

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, FEBRUARY 2, 2012

7:10 p.m.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Brendan Sullivan, Chair

Tad Heuer, Member

Thomas Scott, Member

Mahmood Firouzbakht, Member

Douglas Myers, Member

Maria Pacheco, Zoning Secretary

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PROCEEDINGS

(7:10 p.m.)

(Sitting Members: Brendan Sullivan, Tad Heuer, Thomas Scott, Mahmood Firouzbakht, Douglas Myers.)

BRENDAN SULLIVAN: Let me call the Board of Zoning Appeal meeting for February 2, 2012, to order. The first case we will hear is case No. 10191, which is 126-128 Holworthy Street.

Is there anybody here interested in that matter?

(No Response.)

BRENDAN SULLIVAN: I see nobody. There is correspondence in the file dated January 30th, from Bonnie Jones and Kim Steel, 126-128 Holworthy Street addressed to Mr. Sean O'Grady. (Reading) On the owner's behalf I herewith request a continuance of case No. 10191, scheduled to be heard on Thursday, February 2nd at seven p.m. Thank you for your attention to this matter. Kaj Vandkjaer, K-a-j V-a-n-d-k-j-a-e-r.

On the motion to accept the request for the continuance on the condition that the petitioners change the posting sign to reflect the new to-be-determined date and time. And that any changes to the plans which are now in the file, that the changes be submitted by five p.m. on the Monday prior to the next scheduled hearing date. And also a new dimensional form be attached therein, and any other pertinent documents which needs to be amended.

The date for continuance?

MARIA PACHECO: 3/22, because it's a case heard?

BRENDAN SULLIVAN: This is a case heard.

MARIA PACHECO: Yes.

BRENDAN SULLIVAN: And the motion to continue this to March?

MARIA PACHECO: 22nd.

BRENDAN SULLIVAN: 22, 2012, at

seven p.m.

All those in favor of granting the
continuance?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Heuer, Scott,
Firouzbakht, Myers.)

* * * * *

(7:10 p.m.)

(Sitting Members: Brendan Sullivan, Tad
Heuer, Thomas Scott, Mahmood Firouzbakht,
Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10168, 2500 Mass. Avenue.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman. For the record, James Rafferty on behalf of the applicant. Seated to my right is Maureen Arkle, A-r-k-l-e. Ms. Arkle is the CEO of the Marino Center for Integrated Health, the owner of the subject property.

I took sometime to try to understand how this case arrived in the position it was, and I learned a few things. I was able to share them with Mr. O'Grady. The photographs in the file really tell the story. For a long time there was a sign in this location much larger than the sign that's proposed this evening. I don't know if you've been able to reach that photograph yet.

TAD HEUER: And that's the sign that now exists; right? It's not proposed. It's being proposed to us.

BRENDAN SULLIVAN: There was a sign above it.

ATTORNEY JAMES RAFFERTY: There is a predecessor sign in this location which was almost double the size of it if you look closely at the photo. There you go, that's the sign that was there. Thank you.

So what happened is that the applicant hired a sign company and they went and went through the sign certification process, received a sign certification. Actually received a Building Permit. And the intention at that time, the building used to have its entry, if I can show you the photograph, its entry was right here on Mass. Avenue. You can see this little spandrel area here at the base. That was the entrance. And the sign was proposed and approved to go with that location over that door. During the course of the renovation of the building, in the past year a decision was

made to no longer use that door and to make this entrance the principal entry to the building.

TAD HEUER: That's the south entrance; right?

ATTORNEY JAMES RAFFERTY: Yes. It's on the corner.

So at that time, the sign company, believing it had a permit and a sign that was dimensionally approved, they decided to remove -- I want to make sure the other Board members -- thank you.

So the decision was made well, we'll remove this sign and we'll take the sign that we were going to put over the door and we'll put it here.

DOUGLAS MYERS: Here being in the same place?

ATTORNEY JAMES RAFFERTY: In the same place. So the sign is actually in place today but --

DOUGLAS MYERS: Although it's not in the exact same place where the previous sign was?

TAD HEUER: It's lower.

ATTORNEY JAMES RAFFERTY: It's lower. That's true. Okay.

But in that area. So the issue was, and when I first tried to understand the case, I couldn't understand how -- because the contractor kept insisting he had a permit. And I said, well, you couldn't have a permit for that sign. And then he gave me the paperwork and I saw the sign. And I said, well, yeah, that's a dimensionally conforming sign. And then I came to understand that the sign as approved, of course in this location, the issue here is the 20-foot height limitation on signs. So in this location it's either 20 feet or below the window sill of the second floor window.

So the contractor, when the decision

was made to not use that entrance, to replace, to simply replace this sign in generally the same location, but the difference -- the new sign then had a -- has an external light place on it. Now external illumination is actually permitted, it complies, but the height isn't right. So you can't have -- while you can have a lit sign, you can't have lighting on a sign that high without relief. So that's where the confusion started. So, and then the issue was brought to the attention I think initially to the Department and to Inspectional Services and then to the owner by the neighbor when they, the light was rather prominent and it was seen as a nuisance. So the light has been disabled. The sign is no longer lit at night, and there -- but the sign is in place, and it went up by mistake. A mistake in belief that the approval they had for a sign with a lack of

an awareness that that approval had a height limitation on it. So what's proposed here, and the actual dimension here, is this sign at the top is at about 24 feet. And it is a conforming sign in its area, in both in its area and in its illumination now that the illumination is off.

The relief that's being sought here is to allow for this sign to exist lawfully in this location at a height greater than 20 feet.

TAD HEUER: And the height, the 24 feet is to the top of the capital letters or to the top of the --

ATTORNEY JAMES RAFFERTY: No, to the top of the logo. Because the way the sign is measured the entire box, so you start from here and you go there. And so you can see when the sign certification process was done, that's how they measured the sign.

So --

MAHMOOD FIROUZBAKHT: How does the square footage of the pre-existing sign compare to the square footage of this sign?

ATTORNEY JAMES RAFFERTY: I'd be guessing, but just the expansive, it appears to go across the -- in comparison, this sign looks to -- that sign, this sign looks to be two-thirds the sign? I mean, that's just a guesstimate on my part, but I would put it somewhere in the nature of two-thirds. This is what was there for more than ten years presumably since the building opened. This is --

BRENDAN SULLIVAN: We don't have a number I guess.

ATTORNEY JAMES RAFFERTY: A number of?

BRENDAN SULLIVAN: Square foot.

ATTORNEY JAMES RAFFERTY: We do on the new --

BRENDAN SULLIVAN: No, no, but I

mean on the previous.

ATTORNEY JAMES RAFFERTY: On the sign that was, that came down, right, the prior sign. So we have photographic evidence. And if you look closely at some of these photos, you can actually see the imprint of the former sign. So you can understand the relationship. So I think it's -- I don't think it's a factual dispute that it's a smaller sign, and I might suggest significantly smaller.

MAHMOOD FIROUZBAKHT: And the former sign was not lit either?

ATTORNEY JAMES RAFFERTY: No, that was not a lit sign.

MAUREEN ARKLE: No.

TAD HEUER: What's the reason why the sign can't be over the course below the windows rather than above it? So between 2500 -- the street numeral 2500 and the first course of windows?

ATTORNEY JAMES RAFFERTY: It's kind of a -- it's a visibility issue. This allows traffic and people coming up Mass. Ave. to see it. It provides greater visibility. The number in that location has been there for a long time, and the thinking was that there's actually a better spatial relationship with the sign at the higher location than if it were put where the number is. The relationship of the window, the way the window bans are, the windows are somewhat lower that may typically be the case in commercial buildings or more retail-oriented buildings. So the space there is limited. But the thinking is that there's now a print -- there used to be two entrances into the building. There's now a single entrance into the building. This provides a slightly more prominence. And the applicant could obviously put a lower sign -- could relocate that sign to that location and then light that

sign externally and be permitted to do so. The thinking is both in terms of the neighborhood concern about the impact of the light and the desire on the part of the operator to have a greater visibility, the request is that a relief be granted to allow for the sign in this location, non illuminated.

The other dimensional aspects of the sign in terms of its area the letter size and the like comply. And that's if you, the sign certification form is in the file, and that certified all that, what happened as I said, is that the certification when presented and certified and when the building permit was issued was always as a location below 20 feet and that's how we wound up with the sign there. And I think it has some relevance because I think there might have been some thinking that this was a total lack of regard for the sign permitting process, and it was just a unilateral decision made by the owner

or their agent to go out and install a sign. They actually went through the process, got a sign approved, but at the time they went to install, they made this change in the entries and someone got the bright idea why don't we just take down the old sign and put up a new sign. The new sign you can see has lower case letters, it's a smaller font. Everything about the new sign is actually toned down compared to the predecessor sign. And there was a mistake in belief that putting a small approved sign in that location was acceptable.

BRENDAN SULLIVAN: I would have thought that a sign company would have been astute enough to know that if they received a permit for a particular sign at a particular location and if they changed the location, that they should at least to go back and inquire as to whether or not the permit was still good for the new location.

ATTORNEY JAMES RAFFERTY: I had a similar thought to be honest. I'm not sure why that didn't happen.

TAD HEUER: We all did.

ATTORNEY JAMES RAFFERTY: Yes, I was surprised. But when I first heard about it, I thought it was a case where a sign company did none of the process, but I was repeatedly being told well, we had a permit for the sign. And I kept saying you couldn't have had a permit for the sign because there's no way you could have got a permit for that sign at that height. But what I hadn't appreciated was that the mistake and assumption that because there was a pre-existing sign in that location, they could simply install and approve sign in that location. But I can't speak for the sign company, but it's a legitimate point of inquiry. And had that happened --

BRENDAN SULLIVAN: The existing

sign in that location was not compliant.

ATTORNEY JAMES RAFFERTY: I don't know the history of that sign, but I haven't been able to find any authority for its --

BRENDAN SULLIVAN: I would say, yes, above height obviously.

ATTORNEY JAMES RAFFERTY: Right. So the -- I think it's a reasonable inference that absent any documentation that would allow that to be in that location --

BRENDAN SULLIVAN: And it could very well be that a former building manager just took it upon himself to authorize whatever.

ATTORNEY JAMES RAFFERTY: Who knows given the individuals associated with the operation who might have done that.

BRENDAN SULLIVAN: Yes.

ATTORNEY JAMES RAFFERTY: But ironically had the sign simply remained in place, we all know the statute of limitations, it's six years with the permit,

ten years without, so there would have been -- enforcement agency would have been a stop from compelling removal of that sign because it had remained there for more than ten years. I'm not suggesting that was a good thing, but that does happen to be the reality of that sign.

BRENDAN SULLIVAN: How long has the building been there?

MAUREEN ARKLE: You know, I don't know. Years.

ATTORNEY JAMES RAFFERTY: I bet some of the neighbors have it better.

MAUREEN ARKLE: Twenty years maybe?

BRENDAN SULLIVAN: Didn't Les build it after the restaurant?

ATTORNEY JAMES RAFFERTY: After the restaurant, but not long after.

BRENDAN SULLIVAN: So right after?

ATTORNEY JAMES RAFFERTY: Yes, I would think within a couple years of the

restaurant.

BRENDAN SULLIVAN: But anyhow more than ten?

ATTORNEY JAMES RAFFERTY: Very much more than ten, yes.

TAD HEUER: So if Marino is the only tenant, is there a reason the sign can't be left of the window course? Or there but down.

ATTORNEY JAMES RAFFERTY: There's actually a design preference stated in the ordinance that signs should be over entryways and that's reflected in that location. So I think that's probably the reason it's there. It's the only entrance into the building and it's designed to draw you to that location. We wouldn't want people walking into the wall.

TAD HEUER: Or given the services provided, it may be an additional benefit.

MAHMOOD FIROUZBAKHT: To the extent

that the sign, that proposed sign was installed where it was supposed to be installed, would the previous sign have been maintained at the old location?

ATTORNEY JAMES RAFFERTY: That had been the plan. The plan had been there were going to be two entrances, and the old sign was there.

MAHMOOD FIROUZBAKHT: It was going to stay there?

ATTORNEY JAMES RAFFERTY: And presumably there was no plan not to -- but when the new entrance was located --

MAHMOOD FIROUZBAKHT: Right.

ATTORNEY JAMES RAFFERTY: -- it came down. So, at the end of the day, the variance will result in a more compliant sign than one that frankly could have remained there.

TAD HEUER: And a reduction of the signage on the buildings as to what would have

been proposed in the original iteration.

ATTORNEY JAMES RAFFERTY: Correct. There would have been two entrances and there would have been two signs, correct.

THOMAS SCOTT: The light fixtures that are no longer active, are they going to be removed?

ATTORNEY JAMES RAFFERTY: We've been talking about that. And they've been -- Ms. Arkle tells me that they have been disabled. There is no longer electrical current to it, but it was an expensive installation. At the moment she says -- the long-term objective is to remove it because it doesn't have any functionality. It costs nearly \$4,000. So it could appear on eBay at some point or whatever.

BRENDAN SULLIVAN: Do they have a real function?

MAUREEN ARKLE: Does the light have a real function?

BRENDAN SULLIVAN: Yes. I mean, a real practical function to the operation? I mean, I'm thinking obviously not in the summertime, but the winter months from 3:30 on or something till, what are your hours of operation?

MAUREEN ARKLE: No, because there are other lights under the entryway for people to get, you know, into the building.

BRENDAN SULLIVAN: But I'm thinking of identification of the building seeing how this is sort of the purpose of the sign to begin with.

MAUREEN ARKLE: There was never a light there in the past, so I was fine with, you know, disarming that light. We haven't been there that long.

ATTORNEY JAMES RAFFERTY: And there's a lot of street lighting in that area. And there was an agreement -- there has been an agreement with the some of the neighbors

that the light will go away and we would anticipate as a -- in the event relief were granted in this case, a condition would be -- it would be a non-illuminated sign if the height relief being sought was approved.

BRENDAN SULLIVAN: Any other questions by the Board?

Tom?

DOUGLAS MYERS: You mentioned that the sign has been disabled.

ATTORNEY JAMES RAFFERTY: The light has been disabled.

DOUGLAS MYERS: The light, excuse me. Has the light been permanently disabled?

MAUREEN ARKLE: The electrician came in and cut the wires or did whatever. So I'm sure it could be, you know, somebody would have to come in, an electrician, to rewire it. And I've invited the neighbors to come in and look to see what we've done so they feel

comfortable that somebody can't flip a switch and turn that light back on. I have no desire to do that right now. I would prefer not to take it down because I'd also have to repair the building where the big --

ATTORNEY JAMES RAFFERTY: There are four holes where this is mounted into the building.

MAUREEN ARKLE: And it's a stone building. It would be an expense that I just -- we're not for profit. It's a difficult time in healthcare. And I would prefer -- I've spoken to the neighbors about it, I would prefer to have some grace there, grace period.

ATTORNEY JAMES RAFFERTY: To use -- it had been suggested perhaps to the extent the Board felt that a condition of non-illumination needed added requirement of removal, that if some period of time, perhaps a year, to remove the light would allow a

budgetary process and to get some bids. Because it will require some masonry work to remove the lighting and re-repair the openings, the holes in the wall.

DOUGLAS MYERS: Is it your view, Mr. Rafferty, that under the ordinance that the height of the lighting fixture decreases the degree of non-conformity?

ATTORNEY JAMES RAFFERTY: I think you can make that case. You can't have the sign at this height, so you can't have it illuminated or a non-illuminated sign at this height. So if the sign was at this height and were approved at this height, its illumination wouldn't be a violation, but its height would.

DOUGLAS MYERS: Including the height of the lighting fixture.

ATTORNEY JAMES RAFFERTY: Right.

DOUGLAS MYERS: That was my question.

ATTORNEY JAMES RAFFERTY: And I would say there are many cases where the Board has granted relief from the Sign Ordinance where that resulted in higher signs that then took advantage of what would be considered as-of-right illumination. But it's been very clear, frankly this illumination I think people think now was probably more excessive, it created quite a glare and given the size of the sign, it wasn't the most discrete lighting. I think it was -- I think Marino's thought it was probably a misstep all around so there's no desire to turn it back on or to use it.

But to your question, I think you could make that claim. I was having a discussion with a member of the public about that very issue as to, you know, you can light it, but you can't light it at 20 feet, so....

DOUGLAS MYERS: Right.

MAUREEN ARKLE: And it's never been

lit.

ATTORNEY JAMES RAFFERTY: Yes, the history there's never had been a lit sign.

BRENDAN SULLIVAN: Any other questions, Tom or Doug, any?

Mahmood, any questions?

Tad?

TAD HEUER: No.

BRENDAN SULLIVAN: Let me open it to public comment. Is there anybody here who would like to speak on the matter at 2500 Mass. Ave.?

Mr. Teague, please identify yourself for the record.

CHARLES TEAGUE: Charles Teague, 23 Edmunds Street.

ATTORNEY JAMES RAFFERTY: Would you like a chair?

CHARLES TEAGUE: Oh, thank you.

So we had a series of signatures and then we had some more signatures on the letter

that was sent in. I assume you've read it, and asked for some conditions. And in the first one is about the light. And the light is very high and it actually can be seen through people's windows when it's illuminated. And I have to say, Maureen, there's been a series of management changes over the years for that building. And Maureen's wonderful. And she's working very hard on all sorts of neighborhood issues. So we would really, really like to be memorialized that there be no light. But if she needs more time, that would be great, you know. I think it's very clear, there wasn't a light there. It actually shines in people's windows. We have a pending zoning amendment with my name on it to -- about things like this. And so, that would be great if we could have that condition.

The thing that's bothering John Courtney who lives at 2508 and his wife is the

lights on in the building. And it's just been a hardship for them for a very long time.

BRENDAN SULLIVAN: I'm sorry, the which?

CHARLES TEAGUE: The lights that are inside the building.

BRENDAN SULLIVAN: But what does that got to do with the light that's on the front of the building?

CHARLES TEAGUE: Um.

BRENDAN SULLIVAN: The issue before us is not the function of the building or the operation of the building, but it's the sign over the front door.

CHARLES TEAGUE: I was just trying to explain why we put -- why we put additional things in that.

BRENDAN SULLIVAN: But, again, our parameters here are very narrow. We're talking about a sign over the front of the door which exceeds the height limit.

CHARLES TEAGUE: Okay. All right.
I would -- our efforts were trying --

BRENDAN SULLIVAN: I don't want to go too far, Charlie, because, again, you know, I'm not for trying to extract a whole bunch of concessions because this is perceived as somewhat of a day in court here, and while we have a forum, I don't want this Board to be used as a forum to address a whole bunch of other probably annoyances or whatever they may be. That's something I think I would discuss with her --

CHARLES TEAGUE: No, and --

BRENDAN SULLIVAN: -- to alleviate that. But I don't want to use this Board as a vehicle for that.

CHARLES TEAGUE: I was just expressing that with management changes light goes up and down for the residents because the business zone is wrapped with residences. This building is a business

zone. And it's a little bit of a special case. And that was all the neighbors were trying to express.

BRENDAN SULLIVAN: Okay, I want to narrow our focus.

CHARLES TEAGUE: All right.

All right, well, if we're just going to --

BRENDAN SULLIVAN: That's the issue that's before us.

CHARLES TEAGUE: The only, you know, we support the sign without a light. Without -- if the light stays --

BRENDAN SULLIVAN: I think we're beyond that.

CHARLES TEAGUE: Then we're fine.

BRENDAN SULLIVAN: Yes.

CHARLES TEAGUE: And I just want to say the light is visible, that the actual elements of the light are visible from both the street and from residences.

BRENDAN SULLIVAN: Okay, all right.

CHARLES TEAGUE: Thank you.

BRENDAN SULLIVAN: Anybody else wish to speak on the matter 2500 Mass. Avenue?

(No Response.)

BRENDAN SULLIVAN: I see nobody. I will close public --

MICHAEL BRANDON: Excuse me, Mr. Chair. I'm Michael Brandon. I live at 27 Seven Pines Avenue in Cambridge. I feel uncomfortable with the height of the sign. Since it was put there, no hardship was involved, none of the rationales for granting a variance that I see are there. I realize others felt that perhaps if accommodations to address some unrelated problems were there that were willing to live with a sign infraction. My organization the North Cambridge Stabilization Committee has been active over the years in calling Inspectional Services Department's attention to sign

violations, including fairly recently height issues, often lighting issues, but height issues. 2400 Mass. Ave. Has two large placards were placed above the second stories.

BRENDAN SULLIVAN: Have they reviewed this case, Michael?

MICHAEL BRANDON: Yes. My point is just that --

BRENDAN SULLIVAN: No, but wait a minute.

MICHAEL BRANDON: I'm sorry.

BRENDAN SULLIVAN: Have they submitted any correspondence? Have they submitted any correspondence?

MICHAEL BRANDON: Who they?

BRENDAN SULLIVAN: Who they? The organization, North Cambridge Stabilization.

MICHAEL BRANDON: No, we have not because some of our members were negotiating.

We did invite the applicants in. They appeared before us, we made the presentation. Some of these other issues were raised. There were discussions and problems of possibly working together to retain a bus stop that's immediately across the street, but would serve their patrons.

BRENDAN SULLIVAN: That's not before us.

MICHAEL BRANDON: No.

The sign issue specifically was, you know, it was not resolved, it was suggested at that time that they seek a continuance because there were clearly opponents, and then as you know this Board, I think, delayed hearings further because of improper posting and there was a change of ownership. So I haven't been involved in the discussions. I'm a little disappointed to hear that agreements weren't reached apparently. So that's just my view, not speaking for the

organization which hasn't taken a full vote on it, but that I would like to see the Sign Ordinance complied with and as a matter of fairness to other businesses along the avenue, that recently have, you know, they were enforced. They didn't come to get a variance. And that's what happened. So it's just for the record.

BRENDAN SULLIVAN: Good, thank you.

MICHAEL BRANDON: Thank you.

BRENDAN SULLIVAN: Anybody else wishing to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see nobody.
I'll close public comment.

Any questions from Members the Board at this point?

Mr. Rafferty.

TAD HEUER: I have a question.

BRENDAN SULLIVAN: Yes.

TAD HEUER: So this, we're

here -- just a technical merit. This is not a replacement of the original sign in the opinion of Inspectional; right? So this -- it's not as though this sign is in the context of where you would be maintaining something and you take it down for -- like the Sheraton Commander sign, it was taken down, it was then put back up. It's not a violation of the Sheraton Commander sign because of a repair and put back. It's the opinion of Inspectional that that's not what we have here. It's a sign that went down and this is a new sign being that's placed above the height limit and doesn't gain the benefit of any of the grandfathering of the old sign? If I understand it correctly.

ATTORNEY JAMES RAFFERTY: I may not be the best person to provide the opinion of Inspectional Services, but I understand the question. I suspect that's their position, but candidly I never discussed it with them.

But I think we're all familiar with the protections under the Section 6 that have been lawfully pre-existing, perhaps that was the case of the Sheraton.

But, no, I don't think we're making a claim here lawful. I think there's a practical implication that the old sign could have remained larger or this sign lower could have the type of illumination that's been found to be objectionable. So, it's a use that it's a primary care facility. Having a slight more prominent sign allows people who are coming to this place who are very often, and more often than not in a compromised physical condition. It's easier to locate if you're travelling on the bus or you're arriving by car. So, I know the Board has recognized sometimes with healthcare institutions. The ordinance makes a provision interestingly that the height doesn't apply to hotels with the thinking

that people need to find the hotel. This represents a rather modest increase in height, but is accompanied by a non-illumination condition, and our thinking was that the location of the single entrance and one sign would provide sufficient elements for the Board to conclude that a hardship could be justified here.

TAD HEUER: Okay.

BRENDAN SULLIVAN: Anybody else?
Mahmood?

MAHMOOD FIROUZBAKHT: No questions.

THOMAS SCOTT: I think the hardship is that the sign's already up. And if we don't like where it is, then it's going to cost them money to put it in the correct location. You know, it is in violation of the height restriction. I don't see any reason why it couldn't be lowered to where the 2500 is. I don't see the need for the 2500 frankly to be so big. Once you have your name

in the center there, people will know where they're at. So I don't know. I just don't see why it can't be brought into conformance.

BRENDAN SULLIVAN: Do we have from the street, from the sidewalk rather, to the top of the M in Marino, what is that distance? I'm just thinking does the logo sort of tip the balance here?

ATTORNEY JAMES RAFFERTY: Close to it. If you look at the site, the sign begins at 19. According to this, the M is 13 inches and the letter below the 7. So it looks like the top of the M is -- would appear to be 20 inches above the bottom of the R.

BRENDAN SULLIVAN: The bottom of the sign is at 19 feet, 9 inches. So we have more than three inches above there obviously.

TAD HEUER: It's 25 inches; right? This you're drawing the --

ATTORNEY JAMES RAFFERTY: He asked about the top of the M, though.

TAD HEUER: Yes, yes, but if that's 26 inches high and that's 51 inches total, then those look like they overlap maybe an inch if at all. Then the difference between 51 total and the 26 for the logo is 25, 24 probably. It's probably 24 inches.

ATTORNEY JAMES RAFFERTY: Oh, yes, yes, I see what you mean.

TAD HEUER: Right?

ATTORNEY JAMES RAFFERTY: So 13 and 7, is 20 and probably the spacing between them is a couple of inches.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: So I would say it's probably a two-foot sign. So it starts at --

BRENDAN SULLIVAN: So it's at 21 feet.

