it's fair for the record to
17 say that there's letters of support and opposition to the
18 relief being sought. Ready for a discussion, or ready for a
19 vote?

20 ANDREA HICKEY: I just wanted to ask, did you do
21 any outreach to your neighbors before coming up with this
22 proposal, to try to find --

1 ABIGAIL LIPSON: Yes, I --

2 ANDREA HICKEY: -- some way that you could work
3 through what you would like, and what they --

4 ABIGAIL LIPSON: Absolutely. It's the first thing
5 I did. I came up with some ideas and plans and sketches,
6 brought it to the immediate neighbors, asked them what their
7 concerns were, invited everyone over to my house, or in some
8 cases, went to their house with the plans.

9 I heard quite a bit about concerns about keeping
10 the open space open, and views from particular angles. So
11 they were kind enough to let us go take photos from
12 different angles.

13 And originally, the staircase that what is now a
14 small shed addition, which is less than one story tall on
15 the right, had been sort of a silo with a stairwell that
16 would go into the second story.

17 And that, after hearing from my neighbors I could
18 see was sort of looming over one person and interfered with
19 the view of a number. And it sent us completely back to the
20 drawing board to bring everything down below one level to
21 make sure that the size of it was less than the original
22 barn.

1 And it was only after I had talked with all of the
2 abutters and abutters -- you know, people who had immediate
3 impact that I went -- then when we had another plan that was
4 less impactful, I went and talked further to neighbors,
5 asking if they had other concerns, letting them know what I
6 was planning to do.

7 DIMITER KOSTOV: And we had also submitted with
8 the paperwork the survey that Abigail had done in the
9 abutters in the neighbors, where she had approached each
10 individual neighbor and solicited their opinion to the
11 project. And she actually marked up at the time those in
12 support and favor, those not present.

13 ABIGAIL LIPSON: Some of that might have changed
14 over time, but that was as of these plans.

15 CONSTANTINE ALEXANDER: And it would appear that
16 it has changed over time. There seems to be a lot more
17 opposition than is reflected on this sheet.

18 ABIGAIL LIPSON: I'd like to speak also just to
19 the trees, because that was part of the -- there are a
20 number of tall, older trees, and as you know, the Cambridge
21 canopy is aging, and that was a great concern of ours.
22 There's somebody named Trumbull Barrett who has looked after

1 many of the old trees for many years for all of us in that -
2 - you know, around the central part of that block.

3 And we had him come, we had him look at each and
4 every tree, we had him give us advice about how to make sure
5 that they could be protected during construction, that we
6 wouldn't -- and in fact we changed the plan so that we
7 wouldn't be excavating under the back of the house. We'd be
8 cantilevering the foundation over some posts, so that it
9 wouldn't affect that tree.

10 And we got very good advice and instruction from
11 him, which we plan to follow.

12 CONSTANTINE ALEXANDER: Thank you.

13 PAMELA WINTER: May I say one more thing?

14 CONSTANTINE ALEXANDER: Yes, but --

15 PAMELA WINTER: Is it possible? I'll make it
16 quick, so --

17 CONSTANTINE ALEXANDER: Please.

18 PAMELA WINTER: I just want to go home. I will.
19 I just -- again, my name is Pam Winters, 41 Orchard Street.
20 I just have a quick question for the architect. What is the
21 square footage of the top floor of the barn? Do you know
22 that offhand?

1 DIMITER KOSTOV: It is 14 x the five-foot mark.
2 So the calculable square footage with ceiling height above
3 five feet would be 14 feet six inches by 20 feet x 22 feet
4 four inches.

5 PAMELA WINTER: By 22 feet, okay.

6 DIMITER KOSTOV: Four inches.

7 PAMELA WINTER: Okay.

8 DIMITER KOSTOV: So that approximates a little
9 over 300 square feet -- closer to 20 square feet.

10 PAMELA WINTER: So it would make it over 900
11 square feet for the barn. Is that correct? Including the
12 barn floor.

13 DIMITER KOSTOV: Between the -- in its current
14 condition?

15 PAMELA WINTER: Yes.

16 DIMITER KOSTOV: Is that the question?

17 PAMELA WINTER: Yeah.

18 DIMITER KOSTOV: Yes, I believe so.

19 PAMELA WINTER: Okay. And then one last thing in
20 terms of what reminded me of this was the trees and so
21 forth. Abigail would have to put in sewerage, electrical.
22 Everything would come within a couple of feet of our house.

