

BOARD OF ZONING APPEAL  
FOR THE  
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, FEBRUARY 16, 2012

7:30 p.m.

in

Senior Center

806 Massachusetts Avenue  
Cambridge, Massachusetts 02139

Constantine Alexander, Acting Chair

Timothy Hughes, Acting Vice Chair

Tad Heuer, Member

Slater Anderson, Member

Mahmood Firouzbakht, Member

Douglas Myers, Member

Sean O'Grady, Zoning Specialist

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

(Sitting Members: Constantine Alexander, Tad Heuer, Slater Anderson, Douglas Myers, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Acting Chair will call this meeting of the Board of Zoning Appeals to order. We start with our continued cases. We only have one on our agenda, it is case No. 10207, 140 Columbia Street.

Come forward, Mr. Rafferty, as much as we're going to hear this case on the regular agenda, it would make sense for us to hear the continued case after we hear the regular case unless you feel otherwise.

ATTORNEY JAMES RAFFERTY: I feel exactly that way. Thank you. That was the postering. As you recall, there was an issue around the adequacy of the description of the work so we filed a second case and we would request that the second case be heard which is scheduled for later in the evening get

heard before this case.

CONSTANTINE ALEXANDER: Okay. I don't think we need a motion on this. Just a matter of process, we'll take this case up after the other Columbia Street.

ATTORNEY JAMES RAFFERTY: That's true.

TIMOTHY HUGHES: We don't have to continue it until ten o'clock?

CONSTANTINE ALEXANDER: No, we're just taking a case out of order that's all.

Okay, we'll go to the regular agenda, and the first case is 10211, 17 Francis Avenue. And I'm going to recuse myself from that case. So Mr. Hughes will take over as Acting Acting Chair.

(7:30 p.m.)

(Sitting Members: Timothy Hughes, Tad Heuer, Slater Anderson, Douglas Myers, Mahmood Firouzbakht.)

TIMOTHY HUGHES: The Acting Acting Chair will call case No. 10211, 17 Francis Ave.

ATTORNEY JAMES RAFFERTY: Good evening. James Rafferty on behalf of the applicant Janet Green. This is an application filed by Ms. Green in her capacity as trustee of the real estate at 17 Francis Ave. She lives next-door to this home and has lived there for decades and was very good friends with Hilda Shea. Ms. Shea was the applicant in an earlier case. This case was -- or this property was granted a Variance in 1995.

TIMOTHY HUGHES: Can I interrupt you for a second?

ATTORNEY JAMES RAFFERTY: Sure.

TIMOTHY HUGHES: I should probably

say for full disclosure that I worked for Hilda Shea -- I was one of those graduate students back in the late seventies, early eighties for about six years. So I know the situation. But I don't know anything about the apartment which came much later.

DOUGLAS MYERS: While we're making disclosures, I should also say that I know Janet Green. I am a member of one committee that meets at widely spaced intervals at her house, but I have no social or personal relationship with her.

ATTORNEY JAMES RAFFERTY: Okay, well I've never had the pleasure of meeting Janet Green so you're one step ahead of me, but I appreciate the disclosure. Certainly from the Applicant's perspective we don't see that as a cause for concern.

As I noted, there was an -- and I'm sure the Board has familiarized itself with the fact that there was a Variance granted in 1995

at that time to allow for what essentially is an access into an accessory apartment into this single-family house on Francis Ave. And the reason that that relief was sought was because Ms. Shea had an adult son, who continues to live there, and he is an autistic adult and required caretakers. And the apartment was created to allow for a live-in caretaker at the home.

Ms. Shea has passed away, but the Variance itself had a time limitation upon it, which was during a brief period of not much enlightenment. That seemed to be a favored approach with the Board. So this case had a tail on it that says in 15 years, the Variance needs to be renewed, but the language itself says -- the condition is that the Variance be for a 15-year term and could be renewed at that time. So it is at that time, and it's frankly about a year after that time, and what has happened in the interim is

Mrs. Shea has passed away. Ms. Green serves as the trustee of the property and also the guardian of Ms. Shea's son. So she has been very involved in his care in managing the people that provide that care. So in short, all of the conditions that were present in 1995 to justify the granting of the Variance continue to exist today, but for the fact at that the individual's mother is no longer living. Mrs. Green essentially is now the applicant because of her fiduciary role as trustee, and the guardianship role over this individual. So we're requesting that the Variance be extended or have the 15-year limitation removed.

TAD HEUER: So just so I have the -- who's living where and doing what; right? So is there currently a caretaker living in the accessory apartment now?

ATTORNEY JAMES RAFFERTY: Yes, I verified that with Ms. Green. I wasn't

quite sure who was living upstairs and who was living downstairs. I learned today that the caretaker continues to live downstairs in this apartment. And now Mr. -- young Mr. Shea lives in the main body of the house, but he has people who are with him. This allows the caretakers to rotate and allows one particular caretaker to live on the premises 24/7.

TAD HEUER: And is there still an apartment on the third floor? I seem to recall reading the transcript from the last go-round that there were questions about the third floor unit. It seemed to me that it was a rent-producing unit. Do you know if that's still the case?

ATTORNEY JAMES RAFFERTY: I don't. And I recall reading the transcript, and frankly that escapes me. I don't know -- I didn't --

MAHMOOD FIROUZBAKHT: The property

is listed as a three-family on your dimensional form.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: On the dimensional form?

MAHMOOD FIROUZBAKHT: Yes.

ATTORNEY JAMES RAFFERTY: Right, you're correct. And I used the dimensional form from the early case, so it does say a two-family. And the requested use at that time was for a three-family. So I imagine -- I haven't heard that there's been any change in that, so --

TAD HEUER: All right. I guess the only reason I ask is the question at the time, if I remember the transcript correctly, was when it had the caretaker live in the existing unit, third floor and the insinuation at the time from the petitioner was that was a rental unit that was providing income that was able to assist the care of Mr. Shea. And that the

reason they needed the additional apartment was because taking away that income-producing unit would provide for the caretaker. Albeit the purpose I think that was partly how the caretaker was being funding is my sense.

ATTORNEY JAMES RAFFERTY: I apologize, I don't have any knowledge of that.

TAD HEUER: And in terms of the extension. So you're -- I mean, ideally you're asking for it to be removed. Seeing as we have a two-family now and we've added the third in order to provide for the care of this individual, if I read the transcript correctly, there was discussion about whether that was even an appropriate hardship. The Board eventually determined that it was. And they also had a discussion about whether they could have it essentially as a life estate of a third unit; life meaning

life of the ward. They determined that attaching it to the life of the individual wouldn't be appropriate but they could put a time limitation on it. I presume the Petitioner would accept an extension of a time limitation if the goal of the Board were to have this apartment exist for the purpose of caring for Mr. Shea and then no longer in some future point when Mr. Shea is no longer in need of a caretaker, the second unit will revert back and be folded back in to create this as a two-family once again?

ATTORNEY JAMES RAFFERTY: I mean, I could see the logic in that. And I would say that if the Petitioner received the same relief from this Board as they did from the prior Board, that they would, they found that acceptable and that worked essentially and it did provide this opportunity to review the status and if the situation 15 years were to be that Mr. Shea was not there or a need for

a caretaker didn't exist, I would think then the right to have the third apartment would terminate.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: I don't think one can quibble with the logic of that nor the consistency of it given the hardship as found in the prior case and the relief that was granted.

TAD HEUER: Right.

DOUGLAS MYERS: How old is Mr. Shea?

ATTORNEY JAMES RAFFERTY: I'm told he's in his forties, but I don't have his exact age.

TIMOTHY HUGHES: I think he's older than that.

ATTORNEY JAMES RAFFERTY: I was told by another neighbor so, who lives across the street.

TIMOTHY HUGHES: Because I'm sure he was older than me when I was a graduate

student.

MAHMOOD FIROUZBAKHT: I thought he was 46 at the --

TIMOTHY HUGHES: At the '95 hearing.

MAHMOOD FIROUZBAKHT: At the '95 hearing.

TIMOTHY HUGHES: That's possible.

ATTORNEY JAMES RAFFERTY: He looks young perhaps.

TIMOTHY HUGHES: That would make him early 60's, that's more accurate.

ATTORNEY JAMES RAFFERTY: That would say something about the Acting Acting Chair's age as well. It's surprising.

TIMOTHY HUGHES: Exactly, yes.

Any more questions?

I'll open it up to public testimony. Anybody want to be heard on this matter?

(No Response.)

TIMOTHY HUGHES: Seeing no one, I'll close public testimony.

Further questions? Issues? Are we clear on this?

TAD HEUER: My suggestion would be to add another reasonably long but finite time limit on it.

SLATER ANDERSON: I agree. I agree. Circumstances are such that -- there was a lot of deliberation that went on in the past, I don't think we need to reinvent.

DOUGLAS MYERS: It would be helpful to have Mr. Shea's age in terms of determining whether we -- it's reasonable to define a period as long as 15 years. If he were in his sixties, indeed we might say ten years would be sufficient.

TIMOTHY HUGHES: I think he's in his sixties. In fact, I know he's in his sixties. I don't know that ten years is going to be sufficient considering how long Hilda Shea lived and how long Hilda Shea's mother lived.

ATTORNEY JAMES RAFFERTY: I hate to make a 60-year-old person to make no plans.

TIMOTHY HUGHES: I'm pretty sure Richard has defied all odds up to this point anyway.

ATTORNEY JAMES RAFFERTY: I see your point, but I mean, there's a certain consistency with the prior term and there might be some benefit to that.

SLATER ANDERSON: Yes, I see this as renewing the extension that has now expired, but extending for the same period.

TIMOTHY HUGHES: Yes.

MAHMOOD FIROUZBAKHT: Yes, I agree with that logic. I guess the one question I have in my mind is there were some additional conditions that the previous Board put on their approval, and I wonder whether, you know, we keep, amend, or what we do with those additional conditions.

TAD HEUER: And are you

thinking -- I'm thinking specifically of the one that states that it shall not be a unit for rental. Are there others?

MAHMOOD FIROUZBAKHT: I can't recall specifically what the conditions were.

ATTORNEY JAMES RAFFERTY: I think that was the only one; that it not be a separate rental and it be limited to 15 years.

MAHMOOD FIROUZBAKHT: Or separately purchased, yes.

ATTORNEY JAMES RAFFERTY: As I said, I think relief consistent with the prior relief is perfectly acceptable to the applicant.

MAHMOOD FIROUZBAKHT: I guess if there's comfort on the Board to --

TAD HEUER: Yes, my sense of the Board in 1995 wanted to create the unit essentially for this individual's care. They didn't want it to be a continual

three-unit well after that individual ceased needing that care and they didn't want to convert this from a two-family into a three-family on a permanent basis for that apartment to be used by anyone for income-creating purposes. So, I think that keeping those conditions would be logical and reasonable and if we're extending the term, to extend to extend the conditions that we applied to it in the first place.

MAHMOOD FIROUZBAKHT: Sounds fair.

SLATER ANDERSON: We want anything in there about when Mr. Shea no longer lives there?

TAD HEUER: I don't think we can do that.

SLATER ANDERSON: We can't?

TAD HEUER: I think my sense was the first time around there was the discussion about do they just make it essentially a life estate? The existence of the unit being life

estate in the life of the ward. And that came close to being a permissible condition adaptable under 40-A because instead -- it could be construed as a -- and particularly more so here now that the original owner has passed away and is in the care of a trustee, that it would be conditioned on the ownership of the property, and it would trend too far into that. So making it a numerical length that was not tied to the owner was more legally acceptable.

ATTORNEY JAMES RAFFERTY: To the credit of the thinking 15 years ago, the language of condition one does say that it can only be occupied by those providing direct service or employed by the occupant of the main dwelling. So if Mr. Shea were no longer to occupy, a new owner or occupant, if they weren't receiving service, really couldn't rely upon the relief of the Variance.

TIMOTHY HUGHES: Okay?

All right, the Chair would move that the Variance be granted to allow the continuation of a unit, a third unit essentially created, third dwelling unit in the premises of 17 Francis Ave. be granted with the following conditions:

That the dwelling unit not be a rental unit or separately purchased, but be occupied only by those providing direct service or employed by the occupants of the main dwelling on the first and second floor.

And that the Variance be for a term of 15 years, it could be renewed at that time.

The Board finds the hardship caused to the Petitioner by the literal enforcement of the Ordinance. The hardship's owing to the shape and location of the structures and the land in which they're situated but does not affect -- gees, that's right out of the book, isn't it? Affect generally the Zoning District in which they're located.

Substantial detriment to the desired relief may be granted without either substantial detriment to the public good for the following reasons:

Actually, the living situation that's existed for Mr. Richard Shea there for his entire life would be continued and would maintain the stability of what has already been in the neighborhood for as long as anybody in this room can remember.

Relief may be granted without nullifying or substantially derogating from the intent or purpose of this Ordinance for the following reasons:

The extra unit would only be tied to the care of Richard Shea for the term of 15 years, which we have stated. And that the house would revert back to its original two-family status if anything was to change in that regard.

All those in favor?

(Show of hands).

TIMOTHY HUGHES: Five in favor.

(Hughes, Heuer, Anderson,  
Firouzbakht, Myers.)

SEAN O'GRADY: Did you want to put in  
the conditions?

TIMOTHY HUGHES: I read them in,  
didn't I? I read them directly from the old  
transcript.

ATTORNEY JAMES RAFFERTY: Do you  
want a reference that they're consistent with  
the prior case?

TIMOTHY HUGHES: Did you get that?  
Yes.

ATTORNEY JAMES RAFFERTY: Thank  
you.

(7:45 p.m.)

(Sitting Members: Constantine Alexander,

Timothy Hughes, Tad Heuer, Slater Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER: The Acting Chair will call case No. 10212, 60 Clifton Street.

Is there anyone here wishing to be heard on this matter?

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, Members of the Board. James Rafferty on behalf of the Applicant. Seated to my right is Kevin Emery, E-m-e-r-y. And Mr. Emery is a principal of Emery Homes, LLC, and the owner of the subject property. And to Mr. Emery's right, and I ask you for the spelling.

EAMON FEE: First name is E-a-m-o-n. And last name is F-e-e.

ATTORNEY JAMES RAFFERTY: Eamon Fee.

Mr. Fee and Mr. Emery acquired this home within the past year?

KEVIN EMERY: About six months. Six months. About going on seven, eight months now.

ATTORNEY JAMES RAFFERTY: It's a single-family home in a Res B District of 5,000 -- 6,000 square foot lot. Their intention had been to demolish the home and construct a conforming two-family dwelling. When they went to seek relief or approval under the City's Demolition Delay Ordinance at the Historical Commission, their request was not acted upon favorably. And the ultimate -- and not only was it not acted upon favorably, a petition was filed for landmark the property. And that has the effect during the -- so a study period was initiated. So during the landmarking period it was as though the property was landmarked.

So essentially that process presents what is the basis for this hardship. The hardship is related nearly to the setback

with the second house. This is a structure that will have a lot that will have two structures. There had been, as I said, an original intention to build a conforming structure, a two-family dwelling, and then when this structure was found to not, found to be perfectly preserved in fact, the subject of landmarking then the Applicants explored putting an addition on this structure that would incorporate two units. That wasn't seen as favorable either by the Historical Commission. And the preference was for a two-family -- it's two separate structures. So the proposal involves an addition on the front building. And that addition is a permitted addition. It's a conforming addition to that building.

The second structure is located now closer to the rear setback and permitted, but there is a counter-balancing amenity in that the rear abutter is Russell Field which has

acres of open space. So it is not as though an abutter entitled to setback is experiencing any infringement from this.

So it really, the hardship really is related to the city's desire to see structures of this scale and character preserved, and it is resulted in the owner having to modify the design approach here and come up with two buildings and a building -- and then the separation between the two buildings becomes relevant as well. So one of the things that was looked at well -- could the back building be brought closer to the front building?

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: To accommodate the parking and to have a more reasonable relationship between them. And plus the City Ordinance requires ten feet between two structures on the same lot. For all of those reasons, the sighting of the

building at this location was seen as preferable.

CONSTANTINE ALEXANDER: Was it preferable or you have no choice? It's very important distinction.

ATTORNEY JAMES RAFFERTY: Well, preferable in the eyes of the authority that has jurisdiction over the landmark status of the lot. They did not want them combined into a single.

CONSTANTINE ALEXANDER: No, no, I understand that. But could you relocate the new structure, fashion on the lot without -- and avoid any -- do it as a matter of right? Avoid any rear yard setback issue? Essentially moving forward.

TAD HEUER: It would have to be smaller.

CONSTANTINE ALEXANDER: Yes. Either smaller. If you can't move it forward, can you make a smaller structure?

ATTORNEY JAMES RAFFERTY: Well, you, I suppose you could always make a smaller structure, correct. But the setback, the setback relief at that location, the lot is more than 100 feet deep. So it has, I think, the required setback there is a few feet above what's typically expected.

KEVIN EMERY: 30 feet.

ATTORNEY JAMES RAFFERTY: Yes, it's 30 feet. It's an additional five feet beyond the 25 in the district. So the Petitioner doesn't have the ability to locate this structure closer to the main structure than 10 feet under the current Ordinance, and it's 15 feet apart now. So, if it was brought forward five feet, it would require less than the nature of rear setback relief, but --

CONSTANTINE ALEXANDER: But you would need relief. That's my -- I'm exploring if there's an as-of-right solution here that would avoid the need for us to grant

you a Variance. And you can't, and as-of-right it's moved the structure forward. You're pointing out you can't move it forward enough without causing other Zoning issues.

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: The only other alternative would be to make a smaller structure. If we were to deny you relief, for example, tonight, you could go back and build a smaller structure as a matter of right. Is that not so?

ATTORNEY JAMES RAFFERTY: I believe that is correct. You could. You could build a structure less than what the permitted FAR is on the lot. They're obviously trying to build something that allows them to realize the full potential development on the lot.

KEVIN EMERY: Also -- Kevin Emery for the record. And I also want to -- this

plan has been going back and forth with Historical numerous times. We met with the architect. We met with Charlie Sullivan. And this is something they wanted, they wanted further apart. They don't want it attached at all.

CONSTANTINE ALEXANDER:

Understood.

KEVIN EMERY: They want it further apart, and they want some designs similar to this design. And, you know --

CONSTANTINE ALEXANDER: Well, am I correct, though, Historical is only interested in the front house? They don't want the back house attached, understood.

KEVIN EMERY: Well, their interest is on everything what's going on on the property.

ATTORNEY JAMES RAFFERTY: The nature of the landmark petition encompasses the entire lot. So both structures -- to

construct a structure on a lot that's landmarked requires their approval as well. So they have reviewed and have weighed in with design elements on the second structure.

CONSTANTINE ALEXANDER: Although, the letter which I'll read into the file, only deals with the front building. That's what Historical is really interested in. To be sure they have the whole lot.

TAD HEUER: What's the nature of the landmarking petition?

ATTORNEY JAMES RAFFERTY: The nature?

TAD HEUER: Yes.

ATTORNEY JAMES RAFFERTY: I don't know what you're saying.

TAD HEUER: Like, basis. It's not just that it's an old house; right? There's something substantive.

KEVIN EMERY: Yeah, the house was -- the research on the house as far as it

was the first house that was built in that area in 1855. It was originally built (inaudible) and it eventually moved to where it is now. And so because of the history of it and because a lot of those Irish cottages were removed in that area, and this is one the oldest ones is why they were pretty much they were adamant they want to do whatever they can to save it.

TAD HEUER: And if it is indeed landmarked as a structure, that would preclude you from demolition at all, correct?

ATTORNEY JAMES RAFFERTY: Absent a Certificate of Appropriateness. But it is a very high bar to get an approval to raise a structure after it's been landmarked.

TAD HEUER: Right. And did you have any knowledge that this might have been a landmarkable structure when you made the purchase?

KEVIN EMERY: No, not at all. It's,

it's been going on for a long time. What happens is with Historical is they give you six months delay and then they put back inside whether they want to landmark it. So we bought it, six months later we were waiting to see what we can do with it and then they landmark it. Now, you go back and we negotiate the design with them and what we can do. When we originally bought the building we go in, and we figure we go by the Zone it is now and knock the building down and build the house according to Zoning. But the hardship is we haven't been able to do that for eight months. And we finally got together with them and we got a plan that everyone's happy with.

CONSTANTINE ALEXANDER: You still need approval from the Planning Board, do you not as well?

ATTORNEY JAMES RAFFERTY: Yes, because there's a hearing scheduled in two

weeks because of the two structure --

CONSTANTINE ALEXANDER: And what's before them is simply more than 75 feet setback from the street?

ATTORNEY JAMES RAFFERTY: Yes, that's right.

CONSTANTINE ALEXANDER: It's a different issue than what we're facing?

ATTORNEY JAMES RAFFERTY: It is a Special Permit. It should be noted that landmarking is ultimately within the purview of the City Council, and so it's never easy to say. And we only have, I mean, in my estimation I think we have less than 30 landmarked structures in the city in total. So I'm not sure how one could have anticipated that this particular structure would have found its way to this resolution. I don't know if the -- I didn't -- whether the Commissioner initiated the landmarking petition or whether it was a petition filed

by others.

KEVIN EMERY: The Commission on the advice of the Historical staff.

TAD HEUER: So one question I have is, so right now the lot on your right has two -- what looks like the lot on your right, I understand it's two lots. There's two structures on one, essentially in the front on a small lot, and then there's a larger structure in the rear which is technically on its own lot, it's a flag lot or a pork chop lot.

KEVIN EMERY: Correct. It's a single-family, four-family.

TAD HEUER: Right. So if -- I guess one question I have is if we grant this petition, do we end up with everyone with 6,000 square foot lots lined up along the street with these small cottages coming in and saying we'd like to build a second house in my backyard? So for instance, 36 Clifton,

so maybe four down on the left side of the square apartment building. Like, will we see a lot of these people coming in saying, you know, I've got a small FAR on my lot, I'd like to build a second house behind me. What's wrong with that? Or is this unique because --

ATTORNEY JAMES RAFFERTY: I would say no. Will we see a lot of people coming in doing this? I would say no. Because I think the reality is this has been a very lengthy process. It has been landmarked. It happens to be that the existing GFA on the lot is rather small. But I don't, I don't think it's likely that this establishes a precedent of allowing buildings in the rear setback. Which is ultimately the issue that's here before us. I think there are a unique set of circumstances affecting the landmark nature of the present structure. So in all candor, I don't see why this would

be viewed as an opening for others to go around and do this. If you don't -- I mean given -- this house is particularly sited forward on the lot. That's a four-unit dwelling. I don't know how that was constructed. I look at the other -- the way they're set, I don't see how you could get in the backyard of some of these other properties.

KEVIN EMERY: Can I add something to that, too?

ATTORNEY JAMES RAFFERTY: Sure.