TAD HEUER: Right. So it starts at 19, add two feet for letters and spacing. Without the logo gets you to 21.

BRENDAN SULLIVAN: Right.

TAD HEUER: Right?

BRENDAN SULLIVAN: I mean, it's more -- it's heading in the right direction being compliant than the previous sign. If the logo were moved down, it would be even more in compliance.

ATTORNEY JAMES RAFFERTY: That's correct.

BRENDAN SULLIVAN: That's the feeling of if we're really trying to push it down as much as possible.

ATTORNEY JAMES RAFFERTY: Right. If the logo were in the same panel as the lettering.

BRENDAN SULLIVAN: Right.

ATTORNEY JAMES RAFFERTY: This is like -- well, this is a -- the logo, it's their font.

BRENDAN SULLIVAN: It's on their stationery business cards.

MAUREEN ARKLE: Website.

ATTORNEY JAMES RAFFERTY: We suggest it's a rather benign logo. It's not a hamburger or something.

BRENDAN SULLIVAN: All it does is it stretches the number.

DOUGLAS MYERS: Board members are kind of talking with each other through you, using you as the medium to communicate with each other because we're not at liberty to discuss these cases among ourselves before, you know, outside of tonight's hearing. And in that spirit I'd like to kind of offer my thoughts for the applicant's consideration and for the consideration of the other Board members, and picking up what other questions and what other Board members have said.

I'm not so much troubled by the height of the sign or by the fact that it's a new sign in effect that is somewhat non-conforming. I'm more -- troubled is not the word, but I'm

more mindful and maybe troubled is the word although not seriously troubled, but I'm troubled by the question of the lighting fixture, because the lighting fixture is considerably higher than the sign. Now it's clear it serves no purpose. It's something of a renegade in that it shouldn't be there at all, and it increases, it increases the non-conformity significantly. So from my point of view -- I mean, I would favor -- I'd like to see the removal of the lighting fixture, although it's some kind of tolerance period of a year or two to allow for some kind of budgeting or planning so it's not a forced expense. But I'll go further and to say that if other Board members don't agree or no one else particularly supports that approach, I would support the variance for the sign placement so long as there's some sort of absolute and adequate agreement of non-illumination.

BRENDAN SULLIVAN: Tom, what are your thoughts?

THOMAS SCOTT: I think -- I'd go along with what Doug said. If we put some condition that the light fixture be removed within some period of time, you know, given that the sign is smaller, it's lower, the attempt is there to come closer to conformance with the zoning guideline, I could go along with that.

BRENDAN SULLIVAN: Okay.

So, both of you are saying that the existing sign is okay, that the light strip over it No. 1, should remain dark, off. And that over some period of time eventually be removed? Is that the essence?

DOUGLAS MYERS: That's correct.

THOMAS SCOTT: Yes.

BRENDAN SULLIVAN: Mahmood, what do you say?

MAHMOOD FIROUZBAKHT: I would agree

with that.

BRENDAN SULLIVAN: Tad?

TAD HEUER: I don't agree with that. My concern here, and the reason I asked about the replacement versus non-replacement because I think it does matter. If this were deemed by Inspectional as a replacement of an existing non-conforming sign, I think it's fine. All the things that's just been said are right; it's smaller, it's a bit lower. I would see it as a replacement of an existing pre-existing non-conforming or a cured non-conforming.

ATTORNEY JAMES RAFFERTY: With all due respect, we wouldn't need to be here.

TAD HEUER: Absolutely. But we are here.

ATTORNEY JAMES RAFFERTY: But you're asking for a scenario that we can't provide. You're prepared to give relief in the case where relief wouldn't be necessary.

I wanted to point that out.

TAD HEUER: That's exactly what I just said. If Inspectional just said if this were a replacement for a sign, then I'm happy to live with that. It wouldn't be in front of us and I wouldn't be bothered. If Inspectional said it's not a replacement for a sign in that the original sign has come down and all the ordinance provisions now apply in full force, means that that leeway isn't granted to the sign. It's a 20-foot sign non-illumination sign of this building. And given that, I don't see the hardship. Because I see several other places on this building where you could put a sign of this size. You could put it below the window course. You could put it to the left of the window course. You could remove the logo and just have the words. I might be willing to go with that. But I'm somewhat troubled by this notion that we can trade or that, not

necessarily what's happening here, but as a precedent that we could have petitioners come in and say I put up a sign and I shouldn't have put it up. This has been going on in four months in violation, which does trouble me a great deal actually. And then we illuminated it. We'll take away the illumination as a deal with the neighbors in order to retain the height. That doesn't seem the way we should be going. We shouldn't be able to trade illumination which you shouldn't be entitled to for height because you're not entitled to because it's less worse than the other worse option. My sense is that, the sign, if it does need to be conforming it should start with no presumptions that the other sign was there, was a bit bigger, was a bit higher, it goes under its own terms, which means it's above 20 feet. There doesn't seem to be in my mind to be a hardship except that it's been put up

there which seems to be self-imposed. And because of that I would vote against the granting of the Variance.

BRENDAN SULLIVAN: Okay.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, just a brief reply. I understand and respect that opinion. I would only say to the notion that this is a deal, I think it is not at all inappropriate for the Board to look at a sign applicant, in this case the illumination of this sign was deemed to be a nuisance to abutters. If the Variance were denied and the applicant pursued an as-of-right sign in the lower location, then the illumination could return. So I think it's a valid consideration for the Board in assessing the variety of interest at stake here to acknowledge that a lower sign with lighting that may be found objectionable to nearby residential abutters is not a preferred

outcome, and that's the only reason we offer that. Not to suggest that we make a deal, but an acknowledgement of impact upon abutters of having a non-illuminated sign I think is an appropriate concern for the Board.

BRENDAN SULLIVAN: Okay.

Let me make a motion to grant the request for the sign as per the installation and the documents on file.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner because it was a fairly limited visibility and accessibility of the patients coming to this building to identify the locus.

The Board finds that there's practical hardship in lowering it into a compliant situation because of the lack of distance visibility down Massachusetts Avenue, and that the Board finds that the location is a

fair and reasonable request given the nature of the sign.

The Board finds that the hardship is owing to the corner location of this particular lot. The siting of the unusually shaped building on this lot, the location of the front door, entryway on the lot, and the need for identification.

The Board finds that desirable relief may be granted without substantial detriment to the public good, and the Board finds that relief may be granted without nullifying or substantially derogating from the intent or purpose of the Ordinance.

The Board finds that as a condition of granting of this Variance that the lighting strip over the existing sign be turned off, remain dark, and be removed at a period not to exceed?

ATTORNEY JAMES RAFFERTY: Two years? 18 months?

BRENDAN SULLIVAN: 18 months?

MAHMOOD FIROUZBAKHT: I'd like to keep that at one year.

ATTORNEY JAMES RAFFERTY: One year?

BRENDAN SULLIVAN: Not to exceed one year.

DOUGLAS MYERS: Whatever the Chair says.

BRENDAN SULLIVAN: From the effective date of this relief.

Any other conditions?

All those in favor of granting the relief for maintaining of the sign.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Scott, Firouzbakht, Myers.)

BRENDAN SULLIVAN: And one opposed.

(Heuer.)

ATTORNEY JAMES RAFFERTY: Thank you very much.

(7:45 p.m.)

(Sitting Members: Brendan Sullivan, Tad Heuer, Thomas Scott, Mahmood Firouzbakht, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case 10201, probably together, 10202 and

10203 which entails 18, 22, and 27 Cottage Park Avenue.

MAHMOOD FIROUZBAKHT: Mr. Chair, before we proceed, I do want to disclose for the record that my law firm represented the seller of this property. My understanding is that there's no connection or relationship currently between the previous seller and the current petitioner. I don't believe there's any conflict, but I wanted to disclose that for the record, and to the extent that there's an issue with that.

BRENDAN SULLIVAN: Does the petitioner have any problem with that?

MAHMOOD FIROUZBAKHT: My law firm represented the seller that sold the property to you.

MARC RESNICK: Oh, really?

MAHMOOD FIROUZBAKHT: Yes.

MARC RESNICK: If you didn't sell it to us then I would object.

BRENDAN SULLIVAN: Does any member of the Board have an objection with Mr. Firouzbakht sitting in?

(All members shaking head.)

ATTORNEY JOSEPH HANLEY: Good evening, Mr. Chairman, members of the Board. My name is attorney Joe Hanley. I am the counsel for the owner and the developer who is to my immediate right, Mr. Marc Resnick who is the trustee of the entity trust on -- the two entity trusts at issue. David O'Sullivan is our project architect who I will hand off to just briefly to go through the plans and make a brief presentation if that's the pleasure.

BRENDAN SULLIVAN: Counsel, just to sort of set the table here.

ATTORNEY JOSEPH HANLEY: Yes, sir.

BRENDAN SULLIVAN: I guess we would proceed with 18 and then I guess 22, its relationship to each other.

ATTORNEY JOSEPH HANLEY: Yes.

BRENDAN SULLIVAN: And then proceed then to 27. I know that all three are going to be intertwined and they're all going to be part of it, but there are going to be three distinct documents.

ATTORNEY JOSEPH HANLEY: Correct. So I start with 18 and 22?

BRENDAN SULLIVAN: Correct, yes.

ATTORNEY JOSEPH HANLEY: Okay. Thank you. As you indicated, these are three related cases. The two that you're hearing at the moment, 18 Cottage Park Ave. and 22 Cottage Park Ave.; 18 is an existing two-family structure property that is adjacent and contiguous to 22 Cottage Park Ave. which is an existing four-story commercial building. What is contemplated here overall is an overall residential conversion and renovation of the subject properties with on-site parking and a very de

minimum addition that's necessary to accommodate the handicap accessibility and relates to the hardship aspect.

In particular on the first case is relating to the subdivision of 18 Cottage Park Ave. This is an existing, long existing two-family with a garage parking, two garage parking spaces. We're not proposing any changes to the existing condition. It was historically always separate. It was just recently combined through merger of the deeds based on common ownership of the prior owner.

There's also a common driveway in there that is at issue, and we'd like to be able to subdivide these in order to provide two distinct ownership entities. The trust that owns 18 is the Bliss Realty Trust.

Mr. Resnick is the trustee of that. And the trust that owns 22, which is the main residential renovation, is Cottage Park Realty Trust. Part of that relief being

requested is to allow for the renovation of the main building at 22 which is, again, an existing four-story commercial building that lacks handicap accessibility. It's not compliant to its current use. And what we're trying to do is to convert it to a 16-unit residential building with generously-sized residential units for home ownership. We hope this will provide an opportunity for families to live and remain in Cambridge. Also have the ability to parking which relates to the final case.

One of the variances at issue there, as I mentioned, is an addition to the existing structure. This is approximately 80 square feet so it's de minimus, and that is necessarily merely to provide handicap accessibility into the renovated structure.

There's no habitable space or living space per se that's in that area.

Those are the sort of specific and

general aspects of the proposal. There are a series of variances and Special Permits that relate to that. I can go through them one by one if you wish or I could have Mr. O'Sullivan do a brief review of the plans.

BRENDAN SULLIVAN: Just do a brief if you will. Is there a plot plan, certified plot plan on the proposed subdivision?

TAD HEUER: There should be on 18.

BRENDAN SULLIVAN: Okay, I'm sorry.

DAVID O'SULLIVAN: So to the first case of two lots, 18 is a two-family house. This is the existing two-family house. There's basically a driveway between the two. It's all paved. Garage out in back. Backyard. And on down the street are more similar houses. The mill building that's here basically has this lot. So they are kind of two descript -- two separate lots, they've been sharing driveways and parking

for a long time.

TAD HEUER: So is there a cross easement that you need for 18?

DAVID O'SULLIVAN: We will be having this -- one of the permits there is to get a common driveway so we can keep a wider driveway.

TAD HEUER: Well, right. Let me rephrase. We can certainly grant that.

ATTORNEY JOSEPH HANLEY: Under mutual easements.

TAD HEUER: You have a cross easement somewhere that we can see?

ATTORNEY JOSEPH HANLEY: That's correct, yes.

TAD HEUER: Is it in one of these folders, do you know?

ATTORNEY JOSEPH HANLEY: Are the mutual easements, do you know --

MARC RESNICK: I would say they're not in the package. But they will be

provided.

TAD HEUER: Okay. But you're the common trustee of both?

MARC RESNICK: I am involved with both properties.

ATTORNEY JOSEPH HANLEY: Correct, yes, sir.

TAD HEUER: Okay.

ATTORNEY JOSEPH HANLEY: So in compliance with that section, we have mutual easements and we can provide them as right of way.

TAD HEUER: Right.

DAVID O'SULLIVAN: That is -- this the view of the existing building that is at 22 right now. And this is the view of the backyard -- this is the view of the existing building at 18, pretty much as is. There are some interior renovations, but no changes to the exterior of 18. No changes to the lot or the parking set up for 18.

BRENDAN SULLIVAN: Okay.

DAVID O'SULLIVAN: Do you want me to continue on?

BRENDAN SULLIVAN: Well, no, the specific relief that's being required?

ATTORNEY JOSEPH HANLEY: So the relief for 18 which is the property which is presented by Mr. O'Sullivan, a series of dimensional variances under Section 531. Most of those relate to the existing non-conformities which Mr. O'Sullivan said we're not altering.

The second set of variances for the subdivision, and that's again because of the obviously the subdivision and we're not changing the existing dimensions and the structure and pursuant to that we'll also have mutually things in place.

Special Permit for the common driveway, which again is allowing the new residential use at 22 to utilize the driveway which exists

today without any changes.

And the final is the setbacks for the driveway which is within five feet of the rear of the property line. Property that's affected by that is owned by the same individual. So, again, it's part of the overall residential conversion of the -- of the whole.

BRENDAN SULLIVAN: Okay.

DOUGLAS MYERS: What would be the future -- in connection with the development in toto, what will be the future use of the two-family property at 18 Cottage Avenue?

ATTORNEY JOSEPH HANLEY: So it will remain as home ownership.

MARC RESNICK: Two condos. Two separate condominiums.

ATTORNEY JOSEPH HANLEY: Yeah. They exist now as two rental units. They will be renovated for the interior. But, again, no expansion of the envelope or

footprint so no violation of that, but they will be renovated, upgraded, and provided as home ownership. And they exist now with two garage parking spaces which is also appropriate.

DOUGLAS MYERS: Would they be part of the same condo association? No, they'll be separate?

ATTORNEY JOSEPH HANLEY: No. And that's why we're seeking subdivision. Because really it is a different type of interest that someone's going to have living in the two-family versus living with the other folks and 16 units as you might imagine.

DOUGLAS MYERS: I understand.

ATTORNEY JOSEPH HANLEY: I just also note, too, and I'm sure you may be aware of this, but the Planning Board on January 3rd approved this application for the use change for -- to the 16 units at the former commercial building at 22. So that's kind

of --

BRENDAN SULLIVAN: So --

MARC RESNICK: Under 5.28.

BRENDAN SULLIVAN: -- the Special Permit covered 22, 27?

ATTORNEY JOSEPH HANLEY: Correct.

MARC RESNICK: Yes.

BRENDAN SULLIVAN: And 18 is sort of a stand alone?

ATTORNEY JOSEPH HANLEY: Correct.

BRENDAN SULLIVAN: Okay.

ATTORNEY JOSEPH HANLEY: Yes.

There are some skylights and stuff that were approved as part of that Special Permit for 22.

BRENDAN SULLIVAN: Right.

ATTORNEY JOSEPH HANLEY: And some other elements.

TAD HEUER: When did the lots come into common ownership, do you know?

MARC RESNICK: A long time ago.

TAD HEUER: So the previous owner.

MARC RESNICK: The previous owner --

TAD HEUER: 18 was decades ago?

MARC RESNICK: 22 over time.

TAD HEUER: Okay.

ATTORNEY JOSEPH HANLEY: Yes. So common ownership.

MARC RESNICK: So 40 or 50 years I would say at least.

TAD HEUER: How many?

MARC RESNICK: Like, 40 or 50 years.

ATTORNEY JOSEPH HANLEY: They'll have separate ownership again.

MARC RESNICK: And the big building was always used as a commercial structure and the house was always a -- totally a house.

TAD HEUER: So is it fair to say that you were required to buy the house as an element of being able to get the commercial building that you really wanted to get first.

MARC RESNICK: It was a package

deal. That's why the investment pack -- I own the house by myself, but I own the building with like five other people because I just had to buy the house.

TAD HEUER: Right.

MAHMOOD FIROUZBAKHT: What's the use of the driveway?

DAVID O'SULLIVAN: The driveway basically accesses this parking and the handicapped parking here, and it also provides utility access. We're going to have a transformer for this building back here so they need truck access if they ever have to replace that. So it's very limited use driveway, really, because it's only serving three parking spaces.

MAHMOOD FIROUZBAKHT: And the garage spaces will go with the two-family?

DAVID O'SULLIVAN: And goes for --

MAHMOOD FIROUZBAKHT: And the handicap space will go to the big building?

MARC RESNICK: There's a handicap ramp out in the back in case someone needs to get in there.

ATTORNEY JOSEPH HANLEY: And that's what's being proposed and that's what you need a variance for.

DAVID O'SULLIVAN: We need a variance for the other side. For handicap access.

ATTORNEY JOSEPH HANLEY: Okay.

DAVID O'SULLIVAN: The building code requires all access for handicap access.

BRENDAN SULLIVAN: Okay. Any other questions at this time?

TAD HEUER: Just a second.

DOUGLAS MYERS: Just on this topic. The driveway you're referring to is the driveway presently located to the left as you stand in the street to the left of No. 22?

MARC RESNICK: Left of the building -- left of 22, yes.

DOUGLAS MYERS: And the garages are further back on the left side of that driveway although you say they're part of the property at 18?

MARC RESNICK: They're part of -- behind the two-family house.

DOUGLAS MYERS: But also the asphalt part of the driveway that we're referring to seems to make a dog leg to the right behind No. 22.

MARC RESNICK: It does. There used to be other garages behind the 22 Cottage that have been removed. There were like some very old decrepit old garages that have already been taken down. And that's going to be -- do you have a picture of that?

DOUGLAS MYERS: And what would be the use of the dog leg area? That's my question.

MARC RESNICK: One handicap parking space. I think we're going to put some bike

racks back there and landscaping.

DAVID O'SULLIVAN: Right. The space behind 22 is supposed to be handicapped parking, the transformer for 22, an open green space for the residents of 22, rear access to the building, and bike racks for 22.

DOUGLAS MYERS: And that is the utilization for the space that already exists, correct?

DAVID O'SULLIVAN: Correct. There were garages previously that connected kind of -- almost connected from the 22 building over to the other garage. So there were, like, four other garages along here previously.

DOUGLAS MYERS: Thank you, Tad. That's it.

TAD HEUER: A technical question on the subdivision. So you're asking for a subdivision of 18 and of 22?

ATTORNEY JOSEPH HANLEY: Correct.

TAD HEUER: Is the need for a subdivision on -- so a subdivision is drawing a single line; right?

Is there a setback violation created at 22 by the subdivision of 18 from it that requires relief or is that just a prophylactic request for two subdivisions because both properties are involved?

ATTORNEY JOSEPH HANLEY: The -- so we are sited for minimum front, side, and rear yard.

TAD HEUER: Okay.

ATTORNEY JOSEPH HANLEY: The existing -- the addition to the lobby which is the handicap accessible --

TAD HEUER: That's on the other side of the building.

ATTORNEY JOSEPH HANLEY: That's one violation of that.

TAD HEUER: Right.

ATTORNEY JOSEPH HANLEY: The

question is whether when you subdivide you have -- I mean, you have existing non-conforming --

TAD HEUER: Right, where you're subdividing --

DAVID O'SULLIVAN: You're asking if this lot is too close to the property line?

TAD HEUER: Yes.

DAVID O'SULLIVAN: We have about 15 feet. I don't remember what the zoning calls for.

(Looking over plans).

TAD HEUER: All right. So your dimensional form says that you've got nine foot, six. Nine and a half feet.

DAVID O'SULLIVAN: On 18?

TAD HEUER: On 22.

BRENDAN SULLIVAN: And on the right side of 18 they're getting 10 with a seven-foot, six. So the lot line to the left, to the right are in compliance.

TAD HEUER: Okay, right.

BRENDAN SULLIVAN: Does that --

ATTORNEY JOSEPH HANLEY: Makes sense, yes.

BRENDAN SULLIVAN: Correct?

TAD HEUER: If we do grant the subdivision on 18, the subdivision on 22 is superfluous; right?

MARC RESNICK: Once they're separated.

TAD HEUER: Once they're divided --

BRENDAN SULLIVAN: Correct.

TAD HEUER: -- they're two created properties with a drawing of a single line.

BRENDAN SULLIVAN: Correct.

Mahmood, any questions?

MAHMOOD FIROUZBAKHT: Not at this time.

BRENDAN SULLIVAN: All right. Anything else?

DOUGLAS MYERS: No, thank you.

BRENDAN SULLIVAN: You can save the Board's wisdom. Let me open it to public comment.

Is there anybody here who would like to speak on case No. 10201, 18 Cottage Park Avenue.

Mr. Teague. This is on the subdivision and common driveway.

TAD HEUER: I guess my question is are we having comments on the entire project?

BRENDAN SULLIVAN: No, I'm going to take 18. So this is on the subdivision of 18 from 22 and the common driveway. Okay.

CHARLES TEAGUE: As a global comment, we were just discussing this morning with Mr. Resnick, a neighborhood agreement which was a lot of health and safety, particularly because there is all the elderly in the area. And because the street is -- this project more than doubles the density of Cottage Park Ave. which has 11

units on it right now. So, we feel that all of this -- we're asking -- we would like to see a delay of this, of all these cases because this is a lot, a lot of relief. And I don't think they appreciate how much relief this is.

I was here when this -- when the Board denied Vinnie Pachenko (phonetic) the -- dividing the lot on Washington Ave. right behind the Valvoline. I'm not sure we have -- I think this is an undersized lot. I don't think the -- when you mentioned the setbacks, I'm not sure --

BRENDAN SULLIVAN: Charlie, are you representing yourself or North Cambridge Stabilization?

CHARLES TEAGUE: I've been working with a group of the neighbors. So we, in some sense, we're a subcommittee. It's just been so drawn out and every time we get at the one yard line of agreement, something happens.

BRENDAN SULLIVAN: Did this not go down before the Planning Board? I mean, did you speak at that time? Did you give it support or did you voice opposition?

CHARLES TEAGUE: We asked for a delay.

BRENDAN SULLIVAN: All right, okay. Not North Cambridge Stabilization Committee?

CHARLES TEAGUE: No, the North Cambridge Stabilization Committee asked for a delay.

BRENDAN SULLIVAN: Asked for a delay?

CHARLES TEAGUE: And I asked for a delay as well.

BRENDAN SULLIVAN: Okay. And I asked in the previous case, again, is there any correspondence from the North Cambridge Stabilization Committee to us regarding this matter?

CHARLES TEAGUE: No.

BRENDAN SULLIVAN: Okay.

CHARLES TEAGUE: What happens is that even as this morning, we thought we were all the way there and then at like six o'clock, we got an e-mail saying we're not there. So, you know, I don't know what to tell you. It's -- this is --

BRENDAN SULLIVAN: You're opposed to 18 being --

CHARLES TEAGUE: I'm not --

BRENDAN SULLIVAN: Well, I'm just trying to get the nature of what the opposition is. That you're opposed to 18 being subdivided from 22? We're not talking 22, we're not talking 27. We're talking 18. Should 18 be separated, subdivided?

CHARLES TEAGUE: The questions I have in particular on the subdivision are is there relief for the size of the lot. You know, there's no easement documentation present. And are the setbacks correct for

the 22 when it's the sum of 20 for Residence B. So, you know, you check the setbacks for one side and you need 20 feet total. So that, that is sitting practically right on the lot line on that little bump-out over there. So I'm not even -- if they don't have all the relief, then they should come back and get the right relief.

BRENDAN SULLIVAN: Well, that's what they're asking. That's what they're here for. They're asking us to give them the relief because they don't get over that threshold because it's an existing structure on the lot.

CHARLES TEAGUE: I was just asking whether there was any solution. If they're getting the right relief, we're just asking for a delay to get everything done.

BRENDAN SULLIVAN: In review of the documents, my understanding is that they were asking for the proper relief.

CHARLES TEAGUE: Okay.

BRENDAN SULLIVAN: Is there anybody else who would like to speak on the matter? Sir, yes.

DAN FARBMAN: My name is Dan Farbman. I'm the new resident of 14 Cottage Park. You can't see it in these pictures, but my house is in some of those pictures. So it's right next door.

The only reason I would ask for delay is only because I haven't -- we just moved in two months ago, and I've only had an e-mail correspondence with the person who claims to be the person who is going to live in 18 Cottage Park, and I really haven't had the chance to really look at the stuff. I'm not -- I'm able to process it, I could, but I'm not sure if this impacts my property basically is what I'm saying. I don't -- I can't -- I don't have a total sense of what the plans are. I haven't met with these

folks before.

MARC RESNICK: If I could help you, this vote is just to draw an agreement --

BRENDAN SULLIVAN: Mark, Mark.

DAN FARBMAN: No, I understand what the vote is for.

BRENDAN SULLIVAN: I don't want a back and forth so you hold on.