1 It would really make quite a disruption to us as neighbors.
2 So all of that would have to go out to the street. So
3 anyway, I just wanted to mention that.

4 CONSTANTINE ALEXANDER: Thank you. You wanted to
5 say something?

6 DIMITER KOSTOV: I just wanted to address the
7 issue with water supply, sewage and power. We actually
8 spoke to your contractor, who evaluated that those services
9 could be brought to the existing house by trenching what is
10 currently a grass area. So there will be no direct
11 trenching from the street through driveway patio area, and
12 nowhere near the abutters.

13 CONSTANTINE ALEXANDER: Okay, thank you.

14 ANDREA HICKEY: I just have a question. So Ms.
15 Winters at the beginning of her presentation called to our
16 attention some issues with the dimensional calculations.
17 Could you speak to those, so that in my mind I can determine
18 whether Ms. Winters' comments are accurate, or whether your
19 form is accurate?

20 DIMITER KOSTOV: Yes, I believe I based all the
21 calculations according to the Cambridge Zoning Ordinance
22 instructions on the dimensional table regulations, and on

1 the specific definitions regarding Gross Floor Area and
2 setbacks. I can go back to my files, if you want?

3 CONSTANTINE ALEXANDER: Do you want the letter?

4 ANDREA HICKEY: Yeah. Just a second. So
5 specifically, Ms. Winters' letter says that the applicant
6 ignored that after the first 5000 square feet of lot area,
7 FAR lot area for dwelling unit calculations are adjusted
8 from 0.5 and 1 per 2500 square feet to 0.35 and 1 per 4000
9 feet, respectively. Is that not your reading?

10 DIMITER KOSTOV: I don't have the zoning ordinance
11 in front of me.

12 ANDREA HICKEY: I understand it's a very technical
13 question.

14 DIMITER KOSTOV: Yes, so no, I don't believe
15 that's my reading, no.

16 ANDREA HICKEY: Does anyone have the expertise
17 here to know whether that comment is accurate in the letter?
18 Because if there is an issue in the dimensional form, I'd
19 want to know about it.

20 DIMITER KOSTOV: And I'd be more than happy to go
21 back, revisit, and also, consult with the staff at the
22 Inspectional Services, so that they can provide some

1 additional interpretation on that specific issue.

2 ANDREA HICKEY: Fair enough.

3 DIMITER KOSTOV: So I'd be glad to go and talk to
4 them. Absolutely, yes.

5 ANDREA HICKEY: I think it's important.

6 DIMITER KOSTOV: No, I agree, I agree. I didn't
7 want to misrepresent it.

8 BRENDAN SULLIVAN: I have the regulations here.

9 ANDREA HICKEY: We have the regulations.

10 CONSTANTINE ALEXANDER: We have the --

11 DIMITER KOSTOV: Yeah, I think we both have the --

12 CONSTANTINE ALEXANDER: -- ordinance right here.

13 BRENDAN SULLIVAN: Okay.

14 ANDREA HICKEY: You have it?

15 CONSTANTINE ALEXANDER: If someone wants to take a
16 look at the calculations, it doesn't -- want to look at my
17 book? From my point of view, it's not -- it's important,
18 but not --

19 BRENDAN SULLIVAN: It's not a game changer.

20 CONSTANTINE ALEXANDER: It's not a game changer.

21 It's only my --

22 BRENDAN SULLIVAN: It's a numerical change, but

1 the concept is what's going to either rise or fall.

2 CONSTANTINE ALEXANDER: Yeah. I mean, I think the
3 issues that are raised here are more significant.

4 BRENDAN SULLIVAN: But I think Pam was correct.
5 Is that in a Res B, there are two calculations.

6 ANDREA HICKEY: I think she's correct too.

7 CONSTANTINE ALEXANDER: Yeah.

8 BRENDAN SULLIVAN: 0.5 for the first --

9 CONSTANTINE ALEXANDER: Yeah, and then it's --
10 shifts.

11 BRENDAN SULLIVAN: -- and then it's 0.35 for the
12 remaining, so that --

13 CONSTANTINE ALEXANDER: I know that's the case.

14 BRENDAN SULLIVAN: -- the number is not correct.

15 ANDREA HICKEY: I think you're right.

16 DIMITER KOSTOV: And I can accept that I
17 misinterpreted the instructions, so --

18 BRENDAN SULLIVAN: No, no, it's an honest mistake.

19 ANDREA HICKEY: But again, in fairness to the
20 Board, perhaps that's not critical.

21 DIMITER KOSTOV: Yeah.

22 ANDREA HICKEY: So.

1 DIMITER KOSTOV: We'll see.

2 CONSTANTINE ALEXANDER: I will close public
3 testimony. Time for a vote or discussion first, if you wish
4 to discuss. Anyone wants to go forward? If not, I'll
5 volunteer.