KEVIN EMERY: Also, you won't see this happening too often because if Historic wasn't involved, we would be attaching the second unit to the house. So if Historical didn't want this -- let us attach the units, then we wouldn't have a rear yard setback.

TAD HEUER: Right.

TIMOTHY HUGHES: Right. You wouldn't have a rear yard setback problem.

KEVIN EMERY: Problem, right.  
Because you would design the house -- you would design the house that would fit without having a setback problem.

CONSTANTINE ALEXANDER: Just for the record, if we were to grant you relief, you will still have a setback of roughly 15 feet from the lot line, but you're required to have 30. So we're looking at -- to be very specific, you're looking at 15 feet of relief for the rear yard setback. So we're all clear as to what we're talking about.

Further questions at this point from Members of the Board?

TAD HEUER: This dimensional form says you have 700 square feet now; is that right?

KEVIN EMERY: 709.

ATTORNEY JAMES RAFFERTY: 704.

TAD HEUER: And that's from, with the exception of a house on John Bellis Circle

and maybe one over on, like, Second, that's the smallest number I think I've ever seen. Is that because there's a basement and an attic that don't count or is it actually much smaller than it actually looks even from the outside.

KEVIN EMERY: That's the structure they want to see. There's been additions on for different reasons, different types of additions on the building over the years in which Historical has no interest in saving.

TAD HEUER: So the mobile home looking thing on the left isn't something they care about, and that's been taken out of that number?

KEVIN EMERY: Yeah. And on the right side there's a bulkhead that was taken out of it. And then there's a little kitchen that was added on in the back that was taken out of it, also.

TAD HEUER: Okay. So the number

we're starting from when we look at this is the structure that Historic wants to keep minus the additions that are there now that actually make it somewhat bigger.

ATTORNEY JAMES RAFFERTY: That number reflects the net square footage after the elements that Historic as authorized to be demolished.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: It's an interesting number because the relief also involves more than 25 percent of the non-conforming structure, but it's actually more than 25 percent really shouldn't be based on the 74. The 25 percent should be based on a higher number, but they still require that relief.

TAD HEUER: And those were additions that were made, the non-conforming ones they want to lose are the ones that were made pre-dating the Ordinance anyway?

ATTORNEY JAMES RAFFERTY: Well, I think pre-dating some elements of the Ordinance.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: At least the portion of what happened -- I mean, the house -- the front structure itself is only non-conforming towards the front setback.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: So I don't have a good answer as to when that nine-foot, seven. But you can average in this neighborhood depending on the Res B but the minimum is ten feet.

TAD HEUER: And then the rear building -- so the front building -- this is going to sound bad. The front building is cedar clapboard; is that right, that's what your planning on doing?

KEVIN EMERY: Yeah.

TAD HEUER: The rear building is all

vinyl?

KEVIN EMERY: No, all clapboard.

TAD HEUER: Okay, so where it's indicating vinyl siding, vinyl posts, vinyl everything else, that's going to be wooden --

KEVIN EMERY: Yes. That was a typo. We drew the plan for Historical which is after we submitted to you. That was all changed.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: It was noticed by the Historical.

TAD HEUER: I imagine it would have been. Okay.

CONSTANTINE ALEXANDER: I'm going to open this matter up to public testimony.

Is there anyone here wishing to be heard?

Yes, Ma'am, come forward and give us your name and address.

CHERYL WEBB: Cheryl Webb, 64 Clifton Street, the monstrosity they're

talking about next to it. Actually, the house the reason why it's like that it was built that way. It was built in 1903. It's been there forever. The other house that you see on the other side, the orange one, is actually the first original house built on the street, and then they moved the -- this 60 Clifton Street over about four or five years later when they needed more room up on Rindge Ave. So basically it was considered a cluster of older houses. The two oldest are the blue one and the orange one which is 66. Ours the Historical Society gave us money to improve it and bring it back to its natural state about -- I'd say 12 years ago. So that's why the houses were considered historically unique, especially where the three of them were together.

One of my problems with the whole design from the beginning was you're going to lose the uniqueness of the blue house. I know it

looks ugly on the outside, but it was still structurally sound. And the orange house has been, once they're painting it, it's going to be all -- it had just been redone. So it was brought back and it was still in its original use except for a cutout porch.

The -- just tearing it down, I didn't want it to have happen. So him -- them going back and forth with the Historical Society in trying to figure out some way to do it, which was nice, because it was all -- the plan before was something that you still only had 25 feet and so many feet in the front, and it was a huge townhouse. And it was just taking away the character of the neighborhood which it was still in one existing structure. So they got to push all the boundaries that they probably could with the big structure. By preserving the house, you're keeping a little bit of history. I would have preferred if they had just kept one house, though, on the

lot. And the suggestion, the abutter with the suggestion about the second house, when we were talking about that, we were still talking about something of a similar scope and size of the front house in the front, not pushing the boundaries still to get, you know, I figured you'd still have the 30-foot lot in the back, the nice backyard and everything like that, even if you did a house if it was a smaller size. One of the things, you know, people will say, well, your house doesn't have a lot of backyard. I do have a big backyard. It might not look like that on the map, but I have a nice big backyard and I have a huge side yard. So I still have a lot of green space. I have space for a garden, grape arbor, everything back there. Barbecues, you could fit 100 people back in my yard for a barbecue. Having something that's only 15 feet and then you're encroaching on trees and stuff that are

already there, it's just -- it's putting whatever you can cram onto the lot which is -- I'm glad that they're starting to maybe change it a little bit and the front house is going to be saved hopefully, the portion of it that's historical. The big addition they're building on the back, I don't know how it's gonna look. I mean, I look at it in plans, but it's -- it just looks like there's this big wing now in the back of a little tiny part of the front of the house. And I'm just trying to preserve -- and then when you asked the question about back yards, further down there are -- there was a big thing with on the corner of Dudley and Clifton where they had saved, you know, they saved the existing house, and they built a bunch of town houses in there. But even further down, about two houses, three houses before that, there is a thing where they put a house in front of a house and there is no yard. And that's where

the 30 -- I believe the 30-yard or the 30-foot rule came in because people were starting to put houses behind houses on our street. There's already a case of one or two cases of that and that's why the 30-foot rule came into play. So I mean, I'm still not totally opposed to a second structure. I would rather they just did one structure that wasn't huge, but still you should play within the 30-foot law. It could be scaled down. As I say to Mr. Emery I'm very sorry that he overpaid for a piece of property, but there was already research done on the property. He maybe wasn't aware of it. But they already knew how old that house was. They already knew how old 66 Clifton Street was. And the Historical Society knew all that because they had done all the information when we got the grant for our house, which is 62-64-A Clifton Street. So there was previous paperwork already existing on the

historical part of that whole neighborhood.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishing to be heard?

Sir?

RICHARD CLAREY: My name is Richard Clarey, Brookford Street, Cambridge. I'm Chairman of the North Cambridge Stabilization Committee. With the blower in the ceiling it's very difficult for people sitting back where we sit to hear all the exchanges that take place between the Board and the applicants, but I thought I heard one member of the Board ask who initiated the landmark study? And I think the answer was that it was initiated by the Commission. In fact, it was initiated by a large petition of citizens, a copy of which I have here, at one of the Historical Commission hearings. And the business plan of Mr. Emery and Mr. Fee has presented our neighborhood with a challenge for some, I believe as much as 15

years. Because they go around the neighborhood, and I guess I think in other communities also, seeking out lots that are not built to the maximum and then seeking to build them to the maximum thus depriving the neighborhood of open space. And so we are constantly resisting that attempt. And although the tools we have are not nearly as adequate as we like them to be, we would certainly appreciate any failure of this applicant to comply with the requirements for a Variance to be used --

CONSTANTINE ALEXANDER:

Mr. Clarey, you appreciate --

RICHARD CLAREY: -- in favor of the community.

CONSTANTINE ALEXANDER: You appreciate that the amount of open space, if we grant relief, the amount of open space complies with our Zoning By-Law. The issue is simply rear yard, and year yard being that

portion of the lot that abuts Russell Field.

RICHARD CLAREY: Right.

CONSTANTINE ALEXANDER: So it's not like you're not going to have not a lot of green space on the lot. You'll have as much as the Zoning Law requires. It's just the sighting of the second structure that raises the issue. So you're clear as to what's going on.

RICHARD CLAREY: I'm -- I'm not, I'm not as clear as I should be.

CONSTANTINE ALEXANDER: Okay.

RICHARD CLAREY: But I understand.

CONSTANTINE ALEXANDER: Okay.

Anyone else wishing to be heard?

Yes, Mr. Brandon.

MICHAEL BRANDON: Thank you, Mr. Chairman, and thank you members of the Board. I don't think I've ever seen the room open, but happy Valentine's Day as the banner says.

CONSTANTINE ALEXANDER: Thank you.

MICHAEL BRANDON: My name is Michael Brandon, B-r-a-n-d-o-n. I live at No. 27 Seven Pines Avenue in North Cambridge and I'm the clerk for the North Cambridge Stabilization Committee. Mr. Clarey mentioned the difficulty in hearing, and I don't know, I had questions about some of the things that were being said. I had prepared some remarks based on the application, maybe I'll go through those first.

CONSTANTINE ALEXANDER: I have to apologize the room is what it is, it's not ideal. And so --

MICHAEL BRANDON: No, it's nothing that the Board can control. It's just the microphones and, you know, the way people are facing.

CONSTANTINE ALEXANDER: Go ahead.

MICHAEL BRANDON: And so I apologize if I misheard everything.

CONSTANTINE ALEXANDER: Just as long as you don't repeat remarks that people already made.

MICHAEL BRANDON: That's why I went last because I sometimes tend do that.

CONSTANTINE ALEXANDER: Yes, you do.

MICHAEL BRANDON: You remember me? Please call me if I'm going off on a tangent that I shouldn't be. I did jot down some notes which I don't always do which helps me from rambling too far afield.

So, what I was going to say was that as near as stabilization committee can tell, this proposal has no support from the immediate abutters or the broader neighborhood along Clifton Street or the wider neighborhood where this is a problem throughout North Cambridge of existing housing stock. Many of the houses historically and architecturally

significant being demoed or lots overbuilt. The discussion I heard, I -- my sense was that it was really more appropriate for the Historical Commission or perhaps the Planning Board in the nature of the discussion rather than the Board of Zoning Appeal which is as you all know, you know, you have a specific jurisdiction and really should be focusing on the -- in my view, on the Zoning violation that would be potentially waived.

So one point I wanted to make is that the application, at least as far up to this afternoon, and I don't know when Mr. Rafferty took on this case, but it certainly did didn't look like it was his work, it was Mr. Emery's who I don't believe is an attorney. But it's incomplete and defective on its face in material ways. There is no -- the biggest flaw is that page 5, the supporting statement for a Variance, is not included there. So

it's very hard for us to prepare any kind of written comments on what they may be arguing or were going to present tonight. So we're kind of shooting from the hips.

Your rules and your application forms make it very clear that that form needs to be filled out for obvious reasons and so that the Board has, you know, very clear idea of what the response is to whether, you know, the application conforms with -- the project conforms with those criteria.

CONSTANTINE ALEXANDER:

Mr. Brandon, just to that point, I'm sorry to interrupt you.

MICHAEL BRANDON: Yeah.

CONSTANTINE ALEXANDER: There is in the file, there is a one-page supporting project narrative statement. It doesn't --

MICHAEL BRANDON: Yes.

CONSTANTINE ALEXANDER: What's that?

ATTORNEY JAMES RAFFERTY: I was provided that by Mr. Emery when I met him on Friday.

CONSTANTINE ALEXANDER: It's not in our file.

But what it does is in a general way it accomplishes what would be in the statement that is not in the file. So it's not like it's completely -- we're in the dark, you're in the dark. There's nuts and bolts of the case is laid out in this one page.

MICHAEL BRANDON: If I may, Mr. Chair. I am familiar with that document, and I think it's titled and what it really is is a supporting statement for project.

SLATER ANDERSON: Project narrative I think it said.

MICHAEL BRANDON: Supporting project narrative. It's not supporting statement for the criteria. If you look at

another application, you'll see that the very specific requirements of the statute are -- and the Ordinance are listed there and those are not addressed there. So I still have uncertainty even hearing the presentation as to what precisely they are claiming -- the applicants are claiming is their hardship. I don't see a hardship. There's none claimed in the application. And it's supposed to be a substantial hardship, which I don't think is there. They have not made the case, or there's no case made in the submission that even tonight that this has anything to do with the topography or the soil conditions or even the shape of the buildings as we're talking about the new building. You know, it's really not the existing building.

So I don't know why that was accepted by the staff and scheduled for hearing, but I would hope that the Board would make a nudge

to the staff to make sure that all the various forms are there because really prejudices the rights of the parties of interest who are here as well as the wider community who does have interest in these.

I also think that the matter is before the Board in an untimely fashion partly because the defective incomplete application, but also because the Historical Commission has not issued a Certificate of Appropriateness. There is a memo.

CONSTANTINE ALEXANDER: Memo.

It's coming. And there's a support -- which I'm going to read into the record in a short while, a supporting statement from Mr. Sullivan.

MICHAEL BRANDON: And my position is that, especially based on your application forms, which call for resolution before the Historical Commission before matters come to you, to obviously to save time of this Board

and city resources, so that has not issued yet and it could be appealed. So, you know, again, it's premature, I think, to be here at least until, you know, the document is issued so people can see it. Especially since aspects of the historical preservation are being discussed and argued here.

The other item that was mentioned was that this also requires a Special Permit from the Planning Board, and they also have not conducted a hearing, let alone issue a decision. In order for this Board to make the necessary determinations, you have to find that the project doesn't -- isn't at odds with the Zoning Ordinance, and it currently is because what the Ordinance says is you're not allowed in the Residence B Zone to build a second structure, more than one structure, beyond 75 feet from the front lot line. There's a good reason why that was put in. Ms. Webb mentioned there was a period ten

years ago or so where the City Council became alarmed and heard from constituents that developers were coming in and plopping additional buildings under these beautiful backyards in what we called the race course neighborhood. These are especially valuable in historic -- in and of themselves because of these long lots that are longer than the usual hundred square feet standard. And, in fact -- and I'll turn to the specific issue that was identified, although I heard some others, I'm not sure is there the adequate ten feet between the buildings or is there not? But that's certainly not mentioned.

The issue that's cited in the application is the rear yard setback. And reduction from the current -- roughly 72 feet to 30 feet will be a significant loss of open space to the abutters and to the neighbors, the neighborhood as these properties are

increasingly being filled in and the yards disappearing. And even though as of right they could go to 30 feet, within 30 feet of the rear lot line, they're seeking to cut that by 50 percent. So that's a huge, you know, that's not a small thing because of the nature and the shape of the lot or where the building is. Yeah, they're building a new building and they just want to basically waive that very clear requirement. That requirement I'd also point out in Res B, the Council specifically created -- and a larger rear yard setback than is for the standard 100-foot deep lots in Res B and the extra, it's normally 25 feet, the extra five feet kicks in because this lot is longer, it's roughly 120 feet I think. And so clearly to waive any of that setback would violate the intent of the Ordinance and that, therefore, would not satisfy the third criterion that you have to find that -- or one of the criteria

that the proposed relief doesn't violate the intent of the Ordinance. That's the intent of the Ordinance because of that extra requirement beyond the standard rear yard setback.

In addition to potential negative impacts on future inhabitants and abutters of the property, there will be impacts on views, light, air, shadow effects, mature trees. I don't know if Ms. Webb mentioned that, but I know she has a concern about large trees in the rear yard that have been there for many, many years. That if they're allowed to develop that far back on the property, would apparently be lost, or at least one of them.

Basement flooding, rainwater runoff, ground percolation. Big problems in this specific neighborhood and along that street which I believe their submission indicates that this particular property is not in the hundred year flood plane, but it certainly,

like all the houses on that street are vulnerable.

Russell Field, which Mr. Rafferty mentioned, as though that's an amenity to serve as open space of a sort serving the private owner, I would view it the other way and I hope the Board will, too. That the public's interest is in not having buildings increasingly encroaching on our open spaces. That's an open space district. It's become an increasing problem in North Cambridge especially along the Linear Park which is gradually being canonized. In fact, there are petitions that are trying to address that problem. So my sense is that from the public standpoint, having the building set back, you know, at least to comply with the Ordinance, it serves the interest of the public.

And then just so on the few matters that I think heard come up in the testimony, I don't believe if the argument is that if the

historic nature of the property is a hardship, I disagree with that. First of all, it's not a landmark property. It's under temporary oversight by the Historical Commission. But as has been suggested, it's very likely that they won't recommend -- it's not very likely -- it's not necessarily or Mr. Rafferty thought it seemed unlikely, I think I heard him say that it would be landmarked? I may have misheard, but there are only 30 in the city and, you know, this isn't a highly visible project to -- on Mass. Ave., for instance, like some that have been recently landmarked. In any event, it has not been landmarked. And even though it's preferably preserved, it may lose that classification.

Also I'm sure I heard Mr. Emery say that he had no idea that -- or no, that's not his words, but he was not aware that this was an historic property or potentially historic.

And just to follow up on what Mr. Clarey was explaining, Mr. Emery and Mr. Fee have come into North Cambridge, I think it's actually more than 15 years ago, and on this particular street, on Harvey Street, and elsewhere in North Cambridge, have purchased properties with the specific intention of demolishing the existing buildings and maxing them out with -- as of right, townhouses. Sort of cookie-cutter designs. But that's what's going on. They have repeatedly been faced --

CONSTANTINE ALEXANDER: I'm going to stop you on this line of commentary.

MICHAEL BRANDON: Okay, fine.

CONSTANTINE ALEXANDER: The character of this gentleman or what his --

MICHAEL BRANDON: Sorry. I didn't --

CONSTANTINE ALEXANDER: Well, now wait a minute. Let me finish. His past practices were not relevant. And what he

knew or didn't know about this property is also not relevant. Before us tonight is a Variance and do they meet the legal requirements for a Variance.

MICHAEL BRANDON: Thank you, Mr. Chairman. I'm sorry, I only got on that because the question was raised and asked.

CONSTANTINE ALEXANDER: Anything further? Let's move on.

MICHAEL BRANDON: Um, Mr. Rafferty I think mentioned something about 20 percent expansion. I'm not sure if, I believe the Ordinance limits -- expansion of non-conforming pre-existing buildings.

CONSTANTINE ALEXANDER: That's not before us tonight.

MICHAEL BRANDON: Okay. I just heard him mention it. I didn't --

CONSTANTINE ALEXANDER: He did mention it, but it's not relevant.

MICHAEL BRANDON: Thank you.

ATTORNEY JAMES RAFFERTY: It is.

CONSTANTINE ALEXANDER: I think you probably covered everything?

MICHAEL BRANDON: Yeah, I think so. So just to summarize, I would say that there's no demonstrated hardship. There are no soil conditions, no topographical aspect or anything about the building shape that effects this property and this yard that distinguish it from other nearby lots. And very similar historic structures inside the lot, same thing. If you were to grant this, it would nullify the Zoning.

Thank you very much.

CONSTANTINE ALEXANDER: Thank you. Anyone else wishing to be heard on this matter?

(No Response.)

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

(A short recess was taken.)

CONSTANTINE ALEXANDER: Technical difficulties have been solved and I think we're at -- no one else wished to be heard so I'm going to close public testimony.

I'm going to read into the file, we have a letter from the Cambridge Historical Commission or a memo I should say, with regard to 60 Clifton Street. It states -- and then there's a letter attached, which I'm going to read as well because I think it's important to be part of the record and for everyone to have heard it. I'm reading from the Historical Commission's memo to us.

(Reading) The building, an example of a typical North Cambridge worker's cottage is currently be studied for landmark designation after a demolition delay was in effect last year. The property owner has redesigned the project in a way that will preserve the main block of the historic house, construct an addition, and construct

a freestanding building behind it. A Certificate of Appropriateness was approved by the Historical Commission on February 2nd. A copy of the Certificate will be forwarded to the BZA file as soon as it is available.

It has not, as of right now, hasn't been sent to us.

There's also a letter to us, or actually addressed to Ranjit, dated February 15th from Charlie Sullivan regarding this property. And the letter says as follows: (Reading) The property at 60 Clifton falls under the Historical Commission's jurisdiction because it is currently being studied for landmark designation under Chapter 2.78, Article 3 of the City Code. The existing house, a worker's cottage that was built in 1851 and moved to this location shortly thereafter was found to be a "preferably preserved significant building" last year under the procedures of the Demolition Delay

Ordinance. Cottages like 60 Clifton Street are emblematic of a significant period in Cambridge history. When immigrants were arriving from Ireland in large numbers and finding employment in the clay pits and brickyards of North Cambridge, the familiar high basement worker's cottage evolved to meet the particular needs of this community which needed inexpensive housing in an area with a high water table and frequent flooding. This example with a footprint of only 14 feet by 22 feet is even smaller than most. Mr. Emery initially intended to demolish 60 Clifton and build townhouses. Once the Commission initiated a landmark study, he began to work with the CHC staff to develop a plan that would preserve the essential form of the house and allow additional development on the site. The Historical Commission granted his latest plan, a Certificate of Appropriateness, on

February 2nd subject to staff review of construction details and materials. I urge the Board to grant Mr. Emery the relief requested. Worker's cottages are often threatened because they are difficult to adapt to modern living conditions, but Robert Connell, the architect has done an excellent job in this instance. And it's signed Charles Sullivan.

With that, Mr. Rafferty, any closing comments? But I want to ask you a question before your closing comments. If I look at your dimensional form, it would appear, am I correct that the new building, not the -- it's going to be about 2100, roughly 2150 square feet?

ATTORNEY JAMES RAFFERTY: No.

CONSTANTINE ALEXANDER: Okay. How big will the new building be?

EAMON FEE: 1425. 1,425.

TAD HEUER: They're going to add

more to that and they're going to have --

CONSTANTINE ALEXANDER: Right. So how big is it going to be? I'm sorry.

EAMON FEE: 1425 feet.

TAD HEUER: Both buildings each?

ATTORNEY JAMES RAFFERTY: They'll be comparable.

EAMON FEE: Will be 1400.

CONSTANTINE ALEXANDER: Okay, now.

ATTORNEY JAMES RAFFERTY: Just briefly, Mr. Chairman. And to be very clear, the hardship here is directly related to the structure on the lot and the historic structure, that is the reason we're here. There has been a long process at the Historical Commission involving this house. And when the determination was made to impose a demolition delay and not allow the house to come down for at least six months, Mr. Emery did explore with Mr. Sullivan what would have been an as-of-right solution. And the Board

can see it by looking at the site plan. You can lift that house up and move it back five feet. And the front house becomes a conforming house. And the addition proceeds within the dimensional restrictions of a Res B lot of 6,000 square feet. What's happening here is the 15 feet that isn't in the backyard is between the houses. And there's a tradeoff there. There's been a determination by the Historical Commission that the front house is better preserved as a freestanding structure without having a large attached addition gloved onto it. So that is definitely what the hardship is. With all due respect, it's a little disingenuous to pretend one doesn't know what the hardship is when they've been actively involved in understanding with what the Historical Commission process is.