DAN FARBMAN: I totally understand what the vote is for. And what I'm saying is from what I've heard tonight I don't hear anything impacting 14 Cottage Park, but what I don't know is whether if this relief goes through, there's anything that might impact me that I haven't had a chance to process. So for me I'm just -- that's -- I'm asking not for -- I'm not opposing it. I'm just saying if there is something in it -- this is the only time I can speak because if it gets granted and the subdivision happens and if there's anything in the subdivision that does

affect my property, I won't have a chance to speak. That's the reason I'm standing here. Not opposing it, just --

BRENDAN SULLIVAN: And you've not had any substantive conversations with the --

DAN FARBMAN: I've only talked with -- I mean, the only people who have approached me are the people in the neighborhood committee. And when I wrote an e-mail did I get a response from someone from the development company asking to sit down and talk, and we've had e-mail correspondence, we haven't been able to talk. And he said he's going to be the new owner but not the person who was responsible for making the plans. So, I'm just expressing that I don't know everything in these plans. They may be great. There may not be any impact on my property. I just -- if I can't -- I can't speak later so I'm speaking now.

TAD HEUER: You're not the direct

abutter, you're the --

DAN FARBMAN: I'm the direct abutter of 18 Cottage Park.

TAD HEUER: So is it 14-16?

DAN FARBMAN: I'm 14-18.

TAD HEUER: There's no 16?

DAN FARBMAN: There's no 16.

TAD HEUER: Okay.

DAN FARBMAN: And our property -- we share a long fence in our backyard. And we, you know, the construction is happening right through our windows. So we -- all of this stuff matters to us, but I can't tell you. From what I've heard tonight, I'm a lawyer, it sounds fine, but I also don't know. So....

BRENDAN SULLIVAN: Okay.

Is there anybody who wishes to speak on the matter, 18 Cottage Park Ave.?

MICHAEL BRANDON: I'm Michael Brandon again. 27 Seven Pines Avenue. I

would support Mr. Farbman's request for a delay with approval that would be necessary for the applicants because he and his wife are new to the property. There have been a lot of negotiations going on and I think, you know, out of fairness to be a good neighbor, you know, the applicants would want to do that, especially knowing that the property owners, they aren't happy with what happens and once they understand what's going on, you know, could make things difficult.

Another question on the specific question of the subdivision, my understanding is that the properties have already been divided in ownership is my understanding. It's not -- 18 and 22 are not owned by the same entity. They're two different entities although Mr. Resnick, I believe, is involved in both of them. And I guess my question, my understanding is that there's a provision of our ordinance that you

cannot change ownerships of properties, subdivide them, such that it creates new non-dimensional non-conformities. And I presume, given the large buildings that are on those lots, that, you know, to make the lot smaller, that triggers various violations that may or may not have been identified. So the nature of the real detailed nature of the relief that's being granted may be even bigger than the pretty significant relief that's on the table right now. And it's sort of like a previous case you had where if my understanding of what the law is, you have a violation and, you know, they're really coming here to correct a violation and whether, you know, the hardships apply, the criteria apply, you know, when you think about that aspect of subdividing. And that's all I'll say on this particular case.

Thank you.

BRENDAN SULLIVAN: Okay. Anybody

else wish to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see none.

Would it be wise for us to recess this for a little bit, have you go back into the other room, talk to the abutters, at least have some conversation, see if you need to extend those conversations further than tonight? At least this gives you maybe an hour or something rather than us having that hang out there. And you may come back and say that, you know, we want to proceed or you may come back and say well, you know, maybe we could have further discussions. Or you may come back and say you're satisfied with some discussion. Would that be of benefit?

DAN FARBMAN: That's fine with me.

MARC RESNICK: Could we recess for 15 minutes or 20 minutes?

BRENDAN SULLIVAN: However long it takes. We'll go on to the next case or two

and I'm not going to stop a case, but when you conclude the discussions, come back and say we're ready to proceed. In whatever manner you want.

MARC RESNICK: We'd love to talk to them, absolutely.

BRENDAN SULLIVAN: I think that might be of some benefit.

MARC RESNICK: All right.

BRENDAN SULLIVAN: On the motion, then, to recess this until the petitioner returns after discussions.

DOUGLAS MYERS: May I just say, if at some point the question of a continuance arises before this Board, that would be something that the Board would discuss, wouldn't it?

BRENDAN SULLIVAN: That's correct. Oh, yes, absolutely.

DOUGLAS MYERS: Subject to a discussion and a vote by this Board?

BRENDAN SULLIVAN: Absolutely, yes.

MARC RESNICK: We'll do that,
gladly.

BRENDAN SULLIVAN: Case in recess.

(A short recess was taken.)

(8:15 p.m.)

(Sitting Members: Brendan Sullivan, Tad
Heuer, Thomas Scott, Mahmood Firouzbakht,
Douglas Myers.)

BRENDAN SULLIVAN: The Board is
going to hear case No. 10208, which is 61

Dudley Street. We will hold 10126 in
abeyance. So it's 10208, 61 Dudley.

Mr. Wiggins.

ATTORNEY MICHAEL WIGGINS:

Mr. Chairman, Michael Wiggins from the law
firm of Weston, Patrick in Boston, and I have
Meg Bond with me who is one of the owners.
Her husband Bill is on the West Coast teaching
I believe and he can't be here. And Arch
Horst the architect here tonight.

BRENDAN SULLIVAN: Mr. Horst.

ARCH HORST: Mr. Sullivan.

H-o-r-s-t A-r-c-h.

ATTORNEY MICHAEL WIGGINS: So we
have essentially one matter, but two cases
tonight. We have a continued case that
started last summer, and I don't know if you
all, you all weren't here, but some of you
were, and I think just to refresh your
recollection for those of you who were, this
is a house on Dudley Street which is a row of

similarly designed houses. And at the time that we brought the petition for a Variance last summer, we were looking to raise the roof and add a third floor. And I think the sense -- the consensus of the Board upon looking at this is that it was a bit out of scale with the street. It was a bit too large, and we were encouraged to go back and think about maybe doing something out to the back so that the streetscape could remain the way it was. And that's essentially what Bill and Meg did. And they hired Arch to look at some alternatives, and he came up with some, I think, really good alternatives to slightly increase the floor area, but do it in towards the back in a way that would preserve the streetscape. We had originally asked for a 500 square foot plus or minus, and this is really only about 300 square foot, and it's actually only about 175 of enclosed space because as you'll see when you look at the

plans as Arch describes them, it's only going to be a second floor slight extension to the rear and there will be an open porch beneath them. It's covered, therefore, it counts for floor area. But in terms of preserving the open feel in the backyard, it really does a great job. So, the relief we're looking for is basically the several hundred square feet as we go to the back. And, of course, the floor area will increase slightly.

I do want to mention one mistake in the dimensional chart that Arch discussed tonight. The ratio of usable open space existing should have been 0.44, and it will be reduced to 0.36 which is only slightly below. And so this is incorrect and if we need to initial that change, we can.

So --

TAD HEUER: You also have a technical setback violation, correct, because you're extending further back?

ATTORNEY MICHAEL WIGGINS: I do want -- yeah, the side yard to the right is going to be -- those few feet. I do want to mention that. That's the other, that's the other bit of relief that we need. So those are the three things.

We do have neighbors here tonight. I don't know when it's appropriate for them to speak in favor. I do know they've been here a while so, Mr. Chair, when you're ready, I'd like them to just be acknowledged. We don't, you know, for whatever you want to ask them. But basically they are in favor, the three of them here tonight. And you do have a raft of letters in support from front, back, rear and also up and down the street. So people I think appreciate what Meg and Bill are doing to preserve the streetscape well. Modestly increasing so that they can suit their, you know -- address their needs.

I think the best thing now would be for

Arch to just go over the plans with you and show you what exactly they're doing. If you can bring it forward, Arch, if that's possible.

ARCH HORST: So as Mike points out, there are a whole series of houses up and down Dudley Street. There are six in a row. They all pretty much look like this. And the previous suggestion had been to raise this a whole floor. So that's -- the ridge line doesn't change. And all we are really -- just for the sake of the side-view, this is what's getting added. Just this little bit here. And as Mike points out, this gets categorized as floor area because it's covered, but the actual habitable space is the shaded area which is this 7 by 21 foot element here. It takes a substandard bath and a bedroom. It does meet the building code requirement for a room, but it's very, very small and makes it into a larger bedroom

and makes this into a larger bedroom. And also on the first floor we've taken a section of what would be covered space and have actually made the dining room bigger. And that's really all we're doing.

I just want to correct one thing that Mike said. We actually need side yard relief on both sides. The addition --

ATTORNEY MICHAEL WIGGINS: Okay.

ARCH HORST: Yeah, extends back. And then there's skylights in the roof. And these two groups of skylights actually don't need relief. This one -- because this is an asymmetrical setback, you have 12-and-a-half feet on one side and 7 on the other. That's really it.

BRENDAN SULLIVAN: So you're taking the plane of the house and basically just going back?

ARCH HORST: That's right.

BRENDAN SULLIVAN: But it's

existing, non-conforming regarding setbacks --

ARCH HORST: That's correct.

BRENDAN SULLIVAN: -- in the addition.

ARCH HORST: And in fact you could almost not add on to this house if you respect the side yard setbacks, they're so small and the lots are so narrow, your setback -- a conforming addition literally would be this wide.

BRENDAN SULLIVAN: Yes.

TAD HEUER: And on the left side and the rear of the porch, so that's going to be a -- have a -- is that a wrap-around?

ARCH HORST: That goes around, yeah, yeah.

TAD HEUER: Okay.

And then the second floor extends just slightly over?

ARCH HORST: Yeah, exactly.

TAD HEUER: Okay.

ARCH HORST: It's a little confusing, but it does in fact extend. The habitable space on the second floor extends to here and then the rest is roof. And you can see that on the side elevation. You can see how it extends and then the roof comes out a little.

DOUGLAS MYERS: Could you express as a percentage the degree to which the habitable space is being increased?

ARCH HORST: Yeah, let me look. Habitable as in enclosed?

BRENDAN SULLIVAN: Interior.

DOUGLAS MYERS: Yes.

ARCH HORST: Yeah, interior space.

ATTORNEY MICHAEL WIGGINS: It would be 175 over 1400. So --

ARCH HORST: 175 over 1400.

ATTORNEY MICHAEL WIGGINS: I have to....

ARCH HORST: It's like seven percent, six percent.

ATTORNEY MICHAEL WIGGINS: It's pretty small.

ARCH HORST: Yeah. Is that right? No. Someone please, quick, save my embarrassment. No, it's more than that.

ATTORNEY MICHAEL WIGGINS: I'm not doing this correctly.

ARCH HORST: I wish I had a calculator.

MARGARET BOND: He's got a calculator.

TAD HEUER: 12 and a half.

ARCH HORST: 12 and a half?

ATTORNEY MICHAEL WIGGINS: Thank you.

TAD HEUER: You're welcome.

BRENDAN SULLIVAN: So carrying that argument one step further, existing is 0.67. What you're requesting a 0.81 in a 0.85.

ATTORNEY MICHAEL WIGGINS: Right.

BRENDAN SULLIVAN: We're talking 175 square feet; is that correct, of interior habitable space?

ARCH HORST: That's correct, yes.

BRENDAN SULLIVAN: So that takes that 0.67 to --

ARCH HORST: I've got it right here, actually. It takes the floor, the interior floor area to 0.75.

BRENDAN SULLIVAN: Okay.

TAD HEUER: Is there a basement?

ARCH HORST: Yes. But it doesn't --

ATTORNEY MICHAEL WIGGINS: It doesn't have the height.

TAD HEUER: What about in your attic?

ARCH HORST: This zone here in the attic is floor area. And if you actually compare the original dimensional form with

this one, the original dimensional form did not count this as floor area. So we -- I mean, because it is technically. I mean, we've made our case worse -- it's an odd thing.

BRENDAN SULLIVAN: That's why that number's lower.

ARCH HORST: Yes.

BRENDAN SULLIVAN: Okay.

ARCH HORST: We did this absolutely according to the Ordinance until so it makes it look worse than it did last time. We actually haven't changed anything. That's all.

BRENDAN SULLIVAN: You're actually adding more square footage before?

ARCH HORST: Yes.

ATTORNEY MICHAEL WIGGINS: 500 and this is about 300.

BRENDAN SULLIVAN: Right. So the number got askew because the attic was not

included?

ARCH HORST: Right.

BRENDAN SULLIVAN: All right.

DOUGLAS MYERS: I noticed that you referred to a row of six houses, approximately like running from number 59 to 57 on the same side of the street, and the rear as well as in the front the houses are very similar, aren't they?

ARCH HORST: No, some are actually added on to. And there's one that's been added on to even further than this. I don't know --

DOUGLAS MYERS: Among those six, really?

ATTORNEY MICHAEL WIGGINS: We have a picture of the backyard. If you're looking at the backyard -- from Meg's backyard down the row of the back houses, and you'll see one of them --

MARGARET BOND: Is it okay if I step

in?

ATTORNEY MICHAEL WIGGINS: Yes, go ahead. Please describe it.

MARGARET BOND: This is the house -- it's a little bit hard to -- this one includes our house. This is our house.

This is the house next-door, it goes out --

ATTORNEY MICHAEL WIGGINS: Hold it up.

MARGARET BOND: Oh, I'm sorry.

ATTORNEY MICHAEL WIGGINS: No, just point to it.

MARGARET BOND: The house next-door goes out significantly beyond ours. These two houses, which in this picture, look like they go out further, they don't. Those are identical to our house. But this house down here goes out further than even what we're asking for and it goes out to that -- I don't know the exactly the number of feet, but it goes out that far on all three floors. And

we're only asking --

DOUGLAS MYERS: The ones that have not been altered --

MARGARET BOND: Yeah.

DOUGLAS MYERS: -- do you have any idea of the functionality of that slight, slightly extended rear space?

MARGARET BOND: This?

DOUGLAS MYERS: No, the houses that have not been altered.

MARGARET BOND: Those are the ones that are like ours?

DOUGLAS MYERS: Yes, the ones that your like yours.

MARGARET BOND: The functionality of that space. I don't know what you're asking.

TAD HEUER: The lack of functionality presumably you have in yours.

MARGARET BOND: It's so fascinating these houses because we're all struggling how

to figure out to deal with a tiny house and have a number of people live in them. So I don't know that it's that.

DOUGLAS MYERS: Well, how is that space used in your present house?

MARGARET BOND: Well, part of it is in the kitchen, and -- do you have a photograph?

ARCH HORST: Yeah. This is the living room and it's, it's about -- it looks to me like 10-by-12 so it's quite small. This is a dining room. And at some point this wall was taken down or opened up so that this is somewhat of one room kitchen and half bath. That's it.

MAHMOOD FIROUZBAKHT: What are the dimensions of the bedrooms after the work?

ARCH HORST: This one doesn't change significantly. This one I can -- I'm trying. You really want to -- hold on a second. I didn't think of the dimension, but I can tell

you.

So this is going to be -- so that is 13-by-10. And this is probably more like 16-by-10. Not very, not even 10 really. It's nine, eleven. You can call it 10, and they're narrow rooms. And the house is only, you know, it's 500 square feet on the floor. It's pretty small. It's about the size of this. It's smaller than this room. Quite a bit smaller.

TAD HEUER: What's the attic space used for, storage?

ARCH HORST: Yeah, maybe storage and maybe it will get used as a study or something like that. It can't be a bedroom because it doesn't meet code.

TAD HEUER: Right. There are no closets?

ARCH HORST: No, no.

ATTORNEY MICHAEL WIGGINS: With respect to the backyard, the use of the

backyard, I just wanted to point out this lot, unlike the ones down the row, are much longer in the back. So even with this extension we still are observing the full rear yard setbacks. It's not an occasion for the relief. And in fact, the abutter to the rear is totally in favor of the project.

BRENDAN SULLIVAN: You can see here where these houses wind up in relationship to there, but this lot goes right back.

TAD HEUER: I think part of our suggestion last time was the fact that you do have because of the strange plot of that flat, you have much more rear yard space than your neighbors even though you're all lined up against the same setback from front to center. You share a similar setback in the front. Your lots have significantly different depths which is not evident unless you're looking at a plot plan.

MARGARET BOND: I did have an aerial

picture, but I can't put my hands on it.

ATTORNEY MICHAEL WIGGINS: That's what I was looking for.

BRENDAN SULLIVAN: This shows it to me here somewhat.

MARGARET BOND: Okay. Oh, here it is.

BRENDAN SULLIVAN: Okay, any other questions?

Tom, any questions at this point?

THOMAS SCOTT: No.

BRENDAN SULLIVAN: Doug, any questions?

DOUGLAS MYERS: No, thank you.

BRENDAN SULLIVAN: Mahmood?

MAHMOOD FIROUZBAKHT: No.

BRENDAN SULLIVAN: Tad?

TAD HEUER: No.

BRENDAN SULLIVAN: Let me open it public comment. You would have final say.

Is there anyone here who wants to speak

on 61 Dudley Street?

Would you please come forward and identify yourself.

KAREN FRIEDMAN: My name is Karen Friedman and I'm at 59. I'm an abutter and I'm basically completely in support. I mean, my backyard is next to her backyard, too, and I have no problems at all with her plans to extend so I'm hoping that this passes.

BRENDAN SULLIVAN: Okay. And we have a letter from you in the file.

KAREN FRIEDMAN: Yes.

BRENDAN SULLIVAN: Is there anybody else who wishes to speak on the matter?

CHRISTOPHER DEERY: My name is Christopher Deery, D-e-e-r-y, 69 Dudley Street, another one of these houses. And we fully support this as one of the seven sisters we call them. You know, this absolutely preserves the facades of the neighborhood

and, you know, we fully support the proposal.

BRENDAN SULLIVAN: Okay. And we have a letter in the file from you, also.

TAD HEUER: This is your second appearance in as many weeks; isn't it?

CHRISTOPHER DEERY: This is my third time here. I'm a regular. I enjoy the boards.

BRENDAN SULLIVAN: Is there anybody else who would like so speak on the matter? Anybody else?

MARGARET DEERY: Okay, sure. I'm Martha Margaret Deery. I live at 69 Dudley Street. I'm totally in favor of this addition. I like the fact that they're building backwards. That's a great, great idea and I'm for it.

BRENDAN SULLIVAN: Great, thank you.

MARGARET DEERY: There's also a letter from my husband and I in the file.

BRENDAN SULLIVAN: Is there anyone else who wishes to speak?

(No Response.)

BRENDAN SULLIVAN: There is correspondence in the file from Carol and Ted Roberts, 63 Dudley. (Reading) Please accept this letter in regards to the Variance to allow construction on 61. Reviewed the plans and they support the application of the owners.

They are aware that the owners have been very responsive to the Board's concerns about streetscape and height and they have come up with a plan that looks like it will have very little impact on the neighborhood since it goes out the back of the house. Several other similar houses on our block already extend further out the back than their proposed renovation.

There is correspondence from John L. Fitch, F-i-t-c-h and Antoinette M. Fitch, 71

Dudley. They support the application.

(Reading) After having reviewed the plans which will be submitted to the Board, there are seven single-family houses in a row on this particular block. About 20 years ago we obtained a zoning variance and added floor space to our second floor at the rear of the house. The plans for 61 Dudley are for a similar extension to the rear of the house. Most of the other single-family homes have an extension to the rear at the first floor level, thus a modest extension to the back of the house seems very much consistent with the neighboring houses.

There is correspondence from Jessica Cashdan, C-a-s-h-d-a-n and Francois Berelowitch, B-e-r-e-l-o-w-i-t-c-h.

(Reading) We are writing to let you know that we support the plans for Meg Bond and Bill Madsen have proposed for renovating their homes. We have reviewed their plans and

believe they have been very responsive to the Board's concerns. The work they propose will improve the property, something we believe the City should be pleased to see. We sincerely hope you will approve their plan.

And there is a petition approving the plans and support the application for the owners signed by nine abutters. People in the immediate neighborhood.

Okay. So, I will close public comment.

ATTORNEY MICHAEL WIGGINS:

Mr. Chairman, I would submit that this slight extension, it really meets the concerns that the Board had before. If this is allowed, of course, we would withdraw the continued case. This can be done without derogating at all from the public good. I think it actually goes a long way to preserving it, and there would be no nullification or derogation from the intent of the ordinance. This addition

will not result in any increase in intensity of use. It's the same family, the same two family living there. As always, it will remain a single-family home with only the slight addition to make it more habitable in the rear. It's exceptionally sensitive to the open space in the rear. There could have been an option to actually have a complete addition with twice the inside space, and the petitioners have recognized that that was too extreme and have decided to keep the open look. I think it -- that's probably a lot of the reason why the neighbors are so much in support of people around the backyard, including the people to the rear.

So I would respectfully submit that this is a good case for granting this variance.

BRENDAN SULLIVAN: Okay.

Tom, any questions or thoughts?

THOMAS SCOTT: No. I think they did

a nice job in their revisions to the plan and I support the --

BRENDAN SULLIVAN: Had you seen the original proposal?

THOMAS SCOTT: Yes.

BRENDAN SULLIVAN: You sat on that? Okay.

DOUGLAS MYERS: I didn't sit on the first panel, so I'm not aware of the original proposal, but I can -- I accept completely that this is considerably reduced and seems to be proportional and in scale. I sense that my other members of the Board are comfortable with this. My mind works slowly and I had to overcome some resistance, and I am satisfied that the actual increased living space is very modest and modestly executed. However, I mean, I certainly respects the streetscape in front. However, there is a streetscape consideration to me in the rear as well from Harrington Road which is a public

way approachable by public sidewalks on both sides. And these houses, the number of the seven sisters or whatever they're called, present an appealing uniform appearance from the rear as well. And I am now satisfied that because your rear yard is larger, because the addition is modest in its proportion and you didn't seek for the maximum and don't ask for any setback relief in the rear, I am satisfied that this really is a case that should be judged completely in isolation on its own merits and will not necessarily lead to a flood of variance requests marching up and down among the seven sisters. That this really is a case that stands on its own merits. And on that basis with apologies with the lengthy remarks I'm in favor.

BRENDAN SULLIVAN: Mahmood?

MAHMOOD FIROUZBAKHT: Yes, I think the petitioner has done a great job responding to the concerns of the Board

members. It's a modest amount of relief. It's appropriately scaled. I think the bedrooms, you know, don't meet modern living standards the way they currently are, and so it's very appropriate. And I think there is definitely public good in that, you know, people should have nice, reasonable spaces to live in. And that's what this accomplishes without having a detrimental effect on the abutting neighbors.

BRENDAN SULLIVAN: Mr. Heuer.

TAD HEUER: I agree. I mean, the first application with the raising the roof was, I think, everyone on the Board felt was a bit tall. And I think you've done a very good job in both, you know, looking at this, you know, particularly not dormering but looking at skylights which helps preserve the front facade and the ridge. You know, using the open portion in the back I think is very sensitive and intelligent approach. It

gives you more covered space, but it still allows a see-through when you're looking down the lot from either end of the row of houses. I think here the situation of the large percentage increase in the FAR is due to a severely undersized lot. You have a 2,000 square foot lot or something? So the reason the FAR increase may be in large percentage because you're starting with numbers that are so small so any increase is going to look like a large percent than if this lot were anywhere near normally sized. And, again, the advantage of the rear setback that you have in order to go back and come away from the desire to go up, which I think does help the streetscape, does help the neighborhood, and it gives you the space you need without derogating from our ordinance. So I would be in favor.

BRENDAN SULLIVAN: Okay.

Let me make a motion to grant the relief

requested.

There's not going to be any changes to the drawings? These are them, these are those?

ARCH HORST: Yes.

MARGARET BOND: These be it.

ATTORNEY MICHAEL WIGGINS: Better not be any changes.

BRENDAN SULLIVAN: The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner because it would preclude the petitioner from adding some much needed space, some realignment of existing interior space to better suit the sort of modern day living as opposed to the alignment of the house that was built in --

MARGARET BOND: 1898.

BRENDAN SULLIVAN: -- 1898.

The Board finds that the hardship is owing to the size and shape of the lot which

predates the existing Ordinance, and that any addition, realignment, exterior renovations, improvements by adding would require some relief from this Board due to the pre-existing, non-conforming nature of the structure.

The Board finds that the relief being requested is a fair and reasonable one.

The Board finds that desirable relief may be granted without substantial detriment to the public good, and that relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance. And the Board notes the letters in support from the immediate abutters and surrounding neighbors.

The Board will grant the relief on the basis that the work conform to the drawings as initialed and dated by the Chair.

All those in favor?

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Heuer, Scott,
Firouzbakht, Myers.)

BRENDAN SULLIVAN: Okay, granted.

MARGARET BOND: Thank you.

(8:45 p.m.)

(Sitting Members: Brendan Sullivan, Tad
Heuer, Thomas Scott, Mahmood Firouzbakht,
Douglas Myers.)

BRENDAN SULLIVAN: The Board will
hear case No. 10126, 61 Dudley Street.

ATTORNEY MICHAEL WIGGINS: We wish
to withdraw that petition, Mr. Chairman.

BRENDAN SULLIVAN: On the motion
then to withdraw case No. 10126, all those in
favor?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Heuer, Scott,

Firouzbakht, Myers.)

* * * * *

(8:45 p.m.)

(Sitting Members: Brendan Sullivan, Tad Heuer, Thomas Scott, Mahmood Firouzbakht, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10209, 106 Kinnaird Street.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, for the record, James Rafferty appearing on behalf of the applicant. Seated to my left is Steven and Jessica -- well, Steven Watt and Jessica Wenning. W-a-t-t is Mr. Watt. And W-e-n-n-i-n-g is Ms. Wenning.