6 BRENDAN SULLIVAN: If there's enough valid
7 opposition and valid argument -- legal basis -- against the
8 project, and it's just not a good idea.

9 ANDREA HICKEY: Yeah. I can say what troubles me
10 about the proposal is the addition to the footprint.
11 Conceptually, if it were to be another dwelling, the same
12 massing and the same footprint, I'd have an easier time
13 thinking through it.

14 To me, it's not that it's a third dwelling, it's
15 the massing, it's the changing of the structure that
16 troubles me most. The parking doesn't trouble me greatly.

17 DIMITER KOSTOV: Mm-hm.

18 ANDREA HICKEY: But it's the addition to the
19 footprint that I have the most trouble with.

20 CONSTANTINE ALEXANDER: Yeah. I feel the same
21 way, basically, as you do. I mean, I started off by saying,
22 how many places on Orchard Street have barns?

1 And if we do not grant relief, what's going to
2 happen to this structure? And maybe it's a good idea to
3 create additional housing through this barn.

4 But you're not, you're expanding the size of the
5 barn. You're impacting your neighbors, as Andrea's pointed
6 out. And that leads me to that plus the heartfelt -- I
7 think it's heartfelt opposition from your neighbors,
8 basically who believe that we should not grant relief from
9 this case.

10 JANET GREEN: I --

11 JIM MONTEVERDE: So, no, sorry, go ahead.

12 JANET GREEN: -- I was going to say I agree -- I
13 do agree with Andrea's point. It's the massing that really
14 makes it hard to support this project.

15 And I am very inclined to support the projects
16 that help people age in place. I think it's a very big
17 issue. And I think the city has actually taken some steps
18 to try to help, you know, relax some of the ordinances, or
19 some of the ordinance definitions so that people can do
20 that.

21 I don't think thinks meets that, and partly it's
22 because you're expanding the footprint so much.

1 JIM MONTEVERDE: So if you get this, you need what
2 four out of five?

3 DIMITER KOSTOV: Yes.

4 JIM MONTEVERDE: And you can tell -- but your
5 option is -- I mean if you let it go to a vote and it gets
6 turned down, you can't come back for two years?

7 CONSTANTINE ALEXANDER: For two years, except for
8 a substantially different project.

9 JIM MONTEVERDE: Unless she withdraws, and --

10 CONSTANTINE ALEXANDER: But withdrawal has the
11 same effect as being turned down.

12 JIM MONTEVERDE: Turned down?

13 CONSTANTINE ALEXANDER: Yeah.

14 JIM MONTEVERDE: So there's no option.

15 ANDREA HICKEY: Right. It would have to be a
16 continuance --

17 CONSTANTINE ALEXANDER: Continuance.

18 JIM MONTEVERDE: I'm sorry, continuance.

19 ANDREA HICKEY: -- to support in line with what we
20 could consider. That's not to say that what we discuss
21 would be approved. You still have to overcome substantial
22 neighborhood opposition. But it's an option --

1 JIM MONTEVERDE: But that's up to you.

2 ANDREA HICKEY: -- were you to take it to continue
3 the case.

4 CONSTANTINE ALEXANDER: Understood. Again, I
5 would point out that a lot of the opposition I think I've
6 heard is I don't think is going to be corrected by new
7 plans. But maybe I'm wrong. And it's your call, not ours.