So, the house needs relief for two reasons: The front house could be made

conforming rather easily, but the -- Mr. Emery was discouraged from doing that to make the house conforming. And it's two units. It's permitted at two units. It's within the FAR. But it is closer to the rear. And it's no small coincidence, the 15 feet that it's missing in the rear exists between the two structures. And the relief is based on determination by or at least a conclusion by the Historical Commission that the overall scale and context of the neighborhood is better served by this type of separation. That's the hardship, and that's the basis for the relief that's being requested to allow for this separation as two structures as opposed to a single structure.

So the notion that -- and then we also need the 75-foot relief. But to be clear, there are many cases that have concurrent jurisdiction between other Boards. In this case the practice was followed that the Board

wants to see the Historical Commission weigh in first, but to suggest that you can't get a Variance until you get a Special Permit, leads us to a chicken and egg scenario where you could show up a week from now and saying you can't get a Special Permit until the Board has granted you a Variance. The process here allows, I think, appropriately for the body that has overreaching control of the site at the moment to avoid, and I think the support letter of Mr. Sullivan is evidence of the hardship of the Petitioner is facing.

Thank you.

CONSTANTINE ALEXANDER: Thank you, Mr. Rafferty.

I'm going to close all commentary now. Comments from members of the Board?

TAD HEUER: I have some technical questions.

CONSTANTINE ALEXANDER: Go ahead.

TAD HEUER: I'm looking at the plans

that were submitted and I think this is just labeling. But I'm looking at sheet A2, A1, A2, A3. A1 is marked front elevation. That can't be right, is it?

KEVIN EMERY: Which house is it?

TAD HEUER: A1 the rear structure.

EAMON FEE: Yes, it's the rear. I believe the architect called it the front elevation, but really should be the side elevation.

TAD HEUER: Right, that's the left side, right?

ATTORNEY JAMES RAFFERTY: It's the elevation containing the front door, but it's not the elevation fronting the public way.

EAMON FEE: Vinyl siding. It's kind of a typo.

TAD HEUER: Right. So the front elevation should read left elevation.

And on A2, the one that reads left elevation, that should be front elevation?

Or that should be rear elevation? That's rear, correct? A2?

EAMON FEE: A2.

TAD HEUER: The one with the fenestration is rear?

EAMON FEE: Yeah. Where it says left side elevation, that would be rear.

KEVIN EMERY: Yeah.

TAD HEUER: All right.

The one that says right side elevation, that should be front?

EAMON FEE: Well, that should be I guess the front. That's the one between the two.

TAD HEUER: And facing the front of the lot?

KEVIN EMERY: It's facing the house, yeah.

EAMON FEE: It's facing the street.

TAD HEUER: Yes. Is there a reason that there's no fenestration on that

whatsoever and that's the face that you would see if you were on the street looking and you happen to see around the back edge?

EAMON FEE: You're gonna see that the front building's gonna be there.

TAD HEUER: Right.

EAMON FEE: And then you're gonna have the 15 feet and then you're gonna have that gable.

TAD HEUER: Right. So I wouldn't -- is there any place where I would be on the public way where I would be walking passed -- I see front house, I keep walking, keep walking, keep walking --

KEVIN EMERY: You're looking at this?

TAD HEUER: Yes. Right, so let's say that I'm here. I have a site line to the rear units, front facing or I'm here, I'm looking across the driveway of the site line to the front, and I see no windows, I just see

a blank wall?

EAMON FEE: Well, you would be very hard pressed to actually see that gable from any direction.

TAD HEUER: Well, I mean the house isn't going to be hidden.

EAMON FEE: No, but the front corners of that building will obscure at least half that elevation. If you can picture like the site plan going this way.

TAD HEUER: Yes.

EAMON FEE: That corner would obscure 50 percent of this gable. And looking this way, this corner will obscure 50 percent.

KEVIN EMERY: I mean, it's very easy --

EAMON FEE: I mean, we can stick a window in there if you want.

TAD HEUER: Yes, I'm kind of looking at that as a huge blank wall facing the

street, and I'd like to see something on there even if it's false fronted or it's, you know, leads into a garage.

KEVIN EMERY: Add windows, yeah, sure.

ATTORNEY JAMES RAFFERTY: It is a garage, but I think they can easily add windows.

TAD HEUER: Right. With the counterbalance being, you know, usually when we have these issues of structures that are close to each other, we don't, you know, want significant windows where you can look into other people's houses. Here when this can be put into something like a garage and giving some fronting, and so a passerby would look at it and have some articulation but it wouldn't be necessarily detrimental to the --

KEVIN EMERY: Agreed. It makes sense. Yes, it's something we can do.

TAD HEUER: Okay. And then finally on the A3 rear elevation should we, right; is that correct?

EAMON FEE: Fairness, yes, it would be the right.

TAD HEUER: And everything on here that says vinyl rail, vinyl siding, that should read cedar?

EAMON FEE: Yeah, clapboard.

TAD HEUER: Right. And then top cedar impression remains cedar impression?

EAMON FEE: That's going to be cedar shingles.

TAD HEUER: Okay.

EAMON FEE: Yeah, cedar shingles, not a vinyl product. We're going to cedar, cedar shingle.

TAD HEUER: Okay.

KEVIN EMERY: (Inaudible).

TAD HEUER: Right.

So I guess I would suggest to the Chair

that there are also a number of indications in the plans where dimensions have been changed and written in. I presume those changed dimensions are the correct ones. The old ones are whited out. But this plan I would think would be very difficult for inspectional to deal with as is.

SEAN O'GRADY: We don't -- are we talking about siding and stuff like that?

TAD HEUER: No, we're talking about dimensions. The dimensions are written in, not written. We have fronts that are lefts, lefts that are fronts. There are lots of crosses out on this plan. If we do grant relief, I would like to see a plan that is has full, no handwriting on it and is accurate.

CONSTANTINE ALEXANDER: Well, we need to have -- I'm not going to make any approval tonight if we don't have accurate plans.

TAD HEUER: Well, they're -- we have

those and we also have those types of things. And also on the dimensional, these types of --

CONSTANTINE ALEXANDER: I don't think that would prevent Mr. O'Grady from reviewing the plans should we grant relief.

SLATER ANDERSON: The survey's not marked up. They haven't changed dimensions on the survey.

TAD HEUER: No, although I do have a question actually -- thanks for mentioning that. On the survey it shows on the rear building, left side stairs down off the rear deck. And on the landscape -- rather, excuse me, on the -- I believe it's on A4 there are no stairs shown down into that left setback off the rear deck? One of those right or wrong? Or one of them's right or wrong. Which one's right or wrong?

EAMON FEE: You are 100 percent correct. The stairs go down into the left

setback, and are shown on the plot plan but are not shown on the actual dimensions of the house. But then again that's not a -- there's no violation there.

ATTORNEY JAMES RAFFERTY: Can't we go three feet in?

CONSTANTINE ALEXANDER: I'm a little troubled by -- we approve -- if we grant relief, we tie it to plans. And we're talking about plans that I'm told are now not accurate.

ATTORNEY JAMES RAFFERTY: Well, I think what's been pointed out is that it would appear that the plot plan doesn't show --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: -- a conforming stairs. We're not looking for relief on the stairs.

TAD HEUER: Correct. And just to correct, Mr. Rafferty, the plot plan shows it as accurately as I'm understanding. It's

the drawing doesn't show it.

ATTORNEY JAMES RAFFERTY: The drawing? Okay.

KEVIN EMERY: Well, we go with the drawing where the drawings drawn up. We wouldn't -- obviously the plot plan was done by the engineer. He put in --

ATTORNEY JAMES RAFFERTY: The plot plan was the right one.

TAD HEUER: Do you have stairs coming off that side or not? Yes? No? Yes?

KEVIN EMERY: On the plan we don't, but on the plot plan we do. We don't need one set of stairs, the other set of stairs, right.

CONSTANTINE ALEXANDER: Would you like a little time to go back and look at these plans and the plot plan and come back with the plans that you're really going to want to go forward with? I don't like the idea of granting relief tied to plans and, we're in

a little bit of confusion here as to what the plans are.

ATTORNEY JAMES RAFFERTY: You're suggesting we could come back later this evening?

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: We would love to do that, yes.

CONSTANTINE ALEXANDER: We can just recess this case and hear other cases and come back with a set of plans showing us how you changed it from what we have in our file and we can proceed on that basis.

KEVIN EMERY: Okay. Also the Historical -- I mean, Historical made some minute changes on the plans, too. We'll make those notes on this also.

CONSTANTINE ALEXANDER: Well, if those changes have any Zoning impact.

KEVIN EMERY: No.

EAMON FEE: Just in here.

CONSTANTINE ALEXANDER: Please.

We will recess this case until --

TAD HEUER: And the fenestration on that to the extent possible?

ATTORNEY JAMES RAFFERTY: Yes, good idea. Yes.

(Case Recessed.)

(8:50 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Slater Anderson, Douglas Myers, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: We'll call case No. 10213, 6 Longfellow Park.

Is there anyone here wishing to be heard on this matter?

Excuse me, Mr. Rafferty, before we start. You submitted a revised set of plans and a dimensional form. They were paper clipped together, and the paperclip has gotten separated so I want to make sure I have in front of me the revised -- the new dimensional form. Do you have another copy with you?

ATTORNEY JAMES RAFFERTY: I do. But it has a red, it's printed in red and it

says Revised at the top. And I have an extra copy. It looks like this.

CONSTANTINE ALEXANDER: I saw it in the file, but it's been separated so I'm having trouble finding it.

Now, Mr. Rafferty, you may proceed.

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chairman, members of the Board. For the record, James Rafferty on behalf of the applicants Jonathan and Margaret Seelig, S-e-e-l-i-g. And Mr. Seelig is seated to my left and Maggie would be to my far right. Mr. Hart is the architect, H-a-r-t.

Mr. Chairman, this is an application for a Variance to allow for some modifications to a single-family house in a Residence A-2 District, Longfellow Park. The neighborhood of historic significance in the Old Cambridge Historic District is such that proposed modifications have been reviewed by the Historical Commission a month

ago and there's reference to them in the memo by Mr. Sullivan.

Mr. and Mrs. Seelig live currently around the corner with their three children. They purchased this house recently, and are excited about the opportunity to move here. One of the goals that they're attempting to achieve is to create handicap access into the house for Mrs. Seelig's father. He is confined to a wheelchair, and in order for him to get into the home, he will need to have handicap access. The home is proposed to contain an elevator if you've had an opportunity to review the floor plans. And Doctor Gould, Mrs. Seelig's father is anticipated to spend between three and four months a year living with his family. That essentially led to a lot of the decision making around the changes to the house itself. The house today is really non-conforming in a couple of ways. It's

large in terms of its permitted FAR than what the district would provide, but it also has rear setback violations. And we have spent a fair bit of time examining the rear of this house because that's where the majority of the changes are occurring. Just an overview of what's being proposed here are essentially three changes to the single-family house. The creation of a new front entry which is sometimes referred to as a side entry, but it -- presently there's -- the secondary entry to the house is down the end of a narrow, some narrow path. The proposal, which has been reviewed and approved by the Historical Commission, would put a porch there and a small mudroom addition that would allow access into the house, a new secondary means of access that would probably be the principal means of access for the Seelig family. As they use the house it would be at the end of the driveway.

The two other changes that are being proposed to the house are occurring in the rear. If you look at the site plan, you'll notice that the house today has a one-story room which we referred to in the submissions and in some of our writings, as an octagonal room it extends off the back of the house and it also, if you look at the floor plan, it's actually a recessed room, too. It's about four or five steps down off of the living room.

MARGARET SEELIG: Up.

ATTORNEY JAMES RAFFERTY: Up.

Excuse me. So it is not level with the living room, with the floor of the rest of the house. And as the Seeligs and their architect and I looked at what opportunities might be possible with the house, within the context of the Zoning requirements, one of the areas that was focussed on was replacing that octagonal room. And the intention was to and

is to remove that room and replace it with a comparably sized room adjacent to it. But that room will be more functional. It would be on the same level as the other floor of the house, and it would also provides for better circulation. And we did prepare an analysis, I think it's highly relevant in terms of understanding the impact that particular change has. There's a side-by-side comparison. I have a couple of copies. Mr. Hart has even more. That explains both the volumetric and setback differences when you remove the octagonal room and replace it with the rectangular room. In fact, because the rear lot line is not parallel to the street and slopes as you move in a direction towards the west?

STEPHEN HART: South.

ATTORNEY JAMES RAFFERTY: South. You actually increase, the setback becomes more generous. So as you look at the plan

here you'll see both in terms of volume and footprint, that this represents a change that reduces the non-conforming nature of the existing one-story room. It becomes more conforming in terms of setback, and less of that room is in the rear setback than the current room and the room that it is proposed to replace.

I think that's relevant for that particular portion of the application on a number of levels, and chief among them is to allow the Board to explore whether or not there are any new non-conformities being created as a result of this proposed change. This is a single-family house as you know, and there is a provision in Section 6 that says a determination -- if there's no intensification or addition to the non-conforming element, then there is a process for approving this based on a determination that there is -- that

this -- that the proposed alteration does not create a more intensification of the non-conformity. So in this case we will wind up with regard to the removal of that room, because that room in its current configuration has a full basement and the successor room doesn't have a basement, there's actually less GFA involved in that room. We also included a volumetric comparison of the height of that room, and Mr. Heart could probably pass that out, too, showing that the room for the successor room, in addition to being more conforming to the rear setback, is lower in height than its successor.

Now, the proposal when it was originally submitted also included a covered porch in the area next to this room. And as you know the presence of that roof would have meant additional GFA addition. And we've had some extensive conversations with the

near abutter, and there's been a lot of focus on trying to mitigate and minimize any impacts that this change would have, as seen from that abutter's property, particularly their backyard. We did include a Google Earth photo that explains the relationship. So in looking at the covered porch, there was some expression that that covered porch, that even the roof of that might be problematic so that's been changed. So that represents now an as-of-right element.

The other significant change to the project as originally proposed involves the second portion of this addition. And you can again see that.

Through the use of the site plans to show you the changes what's before you. I hope everyone has one. What's before you are three site plans; the original is the existing conditions. The second one is --

CONSTANTINE ALEXANDER: I'm sorry,

Mr. Rafferty, looking through the files, which plans are you working with?

ATTORNEY JAMES RAFFERTY: We're on this package of three site plans.

So the three, you can see the existing conditions as they are in the first sheet.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: The second sheet shows the current proposal. And the third sheet, and the real reason I wanted to draw this to your attention, because the application as originally filed, included an additional element, and its relevance for the Board and their analysis of this case understand that that, the creation of that or the introduction of that element at the ground floor would have resulted in a new rear setback. It would have increased the non-conformity of the excessing setback because it would be by extending in that direction, and as I mentioned, the slope of

the lot line, the original dimensional form showed that the setback then was going from seven feet, five inches to about six feet, eleven when that element was there.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: That has been removed now.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: So there is no change in the rear setback. The rear setback remains at the corner that's depicted if you compare the existing and the current, you'll see 7.6 or seven feet, six inches or 7.5 feet.

CONSTANTINE ALEXANDER: So, you're still non-conforming as to rear yard setback, but what you want to do doesn't increase the non-conformity. It's going to maintain the same non-conformity you had before?

ATTORNEY JAMES RAFFERTY: It doesn't change at all.

CONSTANTINE ALEXANDER: It doesn't change at all?

ATTORNEY JAMES RAFFERTY: Yes. And we don't touch that -- there's no intensification --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: -- of the non-conformity here that the -- that the addition doesn't represent any intensity of the non-conforming element. So the non-conforming element, is at seven feet, six. It's defined, and you can see it in the photograph, it's defined by this. And we've done a volumetric comparison so the Board can understand what change is occurring there.

CONSTANTINE ALEXANDER: Swamped by paper here.

ATTORNEY JAMES RAFFERTY: Careful what you wish for. In the prior case we didn't have enough.

CONSTANTINE ALEXANDER: No, we

didn't have it accurate.

ATTORNEY JAMES RAFFERTY: With Mr. Hart we don't suffer from that.

CONSTANTINE ALEXANDER: Stop with the paper now, okay?

ATTORNEY JAMES RAFFERTY: But what we provided in isolation is for the Board to understand now this second change to the proposal, to the house. And what's happening in this change is you can see, this enclosure right here which currently serves as an enclosure for a stairway into the basement, will get modified such that that non-conforming wall will increase in height in this area, but the distance is unchanged and thus the setback is unchanged. It's already included in GFA because the stairway goes to an occupied floor. So there is not a GFA change represented by this change. So as noted in the application, the net GFA at the end of the day is actually lower. And

that's not a result of a manipulation. That's simply a result of the removal of the basement and the use of mechanical equipment. There's no filling in basements here.

So we find ourselves in a situation now that unlike when the case was originally filed, we were looking for setback, rear setback relief because we were taking it a small distance. We were going from the seven foot, five to a six foot, nine. We are not looking for that relief in this case now. We are looking for relief to allow for these three changes that I've described, two in the rear and one in the back.

CONSTANTINE ALEXANDER: Why do you need relief for those three changes?

ATTORNEY JAMES RAFFERTY: We need relief for the changes for two reasons:

The first as I noted earlier, has to do with creating handicap accessibility into the structure. The floor of this room right

here in this location is not level with the floors, it's not accessible. And the -- it becomes not usable for someone in a wheelchair.

The second, the expansion here doesn't change the GFA. What it does is allows for a slightly more generous family room or kitchen area.

CONSTANTINE ALEXANDER: What is the Zoning? You don't need Zoning relief for the rear yard setback?

ATTORNEY JAMES RAFFERTY: That's correct.

CONSTANTINE ALEXANDER: And you don't -- you have a GFA issue obviously. Although you're reducing the GFA, you're still when all is done, you went over the permissible GFA for the lot.

ATTORNEY JAMES RAFFERTY: But we would not have intensified the non-conforming GFA.

CONSTANTINE ALEXANDER: To be sure. Anything else with the Zoning analysis?

ATTORNEY JAMES RAFFERTY: No. We have a change in the rear setback from the octagonal room to the rectangular replacement, but that also doesn't represent an increase. It does not represent an increase.

MARGARET SEELIG: It's a decrease.

ATTORNEY JAMES RAFFERTY: Right. So the issue before the Board --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: -- in the context of the relief is scaled back then as originally submitted.

CONSTANTINE ALEXANDER:  
Understood.

MAHMOOD FIROUZBAKHT: You're building in the setback and that's the relief you're seeking?

ATTORNEY JAMES RAFFERTY: No.

We're already in the setback. And we're extending a wall. We're extending a wall that's already in the setback. So that's, that's the -- the relief located here is we're building a wall within the setback.

I think the rectangular is a very interesting issue as to whether or not there could be -- if there's a determination under the Section 6 standard that there hasn't been an intensification as a result of shifting that room, I'm not sure that it wouldn't qualify for a relief under Special Permit. But we applied for a Variance and that becomes our issue.

CONSTANTINE ALEXANDER: I'm sorry, I'm still a little confused. You are not -- you are seeking rear yard setback relief. You're not intruding any further into the rear yard, but because of the changes that you're proposing, you are still doing construction in the rear yard setback. Is

that not right?

ATTORNEY JAMES RAFFERTY: Well, we're doing construction, that's correct. So as you can see from that early analysis, a portion of the new rectangular room is in the rear setback. So that's occurring within the setback. There is the element of Section 6, and that's why I introduce it. That says well, if the determination of whether or not, the mere fact that's in the setback, doesn't necessarily mean it does not qualify for that --

CONSTANTINE ALEXANDER: My reading of Section 6 and we're talking Section 6 in the General Laws not the Zoning Laws.

ATTORNEY JAMES RAFFERTY: Understood, right.

CONSTANTINE ALEXANDER: It's a little bit of apples and oranges. Either you come before us and seeking a Special Permit

under Section 6 and we apply the Section 6 standard, or you come before us, as you're doing tonight, seeking a Variance in which case you have to meet the requirements for a Variance under Chapter 40-A under our Zoning Ordinance. I don't think you can mix and go back and forth and pull in notions of Section 6 to justify a Variance. That's why I think you're confusing the Board. Your reference is to Section 6.

ATTORNEY JAMES RAFFERTY: Well, what I'm suggesting, and I apologize for the confusion, is with the change -- with the modification in the plan from the original application, which would have created a new encroachment into the rear setback.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: That I do think it's of some relevance, whether or not the Board makes a determination that what's happening here doesn't result or isn't the

result -- isn't leading to an intensification of a non-conformity. I have been over this with staff, and I think their conclusion is that we do need the Variance. We are, with the rectangular room, we are within the rear setback less so than the prior one. So we -- accepting that determination from the staff, we're here tonight for a Variance. We're mindful of the hardship requirements associated with the Variance, but one of the tests in analyzing the Variance, of course, is its impact, a derogation from the intent of the Ordinance.

CONSTANTINE ALEXANDER: And there the Section 6 analysis is relevant.

ATTORNEY JAMES RAFFERTY: That's my point.

CONSTANTINE ALEXANDER: I understand that.

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: I would

agree with you. And I would have gotten there.

ATTORNEY JAMES RAFFERTY: Okay.

CONSTANTINE ALEXANDER: One thing you haven't dealt with yet is the special circumstances. The hardship you've identified, the need for handicap accessible ramp and elevators and all of that. And you talked to the derogation, the third test in terms of a Variance in terms of bringing in a Section 6 type of analysis. What are the special circumstances that justify or require or justify the granting of a Variance?

ATTORNEY JAMES RAFFERTY: Well, part of it has to do with the historic nature of the structure and making changes in its least sensitive publicly visible location. So there is a, there is a generous side yard which I'm sure if you had an opportunity to see the photographs, creating this handicap

accessibility in a location other than what is proposed would be more disruptive to the public facades of this property. In the other unique aspect of this is the fact that the floor, the layout of the octagonal room is not flush with the rest of the house. So we create this two-tiered flooring system that doesn't allow for that type of access. The house is unique like a lot of the houses around it by its history, by its siting on the lot, and by the fact that it has historically been viewed as preferable to put locations and additions of this size in this location. So there are other areas where the setback is more generous than one can envision an addition that might not create this level of hardship or this level of relief. But in this case, the unique circumstances have to do with -- we're dealing with an existing structure. And if you look at the proposed floor plans, there's little in the way of

disruption to what's happening here within the main body of the house. These are modest by any definition of what the Board sees by measurable definitions of GFA. They're actually a reduction. By setback dimensions it's no change at all. And the unique -- the uniqueness of this to the second part of that test has to do with the fact that there is an established point of access at the rear of the house where a family room and the kitchen feed off this deck in this location. And this is, this is an attempt to create a reasonable floor plan that accommodates a young family, a house that hasn't had significant changes to the kitchen and so that's, it's likely often seen, it's related to the structure and the historic aspect of it, the age of the structure, and some of the existing elements of the interior of the structure. Namely, that floor that I talked about.