Mr. Watt and Ms. Wenning occupy this single-family house on Kinnaird Street with their 15-year-old twins.

STEVEN WATT: Two, 14-year-old twins.

ATTORNEY JAMES RAFFERTY:
14-year-old twins.

The application tonight presents some unusual issues given the shape of the house, and I confess I'm very recent to the case. But as I reviewed it, I began to wonder why this structure as a single-family house might not qualify for that second exception clause of Section 6 that you spent so much time on with over on Foster Street as I studied the footprint of the house and recognized that we weren't changing any of the setbacks. And what's proposed here are two moves.

The house is somewhat unusual because it's a three-story house in a different type of construction might be considered the basement, is actually the first floor. But if you've seen the house, and we probably have photographs that show this, there's this area

beneath, you step down. So there's this second floor room which feels maybe like it's the first floor, but because the stairs go up to it. But nonetheless, you've got this area now that is -- that can be enclosed because it's already included as GFA. So the Variance doesn't apply to the in-fill of the lower level, which is the first component of the project. And the second component of the project is the creation of this third floor addition. But that third floor addition sits entirely within the footprint of the room below.

The zoning issue presented that Mr. Simmers reviewed, is that it's -- I mean, it's a hardship if there ever was one. There's been a determination that the rear setback in this district falls a foot and a half in front of the plane of the existing house. So the relief that's being requested is related to the fact that if you look at the

site plan, that that small foot and a half band is technically within the rear setback. But the rear setback is not established here. The rear setback is established by the rear wall of the house. So if one were to make the case that a variance was needed, the reason is because the as-of-right construction here would require you to put a wall here and the third floor wouldn't connect. You'd have to go downstairs to the second floor, go back up and go up again. But the GFA and the other setbacks conform. And it's a single-family house. I did ask Mr. Simmons whether he explored the second Section 6 exceptions with Mr. O'Grady, and he said that he had not. But as I began to understand the case, I wondered if this might not be a candidate for such an exception. So I thought who better than to raise that issue with, the learned members of this Board.

Similarly the requirement associated

with the Special Permit is not that clear to me. The determination is that the Special Permit at the lower level, that all but the foot and a half elevation can be enclosed as of right. Oftentimes when we see cases enclosing porches is because those porches are in the setback and so we're putting -- extending a non-conforming wall. That isn't the case with the walls of this. It would be again with the exception of that foot and a half, but as I continue to think about Section 6, I think well, what determines the footprint? It's got to be -- the area above it has got to be included in the footprint; right? Because that's -- that's -- if you look at the cases in this area, and you look at what these existing setbacks are, those existing setbacks on the side are established by that second floor piece. So when the setback in this area is determined, it's already

established. So there's no change in the setback on the ground floor with the in-fill, and there's certainly no change in the setback on the third floor. They're within the GFA. And I then ask the question --

BRENDAN SULLIVAN: You're saying that the footprint doesn't change at all?

ATTORNEY JAMES RAFFERTY: The footprint doesn't change at all. And I said what establish the footprint --

BRENDAN SULLIVAN: First it's the plane of the wall come down.

ATTORNEY JAMES RAFFERTY: Right. And the footprint is established by that, what feels like a first floor but is the second floor. That second floor room that's out there floating establishes the front setback at the house. And in this area it establishes the side setbacks. The rear setback is established here, and then granted

there are rear setbacks in this location. So -- and I saw some correspondence and there's some concern, well what about shadow and light? The neighbor had some concern. I said, well, even if we were to move into an area of relief, the impact here is the foot and a half. And to the extent the hardship would be needed, how would one's -- in terms of their own property be affected by the foot and a half in-fill. But I honestly wonder whether if the relief being sought here actually may not be necessary.

TAD HEUER: So I haven't thought about it, but my question is does this not present a similar issue to what we had on Essex Street, the dead end of Pearl? The house of lot of people cut down trees, neighbors didn't like cutting down the trees?

ATTORNEY JAMES RAFFERTY: Uh-huh.

TAD HEUER: What location am I thinking of?

ATTORNEY JAMES RAFFERTY: Yes, was that Ashburton Place? It was one of my cases. It was one of those little fingers off Essex Street.

TAD HEUER: It's not Ashburton Place. That's 21-story building across from the State House in Boston.

ATTORNEY JAMES RAFFERTY: No, no, Cambridge has an Ashburton Place off Essex Street, and it's the one before that one.

TAD HEUER: I want to say it's Pearl, but --

ATTORNEY JAMES RAFFERTY: Oh, no, it's a little dead end.

TAD HEUER: Pearl Place?

ATTORNEY JAMES RAFFERTY: It's one block down from Ashburton Place off of Essex Street. Between Bishop Allen and Harvard Street. It's the second right as you proceed down Essex Street.

TAD HEUER: Percy Place.

ATTORNEY JAMES RAFFERTY: Percy Place. What is the one before it?

TAD HEUER: It is Ashburton. The issue that we had there was a house that was in its front yard setback and had a sufficient enough rear yard setback. So the reverse of this. When we went over the second except clause ground in that case, one argument that I believe was presented by the Chairman was that if you were looking at that house, the reason you can do a conforming addition in the front yard is largely because your rear yard setback is where that -- or in that case, the front yard setback is where the house is sitting. So the reason you can do an as-of-right addition in the front is because you've already taken up a significant amount of none as-of-right pre-existing non-conforming, but nevertheless addition in the rear. So I guess my initial question is if the rear is the length of the house that

you have now, would that be permitted as of right within all your setbacks? If it were bumped forward or at least your front and rear setbacks.

ATTORNEY JAMES RAFFERTY: If it were bumped forward?

TAD HEUER: Yes.

ATTORNEY JAMES RAFFERTY: Yes. If you moved the house forward, there's a point where you would cure the rear setback.

TAD HEUER: Would you invade your front setback? No.

WILLIAM SIMMERS: You would invade the side.

ATTORNEY JAMES RAFFERTY: The side would remain unchanged. To your point, you can continue to move the house forward. I mean, there's a lot of distance here.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: But, you know, in that case there were additions

occurring outside the footprints of the house.

TAD HEUER: Indeed. There was also an issue of length.

BRENDAN SULLIVAN: That was a tipping point I think.

ATTORNEY JAMES RAFFERTY: Right. But I mean in terms of Section 6 -- because the case -- my recollection, I haven't read them recently, but I know it was such a dispositive issue and it was, very interesting discussion. There was that recent case on it, and it was in -- it was a -- it was a case that got heard twice, the appeals. And it really said that in cases where the footprint is unchanged, it could be an administrative Section 6 when there's a -- but when there's a change outside the footprint, it is possible that it could be found that it did have an impact. So the test was there.

TAD HEUER: Correct. And that was the case where they went from a colonial to a --

ATTORNEY JAMES RAFFERTY: Yes, exactly. Right. It changed the whole volume and impact of the house.

TAD HEUER: Stucco or something?

ATTORNEY JAMES RAFFERTY: Right.

The other curious thing about this, this is very analogous to the fact that if this house were constructed differently in that lower level that's unenclosed now, was a basement which in many houses it would be, because it's set below, then under our Article 8 you can construct a second floor addition onto -- of a single -- one or two-family houses as long as you don't extend beyond the setbacks and that you don't change any other violation. You don't exceed the FAR. And I asked the architect, I said, is there any stretch of the definition that

would suggest that what's floating out there is first floor? Because what do you -- do you have that, Bill, the elevation? Where is the basement of this house? And at the end of the day, I think the honest answer is that the house doesn't really have a basement. I say well, this -- the house -- what happened here is the historical evidence suggests that this was built as a three-story house. And at some point a one-story floating addition that jets out here was constructed.

TAD HEUER: Well, that's clear from the 1964 case.

ATTORNEY JAMES RAFFERTY: Right, right. So that's what I said, the historical evidence that tells us that's what happened here. But my point is once you've got that established, if it was constructed differently. But I'm mixing my arguments.

The big picture here is I'm suggesting that I think the relief requested is quite

modest and it involves a rather discrete area that in front of the house, which actually is within the rear setback, notwithstanding the fact the entire house is, but I do question or think it's worthy of consideration as to whether or not it would qualify. I only wish it's not fair to the Board or the applicants or others to raise it tonight perhaps.

BRENDAN SULLIVAN: Well, you would have to ask for an administrative ruling.

ATTORNEY JAMES RAFFERTY: Right. And we talked about what that would mean unless, unless the Board members opine, because I know this great deference of the Board felt that the relief wasn't necessary, that could be communicated. But I don't know any Board members able to reach that decision.

BRENDAN SULLIVAN: Well, I would want it to go and have an administrative ruling first. And then if it was decided

that it needed to come to us. But where they have not had an administrative ruling on that aspect --

ATTORNEY JAMES RAFFERTY: Right. I think in fairness -- I think it wasn't -- I'm not saying it was. It may not have been put before them, and I'm not -- as I say, I didn't have an opportunity to review this with Mr. O'Grady. And I would, with all due respect, I would, if there was thinking that it wasn't met, I'd respect that and say okay, why not proceed with the Variance? But if there was indication that perhaps there's a legitimacy to that, I might be encouraged to request a continuance. If there was any concurrence that that was -- there was some validity to that theory. So I don't know if Board members think there's validity to that. I mean, it's worth -- I mean, the Board members could say I think it's valid and it would be worthwhile to get an opinion. And

why hear a case and provide relief if in fact relief isn't needed. Or if at the end of the day there's enough skepticism to suggest well, the applicant is better served by proceeding. Because I frankly -- I think the hardship is quite compelling, I think, to construct an otherwise conforming addition to not -- but not to be able to use the foot and a half that's in the rear would be a very illogical outcome, and the purpose of the ordinance states in one of its clauses is to allow for logical outcomes and land use decisions and to construct a house that --

BRENDAN SULLIVAN: Yes, I mean we can kick it back and then ask for a detailed review of it, but not, you know, that's valid and it could probably be considered a case not heard I guess. Yes? Somewhat.

ATTORNEY JAMES RAFFERTY: Right. But my point is -- but having said all that, if the direction wasn't clear, rather than

have the applicants lose several weeks and it was not clear, I would suggest that there is compelling hardship here that I would say that the applicant could proceed.

TAD HEUER: Well, I suggest this perhaps, that we proceed as the Variance on the petition of hardship. If we were to turn down the Variance on hardship, I don't think that creates a repetitive petition if you were to petition the Building Department.

ATTORNEY JAMES RAFFERTY: No, it doesn't. That's not a petition at all.

TAD HEUER: Right. Even if they said no, coming back to us on an appeal of that, doesn't preclude. So if the petitioners are looking for time, I would suggest they have no disadvantage going forward with their variance petition tonight, because if they win, they win, they go ahead and their clock starts running and they can build. If they lose, they can seek

an alternative route through the Building Commissioner, which even if that were adverse, could come back to us in an appeal and be precluded.

ATTORNEY JAMES RAFFERTY: Yes. I guess the only, the flip side of that would be in pursuing the relief in the application is -- we wouldn't want the petitioner to be deemed to have waived any rights that might exist under Section 6. So I think it's also not mutually exclusive that one could get relief. And rather than have to wait for the appeal period and the vulnerability associated with it, if the case could be made at the Building Department that there was an adequate basis under Section 6 to proceed without the need of the zoning relief, I don't think the fact that the Board would have heard the case should on its face preclude that possibility.

DOUGLAS MYERS: Mr. Rafferty, just

one question: And in terms of the point that you just made, isn't that your election rather than ours?

ATTORNEY JAMES RAFFERTY: Yes, but I was just saying it on the record so that if I had it wrong someone would say no, no, no, you can't do that.

DOUGLAS MYERS: The other considerations, I mean, I'd like to really hear from Board members wiser than myself, but with respect to your last point, it seemed to me the way you phrased it, that really is your decision rather than this Board's.

ATTORNEY JAMES RAFFERTY: No, I agree. And I was just stating as part of the colloquy that either scenario, that whatever were to happen here, if there was a denial of the application, I think what Mr. Heuer was saying is well, if you could make the case to the Building Department that I didn't need that relief that I didn't get, I could

proceed. I think that's what you were saying.

TAD HEUER: Or in the alternative. If you decided that you did not wish to proceed with the Variance that you did indeed receive either because it was challenged or because --

ATTORNEY JAMES RAFFERTY: That was my second point; right.

TAD HEUER: -- you go through the trouble of recording a Variance.

ATTORNEY JAMES RAFFERTY: Right. Or having to wait the time; right. That was my point, the flip side of that same argument is that -- and I agree with you, so that any point a property owner has certain rights and an applicant could go to the Building Department and say, you know, I've discovered a way to proceed without relief.

BRENDAN SULLIVAN: There's always that course of action.

ATTORNEY JAMES RAFFERTY: Right, right.

MAHMOOD FIROUZBAKHT: So how long would you expect that process to take to kind of flush through that question with the Building Department?

ATTORNEY JAMES RAFFERTY: Well, you know, if there were some direction this evening that suggested that was a meritorious approach, it could facilitate an outcome. If there was skepticism, I would proceed tonight with the relief as requested.

MAHMOOD FIROUZBAKHT: I mean, I don't know if you're going to get that. But the fact that we would agree with continuing the case for that option to be explored with the Building Department, I think would, you know, potentially have an affect.

BRENDAN SULLIVAN: I think we can probably get them on the next hearing. Which is the 16th?

MARIA PACHECO: Yes.

MAHMOOD FIROUZBAKHT: Yes, so if you can get it done by the 16th, than, you know the more power to you. If you can't then you come back to the Board and you present your case.

TAD HEUER: I still don't understand -- I mean we've now -- I think my opinion is we're here, we can hear the case. We can grant them relief. They can have it. It's not as though, I mean --

ATTORNEY JAMES RAFFERTY: Yes, I would agree.

TAD HEUER: I mean, I understand there are larger issues at play here than your front porch, I think. Because this, you know, Legal has been thinking about this could be --

ATTORNEY JAMES RAFFERTY: Yes, right. In fairness, my clients are appropriately focussed on their

self-interest as they should be, and my duty is to do that. So, I didn't mean to take too much time on it, but it did strike me as an interesting issue. But I think with the Board's indulgence, it's a rather straight forward -- our presentation is nearly complete. I would have Mr. Simmons just show it out. But the issue presented in the variance involves the portion of the third floor addition that's located within the rear setback, notwithstanding the fact that it's in front of the house. It's only a foot and a half, and that Mr. Simmons can -- can you just show where this foot and a half exists?

WILLIAM SIMMERS: On the elevation.

ATTORNEY JAMES RAFFERTY: On the elevation.

WILLIAM SIMMERS: This.

ATTORNEY JAMES RAFFERTY: The as-of-right construction -- the as-of-right construction here would require a foot and a

half slot between the third floor.

WILLIAM SIMMERS: This exists here. This exists. This and this, this is the Special Permit. This is the variance.

ATTORNEY JAMES RAFFERTY: And that's the case. That's why the determination has been made. It is, as you measure, you simply apply the straight setback rule. It is within the setback technically, but the reality of the setback is that the entire house is within that setback. So certainly no rear abutter is adversely affected which is generally the place one seeks to -- the setback exists for the protection primarily for the rear abutter. Well, the rear abutter is never going to see, feel, or be aware that this foot and a half in-fill is there. So I'm suggesting that it adds to the issue about the hardship because there is no adverse affect upon those that are entitled to the benefit

of the rear setback. So, I hope without having to say much more that that hardship has been properly identified and placed before the Board. It has everything to do with the location and siting of the structure on the lot. And the fact that it would -- to build this as a conforming addition, you would not be able to connect the third floor. It would result in a very unusual and illogical outcome that you'd have to have two sets of stairs. So to go from the third -- you need to access the third floor independently with two different sets of stairs because you couldn't come through the third floor.

BRENDAN SULLIVAN: So this is the connecting link?

ATTORNEY JAMES RAFFERTY: This is the foot and a half link. And the hardship is and the variance relief is requesting relief so as to not have to do that, to allow for that foot and a half in-fill because it's

occurring, while it is indeed occurring within the rear setback, the setback, the setback is not -- the rear abutters are not affected by that in-fill. And for others who feel that they would prefer this not get constructed, there is an as-of-right procedure here. As-of-right path that is so illogical that it makes no sense, but yet --

BRENDAN SULLIVAN: I think it borders on the safety issue as well, the communication -- being able to communicate, to travel, to traverse unimpeded.

ATTORNEY JAMES RAFFERTY: I was jokingly saying -- I was asking well, could you have windows? It's a foot and a half, could you open the window? You know, agile 14-year-olds could hop through the windows. I mean, you could have presumably thriving, I don't know what, without getting too absurd about the whole thing, I think the more one thinks about it, the -- it's so illogical

that the case almost makes itself. So I'm going to stop talking.

BRENDAN SULLIVAN: Going back through the record, I found that the house was built in 1857 but it was moved to this location in 1891.

JESSICA WENNING: Oh, I didn't know that.

ATTORNEY JAMES RAFFERTY: He's been on the Board a long time.

BRENDAN SULLIVAN: It precludes the existing ordinance by many years.

Tom, any questions?

TAD HEUER: This is a narrow lot; right?

ATTORNEY JAMES RAFFERTY: Yes. This is. Good point.

THOMAS SCOTT: I would be in favor.

BRENDAN SULLIVAN: Doug, anything at this point?

DOUGLAS MYERS: No.

BRENDAN SULLIVAN: Mahmood?

MAHMOOD FIROUZBAKHT: No.

BRENDAN SULLIVAN: Tad, anything else?

TAD HEUER: No.

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who wants to speak on the matter of 106 Kinnaird Street.

ATTORNEY EDWARD FITZGERALD: My name is Ed Fitzgerald, and I represent the abutter, Olga Pelensky, the abutter to the left. And I'm going to hand out six of those. If you could pass those down and maybe pass one to Mr. Rafferty.

BRENDAN SULLIVAN: Do you have a business card just for the secretary if you have one.

ATTORNEY EDWARD FITZGERALD: So in essence, Miss Pelensky is next-door, and I wanted to -- I gave you a little summation of

this argument and I have some photos which I think clearly demonstrate that in her view the light and air is going to be significantly cut off. While I think Mr. Rafferty mentioned that the rear setback is only to protect the rear abutters, we strongly disagree. And if I could just go through these photos with you.

This first one which is the blue dwelling, is to the left of her house looking from her deck. So you can see she's looking up at the third floor on the left-hand side of her house. That's No. 1.

No. 2, is a straight shot back from her deck, which shows the petitioner's house on the right, and this just shows you just how congested it is there.

TAD HEUER: But the addition isn't going in that direction. You couldn't see that; right?

ATTORNEY EDWARD FITZGERALD: Right.

TAD HEUER: Okay.

ATTORNEY EDWARD FITZGERALD: But the idea here is how much light, how much air does she have?

Photo No. 3 shows a view from her kitchen window, and this is a significant -- even though it's an unclear picture, it's pretty significant because it shows the front of the dwelling right now. And I agree that it is in need of some repair and some renovation, but the relief requested would put an addition from this -- correct me if I'm wrong, from this peak on the front out to here at about this level, the same height of the peak.

ATTORNEY JAMES RAFFERTY: You are wrong. The relief is related to a foot and a half.

ATTORNEY EDWARD FITZGERALD: Okay, okay. All right.

ATTORNEY JAMES RAFFERTY: You asked

to be corrected.

ATTORNEY EDWARD FITZGERALD: Okay, thank you.

The light that she sees from her window is essentially going to be completely chopped off from her kitchen window. She won't be able to have any light essentially. That's photo No. 4.

Photo No. 5 is the view from the, from her side lot which is almost to the street. You can see there's like a little parking area that -- it's a pretty large parking area, actually, it's in their front yard. And you can see that from that area she has light above and light over that dwelling. Right now in the morning particularly when that addition is put up, she'll have no more light.

She's got the same problem with photo No. 6. This is from her yard. These are very tight. I would say her side yard is about three or four feet.

And the next photo shows.

WILLIAM SIMMERS: Nine feet.

ATTORNEY EDWARD FITZGERALD: Her side yard. It's very close. Her side yard shows -- this is the view she has. So right now she, you know, it's wintertime there's no vegetation here, but she sees, you know, she can see right through to the neighbor on the other side of the petitioner's house and she gets currents of air and light from that direction. That will be completely closed off.

TAD HEUER: Can you say that again?

ATTORNEY EDWARD FITZGERALD: She's here. She looks through, she can see directly through. She can see around. That will all be closed off by the in-filling; right?

WILLIAM SIMMERS: That picture is taken from the ground. It's not taken from her kitchen.

ATTORNEY EDWARD FITZGERALD: That's right. This one is. In fact, this one's taken from the ground. This one's taken from out by the street. Only one picture was taken from the kitchen.

ATTORNEY JAMES RAFFERTY: Right. So she's getting breezes underneath that today that she won't get, is that what you're saying?

ATTORNEY EDWARD FITZGERALD: And light.

ATTORNEY JAMES RAFFERTY: Light comes underneath that?

ATTORNEY EDWARD FITZGERALD: Yes, you can see that. This was a cloudy day today.

TAD HEUER: I just have a question. So, I'm looking at the Assessor's map that you provided, and it appears that 108 and 104 are essentially on the same setback line. They're approximately the same size. And it

appears that there's no overlap whatsoever in parallel to Kinnaird Street line between 108 and 104 and 106. They seem to be counter set. There's no overlap going through the lots from Kinnaird Street to the rear lot line from your client's house and the subject properties; is that right? So I mean, if I were to draw a line right here, none of the proposed addition overlaps at all with where the --

ATTORNEY EDWARD FITZGERALD:

Actually, I don't think that's -- I do see what you're saying, but I don't think that's correct.

WILLIAM SIMMERS: It is correct.

ATTORNEY EDWARD FITZGERALD: No, it's not. Because this picture is taken directly from her deck. There's a slight angle there, but this is picture No. 4.

TAD HEUER: Is her deck indicated in the depth of 108 Kinnaird Street on your

Assessor's plot?

ATTORNEY EDWARD FITZGERALD: No, I don't think it is. That's an old Assessor's map. But, no, it's not. She has a deck back there. In fact, this was the same issue that popped up in a '97 case here. There was a request for a two-story addition at that time and the Board denied it based on the light and air issue. And I can give you the case number.

TAD HEUER: I think that case was, if I've read that case correctly, wasn't that case about in-filling on both sides of the deck and creating more bulk in the side setback?

ATTORNEY JAMES RAFFERTY: That's correct. It created new setback violations.

TAD HEUER: Correct.

ATTORNEY EDWARD FITZGERALD: And it was a two-story.

TAD HEUER: Oh, sure. But my sense

is that the concern of the Board when I read that transcript, was that it was creating a violation of setback on either side as well as massing, and it was the concern, if Mr. Wiggins were still here he could enlighten us, because he was sitting on the case --

JESSICA WENNING: He was on the Board.

TAD HEUER: -- that that was the concern there. It wasn't necessarily the height which was under FAR in height, but it was the massing in the setbacks that was an issue. Am I --

ATTORNEY EDWARD FITZGERALD:
I -- I'm not a hundred percent sure on that.

TAD HEUER: Have you had a chance to review the 1997 --

ATTORNEY EDWARD FITZGERALD: I reviewed part of the transcript from it. So I understood there was a significant

discussion regarding the light issue. In fact, she would be blocked in much of the same way she is going to be blocked here, a little distant addition, the height of it is going to be much more significant detriment to her.

TAD HEUER: But the depth would be significantly less because it's over -- as Mr. Rafferty's suggesting, the existing footprint; is that right?

ATTORNEY EDWARD FITZGERALD: I don't know. That's correct. But the, you know, there's no doubting -- this is going to be a wall up here. It's going to block that light. She's got -- it's right here.

WILLIAM SIMMERS: No.

STEVEN WATT: It's not from where you're starting. It's from where it's coming off.

ATTORNEY EDWARD FITZGERALD: The little piece in the front is a very small piece right here.

WILLIAM SIMMERS: This, this bump that you see on the --

EDWARD FITZGERALD: The little bump that's coming out.

ATTORNEY JAMES RAFFERTY: That's being removed.

ATTORNEY EDWARD FITZGERALD: But the addition will still be -- it's still going to be from here out to there. And so when she's looking up from her deck, that's exactly what she's going to see. She's going to have that wall on one side, and flipped around, she's going to have the big blue house on the other side. She's going to have tunnel vision out the back.

ATTORNEY JAMES RAFFERTY: We'll stipulate the view will change, but I think the issue is the relief is related to the footnote.

BRENDAN SULLIVAN: My understanding is that could be built as of right.

ATTORNEY JAMES RAFFERTY: Right.

BRENDAN SULLIVAN: That could be built as of right.

ATTORNEY EDWARD FITZGERALD: The petition for a variance, did he withdraw that?

BRENDAN SULLIVAN: No. The relief that is being requested is this foot and a half between, say, the front structure and the rear. So they could build most of that as of right with an interruption of about a foot and a half as shown on the drawing. So you would still see this in the front, and you would probably see the entire I think at the rear. That's the foot and the half.

ATTORNEY JAMES RAFFERTY: This is the area where the relief is being sought, the foot and a half. And the hardship is related to the fact that if that had to have a rear wall, that had to have a wall, it would provide an illogical outcome. But all the

issues that you cited with regard to that addition admittedly that will all be there, but none of that is related to the relief. That's all as of right.