8 LEON NAVICKAS: I just wanted to make sure I
9 understood your interpretation that it is the changing of
10 the massing that is really presenting an issue to the
11 neighbors, and --

12 ANDREA HICKEY: No, I think you've misunderstood.

13 LEON NAVICKAS: Okay.

14 ANDREA HICKEY: It's my interpretation that the
15 neighbors object the use of that as a separate structure.

16 LEON NAVICKAS: I understood that.

17 ANDREA HICKEY: Personally, my objection is --

18 LEON NAVICKAS: The massing.

19 ANDREA HICKEY: -- the massing. I can't speak for
20 my colleagues here.

21 LEON NAVICKAS: Okay.

22 ANDREA HICKEY: I have -- I'm not an abutter. I

1 have less of an issue with it being a separate unit with the
2 idea that aging in place is something that I think is a good
3 goal. But that's not to say if you stuck to the footprint
4 and came back, you're home free.

5 LEON NAVICKAS: No, we wouldn't assume that that
6 would be automatically granted by any means, but I just
7 wanted to make sure that I'm hearing things the way you need
8 to say yes.

9 ANDREA HICKEY: Right. But I think the Chair's
10 point should be very well noted that it doesn't seem that
11 neighborhood opposition would change substantially, were you
12 to shrink the project back to the footprint.

13 LEON NAVICKAS: Understood, understood.

14 CONSTANTINE ALEXANDER: I just would add that,
15 although I agree that we should be sensitive to age, and
16 allowing people to age in place, at the end of the day, you
17 can turn around and sell the place, as three dwelling units.

18 So I -- we can't -- there's no guarantee, this is
19 all -- if we were to grant relief, we would allow you to age
20 in place. So --

21 ANDREA HICKEY: Right.

22 CONSTANTINE ALEXANDER: -- sooner or later,

1 there's going to be more housing on the street that the
2 neighbors want.

3 ANDREA HICKEY: Right. To me that's just one
4 consideration.

5 CONSTANTINE ALEXANDER: Right.

6 ANDREA HICKEY: It's not a major --

7 CONSTANTINE ALEXANDER: I understand.

8 ANDREA HICKEY: -- consideration.

9 CONSTANTINE ALEXANDER: So anyway, the choice is
10 yours. You can seek a continuance of this case, redraw,
11 consider your plans, go back to the neighbors, and see if
12 you can come to something that they can support.

13 LEON NAVICKAS: I think we would like to take that
14 option --

15 CONSTANTINE ALEXANDER: Okay.

16 LEON NAVICKAS: -- of seeking continuance, at the
17 very least so we can assess our options going forward.

18 ANDREA HICKEY: Yeah. And I'd like to ask that
19 you carefully check --

20 LEON NAVICKAS: Absolutely.

21 ANDREA HICKEY: -- the dimensional form and update
22 that.

1 CONSTANTINE ALEXANDER: Yes.

2 LEON NAVICKAS: Absolutely, yes. No, I will
3 definitely do that.

4 CONSTANTINE ALEXANDER: How are -- January 30
5 filled up?

6 SISIA DAGLIAN: Thirtieth, we already have three
7 continuances.

8 CONSTANTINE ALEXANDER: So what's -- February?

9 SISIA DAGLIAN: February 15.

10 ANDREA HICKEY: Hang on one second.

11 CONSTANTINE ALEXANDER: February what?

12 SISIA DAGLIAN: Thirteenth.

13 CONSTANTINE ALEXANDER: Thirteenth?

14 BRENDAN SULLIVAN: I am not here.

15 CONSTANTINE ALEXANDER: You're not here, you're
16 away.

17 SISIA DAGLIAN: Twenty-seventh?

18 BRENDAN SULLIVAN: I am not here.

19 CONSTANTINE ALEXANDER: [Laughter] We can try
20 earlier. How much time do you think you need to reconsider
21 your plans? We don't have much earlier.