We -- as you can see, we've -- there's

been a lot of effort put in here to really understand its impact because we have had conversations with the rear abutter trying to make the case that in our view this has a modest impact and that the changes in some case actually can be seen as beneficial particularly when one looks at the swap between this particular analysis that suggests that this is a volumetrically height-wise, this is a -- and setback-wise, this is more an intrusion and represents more non-conformity than what we're proposing in way of alteration. So we could talk a bit more about it, but I imagine there's someone else here who wants to talk.

CONSTANTINE ALEXANDER: Questions from members of the Board at this point? Comments?

I'm going to open the matter up to public testimony.

Is there anyone wishing to be heard on

this matter? We have a stenographer so give your name and address.

If you a lawyer.

ATTORNEY MARC GOLDSTEIN: I am.

CONSTANTINE ALEXANDER: If you have a business card, that would make the stenographer's life a lot easier.

ATTORNEY MARC GOLDSTEIN: Good evening, Mr. Chairman.

CONSTANTINE ALEXANDER: Good evening.

ATTORNEY MARC GOLDSTEIN: Members of the Board. My name is Marc Goldstein. I'm an attorney with Beveridge and Diamond. We submitted a letter on behalf of our clients at 11 Hawthorn Street who is a direct abutter --

CONSTANTINE ALEXANDER: Can I ask you a question right at the outset?

ATTORNEY MARC GOLDSTEIN: Yes.

CONSTANTINE ALEXANDER: Your letter

that you have sent will be part of our record, part of our file. I don't propose to read it into the record because I assume you're going to cover whatever you covered in that letter orally right now.

ATTORNEY MARC GOLDSTEIN: Agreed. My clients are here tonight. Lynne Hess and Doctor Bill Appleton. Ms. Hess is going to speak after I for a couple minutes just to let her -- give her personal feelings about the impact of the project on her.

I think your confusion about the type of relief that's being sought is the same confusion that we have been suffering under since the proposal was filed with the Board. The initial proposal was failure to request for a Variance. There were intrusions with regards to rear setback. There have been a number of iterations, some of them being in conjunction with discussions with my clients. As I understand it, the request

continues to be for a Variance.

CONSTANTINE ALEXANDER: Yes, it is.

ATTORNEY MARC GOLDSTEIN: To the extent that that's, the application is before the Board and I will address the standards, for this proposal to meet. To the extent that this is really an expansion of a non-conformity, which I think also can be easily be viewed as, there are some serious questions about whether or not it could meet that standard. I don't know if you want me to talk to those, but my concern is to the extent that you're going to look at it under Section 6 as an expansion of the non-conformity as opposed to a request for a Variance, that the two parts of the building that are at issue, that are in the setback, they would need to be a demonstration that those are non-conformities as opposed to non-compliant structures and given the history that my clients have with the

property, my understanding is that those were added and may be outside of the statute of limitations in terms of Zoning enforcement, but that those are not legal structures.

CONSTANTINE ALEXANDER: I don't want to go there. That's ancient history.

ATTORNEY MARC GOLDSTEIN: Well, it's not ancient history to the extent that they're asking for a -- if they are asking for a Section 6 finding.

CONSTANTINE ALEXANDER: This case was not advertised for a Section 6, therefore, that's the point I was trying to make with Mr. Rafferty. Section 6 could have been before us tonight, but it is not.

ATTORNEY MARC GOLDSTEIN: I understand.

CONSTANTINE ALEXANDER: However, the point that Mr. Rafferty made and which I happen to agree with, is that one of the three tests for a Variance is derogation of intent,

and I think the policies that are announced, support Section 6 of Chapter 40-A are relevant to that test. So to that extent Section 6 is relevant, but we're not going to get into --

ATTORNEY MARC GOLDSTEIN: Okay. And I just want to be clear as to what the request for relief is tonight. It's clearly, it's noticed for a Variance.

CONSTANTINE ALEXANDER: It is a Variance.

ATTORNEY MARC GOLDSTEIN: It continues to be a Variance, it's not a Special Permit.

CONSTANTINE ALEXANDER: That's exactly right.

ATTORNEY MARC GOLDSTEIN: Okay. On that basis there's certainly a question about whether or not what the hardship is. And I think the difficulty here is we are clearly talking about a project that in partly

designed to give this house handicapped accessibility. The parts of the house that are being expanded towards my client's property are not integral to the handicap accessibility. The handicap accessibility is the ramp that comes in and goes into the building. There's an elevator that's internal. But the areas that are constructed that are more intense into the back side yard are not in integral to that at all.

CONSTANTINE ALEXANDER: I'm sorry to interrupt you, but I want to make sure I understand. They may be more intense but they're not more intrusive in the sense of getting --

ATTORNEY MARC GOLDSTEIN: Yes, I agree with you.

CONSTANTINE ALEXANDER: I want to make sure I understand.

ATTORNEY MARC GOLDSTEIN: No, no,

no. The current proposal as I understand it, does not intrude further into the setback than the original building does at approximately seven foot, six and about 18.

CONSTANTINE ALEXANDER: It's just more massing.

ATTORNEY MARC GOLDSTEIN: Correct. The issue from my client's perspective and -- did you give them what you gave me tonight? The renderings?

ATTORNEY JAMES RAFFERTY: Yes. Hold on.

ATTORNEY MARC GOLDSTEIN: These guys?

STEPHEN HART: I have those.

ATTORNEY JAMES RAFFERTY: We will.

MARGARET SEELIG: They don't want more paper.

ATTORNEY JAMES RAFFERTY: We were overburdening them with paper.

ATTORNEY MARC GOLDSTEIN: Well, I

apologize if I'm going to overburden you with paper. But Mr. Rafferty gave me some renderings that I think actually will help me explain from the perspective of Ms. Hess and Doctor Appleton what the view is going to be and what the impact on them is going to be. And you have extra copies of that?

STEPHEN HART: May I see what you have?

ATTORNEY MARC GOLDSTEIN: Yes, the current proposal.

ATTORNEY JAMES RAFFERTY: But that's not their view.

MARGARET SEELIG: That's not their view.

ATTORNEY MARC GOLDSTEIN: Well, I'm sure you'll have a chance to explain why that's not potentially accurate.

ATTORNEY JAMES RAFFERTY: Well, if you mischaracterize them I won't give them to you.

CONSTANTINE ALEXANDER: Let him finish and you'll have a chance to rebut.

ATTORNEY MARC GOLDSTEIN:  
Mr. Chairman, Mr. Rafferty gave me this this evening.

LYNNE HESS: This is our view.

ATTORNEY MARC GOLDSTEIN: And just so you can understand from the Appleton property, they're situated behind and at the closest point to the area that has been the closed stairway down which is now going to be a one floor enclosed area right behind their fence line. That's what's going to be the closest. It's going to be as close as the current structure is. The other -- I think the other way to look at it is the other document, which was the volumetric document that was prepared for you, Six Longfellow Park area and volume comparison. There are two of them. You gave them both, right?

ATTORNEY JAMES RAFFERTY: Uh-huh.

ATTORNEY MARC GOLDSTEIN: They're identifying as a shed which is really an enclosed staircase. This is the area that's closest to the Appleton property. This is seven foot, six. What's shown on the right is the existing structure. And at the closest to them is seven foot, nine feet, and it's considerably less in terms of the width than what's proposed. The front wall is going to be now at nine foot, six and we'll now proceed from the entire 15 feet and one and three-quarter inches.

MARGARET SEELIG: No, that's not right.

ATTORNEY MARC GOLDSTEIN: That's a lot more mass from the perspective of somebody on the other side looking out. The reason I gave you the rendering is that the rest of what's being built there is also built in that corner area. It's further back from their property, there's no doubt, but again,

it's all moving out in an area that was previously just deck work, approximately nine feet. And it's building, I think if I'm right, it's approximately 30 feet long even though it doesn't have a top on part of it where the octagonal room used to be. So all of the impact in terms of mass and coming closer to their property, it's all in that corner for them. So the intensity --

CONSTANTINE ALEXANDER: What about the mitigating, from Mr. Rafferty's point of view, the impact of removal of that octagonal building?

TIMOTHY HUGHES: Can I -- when you're talking about mass, are we using a cubic foot measurement, the volume? Is that the same thing? Are we talking about the same thing?

ATTORNEY MARC GOLDSTEIN: Yes. The difficulty is -- I mean, yes, you can certainly do a mathematical calculation.

TIMOTHY HUGHES: I could and I just did as a matter of fact. All right?

ATTORNEY MARC GOLDSTEIN: And so there's a mathematical calculation as to what's the ultimate volume that's enclosed. And then there's the volume also taking into account how close those buildings are.

TIMOTHY HUGHES: Understood.

ATTORNEY MARC GOLDSTEIN: So there's some adjustment that's made but I understand your point.

From the perspective of someone on their side of the fence, this is a lot of intensification. Basically it's close as possible to their part of the property. Their part of the property which also has some pretty intense uses similar to the church -- intensity of the church use next-door.

If I'm right -- I'm looking out at this. You asked about the octagonal room, from the

perspective of the Appleton property, the octagonal room is actually considerably better from their perspective than what's proposed. The octagonal room is architecturally more interesting in that instance, but also more importantly it's slid considerably over so it's not directly behind their property, it's actually behind the Harvard property. So by transferring that volume much closer to their property, the intensity and feel is much more dramatic from their property than the octagonal was -- even though that octagonal room is arguably higher and more volumetric.

To the extent that they're seeking a Variance for this project, I don't think they can meet the standards that are required. I understand that part of the driver for this project is handicapped accessibility. But the changes that are being otherwise made either don't need to be made to accommodate

handicap accessibility or could be made in other ways. For example, to the extent that they're talking about the difference of floor heights because of the octagonal room, I'm presuming that one can even out the floor heights of the octagonal room if that's what you wanted to do. There are lots of things that can be done and accomplished that none of the changes that are bumping towards the Appleton property need to be done or simply accommodate the handicap access. As a result, there's no hardship here. And to the extent that they want more room or more living space, there's ample space in order to do that that's not intruding into the setback.

There's really, there's nothing particularly about the property or the house or its situation that lead to the special circumstances that are required under the Ordinance or under Chapter 40-A.

. The location of the structure is not

different than the location of other structures in the Zoning District. It's nothing unique about the property or the lot which is a requirement under the statute and under the Ordinance.

And Ms. Hess will talk to this, there's an impact and a negative impact on the neighborhood and particularly on their property.

CONSTANTINE ALEXANDER: Well, maybe Miss Hess will do it. I've heard a lot of -- not yet. You'll have your chance.

ATTORNEY MARC GOLDSTEIN: Don't worry she wants to talk.

CONSTANTINE ALEXANDER: I heard a lot of technical stuff back and forth. I'm trying to get the nub of this. What's the problem? What is it that your client has a problem with respect to the project that is going forward?

ATTORNEY MARC GOLDSTEIN: Yes. And

it may sound technical, and perhaps Miss Hess will be able to sort of say it in a more heartfelt way than me as a lawyer can do, but the reality is what they're replacing, which is that enclosed structure which is quite close, but not all that massive. They're replacing that with something that is much larger from their perspective to the closest point of their backyard. They've lived in this house for 30 years. They use the backyard. They don't have a summer house. So they're in the backyard spring, summer, and fall. So to the extent that they are moving either mass or building closer and taller --

CONSTANTINE ALEXANDER: But they're moving a wall closer.

ATTORNEY MARC GOLDSTEIN: They are.

CONSTANTINE ALEXANDER: Is the privacy of your client going to be impacted by the moving of the wall closer to the lot

line?

ATTORNEY MARC GOLDSTEIN: I don't think it's a privacy question.

CONSTANTINE ALEXANDER: Then what is the question?

ATTORNEY MARC GOLDSTEIN: Yes, I mean, it's really a -- you can put it as a claustrophobia questioning. I think it's probably overstating the problem.

ATTORNEY JAMES RAFFERTY: Point of information, we're not moving a wall closer. We are extending an existing wall.

CONSTANTINE ALEXANDER: I'm still having -- you'll have an opportunity.

ATTORNEY MARC GOLDSTEIN: There's a certain amount of semantics to this, but I think the pictures show you --

CONSTANTINE ALEXANDER: I know the semantics. That's not my problem. I'm not still not getting a handle on why your client has a problem with this project.

ATTORNEY MARC GOLDSTEIN: Okay. If you stand in their backyard --

CONSTANTINE ALEXANDER: Yes.

ATTORNEY MARC GOLDSTEIN: -- and you look at the property behind them, they have a fence.

ATTORNEY JAMES RAFFERTY: And we rendered these, the original proposal, the existing original, and directly on point with what Mr. Goldstein is speaking and that's what --

MARGARET SEELIG: That's the original proposal.

MAHMOOD FIROUZBAKHT: So we're talking about this massing here being the issue?

ATTORNEY MARC GOLDSTEIN: And further in the corner. So, yes. I mean, it's this area here and then it's what's being constructed here. I mean, obviously, you know, that's a view from a particular

perspective.

MARGARET SEELIG: That's the middle of the property.

MAHMOOD FIROUZBAKHT: This is the existing and this is the proposed?

ATTORNEY MARC GOLDSTEIN: Let me see. Right. Right.

Now, you know, it's rendered from a particular perspective just as Mr. Rafferty was not enthusiastic about the rendering that I showed you initially.

MAHMOOD FIROUZBAKHT: Would that particular perspective be if you're standing in the yard?

ATTORNEY JAMES RAFFERTY: Yes.

ATTORNEY MARC GOLDSTEIN: It would be as if you're standing pretty far back because obviously the get closer you get to the back rear line, the more you can see over the fence.

CONSTANTINE ALEXANDER: My visceral

reaction is that --

TIMOTHY HUGHES: The less than you can see.

CONSTANTINE ALEXANDER: -- pure visceral is that the impact on your client is less than the change than what is there right now. I mean, that -- I like to be similar to presuming I'm wrong. I mean, look at what the existing condition is. There's a big chimney over here that's gone.

MARGARET SEELIG: Which we did for them.

CONSTANTINE ALEXANDER: This is gone. This is gone. Octagonal building. And we've got a wall over here.

SLATER ANDERSON: How tall is the rear fence?

ATTORNEY MARC GOLDSTEIN: Their rear fence?

LYNNE HESS: Excuse me. 16. So the ten feet goes over the fence comes

right --

ATTORNEY JAMES RAFFERTY: Sitting on a wall.

MARGARET SEELIG: It's sitting on a wall.

ATTORNEY MARC GOLDSTEIN: So there's no doubt -- the renderings are from a particular perspective, and I don't know what that is.

ATTORNEY JAMES RAFFERTY: The fence is six feet, but it's two feet up off the deck. So it's an eight-foot fence.

CONSTANTINE ALEXANDER: I understand that.

ATTORNEY MARC GOLDSTEIN: The reality is the rendering shows from a particular perspective when you're standing on the property, you can see much more than that. And they have a table and chairs that's quite close to the line. You're standing back there. What you can see over

that fence is considerably more -- has considerable more impact on that than what is shown in that rendering. That's the difficulty of having a rendering. Now perhaps if we were the developer, we could do our own rendering. We don't have the capacity to do that. The reality is, and Miss Hess will talk to it, and she lives there and she can tell you what she's able to see when she stands in her backyard.

CONSTANTINE ALEXANDER: I think it's time to hear from Miss Hess because she's going to have a heart attack pretty soon.

LYNNE HESS: My name is Lynne Hess. I'm married to Bill Appleton and we've lived at 11 Hawthorn Street there for 30 years. And the people before us lived there for 50 years. We have planted and picked out every tree in our backyard ourselves and. And we are very close to other properties. We are very close to the Mormon church. In fact,

Mr. Rafferty and I are always talking to one another because he got all the air conditioners on the Mormon church right on our side. The Mormon church is right up against one side of us. And Mr. Rafferty tried to get a Harvard Finals Club in the other 15 Hawthorn Street to live there. So we feel like we have this little house, this little piece of property, and we like it. The house that's in question we know very well. We knew our other neighbors well. And what this does is, the present structure that -- the bubble that comes up, is below our fence. The line comes below our fence. So we barely see it. This comes right out right above the fence so we see it and it comes closer.

The octagonal building is barely on our property. It's on the Harvard property at 15 Hawthorn Street. We don't see it. What we see is air and light and sky and a beautiful

Palladium window because we do live outside in our backyard and our porch ten months a year. I have nothing against -- and anybody who wants to build a ramp, but I feel like what they're building along with the ramp is just a bigger house. And if they want a bigger house, they can have it, but I wish they wouldn't do it so we won't have all this light and air that we're staring at in our backyard and we have this massive wall come at us. It is, you know, a little respite for us against the wall and we love it.

CONSTANTINE ALEXANDER: Thank you.

LYNNE HESS: Thank you.

CONSTANTINE ALEXANDER: Are you finished?

ATTORNEY MARC GOLDSTEIN: No, no. And that was a perfect opportunity. I think what I'd like to add is regardless of how much impact we can articulate, reality is they can't meet the rest of the standards for a

Variance.

CONSTANTINE ALEXANDER: I understand that point. You've made that point.

ATTORNEY MARC GOLDSTEIN: And I think it's clear they can't make those standards and if we're going to move into a Special Permit, we can have a discussion about that in other hearing. I don't think they meet the standards, therefore, you can't grant the relief they're asking for.

Sir, you wanted to speak?

GORDON LOW: My name is Gordon Low. I represent the Church of Jesus Christ of Latter-Day Saints. I'm the President of the Cambridge Stake. We own the stake center. I'm sorry, we own the building at Longfellow Park. We are an abutter. Let me thank the Board here for the approval we had for the rebuilding of our chapel. That's been a great blessing for our members, and also for

the support we received from the city and from our abutters also in East Cambridge where we a couple years ago completed our building.

Our general position is to support the development and redevelopment of property owners when they have development which is to improve the property, the function, and things which are consistent with the standards of the neighborhood. We are also very supportive of providing handicap access. That's been important for us in our building, particularly at Longfellow Park to put the handicap access there that was done, and the Historical Commission gave us a Variance on that and that's actually given us a very good use. We don't have any position on the technical or aesthetic aspects of what they're doing. If we were to reach such an opinion, we would reach out to the architects that helped us with our chapel and that would be so covetous and they've done an

outstanding job with us. We'd like to keep all good relations with all our neighbors and the abutters who were very supportive for us, both. The Harrises who lived in the home before and also the Appletons and Hesses who are very supportive of us.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishing to be heard?

WILLIAM APPLETON: Yes, please.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard?

WILLIAM APPLETON: My name is William Appleton and I am the guy that plants the trees. And I don't have a summer home. And I must say first of all, I think that this rendering gives the wrong idea. It looks like there's a fortress here. This is a very slight building with a curve, it is barely noticeable from our property. It is being replaced by a wall that's above the fence that will give us a further sense of being closed

in, which the more Mormon Church already does because it doesn't conform to modern standards and setback as you probably know. And so we are -- we have one side, we have one on the back, too, and now we're going to have another wall on the back closing off the air, the light, the sky, and my summer home. So I hope that you will take into consideration -- usually when we come, we come with an army because we are active in our community and we've seen you on other occasions with more people, but here we're the only ones affected. The man at Harvard next-door doesn't live there yet, and he doesn't -- and the Mormons are not taking a position because I don't blame them because I wouldn't want to go for one neighbor over another either. So, anyway, thank you for listening to me.

CONSTANTINE ALEXANDER: Thank you.

WILLIAM APPLETON: And keep my sky

open.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that there's no one else wishing to be heard. We're going to close public testimony.

We do have letters in our files, which I will now read into the record in no particular order.

There is a letter from Henry Yager, Y-a-g-e-r and Felice Yager, Y-a-g-e-r, who apparently reside at 10 Longfellow Park, addressed to this Board. The letter is dated February 14th. (Reading) We have reviewed the proposed plans for renovation of the Seeligs' house at 6 Longfellow Park and we have no objection to this.

There is a letter to us from -- it would appear to be an architectural firm. The

letter is in poor condition, but it's sign by Ricard L. Kobus, K-o-b-u-s, FAIA, FACHA. These are the initials that appear after his name. He's a senior principal in the firm that appear to be TK&A. Well, anyway, the letter says, (Reading) I'm writing in support of the proposal made by Mr. and Mrs. Jonathan Seelig for alterations at their existing property at 6 Longfellow Park. My firm served as the architect of record for the rebuilding of the Longfellow Park Chapel belonging to the Church of Latter-Day Saints at 2 Longfellow Park in Cambridge following the fire several years ago. In our professional capacity during the process of rebuilding the fire-ravaged church, we interacted closely with all of the neighbors and specifically with the then abutters at both 11 Hawthorn Street and 6 Longfellow Park. As a result, we are very aware of the existing conditions of these homes as well as

the relationships between the properties abutting the church. I have reviewed the revised proposed plans submitted by Mr. and Mrs. Seelig for the alterations to 6 Longfellow Park. In my professional opinion a proposed alterations will have no negative impact on the neighboring properties.

Further in reviewing the plans, I noted that the existing non-conformity with rear setback requirements is improved by the proposal. It appears that the existing volume in the rear will be replaced by a structure that increases the minimum setback by more than two feet, reduces the roof height by almost four feet, and slightly reduces the actual footprint and volume being built in the rear setback area, thereby improving on the existing and non-conformity.

Additionally I've been shown renderings on the property, and in my professional opinion the newly proposed configuration appears

smaller, less obtrusive, and more appropriate from all vantage points.

We are also in possession of a memorandum from the Cambridge Historical Commission and it reads as follows:

(Reading) The property is located -- 6 Longfellow Park. The property is located in the old Cambridge Historic District where exterior alterations are subject to review and approval of the Historical Commission. Exterior alterations were reviewed and approved by the Historical Commission on February 2nd. A copy of the Certificate will be forwarded to the BZA file as soon as it's available.

Mr. Rafferty, on this I assume they were commenting on the old plans they reviewed?

LYNNE HESS: They were.

ATTORNEY JAMES RAFFERTY: That's right.

CONSTANTINE ALEXANDER: You'll have to go back --

ATTORNEY JAMES RAFFERTY: We have a date scheduled.

CONSTANTINE ALEXANDER: You have a date scheduled. I saw it advertised in the paper. If we were to grant relief, you have to go back and get an amendment to your Certificate of Appropriateness.