DOUGLAS MYERS: But isn't it true the fact that the addition will be built the way it's proposed is a consequence of the relief being granted?

ATTORNEY JAMES RAFFERTY: Only to the extent that the foot and a half would be there.

DOUGLAS MYERS: It could be built without the foot and a half?

ATTORNEY JAMES RAFFERTY: Right, right.

DOUGLAS MYERS: But certainly if we grant the variance, it will be built the way it's part of the application?

ATTORNEY JAMES RAFFERTY: Yes.

BRENDAN SULLIVAN: Have you not had discussions with --

ATTORNEY JAMES RAFFERTY: Yes, we've had more productive discussions with Ms. Pelensky's husband because he has a letter of support. He co-owns the house. He has a different view of the impact of the project than his wife does. I don't know if joint tenancy limits a Plaintiff's ability, but it is an unusual scenario where --

ATTORNEY EDWARD FITZGERALD: He agrees that the --

ATTORNEY JAMES RAFFERTY: Well, he's speaking from -- I don't think you're speaking for him; right?

ATTORNEY EDWARD FITZGERALD: No. I've got his letter right here from him.

ATTORNEY JAMES RAFFERTY: I'll just gave it to the Board.

ATTORNEY EDWARD FITZGERALD: He agrees with the petitioners that the property needs to be renovated --

ATTORNEY JAMES RAFFERTY: Well, you

don't represent him, Mr. Fitzgerald; right?

BRENDAN SULLIVAN: Let me have counsel talk first, one person at a time.

ATTORNEY EDWARD FITZGERALD: He also says in his letter he's not thrilled about the height and he's gonna block their morning light. He supports the renovation because it needs to be renovated. It's outdated. The pictures clearly depict a home in need of renovation. There's no dispute about that. But the pictures also depict the other homes in the rear, for instance, of the property that were renovated with no addition. I understand they're all different, but you need relief here, and the hardship here, if you will, is some kind of a nexus between that and the --

BRENDAN SULLIVAN: I don't think counsel understands the full extent --

ATTORNEY JAMES RAFFERTY: The as-of-right opportunity.

BRENDAN SULLIVAN: -- and what is before us. And it's basically a connecting link between, if you will, the front and the rear. If you could build most of that as of right, you could build what's in the back as of right, because that's a foot and a half which would be interrupted if you did not receive relief from the Board.

ATTORNEY JAMES RAFFERTY: Correct.

BRENDAN SULLIVAN: You could go from the third floor, here, you would have to go down, over, and up if this third floor -- if this one and a half foot were not allowed. If it is allowed, then it gives you unfettered access across. And that's basically what it is, the nature of this relief.

ATTORNEY EDWARD FITZGERALD: Right. The consequence of that relief is what her primary concern is.

BRENDAN SULLIVAN: What she's really objecting to is not this foot and a

half. She's really objecting to this.

ATTORNEY EDWARD FITZGERALD: Well, I think she's objecting from everything to the peak over. Because right where your pen is, there, right below that, below the top square, right there, that also is the new fill in also blocks the light, too. And so --

BRENDAN SULLIVAN: But that all can be done as of right.

ATTORNEY EDWARD FITZGERALD: Exactly. So if you give the relief, though, you know, the end result depends upon whether you give the result -- the relief. If you give the relief, she can't see anything out of her window.

TAD HEUER: Well, you're suggesting in practice that if we don't give the relief, they will not build this and therefore it will be status quo and they --

ATTORNEY EDWARD FITZGERALD: No, no, they may decide to go ahead and build

something as of right --

TAD HEUER: Whoa, whoa, I don't think you want to go there, Counsel. Because what they can build as of right is everything except for that notch. I think what your client is saying is that this new addition is what she is concerned about, and only by granting this can they actually get it. My question was, isn't she really saying if they don't get this, she's presuming they will not build this? If your answer to that is no, then I'm not sure where your position is.

ATTORNEY EDWARD FITZGERALD: That's probably right. She thinks they won't build it.

TAD HEUER: Okay.

WILLIAM SIMMERS: Could I --

ATTORNEY JAMES RAFFERTY: No, it wouldn't be helpful.

BRENDAN SULLIVAN: You'll have a chance to rebut. But you've got the floor.

ATTORNEY EDWARD FITZGERALD: She's opposing it because she doesn't think they'll build it. If they want to build it, we'll be back.

TAD HEUER: I have a question for the Petitioner's counsel. You're seeking to build this portion up on top of the existing house, the main house, to a notch using the dormer provisions; is that correct? So just can you clarify how we're getting from the ridge to the notch and it's only the notch that's the issue?

ATTORNEY JAMES RAFFERTY: Well, no, I don't think we're relying on a dormer provision. I think we're within the allowable FAR and we're --

TAD HEUER: Sure, but you're building in a setback here; right?

ATTORNEY JAMES RAFFERTY: Right.

TAD HEUER: You're certainly in the rear setback. So the question is why is this

not required setback relief but not --

ATTORNEY JAMES RAFFERTY: Thank you. Yes, that's exactly right, yes.

TAD HEUER: So would be it theoretically possible to -- and I don't know this, to bring out the front wall of your house sufficient enough to allow the dormer provision to capture that, within your setback, your front setback, and your side setback, to capture the notch under the dormer provisions and then you have no notch because you have a dormer all the way up to there and then you have as of right into your front yard setback. Would that theoretically be a solution?

BRENDAN SULLIVAN: No, because you're extending that wall into the rear yard setback.

WILLIAM SIMMERS: Yes, the side setback you'll be extending the front with the side yard setbacks.

TAD HEUER: Not necessarily.

ATTORNEY JAMES RAFFERTY: No.

TAD HEUER: The Chairman may have just provided the answer, but if you extended the front wall of the existing house, I guess that -- but you're already there.

WILLIAM SIMMERS: It's 3.3 feet.

ATTORNEY JAMES RAFFERTY: Right. No, it's an interesting observation. So the point being that if -- it's the same theory that gets you to that point, doesn't it take you to that point?

TAD HEUER: Kind of.

ATTORNEY JAMES RAFFERTY: I mean to the extent that the Board will accept, I mean Mr. Simmons has done some shadow and light studies and we find the impact will be --

DOUGLAS MYERS: I just like to raise a point for everyone's consideration, and I'm perfectly fine if nobody's interested, it's really okay. But have we reached a point in

terms of an accumulation of suggestions, possibilities that are worth discussing where it might be, where it might make sense to entertain the prospect of continuing the case? And I really appeal to minds wiser than myself. If these alternatives may crystallize, I wonder if it may be a way around the necessity of us deciding the case this evening. Not that I'm trying to -- not that I've lost interest in the case or I want to avoid a decision.

ATTORNEY JAMES RAFFERTY: I understand.

DOUGLAS MYERS: Just raising for the consideration, not the applicant, of course, the abutters, and the members of the Board. And if no one's interested, that's fine.

ATTORNEY JAMES RAFFERTY: Yes, I think the conversation, the conversation that's starting to emerge has more to do with exploring what other as-of-right means might

exist. I don't think in fairness to Mr. Fitzgerald it's a case of well, you know, could have be scaled back or something different happened? I mean the size of this, to make this work, to take advantage of the existing wall, I mean, I think the form is pretty well determined here because it really is the addition on top of that room that's here now. But I know what you're suggesting. I mean, I think, I applaud Mr. Fitzgerald's first candor which is that, you know, his client would prefer this didn't get constructed and she might think that there's a practical unreality that if relief doesn't happen then something that could happen probably won't happen, and I'm not sure that's the test, though, that the Board should apply as to whether or not a hardship exists. The fact that, I mean, we see hardships all the time where we say well, if the Petitioner raised the house and brought

it forward, it would make it conforming and they could otherwise perceive that more than 10 or 25 percent. But lifting the house up and removing it doesn't make a lot of sense. I mean, there is so much room in the front here. One could envision a scenario where a relocated house winds up happening here. I mean, at the end of the day the GFA is below what is permitted. We're dealing with setbacks that are unchanged by this. So, like I said, I can understand why it would be nice not to have it. I frankly don't understand why the lower level, and that's only a Special Permit even under the most strictest interpretation, how one could claim that their property interest was adversely affected by in-filling an area such as that. But I think we're in a place where we probably just -- we have a neighbor who would prefer something didn't happen. But we've identified -- I mean there was a fair

bit of time spent by Mr. Simmers with Mr. O'Grady trying to arrive at an as-of-right solution, and the determination was that they couldn't get there, so maybe that's the reason that that dormer takes up.

BRENDAN SULLIVAN: Okay. Well, anyhow, Mr. Fitzgerald are you concluded or not?

ATTORNEY EDWARD FITZGERALD: I would just say this: I don't think that the hardship, if you will, is the type that is contemplated by the statute that really if there's any type of nexus between that hardship and any of the factors under the statute, you know, the size of the lot, it's a very common quality of the lots in the area, they're all rectangular shape. All of the houses, if you look at that Assessor's map, and that may not be 100 percent accurate, but all the houses are almost right on the line throughout that area. Miss Pelensky's lot

is actually smaller than the subject premises. The lot behind is actually smaller than the subject premises. I don't think there are any factors that are there that only affect this particular lot or that this particular lot has anything special about it that the other parcels don't. So that's it.

BRENDAN SULLIVAN: Okay. Great, thank you.

Anybody else wishes to speak on the matter?

ATTORNEY EDWARD FITZGERALD: If you want to speak on it you have to speak.

OLGA PELENSKY: Well, I hope you don't mind.

BRENDAN SULLIVAN: No, no. Just give your name.

OLGA PELENSKY: Olga Pelensky at 108 Kinnaird. Pelensky, P-e-l-e-n-s-k-y. And I appreciate the time of everybody here, and

I'm -- but I -- there were a couple of issues that I did want to raise.

One is that we did meet with our neighbors and there was no real offer to discuss any of the issues. And the issue was raised of the impingement of light, the sky, fresh air. And one of the things that I'm not sure you can tell from the map there, but in fact it is quite dense in there. I mean, we love our neighborhood, but it is in fact, you know, there's a lot of walls. There's a wall on each side. So there is a density, there is a safety issue. I believe quite sometime ago in Cambridgeport 10 houses went up in fire from density. So it's -- it is a concern, density in addition to the other issues.

I'm a little confused by Mr. Rafferty's point of a foot and a half is all that we're talking about because I was led to understand, and I was not told anything different, that it is a much larger addition

that is being contemplated. So, yes, that's a very large addition. I mean -- oh, this is the part. But it is in fact, if I am not incorrect, I believe several hundred square feet of filling in and going up -- so I'm sorry to take your time. I know you all are very busy and I appreciate it. I appreciate you letting me say and I appreciate also my attorney here.

BRENDAN SULLIVAN: Okay.

Is there anybody else who wishes to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see none. There is correspondence in the file from Jeffrey Snyder, 108 Kinnaird Street as a next-door neighbor and owner of 108 Kinnaird Street. (Reading) I'm writing this letter in support of the planned renovation by Steve and Jesse Wenning at the home of 106. The plans for the renovation have been presented

to me and have been presented to me, and although I am not thrilled about the height of the renovation, because that height will block our morning light, I nonetheless completely support the renovation. The Wennings have been considering a renovation for a long time and understandably so. I wish to be on the record that I, the other co-owner at 108 completely support the Wennings in their efforts to renovate.

And that is the only other correspondence in the file.

ATTORNEY JAMES RAFFERTY: I thought we -- we had several letters we submitted.

STEVEN WATT: One of the rear.

BRENDAN SULLIVAN: Yes. There is correspondence in the file from Les Montgomery. He lives at 108 1/2 Kinnaird Street. Writing in support of Steve Watts and Jessie Wenning. I have examined their plans and I approve wholeheartedly of these

plans. I think that the renovation will not only be a great benefit to their family but it will also be an improvement to the neighborhood.

There is correspondence from Ranjan Sen, R-a-n-j-a-n S-e-n.

STEVE WATT: He's the owner at 104.

BRENDAN SULLIVAN: His address is 208 East 39th Street, Baltimore who is owner of 104 Kinnaird Street. They write to express support. And as far as I can tell, there's no change to the footprint. And these plans -- I do not see that the proposed plans in any way diminish the beauty of our street or affect the houses immediately in its vicinity including our own, therefore, I fully support the renovation.

There is correspondence from Diana Goldfarb, G-o-l-d-f-a-r-b, 95 Kinnaird Street. I've examined the plans and I approve of those plans.

There's correspondence from Dell.

STEVE WATT: David.

BRENDAN SULLIVAN: I'm sorry, how do you spell that?

STEVE WATT: It's David. I don't know his signature. It's David Kuttler.

BRENDAN SULLIVAN: K-u-t-t-l-e-r, 560 Franklin Street. And he approves of the plans and the renovation will be an improvement to the neighborhood.

Okay, so that's the.

JESSICA WENNING: They're the rear abutters.

BRENDAN SULLIVAN: Okay.
Mr. Rafferty, any final comments?

ATTORNEY JAMES RAFFERTY: Well, I would just conclude that the relief is discrete. It will allow for a logical use of this house by a family that has lived there for a considerable amount of time. We would acknowledge that there will be a change in the

view, but both the setbacks, the side yard setbacks, and the height of this comply and it's occurring within the footprint of the existing structure. I think that would allow one to reasonably characterize the relief as modest. And I think we do have evidence of the shadow study. The foot and a half will not create any impact on the abutter. And the mere fact that the abutter theorizes that without the foot and a half, the project wouldn't go forward, I think would suggest that that disqualifies it for relief. The foot and a half setback issue is a direct function of the size of the lot, the age of the structure, and the location of the structure on the lot. And for those reasons I would respectfully suggest that adequate support exists to find a hardship and warrant the issuance of a Variance.

As for the Special Permit, I think that under the Special Permit criteria of no

adverse impact around surrounding uses, that GFA is already established. Those walls, the vast majority of those walls are within the setback and occurring within the footprint. Again, it's just the foot and a half area at that level that is triggering the relief requirement.

BRENDAN SULLIVAN: Okay.

Tom, any thoughts or questions at this point?

THOMAS SCOTT: I'm just looking at the plot plan and kind of understanding the relationship of the houses around. I think the location of the house is really beneficial to the neighbor in that it's offset and they're not adjacent to one another. They're offset from one another and, therefore, she gains benefit by just the original placement of the house being so far back on the lot. But I think the addition is really going to have a minimal impact on her.

The sunlight approaching her lot, I think, the amount of foliage I see or trees that I see separating the two lots certainly would be more detrimental to her daylight than this addition. So, and I see the relief as being so minimal that I would definitely be in favor of this.

BRENDAN SULLIVAN: Okay.

DOUGLAS MYERS: I have no extensive comments at the present time except to say that I think the presence of the hardship is clear.

BRENDAN SULLIVAN: Okay.

Mahmood?

MAHMOOD FIROUZBAKHT: You know, I guess to the extent that relief isn't required, I think my preference would be that this case not be before us and that, you know, those kinds of issues be determined and flushed out before the case gets heard because it is a case heard now. And so I

guess it's an -- ideally I think before we went into the merits of the case, I think this case -- my preference would have been that this case be continued to deal with some of these questions, but I think we've gone too far at this point and I do think this case presents some unique circumstances with respect to the structure, its siting and narrowness of the lot, and so there are certainly some of those elements are present. But I think so in that regard, I think there's some validity to the Petitioner's case here in meeting the standards to obtain relief. But, again, to the extent that it's required. And so I guess that's where I have a little hesitation about judging a case or issuing a decision on a case that may not need to obtain relief.

BRENDAN SULLIVAN: Well, if it were deemed that the fill in on the second clause and relief was not necessary, it would go

away. If it was deemed that a do not -- nominal protection that it would come back to us. So I think the same issues would be before us. So I guess my question is how would you feel on --

MAHMOOD FIROUZBAKHT: The merits of the case?

BRENDAN SULLIVAN: -- the case before us?

MAHMOOD FIROUZBAKHT: I think, I just wanted to state my preference. I think this case should have been continued before we heard it and -- but we've heard it now, and, you know, I think there is definitely some merit to the extent hardship is required.

BRENDAN SULLIVAN: Okay.

Mr. Heuer.

TAD HEUER: I think we hear cases as they're brought to us. The Petitioner went to Inspectional, Inspectional advised them that a Variance was required and a Special

Permit was required. To the extent that other options are available, that's neither Inspectional Service's charge nor our charge to investigate. They've come to us, they've proceeded through to the request of a Variance. I think we're required to adjudicate on the request of a Variance. To the extent that other options are available as Mr. Myers pointed out, it's not necessarily other position, although we may have opinions on it, to opine on that, we opine on what's before us which is a request for a Variance.

As to the request for a Variance and to the extent of a Special Permit, I think the Variance subsumes the Special Permit at least because we're talking about the same structure and the same footprint. I think that the conditions for a hardship are met. Here we have something that is very unusually cited structure on the very rear of its lot

line on a very long lot. A situation we frequently discuss is a house that could be moved forward, or if the house were moved forward, it would not be in violation of the relief being requested. That's the situation we have here. It is certainly a hardship to actually move that structure physically back to where it was pre-1964. And I think the request to relief of is modest. I acknowledge the neighbor's concern that even though requested relief is modest, the results for the request for relief is more significant than one and a half feet. But I would point out that I think in response that it would be a by-right addition. As the Petitioner's counsel has pointed out, it's not necessarily that this could not be constructed and create the same impediments that the abutting neighbor believes would occur, and it could be done as of right. The one and a half feet here merely

provides for a logical use of the structure, logical use of the extension, and I believe that in itself is modest relief coupled with mitigating factors in terms of the size of the lot and the shape of the lot being an undersized, narrow lot, and that it is not violating anything else. It's not violating side yard setback. It's not violating height, and it's not violating GFA or FAR. So I believe that the standard for hardship is met in this situation and I would be in favor of the Variance.

BRENDAN SULLIVAN: Let me make a motion to grant the relief requested as per the application and the drawings submitted therein. There are not going to be any changes to those drawings I would assume; is that correct? There are no changes?

WILLIAM SIMMERS: They don't have to -- it's a question about what if, if there were minor window changes?

BRENDAN SULLIVAN: Well, as long as they're not subject to this relief, then that's fine.

WILLIAM SIMMERS: I mean, it would be in the by-right section anyway. I think it's going to stay the way it is.

BRENDAN SULLIVAN: Yes, okay. All right.

WILLIAM SIMMERS: You have to appreciate the fact that you have to design the entire structure before you come before the Board and you can't do it down to the -- you know, you can't do it down to the fine detail.

ATTORNEY JAMES RAFFERTY: I'll tell him.

TAD HEUER: Reasonable tolerances.

BRENDAN SULLIVAN: Architectural license.

WILLIAM SIMMERS: What?

BRENDAN SULLIVAN: Architectural

license.

WILLIAM SIMMERS: Do you want my architectural license?

BRENDAN SULLIVAN: Let me make a motion.

WILLIAM SIMMERS: Are you asking for my license?

DOUGLAS MYERS: Not yet.

BRENDAN SULLIVAN: No, no.

ATTORNEY JAMES RAFFERTY: At least he didn't ask you if you're going to live or die by these plans.

BRENDAN SULLIVAN: Let me make a motion to grant the relief requested as per the application and the drawings contained therein.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude the Petitioner from adding this very

necessary connecting link at the third floor.

This connecting link the Board finds is the most practical, economical, and the coherent way to use the space at this third floor level, and that not giving relief from this Board would be a substantial practical hardship to the Petitioner.

The Board finds that the hardship is owing to the unusual placement of this particular structure which was moved back in 1891, which predates the existing Ordinance, to the very rear of the lot in an unusual fashion not consistent with the neighborhood and unique to this particular lot. And the movement of this house to a conforming nature would be not practical.

The Board finds that the relief may be granted -- that the relief being requested is a fair and reasonable one.

The Board finds that desirable relief may be granted without substantial detriment

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

All those in favor of granting the relief for the slight addition?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Heuer, Scott, Firouzbakht, Myers.)

BRENDAN SULLIVAN: On the Special Permit which would be the in-filling of the area below the front overhang of the building, if you will, or the first --

ATTORNEY JAMES RAFFERTY: Second floor addition.

BRENDAN SULLIVAN: Second floor?

TAD HEUER: And is it the entire in-fill or is it again a foot and a half in-fill? Do we know?

ATTORNEY JAMES RAFFERTY: I don't

know what the benefit of the conversation with Mr. O'Grady. Both of those walls are within the side setback permitted within the side setback.

WILLIAM SIMMERS: It would only be -- I think you're allowed to enclose the porch if it's within the lot line within the setbacks. It's only this portion in the rear, in the same slot, that is within the rear setback and so it's only that foot and a half.

ATTORNEY JAMES RAFFERTY: The required side yard setbacks for a lot which has less than the back with a minimum width in less area is seven and a half feet.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: And according to these plans, it's nine and a half -- it's nine, four on one side or ten on the other -- or 11. It would appear to me that those are, those would be conforming

walls.

TAD HEUER: Correct.

ATTORNEY JAMES RAFFERTY: And my understanding is that this portion at the ground floor has the same provision.

TAD HEUER: So essentially it's what we usually see in filling a front porch --

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: -- but we're talking about a rear setback for that distance and that's what's being enclosed for that distance.

ATTORNEY JAMES RAFFERTY: Yes.

Because this would be a conforming wall --

TAD HEUER: Yes.

ATTORNEY JAMES RAFFERTY: -- and we would extend --

TAD HEUER: To hit the house.

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: Where usually it's the other way around.

ATTORNEY JAMES RAFFERTY: Exactly.

BRENDAN SULLIVAN: Let me make a motion to grant the Special Permit for enclosing the existing open area under the second level of the front of the building as per the plan submitted.

The Board finds that the requirements of the Ordinance can be met.

Traffic generated or patterns of access or egress would not cause congestion, hazard, or substantial change in the established neighborhood character.

The Board finds that the continued operation of or development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature the proposed use. And there would not be any nuisance or hazard created to the detriment of the health, safety, or welfare of the occupant of the proposed use or to the citizens of the city. And the proposed use

would not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of the Ordinance.

All those in favor of granting the Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Heuer, Scott, Firouzbakht, Myers.)

STEVEN WATT: Thank you very much.

* * * * *

(9:50 p.m.)

(Sitting Members: Brendan Sullivan, Tad Heuer, Thomas Scott, Mahmood Firouzbakht,

Douglas Myers.)

BRENDAN SULLIVAN: I'm going to hear -- Mr. Hanley, was there any benefit to the discussion?

ATTORNEY JOSEPH HANLEY: Yes, we had a good discussion with Mr. Farbman.

BRENDAN SULLIVAN: Are we going to proceed forward?

ATTORNEY JOSEPH HANLEY: Yes.

BRENDAN SULLIVAN: I want to hear one case before we get back to you. I wanted to see where we were with you.

The Board is going to hear case No. 10210, 59-61 Jay Street.

BRENDAN SULLIVAN: If you would introduce yourself.

DAN LABARRE: My name is Dan Labarre. That's Labarre. I am representing the owners only from the capacity I'm the landscape contractor who installed the shed in question. So the fact

that it ended up being not in compliance is my problem not theirs. Bottom line is this: We have just mostly completed the landscaping and the exclusive use portion of their condominium association that goes along with these folks. And one of the conditions was what can we do about the rather large Cambridge recycle bin and trash bin that are mandated by the City so they're not sitting out in the front yard?

I checked with Cambridge Inspectional Services and said, I just want to make sure is there any problem with a six-foot high fence abutting a property? I know the answer to that is no. But how about on the street? No. I said, do I need a Special Permit at all to construct a shed? No. But where we screwed up is that the shed in question is constructed less than five feet from an abutter.

Now Ranjit and DavidBurns came by,

checked it all out and they themselves concluded that there really is no practical place for this, for the location of these trash cans, because these trash cans are shared by the owners of 59 and 61 Jay Street, which would be the unit immediately above 59 the way they have it numbered. And the only possible place for it would be way back in the back of the yard. This continues to here. So we put it all on one page. Meaning the neighbors would have to come through, walk all the way down into the backyard to put their trash out, and then haul it all the way back up to the street. So they have historically been stored all the way up here. So we're just enclosing them.

So Ranjit and Mr. Byrne both said, look, truth of the matter is, that if you had put up a six-foot panel of fence, a six-foot panel of fence, and a six-foot panel of fence, and a pair of swing gates, you would be totally

in compliance. The fact that there's a roof on it puts it out of compliance. And I said, well, we have two choices: One is to take the roof off, which can be done. Which is sort of silly. One, because it's there. Two, because it keeps snow, leaves, rain, and more appropriately, raccoons, which are all over the neighborhood, out of the trash. And it just, you know -- or we can ask for a Variance. And will we be viewed as being troublemakers if we went for a Variance? And he said, no, go for a Variance.

So this is where we're pretty much coming to you. This is compliant in all ways by zoning and by Inspectional Services with the exception of the fact that there is a roof on it.

It is -- the highest point of it is five-foot, eleven and three-quarters. So it complies with the six-foot height. And most people, I mean, most people cannot see that

there's a roof on it. It looks like fence panels. I believe you have photographs of it in the file; correct?

TAD HEUER: So this is a four-unit?

DAN LABARRE: It's a four-unit building, yes.

TAD HEUER: So where do the other two put their trash?

DAN LABARRE: It was a duplex two-family originally. So this two-family has a ground floor and a second floor. They have driveway and a place for that trash on that side. It's like a mirror image. And these folks don't have a driveway because they were not allowed to put in a curb cut. So now they have a landscaped yard where the trash needs to go someplace. And we put it inside of this enclosure. I'll call it enclosure for lack of a better word, because I think it will help people better visualize what it would look without a roof which is to

say just like it looks like now.