22 SISIA DAGLIAN: January 9 is the --

1 CONSTANTINE ALEXANDER: You up to it?

2 SISIA DAGLIAN: Janet's not here, right?

3 JANET GREEN: January 9 I'm not here.

4 SISIA DAGLIAN: So we're out --

5 CONSTANTINE ALEXANDER: The reason is we need to
6 have the same five people present.

7 LEON NAVICKAS: Understood, yes.

8 SISIA DAGLIAN: March 12?

9 BOARD MEMBER: I'm gone following.

10 CONSTANTINE ALEXANDER: She's gone for the whole
11 month up until March.

12 SISIA DAGLIAN: Well, I don't have the April dates
13 on here.

14 CONSTANTINE ALEXANDER: Not looking good to
15 continue this case.

16 ANDREA HICKEY: There's nothing we can fit in
17 before April?

18 CONSTANTINE ALEXANDER: Whichever -- I'd rather go
19 back to January 20. We have three. We can go to four.

20 SISIA DAGLIAN: January 30?

21 CONSTANTINE ALEXANDER: Yeah. If it works for
22 everybody, January 30 will be the time.

1 LEON NAVICKAS: Okay.

2 CONSTANTINE ALEXANDER: I'm ready to make a
3 motion.

4 PAMELA WINTER: I'm not going to be here then.

5 CONSTANTINE ALEXANDER: Where are you going to be?

6 PAMELA WINTER: Someplace warm.

7 CONSTANTINE ALEXANDER: Well you can, as you did
8 before very eloquently, you can express your views in
9 writing. It's not like you have to be here. I mean, the
10 other alternative is to go back, who knows, into half a year
11 from now. I'm not sure that's good for anybody.

12 SISIA DAGLIAN: No.

13 LEON NAVICKAS: Right.

14 CONSTANTINE ALEXANDER: So, you know, it's up to
15 you. You'll have an opportunity to see what they're
16 proposing and -- again, express your views in writing, or
17 have a neighbor who can make it carry the ball for you.

18 Okay the Chair moves that we continue this case as
19 a case not heard -- I'm sorry, as a case heard, until 7:00
20 p.m. on January 30 or --

21 JIM MONTEVERDE: Thirtieth.

22 SISIA DAGLIAN: Thirtieth.

1 CONSTANTINE ALEXANDER: Thirtieth, subject to the
2 following conditions: You have to sign a waiver of time for
3 decision. Otherwise, we'll have to turn you down tonight.
4 And Sisia has the form inside on the way out.

5 Second, that the posting sign that you have there
6 now either has to be modified with a magic marker, or a new
7 one obtained. And that new sign, or modified sign, has to
8 be maintained for the fourteen days prior to January 30, as
9 you did now.

10 JANET GREEN: And you need to be sure you change
11 the time, because --

12 CONSTANTINE ALEXANDER: All right.

13 JANET GREEN: -- because tonight somebody didn't
14 change their time, so we had to slip them down to a
15 different part. So you got to change date time.

16 LEON NAVICKAS: In our site time is 7:00 p.m.

17 CONSTANTINE ALEXANDER: 7:00. It will be 7:00
18 p.m. Maybe not hear exactly at 7:00 --

19 LEON NAVICKAS: Yes.

20 CONSTANTINE ALEXANDER: -- but you wouldn't have
21 to wait until late in the evening.

22 JANET GREEN: Yeah.

1 CONSTANTINE ALEXANDER: And lastly, to the extent
2 that there are going to be new or modified plans or
3 dimensional forms, and it looks like there will be, they
4 must be in our file no later than 5:00 p.m. on the Monday
5 before January hearing date.

6 That's to allow us and members -- and as citizens
7 of the city to look at them, think about them, and to offer
8 hopefully meaningful comments when we have the hearing at
9 the end of January.

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

11 THE BOARD: Aye.

12 [All vote YES]

13 CONSTANTINE ALEXANDER: Five in favor, case will
14 be continued until January. Sisia -- sorry?

15 AUDIENCE: May I ask a question?

16 CONSTANTINE ALEXANDER: Yes.

17 AUDIENCE: Just a quick question.

18 CONSTANTINE ALEXANDER: It's all right.

19 AUDIENCE: You will be sending out a notice to all
20 the --

21 CONSTANTINE ALEXANDER: No, there will be no new
22 notices sent out. There will be -- a sign will be modified,

1 new sign.

2 AUDIENCE: Oh, okay.

3 CONSTANTINE ALEXANDER: But no new mailings.

4 AUDIENCE: Oh, okay.

5 CONSTANTINE ALEXANDER: That's just the way our
6 zoning ordinance works.

7 AUDIENCE: So it's January 30 at 7:00?

8 CONSTANTINE ALEXANDER: Yeah, January 30 at 7:00.

9 AUDIENCE: I'll be out of town.

10 CONSTANTINE ALEXANDER: We'll miss you.

11 JIM MONTEVERDE: Right. No, but any written
12 correspondence --

13 CONSTANTINE ALEXANDER: Yeah. You can write -- or
14 you can have your neighbors give you comments or send a
15 letter. Thank you.