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: And alas we have a letter that I referred to earlier from counsel for Ms. Hess and Doctor Appleton from the firm of Beveridge and Diamond, Inc.

LYNNE HESS: You don't have to read the letter.

CONSTANTINE ALEXANDER: As I said before, I'm not going to read the letter. I'm just going to reference it and it will be part of our record.

And that is, I believe, all that we have

in the file.

Mr. Rafferty, any concluding comments?

ATTORNEY JAMES RAFFERTY: Yes, just a few, both factual and of some process-oriented.

I just want to draw the Board's attention to the issues that we're here about tonight. We have had a very fruitful and honest discussion with the abutters for sometime now, and I think it's relevant for the Board to recognize the changes that were made in the proposal. Mr. Goldstein's letter characterizes things as massive and looming. Perhaps that might have been said by stretching those words to apply to the original submission, but we looked at that impact and that has been removed. So we really are now in a very discrete area.

There are a few procedural issues that I would suggest to the Board are relevant. First of all, the property,

Doctor Appleton's property, he made an observation that the Mormon church is too close to him. In fact, the Mormon church meets the setback requirements. It's a corner lot. That happens to be a --

CONSTANTINE ALEXANDER: Well, in any case it's not relevant to this particular --

ATTORNEY JAMES RAFFERTY: Well, it's relevant to this because the Appleton property in 1924 received a Variance -- in 1926, one of the first Variances and was permitted -- in those days it was an R-4 District which had a 20-foot rear setback requirement. They were permitted, their predecessors, in 1924 to have a seven-and-a-half-foot setback. So they went, that structure goes into the setback not as a pre-existing non-conforming but as a result of getting a Variance. More significantly in 1982, the abutters, Doctor

Appleton and Ms. Hess, they applied to the Board, Mr. Sullivan being a member at the time, to introduce a stairway to create a further excursion into this rear setback which we now are concerned about preserving the integrity of the setbacks. It is relevant when abutting properties have obtained relief to go into -- from the very same dimensional requirements they're now asserting they're entitled to protection for. And the hardship in that case I note is that without the stairway, patients would have to walk through the petitioner's home. This is a hardship from the point of view of the patient and the petitioner.

I suggest -- I only offer that because there is some relevance to the nature of the relief and the form of the existing conditions that are out there today. The Appleton property has the benefit of two Variances allowing significant encouraging

into the setback. We are not going to change the relationship between the setback as it currently exists, and I do think that the unique nature of the siting this house in a way that does allow the Board to find that there is a hardship. And an element of a hardship, it doesn't need to be the most compelling hardship, is sufficient for the Board to make a determination. And I think the practice of the Board also in assessing that hardship has some relationship to the extent that the relief that's being sought here. I would say the relief is modest. The changes that are -- particularly when one analyzes the replacement structure, the octagonal with the rectangle. I don't know how one can arguably claim that that has any -- it is within the setback, but it doesn't have any impact upon the abutter that's different. It's more conforming than its current location. So for the reasons

stated, we would urge the Board to grant the relief as set forth in the application.

CONSTANTINE ALEXANDER: Thank you.

No, I've closed public testimony.

Unless you feel there's a misstatement of --

ATTORNEY MARC GOLDSTEIN: The only statement I'll make, Mr. Chairman, is Mr. Rafferty knows as well as the Board does that --

CONSTANTINE ALEXANDER: Come forward, please.

ATTORNEY MARC GOLDSTEIN: The Variances that were granted --

CONSTANTINE ALEXANDER: Stop, stop, stop. Wait a minute. I don't believe that the Variances that were granted are at all relevant. I'm going to disregard that. From my point of view, I'm going to disregard that. I didn't want to get into a debate with Mr. Rafferty. I don't believe they're relevant.

ATTORNEY MARC GOLDSTEIN: Thank you.

CONSTANTINE ALEXANDER: Okay. At this point commentary from members of the Board? Questions?

TIMOTHY HUGHES: I don't have any questions. I do have commentary. I'm not a lawyer. I'm an English major and I do think that the lawyer Goldstein did kind of misuse in this regard the words massive and looming. You know, they don't resonate with me in this particular situation. I also live a couple blocks east of Inman Square so when Miss Hess uses the words close and small in regards to her property and how close it is, she doesn't know the meaning of the words until she's lived in my neighborhood, you know? And so I think that, you know, some people are exaggerating here. And I do think that -- once again, I'm going to go to definitions, with the word topography

showing up as it does and the definition of hardship, which is the configuration of natural and artificial physical elements on property that we can hinge a hardship on within the definition and the wording of the Ordinance. So I'm in favor.

CONSTANTINE ALEXANDER: Thank you. Anyone else want to speak next or we can go to a vote? What's your pleasure?

Slater?

SLATER ANDERSON: I'm ready for a vote.

CONSTANTINE ALEXANDER: You're ready for a vote. Okay.

Mahmood?

MAHMOOD FIROUZBAKHT: I think I have the good sense to the extent that we're going to vote, add to the record -- and I would say, you know, looking at the dimensional form and given the changes, the modifications to the proposed project, certainly a lot of effort

has been made to meet the needs of, you know, the abutting neighbors and to limit the effect of this project on the abutters. I think for me it's significant that when you look at the dimensional form, there is really a reduction of impact with respect to the dimensional Variances that are required to the extent that there is a Variance required here. And so, you know, in that regard I think that there is a hardship as other members of the Board have indicated with respect to siting of the existing structure, the age of the existing structure, that there is a need, a family need to provide for a handicap accessibility to the building. That the proposed project provides for a better flow and access in the existing structure, and it's appropriately scaled. But I don't think that there is, you know, a real detriment to the intent of the code given the scope and size of what's being proposed.

CONSTANTINE ALEXANDER: Thank you, Mahmood.

Doug, anything to add?

DOUGLAS MYERS: I'll just add very briefly. I basically agreed with what Mahmood has said in every respect, and I just add that in addition to that that I think the impact on the abutter, the negative impact on the abutter is rather inconclusive. I don't sense that it's -- based on the evidence that I've heard, I just don't feel that there's a strong overtly negative impact on the abutter. From the abutter's point of view I can understand it's undesirable, but as a member of this Board, I'm not persuaded and I would vote for the application.

CONSTANTINE ALEXANDER: Thank you. And I as Chairman would not add anything more than what everybody else has said. I think any point that I would have made has already been made. So I'm going to take it to a vote.

Okay with everyone?

The Chair moves that we make the following findings with regard to this matter:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being the need for -- given the family situation for a handicap accessible access to the property as proposed by the Petitioner.

That there is a hardship owing to the shape of the structure, the location of the structure, and the topography of the land that's special to this property. This property is a non-conforming structure located close to a lot line, and so any change requires Zoning relief. And these are special circumstances that relate to Petitioner's property.

The relief shall be granted without

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

In support of that I would cite a number of things:

One, I think Section 6 of the General Laws does express a general policy in favor of or lessening standing when you want to make additions to non-conforming structures, it's really a desire to make sure the Commonwealth for many non-conforming structures, that structure be maintained or approved upon over time.

That this project has, except for the abutter, has support of the neighborhood and most importantly of the Cambridge Historical Commission.

That the impact on the abutting property owner, though I accept with faith their comments that there is substantial impact, I don't -- I think from a Zoning point

of view, from an objective point of view, I think their comments are overreacting to what is being proposed.

I would note that what is being done it does not increase other than perhaps the massing, the non-conforming aspects. And in fact, it will bring with regard to some aspects bring the property more in conformance with our Zoning Law requirements.

On the basis of these findings, the Chair then moves to grant a Variance to the Petitioner on the grounds that the -- on the condition that the work proceed in accordance with the plans submitted by the Petitioner. It's a plan of land dated, revised as of February 13, 2012, initialed by the Chair. And also several pages, one, two, three, four additional pages. They are date stamped February 13th, and the first of the four pages having been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

(Alexander, Hughes, Anderson, Firouzbakht, Myers.)

ATTORNEY JAMES RAFFERTY: I think there are other -- I think that's the just the GFA calculation. There are elevations and other items bearing the date February 3rd. They're in the file, but they have the February date.

CONSTANTINE ALEXANDER: Can I keep this?

ATTORNEY JAMES RAFFERTY: Yes, you may.

It's there. I think what you might have just referenced is the existing GFA calculation.

CONSTANTINE ALEXANDER: I

understand that. But entered the conditions, further conditions that plans submitted by the Petitioner prepared by Hart Associates, Inc. Architect numbered A1.1, A1.2, A1.3, A1.4, A2.1 and A2.2. The first page which has been initialed by the Chair. And that's the further conditions. I think we've taken the vote and I think the Variance has been granted.

ATTORNEY JAMES RAFFERTY: Thank you very much.

MARGARET SEELIG: Thank you

(9:50 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Tad Heuer, Slater Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10214, 28 Garfield Street. Is there anyone here interested to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Is there a letter in the file?

SEAN O'GRADY: Is there not a letter in the file?

CONSTANTINE ALEXANDER: Let me see. I see the plans.

The Chair moves -- we're not in receipt of a letter we thought we had, but we understand that for the record, the Petitioner has improperly advertised this case so we cannot consider the case tonight. It's going to have to be re-advertised. Therefore, this case will not go forward. Probably as a matter of caution, I'm going to move that we continue the case nevertheless, although I don't think the case needs to be continued. It just can't be considered. What date would you say, Sean?

SEAN O'GRADY: I'm wondering whether or not to discontinue it until the next hearing.

CONSTANTINE ALEXANDER: They've got to re-advertise.

SEAN O'GRADY: Just so we can get that.

CONSTANTINE ALEXANDER: That's fine. We have room in the next hearing?

SEAN O'GRADY: We don't. It's really to get the sign up March 8th.

CONSTANTINE ALEXANDER: So the Chair moves that this case be continued until seven p.m. on March 8th on the condition, one, that the Petitioner sign a waiver of time for a decision. And further that the sign, the posting sign be modified to reflect the new date and time. And that the sign as modified be maintained in accordance with the requirements of our Ordinance.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Heuer, Anderson, Myers.)

(9:55 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Tad Heuer, Slater Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER:

Mr. Rafferty, are you ready to go back?

ATTORNEY JAMES RAFFERTY: I'm told we can recall case No. 10212.

CONSTANTINE ALEXANDER: The Chair will now hear again the case 60 Clifton Street, file No. 10212. We recessed this

case to allow you to correct the plans that you've submitted. And those are corrections. We're not talking about new plans. Otherwise you won't meet our requirements. And why don't you review with us what you have done to the plans, sir, we have seen before.

KEVIN EMERY: Again, for the record, my name is Kevin Emery. What we was removed the set of stairs that were on the plot plan. Okay? There is going to be no stairs there.

CONSTANTINE ALEXANDER: Okay.

KEVIN EMERY: And these are going to be cedar shingles.

TAD HEUER: Right. That's the front building.

KEVIN EMERY: Front of the building, yeah. And nothing changed with A2 in the front of the building. And nothing changed with A3 in front of the building.

CONSTANTINE ALEXANDER: Have you

marked the right elevations?

KEVIN EMERY: Yes. That's on the end. We changed that to the left side.

TAD HEUER: Yes.

KEVIN EMERY: And we changed this one to the right side in front, and we also changed the shingles there and put firm rail instead of vinyl railings.

EAMON FEE: And added the windows.

TAD HEUER: And those go in the garage?

KEVIN EMERY: And we added the windows. Those go in the garage, yeah. We added windows.

The right side now, and windows in the garage on the plan.

And nothing changed on page 5.

CONSTANTINE ALEXANDER: Okay? I think we're ready for a motion. Do you have a paperclip by any chance? I want to keep this all together.

The Chair moves that we make the following findings with regard to this property:

That a literal enforcement of the provisions of the Ordinance will involve a substantial hardship to the Petitioner. Such hardship being that this property is of historical significance and cannot be demolished and is in need of Zoning relief to allow the project to go forward and to maintain the historical character I'm going to call the front house.

That the hardship is owing to circumstances relating to basically the shape and topography of the front house. It's close to the street. It is off to one side of the lot and that the lot itself is not deep enough to allow compliance with the rear yard setbacks, although it is a conforming lot. And the need to maintain a certain amount of space between the two buildings,

the new building to be built, and the one that will be modified, as such that it results in an intrusion into the rear yard setback.

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

The relief will allow the continued existence of an historically significant building.

That the relief being sought is relatively modest in scope. It just affects the rear yard setback. And abutting onto the rear is Russell Field so that it's not a matter of either the privacy or the safety of abutting property owners will be adversely affected at least to any material extent by the relief being sought.

On the basis of these findings, the Chair moves that we grant the Variance on the condition that the work proceed in accordance

with the plot plan submitted by the Petitioner, and additional drawings, one, two, three, four, five, six, seven, eight, eight pages of drawings. The first page of which has been initialed by the Chair.

All those in favor of granting the variance say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Opposed?

(Heuer.)

CONSTANTINE ALEXANDER: One opposed. Variance granted.

TAD HEUER: Good luck.

(10:00 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Tad Heuer, Slater Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10215, 38 Union Street and 369 Windsor Street. Is there anybody here to be heard on this matter?

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chairman, members of the Board,

James Rafferty on behalf of the applicant.  
Seated to my right is --

JAYAKANTH SRINIVASAN: Jayakanth  
Srinivasan.

ATTORNEY JAMES RAFFERTY: Yes,  
okay. You got that; right? Jayakanth  
Srinivasan. I'm going to let Mr. Srinivasan  
give his name. If you think his is tough,  
wait until his wife gives her name.

So the spelling on Srinivasan,  
S-r-i-n-i-v-a-s-a-n. And Mrs. Srinivasan  
doesn't go by Mrs. Srinivasan.

Her name is?

JAYAKANTH SRINIVASAN: Aura Neira  
Teicu, A-u-r-a N-e-i-r-a T-e-i-c-u.

ATTORNEY JAMES RAFFERTY: So,  
Mr. Chairman, this is a somewhat interesting  
case.

CONSTANTINE ALEXANDER: They're all  
interesting.

ATTORNEY JAMES RAFFERTY: True. In

this case there are two components to the relief being sought. One is a subdivision request, and then the other is then to allow for the construction of a home on the new lot.

CONSTANTINE ALEXANDER: But it's fair to say both are related? They're two, but one is part and parcel of the other.

ATTORNEY JAMES RAFFERTY: Oh, absolutely. I said there are two components of it. Same case, two components.

CONSTANTINE ALEXANDER: Oh, okay.

ATTORNEY JAMES RAFFERTY: So the story of the lots, this is one of these lots that we come across from time to time, is a case where a merger occurred quite inadvertently. The current owner of the property lives on the Windsor Street side of the lot. She owned that house -- her name is Mrs. Clang, and she and her husband owned that house and have been in it for many, many years. At some point her father passed away

and left her this lot. And she took it through his estate and she was the sole owner. So she owned the front house with her husband as tenants by the entirety, and the separate lot she owned in her own name. So there was no merger because there was not a common ownership. In an act of wifely parity she, in 1989 when doing some estate planning, she was advised to put her husband's name on that lot so that he would be able to be her successor. So unbeknownst without benefit of understanding the Zoning implications with such a conveyance, in 1999 Mrs. Clang added Mr. Clang's name to the deed for the lot she inherited from her father. At that point the two lots, while they're not the typical contiguous lots in the sense that they're not side by side or directly behind, they're a little bit -- they jog over as you can see, but nonetheless, a merger within the concept as used in Zoning occurred. So my clients

live in the neighborhood and had been looking for a home to purchase and became friendly with Mrs. Clang and expressed an interest in acquiring the lot. And she discovered that she didn't have the ability to sell the lot in its merged status. So we have filed this petition with Ms. Clang's ascent as evidenced by the ownership --

CONSTANTINE ALEXANDER: Why can't she sell the lot as merged?

ATTORNEY JAMES RAFFERTY: Because she would be creating a Zoning non-conformity. The area of that lot is being relied upon for the FAR of the structure on the Windsor Street property.

CONSTANTINE ALEXANDER: You're talking about with regard to building the new structure on --

ATTORNEY JAMES RAFFERTY: No, even before you get to building. She cannot sell off a portion of her lot in a way that would

create an FAR violation. See, now her current house on Windsor Street -- when the lot, the effect of the merged lot is that the lot area -- these are about 2800 square foot lots. So when these lots got merged, and they got merged because it wasn't sufficient area for the Windsor Street house. So now the area of the Union Street lot is now relied upon to make the area of the Windsor Street lot conforming.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: So one cannot unilaterally sell off a portion of the lot.

CONSTANTINE ALEXANDER: No, but you now have as a result of the merger, one conforming lot.

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: And you want -- that's what merger -- that's what the merger document's all about.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: Is to eliminate non-conforming lots when they're contiguous and acquired by and in the same ownership. So if we were to grant the relief, we would be going back to a situation where we would have two non-conforming lots; one at Windsor Street and one at Union Street.

ATTORNEY JAMES RAFFERTY: Right.

But they're -- they were pre-existing non-conforming. The non-conforming status changed with the merger, yes.

CONSTANTINE ALEXANDER: Yes, that's right.

ATTORNEY JAMES RAFFERTY: Right.

But I would say that's the case perhaps in every subdivision case that involves a merger.

TAD HEUER: Well, let me stop you there. Is it really? Because usually what we have is a situation where we've got the

weird situation, and we've had this before I believe, where we've have two buildings that have merged on sub- standard lots into one so we end up essentially condoizing two separate 880 structures. And we say well, that doesn't make a lot of sense. They were always undersized lots. They were oversized houses on those lots. Those should be de-coupled because it doesn't make sense to condoize two houses that everyone always conceived as individual lots with individual house. Here where we have an empty lot -- and I fully grant you this is unusual because they're not side by side. Usually that's the situation we have. But nevertheless they're conjoined through their rear setbacks or through their rear lot lines, and we've created a conforming lot where there's only one building. Why do we go back? Usually it's a situation, we have two buildings, we want to have two lots. Here we've got one

building and two lots and it's two lots that made the building conforming. Like, isn't that our goal?

CONSTANTINE ALEXANDER: Isn't that the purpose of merger doctrine?

ATTORNEY JAMES RAFFERTY: Well, I'm not clear what the purpose of the merger doctrine is. Frankly it's not codified and I'm not exactly certain what the purpose is. It happens -- I agree with you, it has everything to do with sub-standard lots. But I think the case here is there had been a house on this lot, and there was a fire in the house, the house that burned down. This lot, the area of this lot, while it may dimensionally make the FAR of the Windsor Street property conforming, it really doesn't impact the context of the Windsor Street lot. I mean, one would be hard pressed to understand the relationship between the two lots if they were to walk up

and down the street.

CONSTANTINE ALEXANDER: But at the end of the day you're asking us to allow your client to build a new dwelling on a 2800 square foot lot.

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: If we were to do that, why can't every lot, undersized lot in the city, de-coupled or not, be ripe for relief from a Zoning Board? Why should we allow -- I mean, isn't the purpose of minimum lot size to avoid building?

ATTORNEY JAMES RAFFERTY: Right. Well, I would say that there is a hardship here to the Petitioner because of a quirk of land registration that these lots merged, and the historic use of the lot it's consistently sized with the other lots on the street.

CONSTANTINE ALEXANDER: That's true.

ATTORNEY JAMES RAFFERTY: It had

previously contained a structure. Through inadvertence or without an understanding of the legal implication, someone who owned the lot, always figured some day they would do something with the lot.

TAD HEUER: Why would they always figure that?

CONSTANTINE ALEXANDER: That's exactly right.

ATTORNEY JAMES RAFFERTY: Because they --

CONSTANTINE ALEXANDER: If they had come before us and there was no merger and come before us to seek relief to build a single dwelling unit on this property, I don't think we would be granting relief on a 2800 square foot lot where by definition you can't meet the setback requirements. This is exactly what we're not supposed to be doing it seems to me as a matter of Zoning.

TAD HEUER: Might I also suggest

that I think we had this case, a similar case with Sciarappa Street where we had a building on a lot --

CONSTANTINE ALEXANDER: Yes, exactly.

TAD HEUER: -- with a substandard lot next to it and they said can we re-subdivide so we can build on that empty lot? And we said no for exactly kind of this reason, they were side by side lots.

ATTORNEY JAMES RAFFERTY: No, but the Ordinance recognizes there are lots that are undersized that remain buildable. But this would have been a buildable lot, but for the conveyance. So the hardship stems from the fact that the conveyance resulted to build a lot. The relief -- the only relief, the only relief on the second component of the case does involve the rear setbacks. And the hardship there is driven by the width. And I haven't gotten to that part of it yet. But

it conforms, it's below the permitted FAR. It meets the front and rear setbacks. It meets the open space, it meets the parking. And the width of the lot would suggest that the width of the house now -- we'd have to take another eight, six or eight feet out of the width of the house to make it. So you could conceivably build, and I figured we would be needing to address why we need the side setback relief. Frankly, I don't think this was a case where someone bought a large lot and over the years it had been two separate lots as I know is often the case, and then someone comes along and says well, I just want to build a house in my side yard. This -- I mean the records at the Registry and the Deeds reflect what happened here. And it seems it's a rather harsh effect for a property owner to discover that by sharing an asset with her husband, she then removed the ability to convey it out separately, whatever

opportunities exist beyond that.

TAD HEUER: But convey for what purpose? Because you mentioned the setbacks, and I understand the setbacks are there. But you also have a minimum lot size problem; right?

ATTORNEY JAMES RAFFERTY: But it wouldn't have mattered.

TAD HEUER: But there's no house there now, right, because it's burned down?

ATTORNEY JAMES RAFFERTY: It wouldn't have mattered. Look at the Ordinance. The lot was established prior to the adoption of the Ordinance.

CONSTANTINE ALEXANDER: But if there had never been a -- go ahead.

TAD HEUER: But there's nothing -- so just so I have the chronology. Was there a building on the lot before?

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: And it burned down?

ATTORNEY JAMES RAFFERTY: It burned down.

TAD HEUER: Right. And once it burns down, you have the right to rebuild within X period or it becomes non-conforming?

ATTORNEY JAMES RAFFERTY: Right.

TAD HEUER: I mean, so like if there were a structure from 1880 on that lot, and it burns down. The owner says I need to come in and I want to rebuild there on the footprint, they can do that.

ATTORNEY JAMES RAFFERTY: 5.211, okay, this lot was recorded at the Registry. So it has -- it's below the minimum required size and it's narrower. That doesn't make it a non-buildable lot. They couldn't build the same house unless they did it within two years to take advantage of the -- whatever grandfathering existed on the dimensional side.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: But it's not true to say if this conveyance hadn't occurred in 1999, that lot would qualify as buildable under 5.211.

CONSTANTINE ALEXANDER: But you would have still, before you could build on that buildable lot, you would still need Zoning relief from us, setback.

ATTORNEY JAMES RAFFERTY: No.