TAD HEUER: When you -- this was just recently condoized?

DAN LABARRE: No. It was condoized probably about six years ago.

TAD HEUER: So recent history of what we think.

DAN LABARRE: Yes. Well, no, it wasn't like last year and this is all new stuff.

TAD HEUER: Right. The condoization of the property created the common areas and the exclusive areas; is that right?

DAN LABARRE: Yes.

TAD HEUER: Right. So you self-created the common areas to the front and the exclusive areas to the rear whereas you could have done it in reverse and put the trash to the rear?

DAN LABARRE: No, sir. Firstly,

they are all exclusive -- inclusive use of common areas. So each yard is exclusive use. There are rear yards and side yards. So No. 59 Jay Street has the side. No. 61 Jay --

KATHERINE PERDUE: The only common area is right in front.

DAN LABARRE: Literally where the little rose bushes are in front.

BRENDAN SULLIVAN: Just identify yourself.

KATHERINE PERDUE: Yes, my name is Katherine Perdue. I'm at 59 Jay Street.

TAD HEUER: Right. So when I'm looking at the plot plan, I see common area to be assigned right where you built.

DAN LABARRE: This is 59. This is 61. This is 63's, and this is 65's.

TAD HEUER: Right. So and --

DAN LABARRE: And in the front as she -- as Ms. Perdue points out, are some rose bushes. This is technically the only common

land that is not assigned in an exclusive use.

MAHMOOD FIROUZBAKHT: Which are the two units that are going to make use of the shed?

DAN LABARRE: Of the trash?

MAHMOOD FIROUZBAKHT: Yes.

DAN LABARRE: Where this is? Imagine it's split in half. The first and second floor of that building.

TAD HEUER: Right. So right here, so when this says common area, (to be assigned), what does that mean?

DAN LABARRE: I guess at the time when -- my speculation as of the time when they were drafting this and submitting the plot plans for approval to be converted to condos, they hadn't yet decided who was going to get which yard. That's my only speculation.

TAD HEUER: Okay, so where the trash bins are now, they're exclusively in 59's

property?

KATHERINE PERDUE: That's right.

DAN LABARRE: Yeah. Where the trash bins are now basically came with whoever got that property.

TAD HEUER: Right. So my question again goes back to the fact that this is -- the way these exclusive areas were set up is arbitrary; right?

DAN LABARRE: Uh-huh.

TAD HEUER: There's no reason that were this common area to be assigned, which is now been assigned to 59, it couldn't have been something along your rear fence which gets your trash bins out of the front yard and into the rear yard where they're, you know, I think the city would like them.

DAN LABARRE: That would then therefore be in these people's yard, because actually it would be hard pressed to put it. The windows are low enough in this building

for us to go five feet in any direction away from an abutter limits us to right here because technically while there is a fence here, there's room for a trash enclosure, and these people's yard.

TAD HEUER: Right.

DAN LABARRE: But since we didn't contract with these people to do the landscaping --

KATHERINE PERDUE: I guess we view it as a favor to our upstairs neighbors to put the trash cans in our yard because it's near the street where we take it out.

TAD HEUER: Right, and I guess the --

DAN LABARRE: I don't think it's in the docs that they have, that's where they put their trash. It just sort of how it has worked out. The second floor's of this side and this side put their trash here and here. It's just how they have, as neighbors figured

out how it goes.

And like I say, Ranjit and Dave both walked through in this yard's limitations. And basically the only place to put it would be right here which are compromised, the basement window of these owners of the second floor because the way the basement works is they have this half of the basement and the first floor is that half of the basement. And two, it would be compromised in their upper window. And three, this is their egress gate in the attempts or desire needed to move large pieces of furniture into the backyard or whatever and it would be right in the middle of that gate. So they walked around and they basically said, not only is there no practical place for it, even if it were placed back here, we are talking about going back some -- to the tune of 45 feet back from the street to haul the trash back and forth.

MAHMOOD FIROUZBAKHT: How would they access, how would the other condos access that shed?

DAN LABARRE: The way it is here?

MAHMOOD FIROUZBAKHT: Yes.

DAN LABARRE: These are all the front doors. So they would just walk out and right into the where the trash is. Where they've been doing for years.

MAHMOOD FIROUZBAKHT: Meaning along here?

DAN LABARRE: The trash has always been right here.

MAHMOOD FIROUZBAKHT: Yes, but I'm saying if the shed was built back here, how would these folks access the shed?

DAN LABARRE: They would have to come out -- this is their closest door. Walk passed the passageway, through their back patio, out the gate, and to the shed.

MAHMOOD FIROUZBAKHT: And then

where would they take the trash out to?

DAN LABARRE: Back out through across this yard, back through their gate, across their patio, down this walkway, out here through the landscape and out to the street.

MAHMOOD FIROUZBAKHT: Is there a way to go back here and out?

DAN LABARRE: No.

KATHERINE PERDUE: No.

DAN LABARRE: This is a fence with an abutter. This is a fence with an abutter. And this is a fence with an abutter.

Now, this fence around the entire property runs at six feet high. Right here it drops down to -- it dropped down to four feet. What we have -- did was take out the last eight-foot section of the four-foot fence and install a six-foot panel. And the shed in question was designed specifically to look like an extension of the fencing.

MAHMOOD FIROUZBAKHT: Do any of the abutters have a problem with the shed?

DAN LABARRE: I believe one or two does. Is that in the file? There's a picture of the shed from --

TAD HEUER: Previous to now.

DAN LABARRE: That is right now.

TAD HEUER: That can't be right?

DAN LABARRE: Yeah. Here's the deal --

TAD HEUER: You just said your fence is six feet high and that's not.

DAN LABARRE: No, no. Sir. Let me rephrase. The fence is six feet high running to roughly here-ish.

TAD HEUER: Yes.

DAN LABARRE: And then it had dropped to four feet.

TAD HEUER: Right.

DAN LABARRE: So this fence --

TAD HEUER: Dropped four feet.

DAN LABARRE: -- came along here and dropped to four feet and basically tied into here.

TAD HEUER: Right.

DAN LABARRE: The perspective being what it is. We dropped the six-foot section and built the shed to look as much exactly like a fence, including the corner post, etcetera. There is a lattice scheduled to go across here to tie it all together. It just isn't installed until we can resolve the shed thing. So we didn't bother investing in the mahogany lattice. And so you come in here, there's a little bit, sort of a courtyard that allows you access to where the trash goes. There's a gate which keeps people from just wandering into the landscaped part of the yard. And there are a number of neighbors who are quite thrilled with it. The picture before that you were looking at was showing the context of the street. It's not a street

like you'll find in Boston's South End where the buildings are pretty much identical, the stoops are identical, the wrought iron fencing is identical. And anything that isn't conforming to that rhythm looks bizarre. It's a street of really mixed fencing and heights and --

DOUGLAS MYERS: Is there any other structure near the street on Jay Street, from the length of Jay Street starting at Kinnaird Street and going to Western Avenue that bears any faint resemblance to this structure?

DAN LABARRE: There are two fences on two properties --

DOUGLAS MYERS: Not fences, structures. Not fences, structures.

DAN LABARRE: There are no structures that look like because this one basically looks like a fence and great care was taken so that it would look just like a fence. So there are six-foot fences

abutting the street.

DOUGLAS MYERS: But no other structures whatsoever?

DAN LABARRE: But there are technically no other structures. But as I say, great care was taken to make it look no more or less than a six-foot fence abutting the street, as is the condition in one or two of the other properties on the street going to Western Avenue. I mean, I tried to make it look as much in context as I could while still serving a practical purpose.

As far as it being a structure, like I say, I mean, we can take the roof off -- the roof which you don't see, off of it, be completely compliant, and it will look just like it looks now. So that's what we need to do in order to be compliant. It's not gonna change what it looks like, and it's not gonna change technically having a structure there. That is not against the rules.

TAD HEUER: It does technically change having a structure there. That's the whole point.

DAN LABARRE: What's that?

TAD HEUER: It does change having a structure there, because the structure is a legal defined term, and you'd have a fence.

DAN LABARRE: Yes, we would have a fence with panels and doors. Okay. Yes, we would have fence enclosure. Forgive me, not a structure. You're good especially after three and a half hours of doing this.

TAD HEUER: It's my job.

BRENDAN SULLIVAN: Let me -- any other questions?

THOMAS SCOTT: I mean, the bins themselves, that we get from the city, they're about four feet high?

DAN LABARRE: Yep.

THOMAS SCOTT: Why does the thing have to be six feet tall?

DAN LABARRE: Lift up the thing and be able to put a bag of trash in.

THOMAS SCOTT: But if there was no roof on it, you could lift up and throw the stuff in. I guess my objection is the height of it, and especially being in the front yard. I just find it as being really foreign to the landscape of this street and it --

DAN LABARRE: I think it would look less foreign if it weren't brand new cedar against all the faded cedar nearby.

TAD HEUER: I think it looks less foreign if it were not as tall as anything else on the street.

DOUGLAS MYERS: I find myself mildly dismayed by the argument to somehow to pass this off as if Jay Street is a funky environment and that this --

DAN LABARRE: No.

DOUGLAS MYERS: -- and that structure enclosure does not violate the

appearance, is not glaringly out of place on Jay Street as it now exists.

DAN LABARRE: I didn't mean to imply that Jay Street is a funky place.

DOUGLAS MYERS: I didn't say you did.

DAN LABARRE: It's just a place that has a haptic mix of fencing styles, architectural styles. So there's no one thing that I would define Jay Street. There's picket fences, there's chain link fences, there's vinyl white fences.

DOUGLAS MYERS: And there's nothing like this?

DAN LABARRE: There is --

DOUGLAS MYERS: Not anywhere on Jay Street.

DAN LABARRE: There are six-foot panels of fence that abut the street.

KATHERINE PERDUE: Right across the street.

DAN LABARRE: And across the street there are six-foot panels that are right on the street.

DOUGLAS MYERS: Other than fences there is nothing like this?

DAN LABARRE: There are only fences. And with the removal of the roof we technically would only have a fence.

BRENDAN SULLIVAN: Okay.

DAN LABARRE: And as for shortening it, I think we'd end up looking worse than better. Because if it were short enough -- especially with -- either with or without a roof, for the average person to look over and into a trash enclosure and see the trash cans, it sort of defeats the whole point of trying to enclose and hide the trash cans. The height of it being six feet really nobody can see.

TAD HEUER: Isn't the distinction that whether someone wants to peer into your

trash, I don't know anyone that wants to peer into trash, maybe some people do, but certainly don't. I don't want to go peering into people's trash cans.

DAN LABARRE: No, I'm saying peering in the tops of the cans.

TAD HEUER: Indeed. But aren't most people driving down Jay Street or walking down Jay Street and what they're looking at is the appearance from a pedestrian or a car on Jay Street? They're not looking into your trash. Aren't they looking at what the streetscape looks like in which a situation a four-foot fence is much less obtrusive than a six-foot fence. Granted you're not looking into the trash cans, but no one's actually doing that unless you're standing right on top of it. You see the structure from both ends of the street all the way down the street. You don't see the tops of your trash cans unless you're

standing about three feet from them. I think that's a huge difference between height.

DAN LABARRE: So if we were to cut that down to a four-foot fence and the trash cans were to be sticking out this high with their handles, it sort of defeats the point bothering after they're closed.

TAD HEUER: Four-foot two inches fence. You calculated in a lid height under the presumption that, you know, if this fence weren't there, they would be there with their lids open. That's certainly not the point.

DAN LABARRE: No, no, no. The reason you asked why this structure, which shouldn't have been a structure, was built to be a six feet was that one, there are six-foot fences all over Jay Street. Across the street, there's a six-foot fence. And we have a six-foot fence that drops to a four. And now for sake of argument, without a roof, goes back to a six-foot fence --

TAD HEUER: Right.

DAN LABARRE: -- that would have -- ultimately is going to have a lattice tying it all together very nicely. The idea, of course, being to just minimize the impact of the trash cans.

TAD HEUER: Sure. But if your goal is to minimize the impact of the trash can, you started with six-foot fence in your backyard, you drop to four and a half foot fence so it all ties together in that way so --

DAN LABARRE: It would be a four, so it would be a six-inch jog or foot jog.

TAD HEUER: Or, you know, top off the fence with extra money you'd save for not having to put the lattice. And then you're back to a somewhat above trash can height enclosure that is not six feet high, cannot be seen by everyone who says is that a garden shed in the front yard? And people approach

it closely with curiosity and they peer and they find out it's trash cans, well so be it. But I mean my personal -- well, my vote on this case will be that it is a structure that is violating front yard setback with no hardship. My suggestion would be that it will be much more in keeping with the neighborhood and much less obtrusive if it were shortened into something that were four feet or so and were no longer a shed. I'm not sure if shortening it that far would still make it a shed, but that's something I'd be willing to look at.

DAN LABARRE: Well, the thing that makes it the definition of making it a shed is because it has a roof, period.

TAD HEUER: That high it would be a shed.

DAN LABARRE: If it had a roof, yeah, presumably.

TAD HEUER: One foot shed?

BRENDAN SULLIVAN: Makes it a shed
is --

TAD HEUER: Right, I mean, or it's a
deck; right?

BRENDAN SULLIVAN: Well....

TAD HEUER: I mean there's a certain
height.

BRENDAN SULLIVAN: Depends on what
you're using it for.

TAD HEUER: Indeed.

MAHMOOD FIROUZBAKHT: To the extent
you don't get relief to maintain that shed,
what's the plan?

DAN LABARRE: We're going to take
the roof off of it. So it's going to look
just like it looks now.

MAHMOOD FIROUZBAKHT: Without a
roof?

DAN LABARRE: Without a roof.
Which means it's going to get full of snow and
leaves and occasional raccoons and rats.

That's the goal to make it compliant. Either by your vote to giving it relief or you're saying, no, we're not going to let it go, then we'll make it compliant.

MAHMOOD FIROUZBAKHT: And after having conversations with the abutters who oppose this --

DAN LABARRE: We have one abutter -- there was a number of abutters, a number of abutters like it. One abutter went so far as to submit a letter. I do believe you have in the file saying that they wholeheartedly approve. I know there's another abutter who I think it's well constructed but too large for the space and I believe they're here tonight; right? Or are you here to support it?

BRENDAN SULLIVAN: I'll open it to public comment in about three seconds.

DAN LABARRE: Okay. So my to my knowledge walking by and having worked there

most people think it looks great not to look at the trash cans.

THOMAS SCOTT: Can I make one more comment?

BRENDAN SULLIVAN: Yes.

THOMAS SCOTT: Most people put their trash in their backyard. I mean, because you chose to put your trash containers in the front yard, you've said okay, it's a -- it doesn't look that good so we better build something around it. When in fact if you just put them in the rear yard, where actually you have the six-foot fence, you could actually construct something around it in the rear yard and it would have very little impact on the neighborhood. Where this is in the front yard and really deteriorates from the streetscape I think. It just becomes a large object that looks out of place. And it's only because you want to put your barrels in the front yard to make it easier on trash day

to put them out. Well, everybody drags their barrels from their rear yard to the street --

DAN LABARRE: Probably over a driveway, though. Not through a landscaped yard.

BRENDAN SULLIVAN: I read it that the backyard was developed into a Shangri-La, an outdoor living space and it's a beautiful spot and lovely and trash barrels don't fit into the plan.

TAD HEUER: Indeed. And that goes back to my next point that the designation of your comments that your exclusive space is wagging your dog here. If you wanted to designate your trash, it was the only place left. It should have been the other way around. Where you designate your trash bins and then you design your exclusive space around what's left.

MAHMOOD FIROUZBAKHT: See, I agree with that. But the problem is they didn't

develop the condo. They didn't designate the common spaces, you know, now they've bought into this development and they're going to -- they don't have rights to keep their trash bins in the back even they wanted to because if the neighbors in the back say, you don't -- you can't do that, they can't do that. So they're stuck with putting their barrels in the front which is going to look pretty bad.

TAD HEUER: They're a condo association. They can vote and do whatever they want.

BRENDAN SULLIVAN: Yes, they could change it.

MAHMOOD FIROUZBAKHT: I mean, they could, yes, but you could also, you know, go make deals with your neighbors about a lot of things but that's generally difficult to do.

BRENDAN SULLIVAN: All right. Let me open it to public comment, that may add

some more to it.

Is there anybody here who wishes to speak on the matter of 59-61 Jay Street? Please identify yourself and give and spell your last name.

AMY THOMPSON: Amy Thompson. I'm here to oppose.

BRENDAN SULLIVAN: And your address?

AMY THOMPSON: I'm at 57/55 Jay Street. I am a direct abutter.

BRENDAN SULLIVAN: Okay.

AMY THOMPSON: And I've owned the house since 1984 and I've never opposed any neighbor's decisions to approve their property. I do, however, take great dislike to this mammoth structure that was put up. It's -- it doesn't fit anything on the street. There are a few six-foot fences that run perpendicular to the street. This is clearly a large shed. This is another view

completely blocking my house. And this is my view now from when I look out the window and come out the door. So I'm very sorry, and this gentleman actually is an amazing carpenter and he's been working on this incredible landscape property for probably eight weeks. If you look at the plans, they actually had a significant amount of room in the side of the house where they chose to make a pretty elaborate patio. And there was no reason to put the trash at the front. And it doesn't conform to anything and I would like them to move the shed and put the trash in the back.

BRENDAN SULLIVAN: Okay, thank you. Anything to add to it?

CRAIG NAJJAR: Yeah. I think --

BRENDAN SULLIVAN: Just give your name.

CRAIG NAJJAR: Craig Najjar,
N-a-j-j-a-r.

Actually I'm very upset at the approach you're taking here tonight. And the last thing I want to do is be in disagreement with my neighbors in any way. But, you know, to think that the neighbors like this thing after they've come up to me because they thought I built it, and said what are you doing, putting an outhouse in front of your house? Because that's what it looks like. It doesn't look like a nice shed. You use nice wood, but it looks like an outhouse in the front of the yard. I mean, I don't know why you couldn't have, you know, consulted with the other neighbors in the condo and put the thing in the back like the rest of the neighbors do. But instead, it's basically right in the front of our house we have to smell the trash going in and out of the house. And it also is a safety issue because less than six months ago, somebody actually broke into the house during the daylight and they

walked right in. So now there's no view to the street from the bay window looking out that way so that thing's there. Even though that's not in the Ordinance, it's, it's courtesy. It's consideration. It's thoughtfulness. And if I was going to do something that affected my neighbor on the line, I would have called you and said listen, I want to do this, I have a need for this. We could have had a discussion. But that never took place. So it's, it's really, I mean, besides it, you know, thinking that the Ordinances don't make a difference, it was very inconsiderate. And the result is terrible honestly. And the neighbors are coming up to me saying something very different than what I'm hearing from you this evening. And that's it.

BRENDAN SULLIVAN: Thank you.

AMY THOMPSON: May add one more?

BRENDAN SULLIVAN: 30 words or less.

AMY THOMPSON: Our trash is along the side of house. We have a very narrow way. I have to walk back and forth. It's almost to the back of the house. And they could have done a very similar thing. And I do have to say that the joke in the neighborhood is the new outhouse in front of this lovely condo association. And I know that the other members of the condo who -- at least one of the members and the people across the street are not in favor of this. It doesn't conform with the neighborhood.

BRENDAN SULLIVAN: Okay, thank you.

CRAIG NAJJAR: One last thing.

BRENDAN SULLIVAN: No, that's it.

There is correspondence in the file from a David Ring and Mike Langlois, L-a-n-g-l-o-i-s, 67 Jay Street. (Reading) We are writing to express our opinion for 59-61 Jay Street and the request for a Variance to maintain a shed that was recently

built in their front yard. We strongly encourage the BZA to approve the Variance request. The shed is not your typical plastic or metal shed purchased at Home Depot. It was hand built by skilled carpenters and looks wonderful. Indeed it improves upon the look of the neighborhood. For one, the homeowners keeping their four unsightly garbage and recycle bins outside against the building, they're now enclosed in this beautiful shed. The shed helps hamper the rat problem in our neighborhood, and we believe the pro-active beautification efforts of the owners of the 59-61 should be encouraged and we kindly asked to you approve the application.

Okay. Is there anybody else who wishes to speak on the matter?

CRAIG NAJJAR: I would like to say one last thing.

BRENDAN SULLIVAN: Thirty words or

less. Fifteen words or less.

CRAIG NAJJAR: I just -- I think the solution -- if you think the solution is just taking the roof off the thing and leaving that structure there, it's completely disrespectful. That's it.

BRENDAN SULLIVAN: All right. Let me close public comment.

Any questions from the Board at this point?

DOUGLAS MYERS: No questions.

THOMAS SCOTT: No questions.

BRENDAN SULLIVAN: Okay, your final parting shot.

DAN LABARRE: Obviously no offense was intended since we thought we were working within code compliancy and hence the property rights of these folks. It wasn't intended to be a disrespectful to the abutters. My question is if people can visualize the six-foot panel, eight feet long, there's a

connector that's about plus or minus, I think, about 15 feet, if those heights were connected with a lattice, would that be conceived of more appropriate? Or if the remaining four sections were removed in six-foot sections inserted so it was one continuous run of six, would that be to people's minds be less offensive, less conspicuously a trash enclosure and -- but without a doubt be consistent with the rest of the neighborhood.

BRENDAN SULLIVAN: Well, I'll be honest with you, I for one consider a six-foot solid fence on the front line of a house property to be a wall, to be unfriendly, to be not very considerate, and sort of somewhat exclusive or inclusive. It's what's inside of this is ours and yet, you know, the neighborhood is the neighborhood. I do not like six-foot high fences.

DAN LABARRE: Well, that was our

thought for tying it across so that the heights would be unified but with a lattice so it's open.

BRENDAN SULLIVAN: It still doesn't mitigate that there, right in the front of it.

THOMAS SCOTT: I think that's a discussion you have to have with your neighbors. I mean, you guys have to live next-door to one another and you want to be cordial to one another. I think, you know, that's a discussion, you know, we can vote on what we see, but I mean, you guys have to live next to one another. So I think the courtesy, the common courtesy would be to have that discussion with your neighbor about what is appropriate and to take into consideration their -- they're talking about security, you know, visual security. I mean, there's some issues here that really should be discussed. So that's my opinion.

BRENDAN SULLIVAN: Okay. Doug.

DOUGLAS MYERS: I completely support what Mr. Scott just said. As far as the merits of the case are concerned, I mean, I just -- I just want to say for the record that I walked Jay Street up and down this afternoon, and while there certainly are some six-foot fences, they are a distinct minority. And most of the fences along Jay Street do not much exceed four feet. I didn't make a count. But the record should reflect that any effort to create a different impression about the appearance of Jay Street is inaccurate, at least based on my observation this afternoon. It seems to me, I don't know how determined you are to go ahead regardless, but it seems to me that, you know, perhaps discussions with your neighbors would lead you to change your plans completely. But it seems to me to minimize the visual impact of an object that is way too conspicuous, it should be the fence around

it, should be reduced to four feet, and the object itself should be reduced to a height absolutely as little above four feet as possible in order to accomplish the goal you have in mind. But to the extent the vote goes forward as to presently posture and obviously I will vote against it.

BRENDAN SULLIVAN: Okay. Mahmood.

MAHMOOD FIROUZBAKHT: I think this is an unfortunate circumstance because if we don't grant relief, then I think everyone loses so to speak to the extent that that enclosure is maintained. But I don't see the hardship necessarily, whether that hardship standard is met. And I think the approach in not engaging with direct abutters is not good form and probably just not a good idea in doing something like this. So I think as a result of that, you sort of put yourself in a tough position, you know, with the Board. But, so, if we turn this down, I think the

abutting neighbors lose because their visual impact will pretty much be the same. So I guess I just wonder whether there is some alternative right now that we can think of that would give these folks a chance or, you know, some time to sort of figure out a plan that would allow this to be an enclosure with a roof that doesn't have quite the same impact, you know, that we're hearing tonight.

BRENDAN SULLIVAN: I don't know.

DAN LABARRE: May I ask a question? If it were cut down to four feet and you walked by and you saw a roof right at this height, would that not look stranger to you than looking at what fundamentally looking like a six-foot fence walking by? And like I say, easily enough, you can tie that six-foot fence down to the existing six-foot fence. I heard your concerns regarding that, but that's one way to make it all look like it always was there.

TAD HEUER: Except when you're walking and looking at it going down the street, you're looking at two side-by-side. You look at the width. So the photographs that you provided are head on. That's the one that we're thinking of that the six-foot panel that's flush to the street. There's a significant --

DAN LABARRE: And it returns here.