16 COLLECTIVE: Thank you.

17 AUDIENCE: I tried to get on the website for the
18 agenda.

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2 (10:26 p.m.)

3 Sitting Members: Constantine Alexander, Brendan Sullivan,
4 Janet Green, Jim Monteverde, Andrea Hickey

5 CONSTANTINE ALEXANDER: Okay. The Chair will now
6 call Case Number 017200 -- 44 Coolidge Hill Road. Anyone
7 here wishing to be heard on this matter?

8 KYLE SHEFFIELD: Yes, my name is Kyle Sheffield.
9 I'm a principal of LTA Architecture and Interiors in
10 Cambridge. I'm here with my clients Josef Simon and Patty
11 Tung and I will try and keep my comments brief, due to the
12 time.

13 CONSTANTINE ALEXANDER: Thank you.

14 KYLE SHEFFIELD: So the house was built in 1917.
15 It's actually one of the few houses on the street that's
16 actually the closest to the curb within nine feet. Paul --
17 sorry, Josef and Patty actually purchased the house in 2013
18 and lived with it in a few years.

19 Their kids have grown, and they wanted to try and
20 have a modest increase in space to sort of accommodate their
21 continuing growing boys.

22 So the project goals for us were just sort of to

1 reconfigure the back of house components, while maintaining
2 the front entry. And we're here tonight because the
3 hardship is sort of owing to the preexisting nonconforming
4 structure with regard to the front yard setback.

5 The proposed design is actually dimensionally
6 conforming with regard to setbacks, and it has a modest
7 increase in FAR which is still under the 0.5 limit for the
8 district.

9 The total increase in FAR is 12 percent, which is
10 why we're here tonight, the two percent, which is still
11 under the 25 percent, which is why we're receiving a special
12 permit.

13 The design doesn't create any additional traffic,
14 congestion or hazard, because the existing families can
15 continue their continued use of it. I don't think you guys
16 are having any more kids. And --

17 CONSTANTINE ALEXANDER: [Laughter] Is that a
18 promise?

19 COLLECTIVE: [Laughter]

20 KYLE SHEFFIELD: That could go through. It also
21 won't impair the integrity of the district, because the
22 proposed addition doesn't change the use of the structure.

1 It -- the design, we've met with abutters, and it has fairly
2 widespread support from abutters and neighbors. And I will
3 take any questions.

4 CONSTANTINE ALEXANDER: Okay. Questions from
5 members of the Board? Apparently not, and I'll open the
6 matter up to public testimony. You're not going to comment,
7 John. You want to have a comment?

8 JOHN MITARACHI: No, thank you, Mr. Chair.

9 CONSTANTINE ALEXANDER: I will close public
10 testimony. We do have, as Mr. Sheffield has said, numerous
11 letters of support from neighbors and abutters, which I will
12 not read into the record, given the hour. And so, I'll
13 close public testimony. Discussion, or are we ready for a
14 vote?

15 JANET GREEN: I think we're ready.

16 CONSTANTINE ALEXANDER: I think we're ready too.
17 Okay. The Chair moves that we make the following findings
18 with regard to the special permit that's being sought:

19 That the requirements of the ordinance cannot be
20 met unless we grant the special permit; that traffic
21 generated or patterns in access or egress resulting from
22 what is proposed will not cause congestion, hazard, or

1 substantial change in established neighborhood character,
2 and that flows in the nature of what's being proposed and
3 its location on the structure.

4 That no nuisance or hazard will be created to the
5 detriment of the health, safety and/or welfare of the
6 occupant of the proposed use, or the citizens of the city,
7 and that assumes that Mr. Sheffield has done his job well
8 and didn't create any hazards.

9 And that the proposal not impair the integrity of
10 the district or adjoining district, or otherwise derogate
11 the intent and purpose of the ordinance.

12 So on the basis of all these findings, the Chair
13 moves that we grant the special permit requested on the
14 condition that the work proceed in accordance with plans
15 prepared by LDA Architecture, and the first page -- dated
16 October 16, 2019, the first page of which has been initialed
17 by the Chair. All those in favor, please say, "Aye."

18 THE BOARD: Aye.

19 [All vote YES]

20 CONSTANTINE ALEXANDER: Five in favor, good luck.
21 See, all good things come to those who wait.

22 KYLE SHEFFIELD: Thank you, so much.

1 [10:30 p.m. End of Proceedings]

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CERTIFICATE

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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