CONSTANTINE ALEXANDER: Setback.  
Side setback.

ATTORNEY JAMES RAFFERTY: If we were to build this structure.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: But you could build -- my point is you could build --

CONSTANTINE ALEXANDER:  
(Inaudible).

ATTORNEY JAMES RAFFERTY: No, no.  
It doesn't make -- under this 5.211 --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: -- they could, the owner of that lot could have as of right, built a conforming structure --

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: -- or come before this Board, cite hardship issues, and sought to build a structure that didn't comply through a Variance.

CONSTANTINE ALEXANDER: But what would the hardship be?

ATTORNEY JAMES RAFFERTY: Well, we haven't gotten to that second part of the case yet. The hardship would have to do with the width of the lot and coming up with a reasonable footprint. The lot today -- I mean, the difference here, or I should say what's going on here is not a case where this was somebody's yard or this had been something. If you see the photos or had an opportunity to go out there, the foundation is -- the elements of the foundation still

remain of where the other house was. She wasn't aware until the past year that something that she had -- and she can't be here tonight, something that she had always thought she could sell, she can't sell now. So that's the hardship. And it is, it's an economic hardship and it is unique. And it comes about not as a result of any expansion of her house on the Windsor Street side. If you said to me well, you know, she built -- she took advantage of that lot area and they did -- that Windsor Street house is unchanged for years. This is the consequence of an interfamily conveyance where a wife gave half of her interest in an inheritance to her husband and was unaware of the Zoning implication of that happening.

DOUGLAS MYERS: Mr. Rafferty, as a practical matter what is the fate of 38 Union Street if this Board refuses to grant the Variance and undue the merger?

ATTORNEY JAMES RAFFERTY: I think you can see it right now. I mean, I don't know if there is a way in which an addition could be attached to Windsor Street. I don't know what the FAR looks like that you could have a second or additional structure there.

DOUGLAS MYERS: I mean, is it basically a glorified backyard for the Windsor Street property?

ATTORNEY JAMES RAFFERTY: Yes, right. And it's a good question. It's very -- it's a gap in the streetscape on Union Street frankly. I mean, it's -- there is a very established street wall there, and it's houses of a certain scale and size. This is -- this frankly is unsightly and been fairly derelict. I spoke to the Pimentals who live next-door who actually support this and are happy to say it's rat infested, it's overrun. They're happy to get a structure there. I imagine -- I mean, this

transaction wouldn't go forward and then Mrs. Clang would then continue to own it but she couldn't even sell it because she --

TAD HEUER: She could maintain it; right? I mean, there is -- yes, it may be looking bad now, but there are plenty of people who would love to have a large --

CONSTANTINE ALEXANDER: Backyard.

TAD HEUER: -- lot backyard.

Admittedly that goes on to the front of another street. I understand. I mean, and I'm thinking aloud here, and, you know, maybe this is just my thinking in wishing things were side by side rather than front to back. If this were the -- if this were a request for the side neighbor to be able to subdivide these two lots so they can purchase this lot and move their house that way towards that lot, and be able to use that lot to move in towards their lot side, for some reason that seems to make a bit more intuitive sense to

me then here where we're looking to squeeze a house in on the existing lot to keep the same parameters. And I understand you would say we're just putting, you know, equivalent amounts of house into their. But it seems that the purpose of the setbacks and the lot sizes that you do get space in between the homes. And I understand that here in this area you have very narrowly -- you have homes that are very cheap by dowels to each other. It seems to me it makes more intuitive sense if that lot were handed or sold to an abutter on Union Street than simply to subdivide and then recreate a new structure on that substandard lot, substandard only in the sense that it's substandard for what it should be not that it's not buildable at that point out.

ATTORNEY JAMES RAFFERTY: Would that suggest that a lot, a structure that could be built as of right would be seen -- I

mean, that's the second part of the case. I mean, I have to confess I was pretty confident that given the equity argument about what happened to this property owner, that occurred as a result of, in a conveyance with a not understood implication. And frankly I have a hard time getting what the whole merger doctrine and the statutory authority already not set forth in the Ordinance and the like. I would say that I understand the issue on the second part, and I figured we would be spending more time, frankly, on that question because we -- the house could go further in the front if we could park in the front setback or if we didn't have to have a parking space, maybe the footprint could be changed and we could pick up some additional side yard setback and there might be other configurations. But this is a case where the lot -- it was, I saw it as a parallel to other cases. There had been a structure here.

Historically this is the average lot size. If you look at the Assessor's plot plan, these are the series of lots.

SLATER ANDERSON: Can I ask a question? As a 5,000 plus square foot lot, as merged hypothetical --

ATTORNEY JAMES RAFFERTY: Yes.

SLATER ANDERSON: -- wouldn't C-1 allow for the construction of a second unit? Now we would be talking hatched and that becomes a Planning Board Special Permit?

CONSTANTINE ALEXANDER: Only for 75 feet from the street.

SLATER ANDERSON: Oh, okay, you're right. That's not the case here. So just -- am I incorrect in understanding as a 5,000 square foot lot, you could build a second detached structure, not getting into the setbacks and all those issues, you could build a second structure on this property, correct.

ATTORNEY JAMES RAFFERTY: I'm checking. Theoretically you're correct, and the question is you are permitted to have, based on the -- permitted to have 4100 square feet of house on the combined lot. There is currently 3800 square feet on the Windsor Street lot. So you have the capacity to add less than 300 square feet of GFA on to the lot.

SLATER ANDERSON: So 3800 on that 2800 square foot lot?

ATTORNEY JAMES RAFFERTY: There's 3881 on the 369 Windsor lot. That's --

CONSTANTINE ALEXANDER: Sounds big.

ATTORNEY JAMES RAFFERTY: It sounds big.

SLATER ANDERSON: It sounds like a lot.

CONSTANTINE ALEXANDER: For that neighborhood.

ATTORNEY JAMES RAFFERTY: I have to say that we didn't -- the architect didn't

measure their house. We did rely upon the Assessor's records and the surveyor doing it, but we inquired about the basement height and the surveyor gave me that number. But you are correct. I mean, to the extent that that lot area is needed, but that's the problem in the district with the 0.75 ratio today, the house today, the lot today is now what has a .70 FAR when you take the 3881 into the 5528. So there is -- unless the 3881 is overstating the size of the --

CONSTANTINE ALEXANDER: It must be.

TIMOTHY HUGHES: Not necessarily.

ATTORNEY JAMES RAFFERTY: You think so? Why?

CONSTANTINE ALEXANDER: Really?

TIMOTHY HUGHES: Yes. What if it's three stories and it has a basement?

TAD HEUER: It's two and a half.

CONSTANTINE ALEXANDER: I've seen the building, it's not that big.

TIMOTHY HUGHES: Well, maybe counting part of the attic and a full basement.

CONSTANTINE ALEXANDER: Well, anyway.

TIMOTHY HUGHES: You can start stacking things up, you get a lot of, you know, square footage. You think it's 2800?

JAYAKANTH SRINIVASAN: Yes, sir.

ATTORNEY JAMES RAFFERTY: Let me just check the Assessor's record in which case you could put 1300 square feet with additional -- 369 Windsor Street has a living area of 2379.

CONSTANTINE ALEXANDER: Oh, then you can go --

ATTORNEY JAMES RAFFERTY: My apologies. I don't know where 3881. So according to the Assessor's record, it's 2379. So your instincts were correct.

So it's 2379 on Windsor Street.

CONSTANTINE ALEXANDER: Yes. You could build a roughly 1800 square foot house.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: Assuming plus or minus.

ATTORNEY JAMES RAFFERTY: And that makes sense because we're proposing to build a 1750 square foot house.

SLATER ANDERSON: So we're all set.

ATTORNEY JAMES RAFFERTY: Well, you know, in theory one could build two condos on this lot; right?

SLATER ANDERSON: That's what I'm getting at.

ATTORNEY JAMES RAFFERTY: And why is the public interest served better by that not being allowed to be?

TIMOTHY HUGHES: That's what I want to know.

ATTORNEY JAMES RAFFERTY: Given the way it merged is my point.

CONSTANTINE ALEXANDER: I know that. But it did merge. You can -- every case merger that we've ever seen has come up with the circumstances you've described. The merger document is problematic, but it's there. We have an obligation to enforce the integrity of the Zoning By-Law. And if there's a matter of right solution which seems to be here, I don't know why we should torture the Zoning -- in my judgment, torture the Zoning By-Law for a different result. I think our job is to -- unless you can demonstrate the requirements for a Variance, and those are hard to do here, seems to me, maybe you do condominiumize. We've had that kind of case before. We've turned people down and we said go back and condominiumize the property.

DOUGLAS MYERS: It's hard for me to feel proud about protecting the integrity of the Zoning Ordinance when every single case

is simply a pitfall for the unwary. And that's how we've vindicate the integrity of the Zoning system. I mean, here I'm satisfied this was pure inadvertence. There's no abuse. There's no end run around the Zoning Ordinance. This was happenstance. And happenstance that probably reflects poorly on the conveyancer and the poor individual person who went in to have the deed made out, completely blameless and yet suffers consequences that this Board is --

ATTORNEY JAMES RAFFERTY: You can't be too hard on the conveyancer. A Constitutional professor at Harvard Law School found himself in the same situation.

CONSTANTINE ALEXANDER: You're right.

ATTORNEY JAMES RAFFERTY: It is an obscure element of the law I would suggest. But I hear that. But speaking -- when one

speaks to the integrity of the Ordinance, I mean when -- there are -- I mean, so the proposal meets four out of the five criteria, dimensional criteria. And then the discussion should be is there adequate basis for relief? In fact, I thought that's where we'd spend our time. I'm frankly surprised to think that the subdivision alone, if it doesn't yield a big construction, that's always been an analysis I've heard the Board discuss. Well at the end of the day the Variance doesn't enhance or lead to a bigger development that might otherwise come about, then kind of no harm no foul. How is, how is the public interest served better that they would have to share a master deed of the cumbersome nature of condominium ownership in a situation that is totally artificial? I mean, I hear what you're saying, but I think if we had the time maybe to continue this for a few weeks, we might be able to run some

numbers. I'm not convinced that at the end of the day the GFA is all that different here. I mean, we still would need the relief for the setbacks, and I think that's a legitimate conversation about whether the hardship --

CONSTANTINE ALEXANDER: If you want to continue the case, it would be a case heard obviously. It's up to you.

ATTORNEY JAMES RAFFERTY: Well, only because I'm getting the sense that I can't get to first base on the subdivision case. And this is a disappointment. You can see that this young couple have plans in the not too distant future.

CONSTANTINE ALEXANDER: I know.

ATTORNEY JAMES RAFFERTY: And this was going to be their opportunity to build a home.

TAD HEUER: Well, I mean can you give me a situation in which we would look at someone on that side of the table and say the

merger doctrine applies and it just applies?  
When would we say that to anyone?

ATTORNEY JAMES RAFFERTY: When someone actively acquires a lot that they purchased and then --

TAD HEUER: If I as a professional land use attorney went in and purchased -- or a, you know, title researcher or someone who was familiar -- practiced in the land court and was familiar with these documents, went and intentionally purchased two next door lots and then pled ignorance, that should be held against me. But as we just discussed, that's so rare that anyone would -- I mean, doesn't it cut both ways? It's so weird that anyone would know that, yes, in those situations I guess you would hold it against them. But those situations would never arise because they know.

ATTORNEY JAMES RAFFERTY: Well, that may speak more to the frailties of the

merger document than anything else. But, you know, the notion is -- I think if you, I think it's reasonable to look at the context of the average lot size on the street that's being affected, the historical use of the lot which contains a single-family home, and reach a conclusion that in this case the inadvertent nature of the merger is such that restoring this to what had existed -- I mean, some day I hope to join you when I'm in retirement, but I mean I would say that if I sat on that case, I'd say that's different than someone who bought the lot next-door, it was an empty lot, and they used it, their kids played in it and they used it and they parked their car in it and then they did all these things in it and then they decided 20 years later now we'd like to build on it.

TAD HEUER: So kind of goes to the other half of the question, that you said the lot burned down. When did the house burn

down?

ATTORNEY JAMES RAFFERTY: In the sixties.

TAD HEUER: In the sixties, right. So I mean, is the argument that they didn't have enough money to rebuild the house?

ATTORNEY JAMES RAFFERTY: Is that the answer?

AURA TEICU: They never used that lot.

TAD HEUER: Well, they never used it. But if you go in and say, like, the house burned down, you know, you would think that you'd try to preserve your rights. You're saying the house burned down, I'm on the clock. I've got two years to go under rebuilding this house, and I've got to get this house on its foundation --

ATTORNEY JAMES RAFFERTY: I'm not even sure in the sixties they even would have had to worry about the two years frankly.

TIMOTHY HUGHES: Well, maybe the owner of the house burned down with the house and the property got transferred to somebody. Who knows, you know, what happened.

CONSTANTINE ALEXANDER: Plus by the same reason you don't know about the people that know about merger, they probably wouldn't know the two year if there was a two year.

ATTORNEY JAMES RAFFERTY: I'm not even sure.

TIMOTHY HUGHES: This woman didn't know that she had to rebuild this house in two years. She didn't have the property for the first two years.

ATTORNEY JAMES RAFFERTY: Yes, she only inherited it from the father. The merger only occurred, see, the merger only occurred when she -- I mean, when she inherited it from the father, it didn't change.

TIMOTHY HUGHES: She changed the deed.

ATTORNEY JAMES RAFFERTY: Right.

TIMOTHY HUGHES: She should sue her lawyer if she doesn't get relief from this Board. And then I think what should happen to this empty lot is all of our faces should go up on a billboard with the word shame under it. I mean, we can rectify this situation by the subdivision and reinstate the economic viability that this woman thought she had when she inherited this lot, and we're sitting here talking about not doing it. I don't get it.

SLATER ANDERSON: How is the lot assessed?

ATTORNEY JAMES RAFFERTY: Separate tax bill. Separate meets and bounds.

SLATER ANDERSON: What's the assessment on it? It should be right on that right there.

ATTORNEY JAMES RAFFERTY: This is the Windsor Street lot. Just bear with me.

SLATER ANDERSON: The only thing I see this on the occasion is that, you know, someone -- this happens, it gets treated by the city as not a buildable lot.

CONSTANTINE ALEXANDER: The city doesn't -- the city would never deal with the merger. They wouldn't have -- the Assessor's office would have no way of knowing. Two separate lots.

ATTORNEY JAMES RAFFERTY: Separate lot, I don't have the bill. They had the meets and bounds. They have the lot size is the same 2007, 28. And this one. The Windsor Street lot is 2800.

SLATER ANDERSON: Sometimes the property owner can say go to the city and say, these lots are merged. You know, I don't want to be paying full freight for this lot over here.

ATTORNEY JAMES RAFFERTY: Oh, I see.

SLATER ANDERSON: And I would have an issue if we're now undoing what they did for their convenience for the last 20 plus years for tax purposes.

ATTORNEY JAMES RAFFERTY: Right, right.

SLATER ANDERSON: Now to be like oh, okay, you can have your lot back. That's what I'm getting at.

ATTORNEY JAMES RAFFERTY: Yes, it looks like she inherited the property in '72, and in '99 she, in doing some estate planning, put the husband on the property with her. So for 20 plus years there was no merger.

SLATER ANDERSON: Can I see that?

DOUGLAS MYERS: And then unfortunately there was the --

SLATER ANDERSON: Do you have the other one?

ATTORNEY JAMES RAFFERTY: I mean,

here's the -- you've seen these, and these are the two properties.

CONSTANTINE ALEXANDER: I've seen the properties.

ATTORNEY JAMES RAFFERTY: I guess the reason I was thinking of a continuance I thought maybe -- I mean, I will admit I did not see this hurdle as high. I understand, you know, it's true that in several other occasions it's involved houses containing structures, and that's where I have my greatest most understanding of the application of the merger doctrine because I think it really to the extent it applies, it really has to do with buildable lots. And if they become non-buildable then you don't.... You know, this lot is, this lot had the protection of 5.211 so it really -- I mean, it was a buildable lot. It would have had to be narrow to meet the setback requirements. But it's not true to say that oh, the lot

wasn't buildable during its lifetime. So it's for the period of time that she didn't own it for her husband, so the 20 year interim, she could have built as of right or come in. So it's not a case of well, it was never a buildable lot and, therefore, by doing the sub -- by granting the subdivision, or at least you're giving her the ability to build something that she didn't have. We're asking to have the conveyance recognized as a hardship. And the reason I was suggesting an extension is we did some math about some numbers, I think we could probably conclude that the overall density or GFA on the combined lots is probably not that different as having two separate structures on a single lot. And I think that might beg the question then why would, why would there be a -- it's -- well, the process of filing a master deed and separating this out, these are elderly people, I don't think they have

the appetite for that frankly. They're willing to sign a P&S that size if you get this, we'll sell you the lot. But I think it's probably a different calculation. If we have to tell them that the home that they've lived in nearly all their life is now going to become a condominium and multi-family home on Windsor Street, I mean, it's a concept that you might -- can see where they will probably --

SLATER ANDERSON: For the record, it's assessed as unbuildable, 35,000.

ATTORNEY JAMES RAFFERTY: It's assessed as unbuildable?

SLATER ANDERSON: Undevelopable land, 132. Residential owned undevelopable land.

ATTORNEY JAMES RAFFERTY: Well, someone in the Assessor's office knows it's merged then.

SLATER ANDERSON: The previous

assessment was -- so two years back it was also 35,000.

ATTORNEY JAMES RAFFERTY: Well, they're paying for than 35,000 I can tell you that.

CONSTANTINE ALEXANDER: Well, would you like to continue the case?

ATTORNEY JAMES RAFFERTY: Such a stirring comment a few minutes ago. I thought I may have changed a few minds.

CONSTANTINE ALEXANDER: You may have, but you've got to roll the dice.

ATTORNEY JAMES RAFFERTY: Did you say four faces would go up there?

TIMOTHY HUGHES: Well, I'm on the Board. We stand in fault together really.

ATTORNEY JAMES RAFFERTY: Would that be a group photo?

TIMOTHY HUGHES: I don't know, after that I don't know if they'd let me in a photo with them.

TAD HEUER: I am somewhat troubled by what Slater has just said.

CONSTANTINE ALEXANDER: You better get some answers.

ATTORNEY JAMES RAFFERTY: All right.

CONSTANTINE ALEXANDER: Okay, do I take it, Mr. Rafferty, we would like a continuance?

ATTORNEY JAMES RAFFERTY: Yes, we would like a continuance.

CONSTANTINE ALEXANDER: Sean?

SEAN O'GRADY: April 12th.

CONSTANTINE ALEXANDER: April 12th. Can everybody make it April 12th?

(All agreed).

CONSTANTINE ALEXANDER: The Chair moves that this case be continued as a case heard until seven p.m. on April 12th on the condition that the Petitioner sign a waiver of time for a decision, which Mr. O'Grady

will provide.

And on the further condition, the two signs that you have on the property now, have to be modified to -- write with a magic marker, change the date and the time of April 12th, seven p.m., and maintain it for the period of time that's required by our statute.

SLATER ANDERSON: I want to be clear, the assessed -- looking at the Assessor's database, it's classified as 132 which is technically undeveloped land. But it's assessed for 35,000. So I think the question -- my point is has there been a request in time by the current owners for a break on taxes because it's not a buildable or not buildable?

ATTORNEY JAMES RAFFERTY: Okay.

SLATER ANDERSON: But, you know, so I -- it isn't necessarily undevelopable. I think technically the term is undeveloped.

ATTORNEY JAMES RAFFERTY: Yes. I'm not familiar with unbuild --

SLATER ANDERSON: Yes, 132. There is a 133 which is unbuildable residential land.

ATTORNEY JAMES RAFFERTY: Is that the second line where it says 104?

SLATER ANDERSON: That classification. And that's the DOR tax classification.

ATTORNEY JAMES RAFFERTY: Okay.

CONSTANTINE ALEXANDER: Ready for a vote?

All those in favor of continuing the case on the basis of the motion I just made, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The case is continued.

ATTORNEY JAMES RAFFERTY: Thank you very much.

(Alexander, Hughes, Heuer,  
Anderson, Myers.)

(10:35 p.m.)

(Sitting Members: Constantine Alexander,  
Timothy Hughes, Tad Heuer, Slater Anderson,  
Douglas Myers.)

CONSTANTINE ALEXANDER: We're going  
to call case No. 10216, 10 Avon Place.

Is there anyone here wishing to be heard  
on this matter?

ANDREW KEATING: Mr. Chairman,  
Andrew Keating, Stack Design Build. I'm  
representing the Petitioner. The  
Petitioners Oliver and Kathryn Grantham.  
I'm not an attorney. I'm a construction

manager.

CONSTANTINE ALEXANDER:

Congratulations.

ANDREW KEATING: It's been a long day in the construction business. I know it's been a long day for you all as well. Andrew Kizlinski to my right is the project architect. And Oliver Grantham is the property owner to the far right.

Essentially we're here seeking relief from Article 5 in relation to a proposed alteration to an existing single-family dwelling, 10 Avon Place in A-2. And this is an existing non-conforming structure. We are not intensifying the FAR, but we are essentially proposing a small extension to the building, an eight foot by ten foot.

CONSTANTINE ALEXANDER: And you're not increasing the FAR because you're swapping other space within the structure?

ANDREW KEATING: Correct. Yes, we

are. We're swapping other space within the --

CONSTANTINE ALEXANDER: Say again?

TAD HEUER: (Inaudible).

ANDREW KEATING: I'm sorry, there is a four square foot increase.

Thank you.

And so essentially we are seeking to construct a small addition, eight foot by ten foot at the rear of the building which impacts the rear yard setback.

In terms of hardship affecting this request, the main hardship is just our difficulty in meeting the needs of the family within the existing structure. And that's really, really what we're here tonight is just to sort of try to meet their needs. Additionally in terms of hardship as it relates to the language of the Section 6, 40-A in terms of the shape or topography of such land or structures, essentially there's

theoretically a way for us to incorporate this additional space into the existing setbacks on the property. If you look to the -- at the west side of the structure, the existing dwelling, there's, there's a sort of an unusual jog in the building structure. There's a bulkhead. And essentially what I'm talking about is this area right here.

So we looked very, very closely at whether we can incorporate this structure into that part of the property. And because of the existing bulkhead, the jog of the building, the condition of the existing structure, from a construction standpoint it's a very difficult thing to do and also cost-wise.

The other thing from a visibility standpoint, this is a project that has a -- we've received a Certificate of Non-applicability from the NCD. And so essentially the siting of this extension

where we have proposed it from a visibility standpoint is the -- we think far and away the best place where it can be located in terms of visibility as concerned to the NCD, as concerns to the public way and neighbors, etcetera. And so those are really the -- our proposal in relation to the hardships.