TAD HEUER: Right. This is what people see walking down the street. They see a side-by-side double shed that takes up their entire view as you approach until you pass it. It's the bulk of this, not just the edge heights of it that is the issue and that's why it's a structure because once you put a roof on it, you could live in there if you wanted to. So I think it's that issue of not just height, but you've created bulk through a quirk in the Ordinance that allows bulk without a roof that is indistinguishable

to be deemed a fence. I certainly don't think that was the intent and purpose of the Ordinance even though that is what we're tied to. And I would echo what everyone else has said that I feel I'm in a tough place because there's not much I can do to prevent you from doing this except take a vote to tell you to take the roof off. But I would encourage you very much, as Mahmood has said, to realize that you're going to be living next to these people hopefully for a long time, and you can accomplish a similar result to what you want. I think it's self-imposed because I think it should have been done in the rear as Tom has pointed out. But be that as it may, a four-foot something that is tucked behind the existing fence line of the street, which is as I'm looking at it, runs all the way down at least 10 houses, is much more in keeping with the neighborhood and much less obtrusive than a six-foot tall structure that draws

everyone's attention going in either direction. And certainly here you have, if you look at your own fence in the front yard, you've got pickets and then you've switched to this, if I'm looking at these -- the rest of these correctly, just in the photograph, those are essentially picket or similar divided fence. You've got a solid fence here. I just think everything about this says not this area, capping it with the fact that it shouldn't be there in the first place. I mean, there's no way I can vote for it. I would just encourage you to speak with your neighbors and potentially reach a solution.

KATHERINE PERDUE: Right, but if we cut it down, hypothetically speaking, we would still have to come back to you; right? Because if it had a lid --

TAD HEUER: If it had a lid.

KATHERINE PERDUE: Then we would be in the same position. So what's our

incentive to do that, really?

BRENDAN SULLIVAN: Well, I think that may be more favorably received.

TAD HEUER: Well, it would be more favorably received. I might be able to go that way. I think your neighbors would be much more pleased. I will say I don't take kindly to threats, but I'll let that one go for a moment.

DAN LABARRE: Oh, I didn't mean it.

KATHERINE PERDUE: Oh, I didn't mean it as a threat. I was just asking. I was just saying that that didn't address the question.

BRENDAN SULLIVAN: I know what you're saying.

MAHMOOD FIROUZBAKHT: What if you put like a pitched roof on a shorter structure, you know?

DAN LABARRE: I guess the point is, if you're looking like a roof, it really

starts looking like a shed.

BRENDAN SULLIVAN: Do you feel that there is any area for compromise at all?

AMY THOMPSON: They have --

BRENDAN SULLIVAN: A reduction on the height of the shed or anything?

AMY THOMPSON: Well, first of all, it's a little misleading the way it was described in that they do have significant room further back where their trash could go. It's misleading not to note that. And if you could see that, it's not even the other people's area, it's their area.

BRENDAN SULLIVAN: Okay, but and I guess the question is with the understanding that if they were to take the roof off of this, that you would see substantially the bulk of the structure and they could leave that there. There would be trash cans inside of it. The alternative would be to reach some compromise to legalize it by possibly

reducing it or making it a little bit more friendlier. Right now to me it's very unfriendly. So I guess my question is: Would it be fruitful for you to have some conversation, the two of you, to come up to some agreement? Or is it that you -- this may not be going away even if --

AMY THOMPSON: I understand that. And actually I had a little speech written up, and one of the things in it was that not a speech, but I didn't want to get tongue tied. Is I want to be a good citizen. I want to be a good neighbor. Never was I once involved in any discussions in the planning. All of a sudden this thing was there, and I would like to have some sort of a dialogue. I do think that there could be some agreement on something that would be more fitting with the neighborhood.

BRENDAN SULLIVAN: Okay.

So with that said, then, we could

continue this matter for a period of, it would have to be a month. And you could come back and you may say we have an agreement or you may come back and say we have agreed to disagree.

KATHERINE PERDUE: Okay, that seems reasonable.

BRENDAN SULLIVAN: You're going to have to assemble the same five people. Does this sound reasonable to members of the Board, to see if we can't pull a rabbit out of a hat somewhat?

TAD HEUER: Sure.

AMY THOMPSON: If I'm out of place just tell me. You let these other people go and have a discussion. Would you be willing to do that?

BRENDAN SULLIVAN: Sure.

AMY THOMPSON: I think this is a small issue and I think we can resolve it tonight.

BRENDAN SULLIVAN: Come back in an hour or so?

DAN LABARRE: It's 10:30. No, I think we should make an appointment to get together on-site and talk and show lines and what do you think about this, what do you think about that, would be far more productive than --

BRENDAN SULLIVAN: It will be hour and a half.

DAN LABARRE: Way far more productive.

BRENDAN SULLIVAN: What I hear is a motion to continue this matter.

MARIA PACHECO: We could do March 8th.

BRENDAN SULLIVAN: March 8th.
We're all here?

MAHMOOD FIROUZBAKHT: Yes.

TAD HEUER: Yes.

BRENDAN SULLIVAN: We'll continue

this matter until March 8, 2012, at seven p.m. on the condition that the Petitioner change the posting sign to reflect the new date of March 8th and the time of seven p.m., and that the sign be maintained at least 14 days prior to that.

If there are any new submissions, any new drawings, plans, that they be in the file by five p.m. prior to the March 8th meeting. So by five p.m. on the Monday prior to, you should have new drawings, sketches, or whatever you're going to do.

MAHMOOD FIROUZBAKHT: And could I just add that even if you come up with a new design that may be satisfactory to your neighbors, to the extent that it's a shed with a roof on it, you still need to meet certain standards, you're not guaranteed you would meet that standards back at the Board. So to the extent that you could come up with an option that's viable, you know, your condo

docs, we don't. Where your trash could be placed somewhere that's not so visible, boy, that would be pretty good. So if that's something that could be figured out, I think that could solve some of the issues that we're dealing with.

DAN LABARRE: I don't know if it's asking too much and quite possibly it is, I know that you had taken the opportunity to walk by and review the project in advance of this meeting, if you were planning on being in that neighborhood again so I could walk you through the property and ask you where a good place to your mind would be to put it in the back, I would more than happy to make that appointment.

DOUGLAS MYERS: Thank you. I appreciate the good will involved. I don't think that kind of a meeting is one that I could undertake with you.

DAN LABARRE: Just trying to reach

out --

BRENDAN SULLIVAN: I understand.

DAN LABARRE: -- as much as possible to solve the problem.

DOUGLAS MYERS: I understand. And I respond positively in spirit.

BRENDAN SULLIVAN: It crosses our ethics.

DOUGLAS MYERS: Not allowed to be one-on-one with the party of the case.

BRENDAN SULLIVAN: It's a nice gesture. On the motion to continue this?

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Heuer, Scott, Firouzbakht, Myers.)

* * * * *

(10:30 p.m.)

(Sitting Members: Brendan Sullivan, Tad Heuer, Thomas Scott, Mahmood Firouzbakht, Douglas Myers.)

BRENDAN SULLIVAN: Let me reopen

case No. 10201. Mr. Hanley, give us a short synopsis of what went on.

DAN FARBMAN: I'm sorry, I just want to -- when Mr. Hanley represented that everything was fine. I want to actually say what we agreed to say. I didn't actually say I approve of all of these plans.

BRENDAN SULLIVAN: You'll have a chance.

DAN FARBMAN: Okay, I just wanted to make sure that that was clear.

BRENDAN SULLIVAN: Yes.

ATTORNEY JOSEPH HANLEY: Actually, for the record, I didn't indicate that things were fine. I said, we had a good discussion. Thank you.

BRENDAN SULLIVAN: Okay.

ATTORNEY JOSEPH HANLEY: So, we were able to speak with Mr. Farbman and Mr. Teague and Mr. Brandon. I will state for the record that, and I think this Board is aware, that

this has been over a year of outreach, extensive outreach and discussions with the North Cambridge Stabilization Committee, with Mr. Teague, with Mr. Brandon. We are -- it's initial form of substance. We have form over substance. We have an agreement in principle with the neighbors. We've agreed to a series of issues and modifications and the like on this. And the question is, quite frankly, in what form that agreement is. And we've been asked to make that a recordable document and put it on record and we're just not willing to do that. But we're more than willing to agree to all the terms which we've represented, landscaping conditions, window treatments, sidewalks, condominium form of ownership, just to give you an example. To hire a certified arborist, parking lot, lighting, air conditioners on the roof. Again, the neighbors can speak for themselves, but this

has been a very extended and I think outreach process.

TAD HEUER: I have a procedural question on that point. So you say you don't want it to be recorded, and I understand usually if you're doing a commercial lease, you don't want your terms recorded. And I understand that.

ATTORNEY JOSEPH HANLEY: Right. It's a condominium scheme.

TAD HEUER: I do that.

Here where these will presumably be conditions of granting the Variance, they're going to go into the file and be public anyway.

ATTORNEY JOSEPH HANLEY: Sounds good. Let's make them all provisos to your decision. Happy to do it.

TAD HEUER: So that's -- it's just the recordability --

ATTORNEY JOSEPH HANLEY: Yes, sir.

TAD HEUER: -- at the Registry. Not necessarily having them publicly available in some other form?

ATTORNEY JOSEPH HANLEY: Yes. And I'd be happy to share the text of this agreement, and, again, certainly Mr. Teague can speak for himself. He's been the primary person. But we're not going to agree to a recorded document with a condominium scheme being contemplated. Simply not going to happen.

MARC RESNICK: In the form. It's not a recordable document. How would you get it released? Like, what would happen? It's in the chain of tunnel. I could close on the condos and not be able to sell any of them because they said my arborist wasn't certified properly or some --

ATTORNEY JOSEPH HANLEY: Right. Either way.

TAD HEUER: No, I understand.

ATTORNEY JOSEPH HANLEY: Either way. It's your decision. You have the ability to provisos. It's in public record, and we're happy to do that. We have come a long way. Certainly again they can speak for themselves. We've made a significant number of modifications to this overall project. And I would say for Mr. Farbman, we welcome him as a new neighbor. But the truth of the matter is there has been construction going on at this site immediately abutting him. It was going on when he was looking at that property, when he bought that property, there's no secret. Everyone knew this development was happening. We've done our best over the last year, numerous meetings, numerous outreach. We can't control if someone comes in a month from now or two weeks from now and buys another place. What we can control is we agree to all these numerous agreements and you make them proviso with the

neighbors.

DAVID O'SULLIVAN: The other thing I'd like to add that the drawings that you have here, reflect the things that are in the agreement. Meaning where we're locate HVAC. Where we're putting landscaping. Where we're putting parking. Where -- what type of lights we're putting.

BRENDAN SULLIVAN: That was my question. What is the real date? I have -- well, again, I'm going back to No. 18 which is the first issue before us, is on the subdivision. So I have a certified plot plan here in front of me which is dated 11/17/11 by a Scott Charles. Is that the correct current plan.

ATTORNEY JOSEPH HANLEY: Yes.

BRENDAN SULLIVAN: Okay. Now, if you would. Again, just re-introduce yourself for the record.

DAN FARBMAN: My name is Dan

Farbman, F-a-r-b-m-a-n and I live in 14 Cottage Park with my partner whose name is Brooke Hopkins. What I said to these folks, and what I want to say to you guys, is that I absolutely -- I don't feel comfortable saying when I look at the plans, I know that there's no impact on my property. What I do -- what I can say is that I was not in the hour that we sat there, I didn't find a problem that had been hidden. The thing that gives me pause is that, you know, Zoning rules are there for a reason and they're probably there to protect me. And when so many variances are being asked for, I don't know exactly in what ways those all affect me. I haven't discovered a way that they have, I don't have a specific objection. So I'm not coming before you telling you, yes, don't -- you know, I object in this way. I am coming before you telling you that from my own point of view I don't have enough

information and wouldn't without more study, and don't want to represent for my partner, who couldn't be here tonight, what her feelings would be on the project. So that's where we left it. That's what I said to them, that's what I'll say to you, and, yeah, that's where I stand.

BRENDAN SULLIVAN: Okay.

Any questions? Tom, any questions at this time?

THOMAS SCOTT: No.

DOUGLAS MYERS: No questions at this time.

MAHMOOD FIROUZBAKHT: So, clarification on this issue of these conditions being in recordable form, so to the extent that we -- and I haven't really very closely studied the list of conditions, but --

BRENDAN SULLIVAN: Well, do these conditions have anything to do the

subdivision? I'm really trying to do three distinct cases here.

MARC RESNICK: All the conditions are on the 22 or 27 Cottage Park properties. There's nothing that relates to the house.

BRENDAN SULLIVAN: Okay. So we can hold those for discussions for that.

MAHMOOD FIROUZBAKHT: Okay.

BRENDAN SULLIVAN: Do you have any other questions?

MAHMOOD FIROUZBAKHT: No, not on this case.

BRENDAN SULLIVAN: Okay.

Tad, anything?

TAD HEUER: No.

BRENDAN SULLIVAN: Anything else, Mr. Hanley regarding the subdivision?

ATTORNEY JOSEPH HANLEY: Other than to restate for the record that I think I know you have unique circumstances here that support the grant of relief, and in

particular these are separate and distinct uses and structures that have existed in a subdivided fashion historically for decades until the merger. And the grant of relief will not change any of the existing conditions with respect to the dimensions of the existing two-family and the four-story building which we're seeking to convert.

BRENDAN SULLIVAN: Okay. Let me make a motion to grant the relief requested for the subdivision of the merged properties at 18 Cottage Park Ave. and 22 Cottage Park Ave.

The Board finds that a literal enforcement of the provisions of the Ordinance, Section 5.31, 6.43.6, and 6.441B would prevent the property from being used, maintained, or improved without being encumbered by the existence of another structure on the property.

The Board finds that the proposal for

relief from the Ordinance is fair and reasonable and allows this property and the structure thereon to be independent and standalone, a condition which enjoyed by the vast majority of properties in this neighborhood.

The Board finds that the hardship is owing to the fact that the property, which was developed before the enactment of the current Ordinance, hence non-conforming in nature, and developed and used for a totally different purpose than the adjoining purpose, has its own hardship.

Finds that the siting on the lot and the size of the structure preclude being able to comply with the Ordinance, Section 5.31, 6.43.6, and 6.441B.

The Board finds that desirable relief may be granted without either substantial detriment to the public good, and that relief may be granted without nullifying or

substantially derogating from the intent and purpose of the Ordinance.

The Board finds that the requested relief will be consistent with the intent and purpose of the Ordinance because it will allow for the continued use of a long existing dwelling in the manner that is consistent of the character of the surrounding neighborhood.

Is there anything else to add to that?

TAD HEUER: Does that include the variances for setback?

BRENDAN SULLIVAN: That is, that's all covered under 531.

TAD HEUER: Okay.

ATTORNEY JOSEPH HANLEY: I'm sorry, Mr. Chairman, is there reference Section 5.15?

BRENDAN SULLIVAN: I'm sorry which,
5 --

ATTORNEY JOSEPH HANLEY:

Subdivision 5.1 -- section --

BRENDAN SULLIVAN: And 5.15.

ATTORNEY JOSEPH HANLEY: That's violation.

BRENDAN SULLIVAN: That's correct. And so the relief is being granted for the proposal that is before us and the subdivision and the plan as per the plans submitted with the application. So the application from all of those sections of the Ordinance, and as per the subdivision plan which is submitted.

Does that get you there?

ATTORNEY JOSEPH HANLEY: Yes, sir.

BRENDAN SULLIVAN: Yes, okay.

All those in favor of granting the Variance for the subdivision of 18 and 22 Cottage Park Avenue.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Heuer, Scott,

Firouzbakht, Myers.)

BRENDAN SULLIVAN: Now the Board will -- let me make a motion to grant the Special Permit to create a common driveway with less than a five-foot setback.

The Board finds that the requirements of the Ordinance can be met. Let me get my notes here.

The Board finds that the requirements of the Ordinance can be met. The traffic generated or patterns of access or egress would not cause congestion, hazard, or substantial change in the established neighborhood. The proposed common driveway has been in existence for a substantial period of time and will not create any additional traffic, congestion, hazard or substantial change in established neighborhood character because it will continue to exist as it currently does.

The continued operation of or

development of adjacent uses as permitted to the Zoning Ordinance would not be adversely affected by the nature of the proposed use.

The common driveway has already been in existence and will not change traffic patterns or create congestion in the neighborhood.

Nuisance or hazard would not be created to the detriment of the health, safety or welfare of the occupant of the proposed use or to the citizens of the city.

It will allow for the continued use of an existing driveway for two adjacent properties which will obviate the need for -- which would have obviated the need for a curb cut, therefore, the requested plan is benefitting the surrounding neighborhood.

The proposed use would not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of the Ordinance.

The Board finds that the proposed common driveway is consistent with the intent and purpose of Section 6.43.6 of the Zoning Ordinance and the residential nature of the district.

All those in favor --

TAD HEUER: Should this be conditioned on the recording of appropriate cross easements?

BRENDAN SULLIVAN: I'm sorry, add that in, yes.

TAD HEUER: That the Special Permit be granted on the further condition that easements between No. 18 and No. 22 Cottage Park as represented by the Plaintiffs providing mutual easements for use of said driveway are recorded and returned to the Building Department before the signing of the Special Permit by the Chair.

MARC RESNICK: That's agreeable.

BRENDAN SULLIVAN: All those in

favor of granting the Special Permit?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Heuer, Scott,
Firouzbakht, Myers.)

BRENDAN SULLIVAN: Okay. That's 18
Cottage Park.

ATTORNEY JOSEPH HANLEY:

Mr. Chairman, that Special Permit, there's
one -- that was 6.43.6 and 6.441B just so I
assume that included both of those.

BRENDAN SULLIVAN: Yes, that was all
referenced.

ATTORNEY JOSEPH HANLEY: Okay,
thank you.

* * * * *

(10:50 p.m.)

(Sitting Members: Brendan Sullivan, Tad
Heuer, Thomas Scott, Mahmood Firouzbakht,

Douglas Myers.)

BRENDAN SULLIVAN: Now we're at 22 Cottage Park. And, again, you're asking for relief to subdivide 22 from 18?

ATTORNEY JOSEPH HANLEY: Right. Right. And as well as the Special Permit for the location of accessory parking. The plans show three parking spaces -- one handicap parking space, sorry. And then again the Special Permit for the common driveway which relates to the case that you just approved, and the Special Permit for the driveway setback requirement. So this is mutual.

BRENDAN SULLIVAN: Now, the plan that was approved by the Planning Board, do we have that, that's the January 30th?

ATTORNEY JOSEPH HANLEY: January 3rd I believe.

DAVID O'SULLIVAN: The Planning Board, we had proposed in the Planning Board

package 25 parking spaces which had three on Lot 22 and the balance 22 spaces on Lot 27 Cottage Street. The Board, without requiring an additional plan, had reduced the parking to one behind 22 and a maximum of 20 on 27 Cottage Park.

ATTORNEY JOSEPH HANLEY: And that's the final case.

DAVID O'SULLIVAN: So we sent to you for tonight a drawing dated 1/6 reflecting the 21 spaces as requested at the Planning Board.

TAD HEUER: Or as requested by the Planning Board; right?

DAVID O'SULLIVAN: Right.

BRENDAN SULLIVAN: What I have here is --

DAVID O'SULLIVAN: We actually gave you three alternatives.

ATTORNEY JOSEPH HANLEY: Right. Our application was made initially, and this

is through the community process, the neighbors had asked us to provide. Too many parking spaces as possible. So what we applied for and originally before you was three spaces at 22 Cottage Park Ave. and 22 across the street at 27.

DAVID O'SULLIVAN: The plan that's labelled 21 vehicles fits with the number of spaces and the basic locations that were approved by the Planning Board under the Special Permit.

BRENDAN SULLIVAN: All right, so this is --

MARC RESNICK: 21, that's it.

DAVID O'SULLIVAN: We also provided the Board with two other alternatives that showed 23 spaces or 25 spaces depending on how this Board felt.

TAD HEUER: So this one is dated January 6, 2012. This one is dated January 30th. Are they different or which one should

we --

DAVID O'SULLIVAN: Yes. The 1/30/2012 represents the change to the lighting as requested by the neighborhood group that is part of the agreement we're writing.

TAD HEUER: So we should use the 1/30?

DAVID O'SULLIVAN: The 1/30 would be the appropriate.

MARC RESNICK: Because it corrects the lighting on 27. The bottom.

The parking spots are the same. The difference is the light fixtures on the 27 Cottage Park may not correctly changed them as we agreed (inaudible).

BRENDAN SULLIVAN: So the 1/6 is not valid, it's the 1/30?

MARC RESNICK: 1/30.

BRENDAN SULLIVAN: Mr. Hanley, again, if you run very quickly.

ATTORNEY JOSEPH HANLEY: Yes, starts with the dimensional variances which basically relate to the existing non-conformities is four-story commercial structure that we're proposing to convert to a 16-unit residential building. Variance from Article 5, Section 531, minimum front, side, and rear yard. Maximum ratio floor area to lot area. These relate to, again, this is existing building does not conform to the subject dimensional requirements. In addition to that, we are proposing, which the architect can show you again, to a very small addition that is necessary for an egress that is handicap accessible into the side yard for an entryway. We're picking up approximately 80 square feet. And, again, that's just for the use of the entryway to make it handicap accessible. We're not picking up FAR for any additional living space or units or anything like that. So we would suggest that that

Variance in particular is appropriate with respect to the hardship requirement of the uniqueness for the site in order to be able to provide handicap accessibility to the residents which we'd need to do by the way, even if we kept the original use because it's noncompliant to accessibility code.

TAD HEUER: Why do you need -- why do you need the rear setback relief? Isn't that a pre-existing non-conformity?

ATTORNEY JOSEPH HANLEY: Existing non-conformity.

DAVID O'SULLIVAN: We are not changing the footprint along the back of the building along the rear property line. The existing property line is a couple feet off the back. The addition that we're talking about is here adjacent to the other commercial property. Fawcett Oil is what's present on that site. It's an extension of, I think, an existing one-story lobby. This

is basically that elevation. This is the existing part. This is the extension. Presently the building is non-conforming for any kind of handicap access at all. With the renovations of this building for any use, you trigger having to comply for handicap accessibility. Given its location on the site, there's really no way to put anything on the front sidewalk. It could work, so we thought we would -- the best way was to utilize the existing lobby that comes in at grade, and it presently goes into a stairwell at a half level. By extending this little piece here, we're able to put an elevator next to that with a half stop so that a person in a wheelchair can roll into the building, go into the elevator, and access all floors of the building.

This little square footage piece is what's added, it's one-story high, and it's too close to the side property line. So it's

in the required side setback as is most of the structure on that side. So that is the addition -- we actually -- the other thing that's really not noted, at some point in time this whole little courtyard had been filled in with a one-story addition which we had demolished and made exterior space again. So we're actually -- the net -- there's no -- there's actually a loss of square footage within the building by this proposal even though that's itself represents about eight square feet.

TAD HEUER: And that's masonry block? You're just adding on what you've already got there?

DAVID O'SULLIVAN: Right.

BRENDAN SULLIVAN: So basically you're adding 80 square feet. So you're going to go from a 2.54 to 2.55?

DAVID O'SULLIVAN: We actually don't even do that.

ATTORNEY JOSEPH HANLEY: That was on our application.

DAVID O'SULLIVAN: Okay, yeah, but we didn't really count this part. It was taken out in the FAR originally. It's kind of a built-in shed in the courtyard.

BRENDAN SULLIVAN: Back to sheds again.

DAVID O'SULLIVAN: Except I believe it was conforming.

THOMAS SCOTT: How do you get from the handicap parking space in the back of the building to that entrance?

DAVID O'SULLIVAN: Basically this would be people coming from the street, handicap. The handicap parking back here is adjacent to the rear entrance which has a ramp going in to a rear entrance in the building.

THOMAS SCOTT: Oh. Does that get you to the same elevator?

DAVID O'SULLIVAN: It gets you to

the same elevator. Basically we'd be coming in, the building here or here, and the corridors connect through. The hatching is basically the common area in the building.

THOMAS SCOTT: Okay.

MARC RESNICK: We didn't want the space to be on the opposite side of the street where a person would have to wheel across the street every time. So we put the one handicap behind the building --

DAVID O'SULLIVAN: Our concern was that street's fairly rough and cars going in and out and we didn't know what was going to happen with the property at the dead end. We didn't want to put someone in a wheelchair across that road.

TAD HEUER: I have a minor question. What's the in-fill material around the door? Is that -- right below the Emerson Lofts sign.

DAVID O'SULLIVAN: This is basically a parapet, small parapet. Right

now this roof is a concrete plank. So it's like a six-inch thing. So what we were doing is putting on some metal siding as a backer for the sign.

TAD HEUER: Okay.

DAVID O'SULLIVAN: Creating a parapet to dress-up the front entrance and identify it better.

TAD HEUER: Right. So here, so is that existing door --

DAVID O'SULLIVAN: That's existing, right, right.

TAD HEUER: Okay.

DAVID O'SULLIVAN: And we actually had told the Planning Board we'd work out with staff some of the finer details of the aesthetics on that.

TAD HEUER: Can you just explain again why you need a rear setback? You're pre-existing non-conforming but isn't that just a feature of the building that doesn't

need relief because it's already there?

DAVID O'SULLIVAN: It's basically because we created a new lot.

ATTORNEY JOSEPH HANLEY: Because of the change.

DAVID O'SULLIVAN: With the subdivision.

BRENDAN SULLIVAN: You're asking us basically to put our impromoto (sic) on an existing condition?

TAD HEUER: Right.

ATTORNEY JOSEPH HANLEY: Right.

BRENDAN SULLIVAN: That's what it is.

DAVID O'SULLIVAN: Right.

BRENDAN SULLIVAN: Okay. Any questions at this point, Mahmood?

MAHMOOD FIROUZBAKHT: The additional parking spaces in your other schemes do that include more handicap spaces?

DAVID O'SULLIVAN: No. It was just

additional regular spaces. Also by reducing the 27 Cottage Park from 22 --

MARC RESNICK: 22 to 20.