CONSTANTINE ALEXANDER: Have you spoken with your neighbors, shown the plans to your neighbors?

ANDREW KEATING: We have.

MEMBER FROM THE AUDIENCE: They have not.

CONSTANTINE ALEXANDER: We had a case before you owned this building a number of years ago with a relatively small change, I think removing the bulkhead or whatever. I forget now. And there was a lot of neighborhood opposition. A lot of neighborhood comment.

UNIDENTIFIED MALE: I was the one

who brought it up.

CONSTANTINE ALEXANDER: I'm sorry, what?

UNIDENTIFIED MALE: I brought up the fact that the --

CONSTANTINE ALEXANDER: You'll have a chance. We have a transcript. I don't want to have a dialogue with you.

ANDREW KEATING: Mr. Chairman, my understanding -- I have not personally spoken to the neighbors. My understanding, and this could be incorrect, that Kathryn Grantham, the property owner, went individually to all the neighbors in an attempt to speak to them about this. And, again, that is just my understanding.

CONSTANTINE ALEXANDER: And what was your understanding as to what the reaction was from the neighbors when she spoke with them?

ANDREW KEATING: My understanding

at this moment at the disposition of the neighbors, I really do not have a complete understanding. I do not have a complete understanding.

CONSTANTINE ALEXANDER: I think we'll hear shortly what that is.

ANDREW KEATING: Yes. And so, in terms of hardship, that's really what we'd like to call attention to.

In terms of detriment to the public good. We really don't see an apparent detriment based on this sort of very modest alteration. And in terms of nullifying or substantially derogating from the intent of the Ordinance, basically we feel that the intent of the setbacks are to provide a buffer between neighboring structures and the existing dwelling. That there are a lot of existing mature trees, solid wood fencing along the property lines, and that essentially there's already a good screening

and buffer existing in the area. So that's essentially -- do you want to add to that at all, Andrew?

ANDREW KIZLINSKI: No, I don't.

CONSTANTINE ALEXANDER: Thank you. Questions from members of the Board? I see none.

I'll open it to public testimony. Is there anyone wishing to be heard on this matter?

Come forward, sir, and give your name and address to the stenographer, please.

ALBION SAWYER: Albion Sawyer, 14 Avon Place. I own the building directly to the north of this building, and the reason I spoke up a little earlier is simply because that addition would have been created on top of the existing bulkhead to the basement. And the architect in at that case didn't realize that there was no position for any other way of getting in the basement. And of

course there is a furnace and all kinds of stuff in there. So on the basis of that, he subsequently moved it further up the hill and they're much better off.

CONSTANTINE ALEXANDER: I don't know how to take that comment, but go ahead.

TIMOTHY HUGHES: Somebody's much better off.

ALBION SAWYER: And here the issue is not the same, but there's not intended consequence that I perceived in this drawing that I've just had a chance to see since I've been sitting here. And incidentally I work at home and I'm there seven days a week, so I find it very difficult and I'm quite disappointed that there has been no attempt to show me any of the drawings until now. And in any case, the unintended consequence of this addition to the back of the house is is that there's a roof which constitutes a porch on the second-story level with a proposed

door and a window from the bedroom inside which is just big enough to allow chairs, plantings, probably -- what do you call them? Curtains or what are the things that you have?

ANDREW KEATING: Umbrella.

ALBION SAWYER: Umbrella.

Exactly. I mean, there is all sorts of stuff which can be put on the roof of this building. And that would constitute a diminishment of the sun coming into the side of my house at least and that would be a very serious impediment and I don't want that to happen.

So, I don't see any danger in the one-story addition, but I don't like the idea of being able to have a two story.

CONSTANTINE ALEXANDER: I must say, sir, I agree with you. I mean, the case that you made you need a dining room, but you're going to have a second floor deck in a very tight neighborhood. And there are privacy issues as this gentleman's identified. I

was going to get to that later on, but since he raised it. Is it essential that you have a second floor deck?

ANDREW KEATING: It's been requested very, very adamantly by the homeowner that that be part of the project. In other words, is it essential? That's, from my point of view, that's what I know. And what I would say is that, I think it's unfortunate that the plans had not been communicated to this gentleman.

My comment on the issue of privacy and on the issue of insolation would be that the views from the roof deck on to neighboring properties really don't constitute to any more privacy issues than views out of other second floor windows in the property. If I'm looking out of a second floor window, I'm at the same height I would be if I'm standing on a roof deck looking at the neighbors -- this is just my --

CONSTANTINE ALEXANDER: I know.

TAD HEUER: You're inside.

CONSTANTINE ALEXANDER: You're having a little party. There's a little bit of a different impact.

ANDREW KEATING: Yep, absolutely. And the only other thing I would add is that in terms of --

DOUGLAS MYERS: You walk around the deck and have a much broader range of vision.

ANDREW KEATING: Okay.

TAD HEUER: And you get in the way because you're outside.

CONSTANTINE ALEXANDER: And sure we don't buy the argument, but keep going.

ANDREW KEATING: Okay. Well, I won't stress that line of argument. But I will say in terms of sun, the building itself, this is -- we're talking about an eight-foot nominal extension in the north direction from a building that -- the building itself, it

blocks any sunlight that this proposed roof deck would block.

CONSTANTINE ALEXANDER: There are other people. I'm sorry I interrupted. I am the one that started this.

ANDREW KEATING: Sure, and I shouldn't be talking.

CONSTANTINE ALEXANDER: No, that's okay. I know you wanted to speak, Ma'am. Could you come forward, please.

SYLVIA FINE: I'm Sylvia Fine from Six Avon Place so I'm on the opposite side of the side-by-side two-family. I will not directly see this building, but I am speaking about it because of my concern for the other half of the house which our family hopes to buy some day. And because of my concern that my neighbor who is there now does not wish to lose site of the sky and whatever sunshine comes that way in the late part of the day. I, too, have no objection to the eight by ten

extension hence that extra half of a story that's going up with a deck that I object to.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

Ma'am.

NEVE FOWLER: My name is Neve Fowler and I live at 8 Avon Place. And although I didn't get these -- yeah, the plans until tonight, I knew that there was an extension and I knew that my former neighbor, who also asked for an extension, but I don't remember how that went through although we're still friends now. I don't object to their going out a little. It was rather bulky looking at it, whoever took a picture of it or whoever drew it. But there was never an idea that there would be a fence at the top which would be like another story, and although in my kitchen, I can look up the house, I see the trees and the sky. I don't feel claustrophobic and I'm afraid with that

fence, no matter whether they make, put more slats or less, if they're going to use the porch, it could have potted plants, umbrellas, and chairs. Well, I don't know about the chairs. If they leave them out, it would be even an additional extension.

CONSTANTINE ALEXANDER: Okay.

NEVE FOWLER: That's it.

Thank you.

CONSTANTINE ALEXANDER: Thank you very much. Thank you.

I don't think -- anyone else wishing to be heard? I think everyone in the audience has been heard.

I'm going to close public testimony. I think the only thing we have in our files is a Certificate of Non-Appropriateness from Historical.

ANDREW KEATING: Well, non-Applicability rather.

CONSTANTINE ALEXANDER: Say it

again.

ANDREW KEATING: Non-Applicability rather than --

CONSTANTINE ALEXANDER: I'm sorry, Certificate of Non -- I'm just going to read it quickly.

(Reading) After review -- it identifies the property. After review of the plans by the staff, a Certificate of Non-Applicability was issued for the scope of work. See attached. And it is attached. The new addition will not be visible from the public way, and was, therefore, not subject to review at a public hearing at the Avon Hill Conservation -- NCD Commission. And there is a Certificate which has various specifics and conditions. And that's the sum and substance of our commentary in our file.

Any concluding remarks?

ANDREW KEATING: I would only just ask -- it seems that the issue of the roof deck

is pivotal here. I know there are further questions. So I would just sort of introduce the possibility that a condition, some sort of conditional approval -- I don't know -- I honestly don't know how that works.

CONSTANTINE ALEXANDER: I think if you wanted to go forward with the extension without any roof deck and any access to the roof of the extension, I think we would need revised plans which means we wouldn't make a decision. You would have to request a continuance, and then you'd have to come back to the Board and to your neighbors with these revised plans.

ANDREW KEATING: And should we be -- as opposed to -- we know what the client wants. As opposed to sort of requesting a decision from the Board on what they want, are we sort of better off -- if we think that the disposition is more towards --

CONSTANTINE ALEXANDER: If we go

forward tonight doing what your client wants --

ANDREW KEATING: Yes.

CONSTANTINE ALEXANDER: -- and we vote it down. And you need four out of five votes.

ANDREW KEATING: Yes.

CONSTANTINE ALEXANDER: That's the way, legally what's required. Then you will not be able to proceed for two years.

ANDREW KEATING: Okay.

CONSTANTINE ALEXANDER: You have to come back. Unless you brought substantially different plans and there's a procedure in our Zoning order which will allow you to do it. That's the risk you run. If you go forward, and you've heard I think some of the comments from Mr. Heuer by the way --

ANDREW KEATING: Sure.

CONSTANTINE ALEXANDER: -- before you talk about whether you want to continue

the case which I'm going to suggest you do.

ANDREW KEATING: At what point do I need to determine that we continue the case?

CONSTANTINE ALEXANDER: Right now.

ANDREW KEATING: This instant?

CONSTANTINE ALEXANDER: This evening. Before we adjourn our meeting.

ANDREW KEATING: Okay. In other words --

CONSTANTINE ALEXANDER: Tad, go ahead. You had a question you wanted to ask?

TAD HEUER: Yes. So can you walk me through how you're getting your net four, where it's coming from, where it's going?

ANDREW KIZLINSKI: What we're doing is there's attic space that's included --

TAD HEUER: Do you have a --

CONSTANTINE ALEXANDER: These plans?

ANDREW KIZLINSKI: There's an existing attic space, which on the second

floor -- we're cathedraling the second floor ceiling. So that attic space that's included in the existing FAR is -- the gross floor area is taken out because it's now within the cathedral ceiling. And the additional gross floor footage is added in. And so the net is only four.

TAD HEUER: Is there a lofting somewhere?

ANDREW KIZLINSKI: There's a loft over this bedroom. Or it's over this space here between the bedroom and bathroom closet.

TAD HEUER: So that stays in the FAR; right?

ANDREW KIZLINSKI: That's correct, yeah.

SEAN O'GRADY: Is there any part of the attic left or are you vaulting all of that?

ANDREW KIZLINSKI: Of the -- well, of the existing structure is necessary to

come out in order to vault to do the structure.

SEAN O'GRADY: All I'm saying, though, when you're done with all your vaulting, will there be any attic left?

ANDREW KIZLINSKI: That loft area. That loft area is -- a section of the attic space per se as it exists now.

ANDREW KEATING: So the loft area that will remain above this bedroom is essentially located on top of the existing -- well, located on top of new structure and in the same place as the existing tied beam ceiling joists.

SEAN O'GRADY: You should look in the interior corridor rule. I'm not sure that you'd actually -- but that's actually correct.

TAD HEUER: Yes. So the reason I ask this is I understand technically how this is working. I'll also point out that many

other municipalities, like Brookline for instance, count cathedrals at one and a half precisely for this reason, that you can't cathedral a ceiling, gain that space and then throw it somewhere else without increasing bulk. And that's -- I think you can see that's what's happening here.

ANDREW KEATING: Absolutely. I can certainly say that is not an intended end run in any way. It's just the request of the clients.

TAD HEUER: Right. It's permitted by the Ordinance. Quite frankly I don't like the fact that it's permitted by the Ordinance because I think it allows you to bulk unnecessarily.

SEAN O'GRADY: It's not. Swapping FAR is not allowed.

TAD HEUER: Well, swapping isn't, but not -- I think it should count as one -- there should be some count of your

cathedral in your FAR because it isn't permitted and that --

SEAN O'GRADY: And then there may be --

TAD HEUER: That may be because of the interior courtyard rule.

SEAN O'GRADY: Yes. I understand what you're saying about massing.

TAD HEUER: But in the general sense that it allows massing where the Ordinance doesn't expect massing, I think it's problematic. Not necessarily the case here. But you are getting caught up because you have nowhere to put that extra massing. Where you put that extra massing is in your rear setback which is why we're here. So you know, you get it one way but you get caught in the other side.

My sense is that I'm less inclined because of that line of thinking to treat this merely as a setback violation issue and to

think of it really as an over massing issue because you're taking space out that I think the Ordinance at least in the way it's developed is intended to try to constrain you for. So that troubles me a little bit.

And I guess my other question to you, this structure already had a 200 some odd square foot addition to it the first time around, and that put you over FAR I believe. Because it was a 0.5 and you went to a 0.55, and you got 240 feet. So I presume you're below anyone above?

ANDREW KEATING: That's correct.

TAD HEUER: Is that right?

ANDREW KEATING: Yeah.

TAD HEUER: So I mean usually the situation that we, you know, you get to do these things once; right? You're under FAR. You come over, and we say well, what do you want? That's what we're going to put you over. It's rare that we say, at least in my

experience, you were over -- you went from under to over and now you'd like to go even more over because the house doesn't meet your needs. At a certain point there's a cutoff where you say the house just isn't big enough to maintain everything that someone would like to do. Someone is willing to buy a smaller house. Someone is willing to get a bigger house. At a certain point the house just has to stay at the size it is. And this ability to add bulk because you're cathedraling a ceiling I think starts for me to push that boundary of the house is just getting too big for what it's being asked to support and that it should stay, particularly as we've gone over the FAR once by Variance at, you know, 1800 some odd feet, which is a good size house. May not be the house that your clients would like. They would like something bigger. But it's a house that is certainly workable in the City of Cambridge.

And as I've said before, I'm moved to take houses, add on, you know, X thousand dollars of value and then take them out of the lower range. And the more we do that, the fewer of those houses we have left. And we end up in the city where 55-year-olds just about to (inaudible). So I have concerns as to the way the Ordinance is being used here, and I think the setback issue, while not only what is before us is really only the result of several other issues about bulk that I think the Board should be considering.

That's my thought.

CONSTANTINE ALEXANDER: The point from that really, the take away is to go back and redesign the plans and take away the roof deck. Mr. Heuer's line of thought suggesting that we're going to turn you down anyway. I don't think we're ready to make that decision tonight. He brought up some very good points of view. To my mind there

are responses to that.

It's these two additions proposed now and before different owners, different times. So it deals with different needs. And so I'm -- I might be prepared to allow an extension but not the one that you're proposing right now. I'll be very frank to you.

ANDREW KEATING: Should we be speaking further now to Mr. Heuer's comments or not? Is it better left to subsequent --

CONSTANTINE ALEXANDER: My suggestion is that I think we should take it all with -- we should continue the case, come back with the new plans that deal with the extension and the roof deck. You've heard some of the comments. And also revisit the dimensional form. And talk a little bit more with Sean O'Grady as to how to properly -- you may have to revise your dimensional form based on what I heard. I think you do all of

that and then come back before us. We'll have a complete case. And you'll -- hopefully with new plans -- not hopefully. I'm going to ask that you show them to your neighbors in advance of the hearing. And the way our rules work, because you haven't been before us, we're jumping around a little bit. If we do continue the case, and you're going to come back with revised plans, that would be the only purpose of continuing the case. You must get those revised plans in our files by the Monday before the Thursday hearing. You just can't bring them that night.

ANDREW KEATING: Sure, right.

CONSTANTINE ALEXANDER: I don't want you to get surprised.

ANDREW KEATING: Sure.

CONSTANTINE ALEXANDER: The neighbors can come down starting five p.m. on the Monday before to go the Inspectional

Services Department to check the files and to see your new plans and your new dimensional form if you have revised it. But I would ask that you don't force them to come to the office. Reach out to them.

ANDREW KEATING: Sure.

CONSTANTINE ALEXANDER: It's always in your interest. But what I'm telling you if they don't reach out to you or for some reason you can't meet with them, you don't have to wait until the next night when we have a hearing to see the plans. You'll have three or four days down at the Inspectional Services Department to review them.

TAD HEUER: And I think you want to respond to the things I've said. You know, you can revise your supporting statement for a Variance and incorporate those kinds of arguments. I mean, that's perfectly legitimate. You know, certainly take advantage of that if you want.

ANDREW KEATING: Sure.

CONSTANTINE ALEXANDER: So I take it you want to continue this case?

ANDREW KEATING: Yes.

CONSTANTINE ALEXANDER: I think you should frankly.

ANDREW KEATING: Thank you for your guidance.

CONSTANTINE ALEXANDER: Sean, when would the case be -- it's a case heard so when?

SEAN O'GRADY: We're now into the 26th of April.

CONSTANTINE ALEXANDER: Can you make the 26th of April?

ANDREW KEATING: That's -- I believe so. Should we actually pull out calendars and look?

CONSTANTINE ALEXANDER: Well, if not, we'll continue it again on the 26th. I'm going to ask the neighbors. We're going to continue this case to April 26th. Do you

know of any reason why it doesn't work for you?

ALBION SAWYER: I'll tell you in one half second. 26th of April?

CONSTANTINE ALEXANDER: Yes. I can tell you it's a Thursday night.

ANDREW KEATING: Looks good for me. Thank you.

ALBION SAWYER: I've got something at nine o'clock in the morning.

TAD HEUER: Does it go all day?

ALBION SAWYER: The evening is fine.

CONSTANTINE ALEXANDER: Okay. The Chair moves that this case be continued as a case heard until seven p.m. on Thursday, April 26th, on the condition that the Petitioners or its representative sign a waiver of the time for decision.

On the further condition that the sign that's on the building right now, be modified. You can do it yourself with a

magic marker, to change the date and time to seven p.m. on April 26th. If you don't do that, we're not going to hear the case on April 26th. And you maintain the sign as required by our Ordinance.

And just to remind you as I said before, but I'll put it on the record, that to the extent that you're gonna come back with revised plans or a maybe a supporting statement or maybe a revised dimensional form, all of those, you must have them in the file by five p.m. on the Monday before that April 26th date otherwise we won't hear the case then either.

ANDREW KEATING: Sure.

CONSTANTINE ALEXANDER: All those in favor of continuing this case on that basis say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

(Alexander, Hughes, Heuer,  
Anderson, Myers.)

(11:00 p.m.)

(Sitting Members: Constantine Alexander,  
Timothy Hughes, Tad Heuer, Slater Anderson,  
Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair  
will call case No. 10217, 167 Elm Street.

Is there anyone here wishing to be heard  
on this matter?

Mr. Rafferty, why don't you for the  
record.

ATTORNEY JAMES RAFFERTY: Thank

you. James Rafferty, Mr. Chairman, on behalf of the Applicant. Seated to my right, Scott Shuster. This is a Special Permit case that is seeking relief under Article 8 to allow for the enclosure of some porches on a three-family structure on Elm Street.

CONSTANTINE ALEXANDER: No offense, Mr. Rafferty, but the space between where these porches are and the next building you couldn't squeeze through this.

ATTORNEY JAMES RAFFERTY: One couldn't or I couldn't?

TIMOTHY HUGHES: One couldn't.

CONSTANTINE ALEXANDER: I've never seen two structures so close together. I hope you touch on that and why in terms of the relief being sought.

TAD HEUER: He can probably touch on both of them.

ATTORNEY JAMES RAFFERTY: Yes. I mean there is an unusual closeness between

the two. It's most affected at the second floor.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: And not at the top floors. But that is the case.

It's interesting in talking with that abutter their concern was privacy. They actually see it as a benefit. So that open area where people are within a foot or two of their windows, the outdoor type activity will now -- it's impact in both of privacy and noise will be reduced by creating the enclosure. So the setback is unchanged by virtue of the footprint of the porch now. So I do think --

CONSTANTINE ALEXANDER: What use is going to be made of the enclosed decks?

SCOTT SHUSTER: Are you directing to me? Can I speak?

CONSTANTINE ALEXANDER: Whoever wants. Yes, sir. If he'll let you.

SCOTT SHUSTER: Part of it is just going to be an extension of the bedroom.

CONSTANTINE ALEXANDER: The bedrooms are going to get bigger.

SCOTT SHUSTER: And there will be some closet space that you were talking about with respect to where it's really close to the abutter.

ATTORNEY JAMES RAFFERTY: The closest pinch point won't have windows or anything. It's going to be a closet.

CONSTANTINE ALEXANDER: That's my next question, there are no windows there?

ATTORNEY JAMES RAFFERTY: No, it's a closet. So that portion. It was, it was designed with an understanding of this relationship frankly. And we do have the abutters -- the people who live in that building have signed the petition that we submitted. So it's for that reason the GFA is already included within the calculation.

And I think the closeness of the abutting structures actually a double edge sword. While it does create an unusually close relationship between the two structures, it does create a wall and a buffer between what could be an active outdoor porch. Certainly today we wouldn't permit or encourage building porches, talk about looming structures over structures.

TIMOTHY HUGHES: Massive and looming.

CONSTANTINE ALEXANDER: What about the safety issues? Is there safety improved by enclosing the decks or not?

SCOTT SHUSTER: Can I answer that?

ATTORNEY JAMES RAFFERTY: He's been telling me about this for -- yes.

SCOTT SHUSTER: Well, the decks as they are now were built years ago and were built incorrectly. And we took down the one in the front and we would have taken the ones

down in the back regardless. So to answer your question to make it a lot more safe.

CONSTANTINE ALEXANDER: You can also just take the decks down period and just not add bedroom space.

SCOTT SHUSTER: We could do that.

CONSTANTINE ALEXANDER: That would certainly increase the space between the buildings. In terms of fire equipment, something getting back there if there's a fire.

TAD HEUER: I think 169-R is a lost cause if there's a fire.

ATTORNEY JAMES RAFFERTY: Well, right, but I mean, I think the --

CONSTANTINE ALEXANDER: I never had a safety question before in a Zoning case. This is unique.

SCOTT SHUSTER: The fire department has reviewed the plans.

ATTORNEY JAMES RAFFERTY: He did get

the Building Permit based on that. I mean, that's house that's unusual. This house is rather traditional in its footprint. It's the other house that juts into it, and that geometry is quite awkward. I don't know how that was permitted or why that was allowed to occur.

CONSTANTINE ALEXANDER: There was no merger there that's why.

ATTORNEY JAMES RAFFERTY: I had so many great ideas I just came up with in the other room, I wish they come to me. I have to wait until April 12th.

CONSTANTINE ALEXANDER: The hour is late.

ATTORNEY JAMES RAFFERTY: Do you know what one of them is? There's no rear yard if we don't merge this and then we're going to have in-fill.

CONSTANTINE ALEXANDER: Let's --

ATTORNEY JAMES RAFFERTY: All

right.

CONSTANTINE ALEXANDER: Any further comments?

ATTORNEY JAMES RAFFERTY: I hope we don't need to make any at this hour. It's a Special Permit. I'm hoping that it meets the Special Permit test of compatibility with surrounding uses and structures, and I think given the proximity of the abutting structure, it actually has a certain benefit to both structures, both the occupants of this home and the occupants of the abutting home.

CONSTANTINE ALEXANDER: Questions from members of the -- I'm sorry, you wanted to add?

ATTORNEY JAMES RAFFERTY: He wanted me to remind you that there's a petition from abutters and I said you will do that.

CONSTANTINE ALEXANDER: Questions from members of the Board?

SCOTT SHUSTER: Mr. Heuer is looking at windows what. Can you tell you about windows?

ATTORNEY JAMES RAFFERTY: Are we changing any windows?

TAD HEUER: They don't have it on the plan is the issue. Is there a separate plan in there? A smaller plan?

ATTORNEY JAMES RAFFERTY: Existing or proposed?

TAD HEUER: Existing we have. Proposed, we don't except on a smaller plan and here I believe it is.

SCOTT SHUSTER: There should be windows here in the back here.

TAD HEUER: Where?

CONSTANTINE ALEXANDER: Frankly, I thought there were windows. There's no windows in the notch is what Mr. Rafferty said. But there are windows in the back.

TAD HEUER: No.

ATTORNEY JAMES RAFFERTY: Do you have that elevation?

TAD HEUER: I have that; is that correct?

TIMOTHY HUGHES: A blank wall? If it's less than three feet from the property line, it would have to be a blank wall without a state building code exemption.

ATTORNEY JAMES RAFFERTY: That's correct.

I don't think the whole thing is three feet. It's actually deep.

TAD HEUER: It's only at the pinch. The rest of it runs back.

TIMOTHY HUGHES: So you have it in some places and not in others?

TAD HEUER: The lot dog legs to the right.

They've got 40 feet off the rear. They just don't have any feet off the side house. So straight back they're at 40.

ATTORNEY JAMES RAFFERTY: Right. So we didn't apply for Special Permit. The windows would be as of right. But I do concede that the elevation is --

TAD HEUER: Is that the elevation that's being proposed?

ATTORNEY JAMES RAFFERTY: That's what's in the file, but I'm being told that's not an accurate.

TAD HEUER: I was going to ask if that was accurate or not because I was going to have questions whether that was inaccurate probably.

SCOTT SHUSTER: Well, I think there's an inaccuracy.

ATTORNEY JAMES RAFFERTY: It's anticipated that those bedrooms, which is what that wall is, would contain double windows?

SCOTT SHUSTER: Correct.

TAD HEUER: So there'd be one for

each of the bedrooms; one, one, one?

SCOTT SHUSTER: Sets of doubles.

ATTORNEY JAMES RAFFERTY: Two, two, two. This would be side-by-side double hung windows.

SCOTT SHUSTER: And where this says new windows is actually closed. This is not going to be there.

TAD HEUER: So the windows in the bedroom would be on the rear. There would be two in the rear?

ATTORNEY JAMES RAFFERTY: Facing the 40-foot setback.

TAD HEUER: And one toward the front of the building?

SCOTT SHUSTER: No, there'd be none here.

TAD HEUER: None on the left side?

SCOTT SHUSTER: Right.

TAD HEUER: He means correct.

SCOTT SHUSTER: Correct.

TAD HEUER: Don't want to get into right and left.

SCOTT SHUSTER: No, I don't.

TAD HEUER: So there will be windows, and your abutter on that left side, that's just another three-family, that's right?

SCOTT SHUSTER: Correct.

TAD HEUER: So I mean I guess my thought would be it would make sense to put your windows in the rear and not into a wall that's three feet away.

SCOTT SHUSTER: And that in fact is the case. I apologize for that.

TAD HEUER: Okay. So we don't care about the windows that are on your left side because that's not before us because we're not in-filling anything. Correct?

ATTORNEY JAMES RAFFERTY: They're all existing. The only new windows are the in air.

CONSTANTINE ALEXANDER: The enclosed.

ATTORNEY JAMES RAFFERTY: Right. But they're not currently depicted in the elevation.

TAD HEUER: Right. And I guess we suggest since we're giving a Special Permit to enclose a porch, even though the windows might nominally be, I would want to see the windows there --

CONSTANTINE ALEXANDER: So would I.

TAD HEUER: -- before because that's the curtain wall that is being enclosed.

ATTORNEY JAMES RAFFERTY: Could we do like we did in the earlier case and draw the windows?

TAD HEUER: I'm fine with that.

CONSTANTINE ALEXANDER: Yes, absolutely. Yes, I don't want to continue this case.

ATTORNEY JAMES RAFFERTY: Can he

draw them while a motion's being drafted?

CONSTANTINE ALEXANDER: I don't want to do a free hand. I'd like to see a little scale on those windows.

ATTORNEY JAMES RAFFERTY: You're going to draw some windows, right?

CONSTANTINE ALEXANDER: Do you need to draft the windows?

ATTORNEY JAMES RAFFERTY: Thanks for the suggestion, but no. We can take Columbia Street while he goes off and draws windows.

TAD HEUER: Do it on both the elevation and then indicate on the floor plan where they'll be.

SLATER ANDERSON: The plan in the file.

ATTORNEY JAMES RAFFERTY: I would suggest what to do is take these windows and approximate them and double them up here so you can trace them up there.

SCOTT SHUSTER: Thank you.

(Case Recessed.)

(11:15 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Tad Heuer, Slater Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10218, 140 Columbia Street.

Is there anyone here wishing to be heard on this matter?

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman. James Rafferty on behalf of the Applicant, 140 Columbia, LLC. Seated to my right is Christopher Koskores, K-o-s-k-o-r-e-s. He's a principal of the ownership entities. And to the far right is Alex Goncalves.

ALEX GONCALVES:  
G-o-n-c-a-l-v-e-s.

ATTORNEY JAMES RAFFERTY: And then the project architect.

TUAN NGUYEN: Tuan, T-u-a-n first name. Last name is Nguyen, N-g-u-y-e-n.

ATTORNEY JAMES RAFFERTY: Thank you. Mr. Chairman, this is an application to make renovations to a two-family house that exists today on Elm Street -- Columbia Street. Here's a photograph of the house. Elm Street was the previous case.

The proposal has a couple of parks to it. It really involves creating some living

space on the third floor. And because the house is undersized for its current lot, a couple of the elements in the application actually can occur as of right. But the first and most obvious one is the dormer, proposed dormer on the conforming side of the house on the right side. That right side elevation. That dormer is no longer than 15 feet and it's occurring on the third floor. And as you can see, it's built in accordance with the dormer guideline and it does not result in a non-conformity because it still remains below the FAR. The whole project, all three additions are below the FAR.

The second dormer on the other side of the house does not qualify as an as-of-right dormer because the limitation is that the cumulative length of the dormers need to be 15 feet. So in this case this becomes the as-of-right dormer. The dormer on the other side of the house is narrow and modest. And

if you look at the floor plan, is only in place to create a compliant staircase into the third floor.

So it is -- it is not a dormer that is into an occupied room. That glass is only providing light into the stairwell, but that's a stairwell dormer and not a dormer into a room.

CONSTANTINE ALEXANDER: And you need the dormer again for head room?

ATTORNEY JAMES RAFFERTY: For the head. To bring the head space up into the house.

And then the third component is a bit of an in-fill. And it's this component that frankly is not a conforming addition. I just want to just share with the Board why that is the case. The current rear setback on the property, as you see in this, is it's 17 and a half feet. And there is -- there is room where this -- where this room could go in this

direction and be made conforming. And it would be taking two and a half feet off in this direction. But the setback on this side is generous enough that it could be captured. But the plane of the house both in terms of the existing side and the rear are established. So the relief on that area is to allow for a setback relief for two and a half feet.

We did look at -- you could, as I said, you had to be honest. There is an ability to construct that addition conforming that it then just changes the geometry of the room. So it would be slightly less rectangular and more square so they'd have to pick up the square feet over here. And the preference was to take advantage to have a single rear elevation.

This is kind of an unusual looking rear facade today. It's going to be far more symmetrical when they are done. It has this

gabled roof on it now. If you saw the photos, the one-story piece of the day. If you look at the existing rear elevation, it's a little on the funky side, and you'll see that they're bringing some order to that.

This is the rear elevation now. So this one-story piece loses the gable on the back which takes a mass away from the closest edge from where the property is closest. But this, this portion right here, which is new, does go two and a half feet into the setback and thus requires a Variance.

TAD HEUER: What mass does it take away?

ATTORNEY JAMES RAFFERTY: This gable.

TAD HEUER: It takes away the gable part?

ATTORNEY JAMES RAFFERTY: The gable part, right.

CONSTANTINE ALEXANDER: Is that a

deck over the -- over there?

ATTORNEY JAMES RAFFERTY: Yes. But the deck portion we pulled back. The deck portion was within the setback. And it's not included in the GFA.

CONSTANTINE ALEXANDER: Right.

TAD HEUER: And then you're raising the roof?

ATTORNEY JAMES RAFFERTY: Oh, yes, that's what we hadn't mentioned.

CONSTANTINE ALEXANDER: That's what you advertised.

ATTORNEY JAMES RAFFERTY: Yes, right. Part of the dormer construction is the roof comes up --

CHRISTOPHER KOSKORES: Three feet, what? 31 point --

CONSTANTINE ALEXANDER: 31.75 feet.

ATTORNEY JAMES RAFFERTY: It looks like it's a three-foot increase in the height of the roof.

The roof is conforming on three sides and it's non-conforming on this side. So we need relief to raise the roof on that side. But the front and the side.

TAD HEUER: Besides the house on the left with the fake mansard, the blue one.

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: What are the building heights going down the street on that side? Do you know, roughly? My question is will you be going above that height?

TUAN NGUYEN: No, way.

CHRISTOPHER KOSKORES: Here's our other side neighbor right here. He's a similar building to ours. Chuck's actually here. This is Chuck, he lives in this house. I don't --

TAD HEUER: So how come three feet would make you.

CHARLES HENEBRY: It would go the two --

CONSTANTINE ALEXANDER: Sir, you've got to come forward.

CHARLES HENEBRY: Charles Henebry, H-e-n-e-b-r-y. I live at 136 Columbia Street in this green house.

So if -- my house and the pink house, they own the 140, my green house, and the next house over are all virtually identical, were built about the same moment.

TAD HEUER: Right.

CHARLES HENEBRY: And are all I think of a height. This mansard house goes up considerably higher, about ten feet higher. And then I think the house over here is a tall building, also. The houses on the far side, on the opposite side of the street are also taller. Some of them are. And some of them are like this one.

TAD HEUER: The one that's three down, so it's not in this group, is that also a two-and-a-half-story gable?

CHARLES HENEBRY: Yes. This one, this one, and the next one -- the one on the far side of me are all essentially of a height and of a style.

TAD HEUER: Right, so 140, 136 and 132 are all the same.

CHARLES HENEBRY: Essentially the same.

TAD HEUER: 126 is --

CHARLES HENEBRY: Is taller I think. A different style.

TAD HEUER: A different style. And then --

CHARLES HENEBRY: I don't think there are any others of this style, except across Columbia there's a house that's of the same style as mine.

TAD HEUER: That's 135?

CHARLES HENEBRY: I think that's right. Not the one on the conner but one in.

TAD HEUER: The one in?

CHARLES HENEERY: That's right.

CONSTANTINE ALEXANDER:

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Well, essentially for the reasons stated, the desire is to have the footprint of the two-story addition be co-planar with the existing walls of the house. So it's achieved on the side yard as of right, and the rear by way of Variance. An as-of-right solution would create a two-and-a-half-foot setback which would create an unusual rear elevation, and probably push -- and then to capture the square footage, would then push the addition beyond the plane of the house. And we looked at it and frankly it looked very awkward. And the request was to make the relief.

CONSTANTINE ALEXANDER: Okay.

TAD HEUER: Is there a and I'm sure there is, just explain it to me, a reason why

you can't have either the 15-foot dormer where it is now so admittedly more in the setback but capture both the stairway and additional headroom for whatever room you want up there and not have one on the side? I know the stairway is probably where it is and that's where the head has to come out.

ATTORNEY JAMES RAFFERTY: That's right.

TAD HEUER: If we're looking to keep 15 feet working 15 and an eight, is there a reason we can't do 15 on one side and eight on the other?

TIMOTHY HUGHES: Essentially the one with the stairwell you wouldn't get 15 feet of usable space in that dormer.

TAD HEUER: Oh, I know.

TIMOTHY HUGHES: You'd get about 10.

TAD HEUER: That is what I'm asking. Is there a reason you can't do a bit less space or just the layout -- you're going to tell me

layout simply doesn't work so I'm not even sure why I'm asking.

ATTORNEY JAMES RAFFERTY: The footprint is on that side of the house and existing a stairway is there now. There is a stairway going up there. So but that's the site, that's the wall that's non-conforming. So we put the as-of-right dormer on the as-of-right side of the house. If we were to shift the stairway -- excuse me, if the stairway got shifted into the as-of-right dormer and you lost room area, you'd have to relocate the second floor, put that stairway over on the other side.

TAD HEUER: I'm saying it the other way. I'm saying keep the stairway where it is. Put your 15-foot dormer over the stairway. Part of it goes to the head house in the stairway. Part of it goes to expanding the room up there and then you have nothing on your admitted but conforming side.

ATTORNEY JAMES RAFFERTY: Right. But in that case, though, we'd be putting a 15-foot dormer where we have about a one-foot setback. So we couldn't have windows in it if we're going three feet off. I think we'd have a privacy issue. We talked to these neighbors --

TAD HEUER: So you're going to have a windowless dormer for your head house?

ATTORNEY JAMES RAFFERTY: No, there's a window, but it's not a room; right? It's just a window. It's not someone's going to be sitting there looking out.

So we looked at that, because that's where the stairway is. But if you made that the dormer, it's a -- it actually would be as of right, frankly, because you can do the dormer notwithstanding the setback violation, but you then have the building code issues about being within three feet of the lot line. So now you have this expansive

dormer. This dormer is -- if you look at it, the stairway dormer sits higher into the roof in order to have the window then would be ideal for the dormer that's on this side.

TAD HEUER: Right. And on the rear, so you have something on the lot line now. You're going to be pushing in towards a by-right area; is that right? Right now you've got something essentially here.

ATTORNEY JAMES RAFFERTY: That's correct.

TAD HEUER: You're keeping a -- that stays. That footprint stays?

ATTORNEY JAMES RAFFERTY: Yes, you see it right here. So that wall is where -- that footprint is right there. But it looks like this today.

TAD HEUER: And is that your side yard setback line? No.

My question is this new addition entirely by-right because you couldn't go any

further toward your left side setback? Is the reason this pops up and you don't have that -- is there a reason that this doesn't extend further?

ATTORNEY JAMES RAFFERTY: No. And it could. Just out of deference to the, again, to the property next-door. Because as you know, a second story -- that's the other thing, a second story addition in this location on a two-family house would be permitted as of right notwithstanding --

TAD HEUER: That's my question.

ATTORNEY JAMES RAFFERTY: -- the setback. But we were choosing to locate the mass on this side to separate it from the closeness on that side.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: So if he -- if they kept that footprint, took that off, they could put just like they're putting a dormer on, right, they could take the

Article H1 that says you can put an addition onto the second story or a dormer onto the third story.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: But they're electing not to do that out of deference to the proximity of this house to the lot line. And that's our most sensitive edge and they push the mass on the other side.

TAD HEUER: And your roof goes up three feet? That comes in on your edges, so what's your habitable third floor now that as oppose to what you will have after you've done this?

ATTORNEY JAMES RAFFERTY: GFA-wise you mean existing floor area?

TAD HEUER: Yes.

CHRISTOPHER KOSKORES: It's a narrow, narrow strip.

TAD HEUER: Right.

CHRISTOPHER KOSKORES: 350 square

feet.

TAD HEUER: That's what you have now?

CHRISTOPHER KOSKORES: No, that's proposed. Existing is 89.

TAD HEUER: Does the basement count in your FAR?

ATTORNEY JAMES RAFFERTY: I believe it does. Does it?

CHRISTOPHER KOSKORES: No. The basement for the floor area?

ATTORNEY JAMES RAFFERTY: Yes.

CHRISTOPHER KOSKORES: No.

TAD HEUER: So this is the Building Code, Zoning Code discrepancy that we've got now?

ATTORNEY JAMES RAFFERTY: Right. 73 versus 68.

TAD HEUER: So you've got unit one is basement and first, and unit two is second and third?

CHRISTOPHER KOSKORES: That's correct.

TAD HEUER: And your dormer on the left side goes into the side wall or it doesn't? I'm sorry, it doesn't.

CHRISTOPHER KOSKORES: Right.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Okay? Let me open it to public testimony.

Is there anyone wishing to be heard on this matter? Sir, do you want to speak at all?

CHARLES HENEBRY: Yeah.

I'm -- I've lived next-door for about 11 years now and I'm excited about the apartment being renovated or the building being renovated. It had been occupied by an elderly woman who was living in the first floor, and the second floor apartment was unused since her mother died. And the building had really fallen into disrepair. She was elderly and didn't

have a lot of money to fix it up. I replaced the back stairs for her at one point. She was a nice woman. I'm glad, I'm excited to see the apartment falling into the hands of some people who are fixing it up in a really nice way. I've seen the plans. I'm impressed with them.

CONSTANTINE ALEXANDER: Thank you.

CHARLES HENEBRY: I wish the back side didn't look quite so goofy. But I guess, I don't know, that's the compromise they've worked out with not upsetting the -- I don't even think the neighbors on the other side care, but anyway that's the compromise they worked out with the law I suppose.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: Thank you.  
Any final comments, Mr. Rafferty?

ATTORNEY JAMES RAFFERTY: I hope not, no.

TAD HEUER: Is that rental on that

side? The mansard building?

CHARLES HENEERY: I don't think so. I don't quite understand how that family works, but I think they have some rental space, but it seems to be a large extended family.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Questions or comments from members of the Board or are we ready for a vote.

TIMOTHY HUGHES: I'm good with it.

CONSTANTINE ALEXANDER: Okay. The Chair will make the following motion:

The Chair moves that we make the following findings with regard to this petition:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being the ability to restore this building and to make it a viable economic

enterprise.

That the hardship is owing to the circumstance related to the shape of the building. It's a non-conforming structure. A very tight neighborhood.

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

In fact, the project will improve the housing stock for the City of Cambridge.

It has the support of a neighbor who is most directly affected by this. Or maybe not most, but directly affected by what is proposed.

And so on the basis of all the foregoing, the Chair moves that a Variance be granted to the Petitioner on the condition that the work proceed in accordance with plans submitted by the Petitioner. Number of pages in length, the first page of which

has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted. Good luck.

(Alexander, Hughes, Heuer, Anderson, Myers.)

(11:30 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Tad Heuer, Slater Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will now call a continued case, case No. 10207, 140 Columbia Street.

Do I hear a motion to withdraw?

ATTORNEY JAMES RAFFERTY: Yes, you

do.

CONSTANTINE ALEXANDER: I move that we accept the Petitioner's request to withdraw this case.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Heuer, Anderson, Myers.)

(11:30 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Tad Heuer, Slater Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will continue to hear the case No. 10217, 167 Elm Street. And when we last left you you were going off with a ruler and do some architectural work. Do you have it?

SCOTT SHUSTER: I do.

CONSTANTINE ALEXANDER: Will you show us your handy work.

SCOTT SHUSTER: This is here all the way down. These will be closed here. These two windows will be closed. They'll be facing the left abutters, identical all the way down to the back of the building.

CONSTANTINE ALEXANDER: What are the size of the windows?

SCOTT SHUSTER: The same size as the other windows in the -- that are shown in the drawing.

ATTORNEY JAMES RAFFERTY: This size?

SCOTT SHUSTER: Correct.

ATTORNEY JAMES RAFFERTY: They'll match the existing windows on the facade.

CONSTANTINE ALEXANDER: I'm going to write on here new windows will match the existing windows.

SCOTT SHUSTER: That is an excellent suggestion to write that.

CONSTANTINE ALEXANDER: Yes. It's not a suggestion. It's necessary.

TAD HEUER: So will match proposed right side elevation double hung.

CONSTANTINE ALEXANDER: Okay. For the record, the Chair will note that we are in receipt of a Petition which says: We the undersigned neighbors and abutters of 167 Elm Street do support the enclosure of the back porches at 167 Elm. We urge the Board of Zoning Appeal to act favorably upon the Petitioner's request. And signed by 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 persons, all of whom live on Elm Street it appears. There's 169 Elm Street, most directly affected by this. And they are one of the persons who have signed the petition.

TAD HEUER: Is that 169 your building?

CONSTANTINE ALEXANDER: That's the one in the back. 67 is theirs.

ATTORNEY JAMES RAFFERTY: We're 67.

CONSTANTINE ALEXANDER: Okay.

These are the plans that you've -- what happened to the one we just marked? I just wrote on them. This is it. I think we're ready for a motion.

The Chair moves that we make the following findings with regard to this matter:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that there are existing open porches on the property which have adverse impact on the neighboring properties in terms of privacy. And to continue them would adversely affect the relationship of the Petitioner to the neighbors and to potential occupants of the units.

Hardship is owing to the shape of the structure itself.

ATTORNEY JAMES RAFFERTY: Excuse me, this is a Special Permit.

CONSTANTINE ALEXANDER: Oh, I'm sorry, you're right, it's a Special Permit. Thank you. Try again.

The Chair moves that we make the following findings with respect to the Special Permit being sought:

That the proposed enclosure of the porches will not be substantially more detrimental to the neighborhood than the existing situation.

And that we make further the following findings:

That traffic generated or patterns of access or egress as proposed will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of and

development of adjacent uses will not be adversely affected.

In fact, the adjacent uses are supporting the petition and would again, all that's happening is not to change the structure -- its footprint, but to enclose existing porches.

That no nuisance or hazard would be created to the detriment of the health, safety, and welfare of the occupant or the citizens of the city. And the proposed use will not impair the integrity of the district or otherwise derogate from the intent and purpose of this Ordinance.

These findings and the Special Permit would be granted on the condition that the work proceed in accordance with the plans prepared and modified by the Petitioner at this hearing and initialed by the Chair with the plans noting that the new windows that are being proposed with the enclosure of porches

will match the existing windows in the structure.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

Thank you.

(Alexander, Hughes, Heuer, Anderson, Myers.)

(Whereupon, at 11:40 p.m., the Board of Zoning Appeal Adjourned.)

#### **ERRATA SHEET AND SIGNATURE INSTRUCTIONS**

The original of the Errata Sheet has been delivered to the Board of Zoning Appeal.

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\_\_\_\_\_

**C E R T I F I C A T E**

**COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.**

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

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

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

**IN WITNESS WHEREOF**, I have hereunto set my hand this 1st day of March 2012.

---

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

My Commission Expires:  
April 23, 2015

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