DAVID O'SULLIVAN: 22 to 20. We got rid of all the compact spaces so they're all full-size spaces.

BRENDAN SULLIVAN: Anything else? Questions at this point? I'm going to open it up to public comment.

TAD HEUER: Only that 22 and 27 are so inexplicitly linked because they have the same parking requirement, is it more efficient to do 22 and 27 simultaneously?

BRENDAN SULLIVAN: Well, except for the subdivision part.

TAD HEUER: Yes, but I mean if we're going to do -- it would make more sense in some way to have comment on the project rather than comment on the building and then comment on the spaces that serve the building.

BRENDAN SULLIVAN: I will -- because

22 and 27 are more intricately linked that we could open it, yes.

TAD HEUER: Okay. That's just my suggestion.

BRENDAN SULLIVAN: Okay.

Tom, anything at this point?

THOMAS SCOTT: No.

DOUGLAS MYERS: No.

BRENDAN SULLIVAN: Let me open it up to probably comment.

Is there anyone here wishing to be heard on 22-27 Cottage Park Avenue?

CHARLES TEAGUE: Charles Teague, 23 Edmunds Street. The agreements were referenced and my name was referenced and, you know, I've burnt a lot of time on this. And every time we, every time like this morning we were about at the finish line and there's always something. So that's why I asked for a delay. Is that it should just get done. We just went through this. We can't

put all this stuff as conditions of the variances. The, you know -- we don't -- the delay has less impact for them as you might think because they're already working on both projects. There's construction going on right now, and it's been going on for a while. So, you know, the relief is substantial. It's just the landscape plan was supposed to be approved by the neighbors. That's not happened. The one thing that can't go in as a condition is the fact that ownership, the second time we met with Mr. Resnick he said, if you make me build really large units, which these are, he said, I'll fill them with students, four or five students each. And I will -- I'll rent them and they'll all have cars and then where will you be? So ownership is really, really critical thing on this. And one of them, one of the many silly things that we can't put in as conditions is a bunch of health and safety places

surrounded by elderly. Mrs. Costa's chronically ill daughter lives, like, they say it's only two feet of their property, they're right there. And it's -- and they were very resistant to putting vacuums on the grinders for the re-pointing. It's just -- you know, we've tried really, really hard. You know, so I asked for a delay. And here we are.

BRENDAN SULLIVAN: But, you know, how long? When did this process start, Charlie? You know, and again, let me editorialize a little bit here. I think that this thing will just sort of get a life of its own and a monster grows out of this that we're -- what is before us is a very defined request for relief. The conversion of the building has already been established. They've already got the Special Permit for that. That's not before us. I mean, do we agree on that? Apparently not.

MICHAEL BRANDON: It's not finalized.

CHARLES TEAGUE: Not entirely. You're asking -- he's asking for multi-family rights across the street.

BRENDAN SULLIVAN: But they went to the Planning Board and they received a Special Permit for the conversion of the building.

CHARLES TEAGUE: I agree.

BRENDAN SULLIVAN: Okay. The North Cambridge Stabilization Committee advocated for the conversion, change in the Zoning to allow for that use. Yes or no?

CHARLES TEAGUE: No.

BRENDAN SULLIVAN: They did not?

CHARLES TEAGUE: For putting 5.28 in Residence B, absolutely not.

BRENDAN SULLIVAN: Was that zone not changed to allow for the conversion?

CHARLES TEAGUE: No, no. That was

in the BA-2 Zone. That was -- 5.28 clearly applied. 5.28 was changed to make it apply in Residence B after the Fox Petition changed.

BRENDAN SULLIVAN: All right, all right, I'm sorry. You're right. I confused that part.

CHARLES TEAGUE: There were two Zoning Amendments in sequence.

BRENDAN SULLIVAN: The thing is that the Planning Board has already given them the Special Permit to convert the building to residential use.

CHARLES TEAGUE: And what is missing is parking. You were asked -- in some sense there is no hardship here because --

BRENDAN SULLIVAN: They approved 21 spaces.

CHARLES TEAGUE: There's no hardship here because one of the elements of relief is for the elevator. There's already

an existing elevator shaft. They could put parking in the basement. There's --

BRENDAN SULLIVAN: I'm sorry, they can what?

CHARLES TEAGUE: They can put parking in the basement.

BRENDAN SULLIVAN: That's not the plan that's before us.

CHARLES TEAGUE: I understand that. I'm just saying there is no -- in some sense there is no hardship. In some sense I'm not even sure they're asking for all the right relief because in 6.22.2 is at one point the quonset hut was found significant and preferably preserved. You need -- it says -- and you can't build on the parking lot for five years. What's that?

So we asked for a delay and we had, we supposedly agreed, and they've been fooling around for five weeks now. We had everything agreed to. And we went in last

Thursday -- last Friday they said let's split the agreements, so we split the agreements. And so now today it's something else. It's always something. Here we are.

BRENDAN SULLIVAN: Okay.

CHARLES TEAGUE: You know, we're just -- you know, we're saying here we are. You know, I would, they represented everything's going to be as a condition of the Variance. And you just said all of this stuff cannot be conditioned of the Variance just earlier tonight. So I don't know what to do.

BRENDAN SULLIVAN: No, that was on a different matter where it had nothing to do with the relief that was before us. You were talking about lights, lighting, I mean out of a building at 25 -- I don't want to get into 2500. That's another matter.

CHARLES TEAGUE: All I'm saying is the agreement -- we had one agreement and then

it was split into two. There's a whole bunch much things that we would never put in as conditions in a Variance.

BRENDAN SULLIVAN: Okay.

CHARLES TEAGUE: And that's all I'm saying. And you shouldn't put it in as conditions. I wouldn't ask you to put it as conditions of a Variance. So we're just asking for help getting to the end, that's all.

BRENDAN SULLIVAN: All right, good.
Yes.

KAREN SEDAT: I'm Karen Sedat, S-e-d-a-t and I live at 42 Brookford. I'm a direct abutter of the parking lot. I've also been involved with the Cottage Park working group in the last year working Mr. Resnick. We have been negotiating hard, and he has been very willing to talk to us and we appreciated that. I'm here really to ask that the Board may do the unthinkable which is to consider

25 parking spaces instead of the 21 that the Planning Board has asked for. I think that this is one of those very unusual circumstances where the developer will benefit from the increased number of parking spaces, the neighborhood will benefit from the increased number of spaces, and the City of Cambridge will benefit because their tax base will be that much higher because he can sell his units for that much more. And parking is one of the big issues there. And this is, as I said, one of those rare cases where everybody would benefit from this. And I can't say I really understood why 21 spaces was proposed by the Planning Board instead of the 25 that everyone had agreed upon. So I'm asking you to take a hard look at that.

BRENDAN SULLIVAN: Okay.

KAREN SEDAT: Okay? Thank you.

BRENDAN SULLIVAN: Anybody else

wish to speak on the matter? If you raise your hand, I'll recognize you and you can come up and speak. Thank you.

MICHAEL BRANDON: Michael Brandon, 27 Seven Pines Avenue. Just one thing I had was a question, I know you maybe do this later in the meeting, is I had a question as to whether the Planning Board had communicated to you about these Variances and Special Permits?

BRENDAN SULLIVAN: Yes.

MICHAEL BRANDON: So you will be reading those comments.

I'm confused about where things stand. I'm not familiar with the most recent iterations of an agreement that has been in discussions. I'm the clerk for the North Cambridge Stabilization Committee. Our Chairman Richard Clarey who often appears before you was somewhat more intimately involved in these discussions. He's taken

ill of late. My feeling is that no agreement has been negotiated or authorized to be negotiated on behalf of the stabilization committee. I think what's happening is that conditions that various people have negotiated are now being considered as being attached to this Variance and the Special Permits. Should the Board decide that the criteria that justify granting them are present, and that would please me if it means that, you know, those stand and there's no question created as to whether or not the stabilization committee as a full organization, as opposed to a sub-committee that's -- some of our members have been involved in negotiations. Some of them have attorneys. It's just very confusing as to exactly who the various parties are. So a solution I would see, if it's possible, are insofar as it's possible, that any agreements that you feel are appropriate as conditions

be included in, you know, as conditions and not even separately attached, but incorporated in your decision so they would be recorded, they would be enforceable. You know, and I think most of them I think were agreed to by the parties. I'd also support what Karen Sedat said that if this Board can, in its wisdom, grant the number of parking spaces, you know, issue a Variance allowing that, which the parties have all agreed to, and not being intimately involved, I know that that is a big issue on that street. It ties in with an adjacent development that's coming down the line at a much larger property. The Fawcett Oil, you may have heard about. And on-street parking is gonna be, you know, there's gonna be great demand.

So, I had other things -- I was surprised to see there's no request for street trees provided by the developers. It's a small item. And I think it was

just -- kind of fell through the cracks. So that would be another condition I would want to see if indeed you see fit to grant the relief that's sought.

So, thank you.

BRENDAN SULLIVAN: Great, thank you. Anybody else wish to speak on the matter?

DAN FARBMAN: I'll just speak briefly. Dan Farbman, 14 Cottage Park. I want to reiterate the same thing I said. It's very difficult for me to say that I support all of this. There's a huge change happening in our neighborhood. There's a lot of moving pieces. I personally would love more time to figure out how it affects my property, but that's all. I can't say there's good or bad, that's just my position.

BRENDAN SULLIVAN: Okay, good. Thank you.

Anybody else wish to speak?

(No Response.)

BRENDAN SULLIVAN: I see nobody.

There's correspondence from the Cambridge Historical dated January 11, 2012, regarding 22 Cottage Park Avenue. (Reading) The building is more than 50 years old. The proposed adaptive reuse of the building and the associated demolition of the parking lot at 27 Cottage Park Avenue have been reviewed by the Historical Commission. There is ongoing review by the staff of the Historical Commission to determine if there was anyone interested in moving the quonset hut in whole or for parts and to review ongoing construction details for the building at 18 Cottage Park Avenue.

There is a letter on the letterhead of the Cambridge Historical Commission dated November 16th addressed to Mr. Resnick. (Reading) On November 3, 2011, the Cambridge Historical Commission voted to find the

existing quonset hut building at 23-25 Cottage Park Avenue significant, but not preferably preserved, as defined in the City's Demolition Delay Ordinance. Chapter 2.78, Article 2 of the City Code, and in the context of your plans for the replacement project that includes the landscape parking lot at 23-25 Cottage Park Avenue, and the adaptive reuse of the Emerson Company building it will service, and as further described in the site plan and elevations of the parking lot by O'Sullivan Architects. And it goes on to describe it, and the date.

(Reading) The Commission's decision was made on the basis and understanding that the owners will continue to consult the staff on the exterior features of the brick building and on the condition that the owners continue working with the staff on the disposition of the quonset hut as so pledged by you at the hearing. I look forward to

working with you and your team. Charles Sullivan, Executive Director.

There is correspondence from the Planning Board dated January 4th to the Board of Zoning Appeal referencing case 10201, 10202, 10203, 18, 22 and 27 Cottage Park Avenue. (Reading) The Planning Board reviewed and granted the Special Permits for the proposed conversion of the commercial building at 22 Cottage Park Avenue into 16 dwelling units pursuant to Section 5.28.2 with additional height exceptions pursuant to Paragraph 5.23, Section 2. The Planning Board supports the requested Board of Zoning Appeal Variance and Special Permit request associated with this development. The proposal is well thought out addressing the recent Zoning Amendments to Section 5.28.2 conversion of non-residential to residential uses as well as the specific issues of the site and the building. In this case the

requested BZA relief is necessary to ensure that the project can be achieved in a way that is consistent with the objectives of the Zoning Ordinance. Because the 25 requested parking spaces were found to far exceed the requirement of one space per unit and the Traffic, Parking and Transportation Department did not support the requested number of spaces, the Planning Board has imposed a maximum of 21 off-street accessory parking spaces as a condition of the 5.28.2 Special Permit. This could be accomplished by removing some or all of the proposed parking spaces from the 22 Cottage Park Avenue site, converting the compact spaces proposed at 27 Cottage Park Ave. to full size and/or means to be determined by the permittee in consultation with the Community Development Department and Traffic, Parking and Transportation Department. The Board believes that such a reduction in parking

will result in a better site design for the building and improve functioning of the parking lot.

And to your knowledge that's the only two correspondence from city agencies; is that correct?

ATTORNEY JOSEPH HANLEY: Yes, sir.

BRENDAN SULLIVAN: And you don't have any other petitions?

ATTORNEY JOSEPH HANLEY: No.

BRENDAN SULLIVAN: Okay. Let me close --

DOUGLAS MYERS: Before you close public, may I ask a question of Mr. Teague?

BRENDAN SULLIVAN: Yes.

DOUGLAS MYERS: Mr. Teague, are there any specific issues that you feel would be addressed and resolved if further time were granted or there were further postponement of this application?

CHARLES TEAGUE: Ostensibly there

are no issues. There's -- it's just that every time we go -- every time we have a final version, there is a new reason not to sign it or some legal technicality. It's -- so I -- we -- it just -- we just wonder if this is in good faith at all. That's the issue. We have everything written down.

Everything's agreed to. Everything was agreed to, I think at least a couple days before Christmas. But here we are, it's Groundhog Day and it's just over and over and over again. And we split the agreements last week with five weeks in, let's split the agreements. So we did. And it's nothing's good enough. You know, so my concern, we got a lot of elderly people there. It's health and safety. There's some economic protections, like, the, like, if they -- this is going to be a big building. It's going to be sprinklered. It's likely there's a black fire hydrant in front of it, likely replace

the water main. That could -- redoing all that stuff could end up costing the homeowners new connections, and that's an agreement that they would be protected. There's, you know, these people are old, they can't come down here and spend all night. And that's -- a lot of this stuff is that none of that will be a condition of a Variance. So I don't know. Like, there's no reason for us to not have an agreement. We're at the Planning Board. We're supposed to sign that night. Suddenly everything, you know, has to change. And now, I'm not a lawyer, we have lawyers here and I'm just going, like, I have no idea why this isn't -- why this isn't done. And so, you know, like, you know, we ask for your help.

DOUGLAS MYERS: Thank you.

MARC RESNICK: Can I comment?

BRENDAN SULLIVAN: In response to your question about the 25 spaces as opposed

to the 21 that were approved, if we were to approve 25, then that usurps and sets aside the Planning Board permit. Hence they would have to go back before the Planning Board and have their permit changed.

KAREN SEDAT: Okay.

BRENDAN SULLIVAN: And you voiced these concerns before the Planning Board; right?

KAREN SEDAT: I actually was not in town. I was out of state during that meeting.

BRENDAN SULLIVAN: Okay. But anyhow, that would be the procedure. If we were to say it makes sense to put 25, then the permit that was granted by the Planning Board would be voided.

MARC RESNICK: Can I ask a question on that? Can I?

BRENDAN SULLIVAN: I'm sorry, Mr. Hanley, you were going to say something?

ATTORNEY JOSEPH HANLEY: Just to suggest that there was discussion of parking issues at the Planning Board. They heard comment. I want to thank the neighbors for the time that they put in on this. There is good will here. We're at the last portion, last part here. And a lot of the good will has already been shown. In fact, that we agreed to 25 spaces to apply for 25 spaces. The fact that we submitted most recently the revised plans and other things that were provided and asked of us to do. So I can just tell the Board that I will work my best regardless of this vote to get to an MOU. It will not be in recordable form with the community, and it will include, most if not all, of the items which Mr. Resnick has already agreed to.

MARC RESNICK: If they don't request to have it recorded, I will sign both agreements right now. Done. The only issue

is the format for recording is much more technical. Even this morning they changed the plan to a -- what did they call it this morning? Covenant. In other words, it's recorded, it's a never ending. But all the agreements that we've signed, if they have any issue, every single thing is agreed to, I'll sign them now and hand deliver them to them signed so that there is nothing left to be negotiated. If they don't request to record them, all agreements are complete. There's not a single thing left to discuss or negotiate. We've met every single request that they have. All of them.

ATTORNEY JOSEPH HANLEY: Well, just finally with regard to the parking, again, we're trying to do the right thing. The lady over here makes a good point. I do think Marc would benefit from more spaces, but I also think it's unfair for us to be put between a rock and a hard place between a Zoning Board

and Planning Board. A lot of this has been stabbing at things in the dark. We've done the best we can. I don't run a community group. We run the development. I'm willing to speak to anyone throughout the process to show good things and to show good faith and that's what we'll continue to do and that's what was represented in the parking request. But we're sort of at the will of this Board and your expertise as to how that Planning Board decision affects us. And we really would like to get this project going because it does have enormous benefit.

TAD HEUER: Is there a -- let's say for the sake of argument we granted 25 spaces, they have to go back to the Planning Board to get 25 spaces but they could proceed -- in granting 25 spaces we also grant 21; right?

BRENDAN SULLIVAN: Well, it's the Planning Board from -- my understanding is that they have granted the Special Permit

based on 21 spaces. So if a tenant of that agreement is not complied with, only 21, it's not at minimum of 21, obviously but you understand.

TAD HEUER: Right.

BRENDAN SULLIVAN: Then I think they would have to go -- and from what I understand and from Community Development, they would have to go back before the Planning Board and they would have to amend that decision.

TAD HEUER: Much in the same way I could ask for this Board for a Variance to build 500 square feet and I decide afterwards that actually I'm not going to build 500 square feet, I'm going to build essentially by right or something and it's clearly within the grant of the Board.

BRENDAN SULLIVAN: Right, the 25 exceeds what they granted. Whereas if you build less than --

MARC RESNICK: Can I be heard,

please?

MAHMOOD FIROUZBAKHT: Are you saying that we could grant them relief for 25 spaces and then it's up to them whether they -- if they want to incorporate 25 spaces, then they have to go back to the Planning Board, but --

TAD HEUER: The grant of 25 is a grant of 21 as well as 22 through 25.

MAHMOOD FIROUZBAKHT: Right. So they would have that relief from this Board, but the extent they want to exercise it, they'd have to go back to the Planning Board?

MARC RESNICK: Can I say something? How about if I could make an idea? And I don't know because I'm not the Board. But if you approve 21 spaces, with the contingency to have four additional if the Special Permit Board would grant them, then we would have the 21 which would match the existing relief, and then we could go back and -- we're willing to

go back again at our own time and expense and ask for the extra four. So if you granted 21 with the proviso that we could have 25 if the Planning Board would approve, and we also put in a plan of 23 as like a, again, maybe a compromise, you know, maybe it's not 25, but, you know, they want 25, we want 25, and they approved 21. Maybe if you approved 21 and up to four extra, we could then go back and say maybe two extra? And, you know, the neighbors could all have another chance to explain to them why they think it's so important to have as many as possible.

DOUGLAS MYERS: I'd like to hear from the other Board members in response because my thinking is along these lines, it's definitely not crystalized, but it's along these lines. The Planning Board made its decision, as was stated in the letter, based on specific comments and information and evaluations received from the

Department -- City Department of Transportation and traffic control, and I feel myself based on the limited application in the file generated thus far at this hearing, I feel myself at a considerable disadvantage about altering the decisions of the city traffic department to which I'm very willing to entertain are based on a greater amount of expertise than I possess.

BRENDAN SULLIVAN: The other tact would be to approve the 21, if at their own time, they wanted to go back to the Planning Board and ask for the additional four, and to amend their original decision to allow for the 25, then they could then petition us to amend our decision to the 25 --

TAD HEUER: Sure.

BRENDAN SULLIVAN: -- to be in sync with the Planning Board.

TAD HEUER: Sure.

BRENDAN SULLIVAN: I'm not of the

mind to change the Planning Board's decision.

MAHMOOD FIROUZBAKHT: I guess to your point, what were the other reasons for the Traffic and Parking Department requesting a reduction?

MARC RESNICK: What it is is that there's -- they recommend one per unit. And they, what they granted us is equal to or as much as they've ever granted. It just was like a general policy, that they don't want too much parking. I think the idea being that parking draws cars.

ATTORNEY JOSEPH HANLEY:

Mr. O'Sullivan had some notes. I did not actually present at that hearing.

DAVID O'SULLIVAN: What it was was the 21 spaces worked out to the top end recommendation of the Transportation Department for number of spaces per unit. I believe it was like 1. -- sounds like 1.2 or 3, somewhere in that range. We were at about

1.4 with the 25 spaces. So, basically parking had looked at all -- the transportation looked at all the approvals they were given, and 21 fell in line with the high end of what they had given approvals on similar projects in the city. So that was how they arrived at the 21 spaces.

The other request of the Planning Board was that they wanted to provide that, the open space you see on the plan behind 22, hence why they only wanted one space behind, they wanted to provide some outdoor space behind 22 where on the 25 scheme it would be all parking.

MAHMOOD FIROUZBAKHT: So that open space --

DAVID O'SULLIVAN: Open space, the Planning Board thought the other reason for keeping less parking was that they thought this was valuable open space that would be more beneficial to the residents and to the

building people than two additional parking spaces back there.

TAD HEUER: What's the maximum amount of parking spaces you get on 27 if you went back compacts?

DAVID O'SULLIVAN: Two extra.

MARC RESNICK: 22 total.

DAVID O'SULLIVAN: Right.

MAHMOOD FIROUZBAKHT: And you can keep your open space.

DAVID O'SULLIVAN: There is a plan in there dated the 30th that has 23 on there. And they kept this and this would be compacts back here.

ATTORNEY JOSEPH HANLEY: We also did both interior and exterior bike storage. And you can see there are some leads.

DAVID O'SULLIVAN: Right. The Transportation Department has a by-law and a Zoning By-Law of so many parking spaces -- so many bike spaces which is a half bike space

per unit. Which under Zoning we were required to have eight spaces. So we have them, out here we actually, with the extra open space we were able to get 12 out here. They actually are advocating and trying to get the law changed to have more bike spaces per unit, at least one per unit, is what the Transportation Department is advocating and planning on proposing to the city as a rule. So we have that, and we have some space inside the building. And we also agreed that we also have the storage room and we worked with the Transportation Department on getting maybe more additional indoor bike storage for them.

MAHMOOD FIROUZBAKHT: My take on this is I wouldn't want that open space taken by a parking spaces, and so the numbers get so close that frankly, I wouldn't want to undermine or give the appearance that we're undermining the decision of the Planning

Board for not that significant of a difference. And they did have a benefit of testimony or presentation from planning from the Parking Department, and this issue was flushed out I think more specifically at that hearing. So I guess my -- I think my preference is to maintain the decision of the Planning Board with those numbers and then subject if the developer goes back and amends that decision, he would be certainly welcome to come back and hear it again.

BRENDAN SULLIVAN: Point of information.

CHARLES TEAGUE: Yeah, it's -- there was -- at the Planning Board they said they hadn't granted something with so many parking spaces per units, but they had clearly forgotten by B St. John's redevelopment which had both a Variance and a Special Permit which was over, which was 1.5 parking spaces. And we did a neighborhood

survey right in the local area, and we came back with 1.5 parking spaces per unit existing in our North Cambridge neighborhood, and the Neilson data for that exact area also comes back 1.5 parking spaces which is the current usage of our neighborhood.

And I've seen one other area, and I can't remember the name of the Special Permit project, but it was well over the 1.2, 1.3. But St. John's is -- you can look and it's 1.5. So that would, that was the testimony that was inaccurate and it's not reflective of the usage in this exact neighborhood.

KAREN SEDAT: I know it's getting late, I apologize, but I live in a condo that is going to be around the same price range that Mr. Resnick's condos will be and we have two parking spaces, off street parking spaces for each of our condos. These are gonna be three and four bedroom condos in some cases.

MARC RESNICK: Two and three.

KAREN SEDAT: Two and three.

MARC RESNICK: Very large.

KAREN SEDAT: And I think when you have a family of that size, there are going to be more than one car per unit and the remainder of those cars will go out on to Cottage Park which is a one block street with very little parking. They will have -- the remainder of the people who own these units will have visitor parking and will use that to park out on the street. This is one of those -- as I said, really rare occasions where the neighbors are fighting for what the developer wants as well. I think it benefits the neighborhood, it benefits the developer, it benefits the City of Cambridge.

BRENDAN SULLIVAN: Okay, Heather.

HEATHER HOFFMAN: A point of information. If your decision is coming after the Planning Board decision, can you

simply grant a Variance?

BRENDAN SULLIVAN: Can we --

HEATHER HOFFMAN: Can you grant a Variance? I mean, they say X and then the property owner comes to you and says can we have a Variance? I'm asking a question that I don't know the answer to.

BRENDAN SULLIVAN: Yes, well --

CHARLES TEAGUE: Actually, that's what you're doing right now.

BRENDAN SULLIVAN: The procedure is that if the conversion has to follow within all the dimensional requirements; if it does not, then the Petitioner has to go to the Planning Board and get a Special Permit. Then come back to us and get relief from all the dimensional violations. So there is a procedural thing here. The Planning Board sort of throws a little bit of a monkey here in that they have reduced the number of requested parking spaces. But they are

continging their Special Permit on that relief and that plan. So what you're asking us to do is to set that aside.

HEATHER HOFFMAN: I'm not asking you to do it. I'm just asking what your power is and what the actual legal standing of proceedings would be?

TAD HEUER: I think the answer is that we would grant parking and they would lose the right to convert the building temporarily because the part of the Planning Board is tied to the conversion inextricably. So we could grant more parking but that would -- if that invalidated the Special Permit they're left without --

ATTORNEY JOSEPH HANLEY: Or we can always come back to amend the decisions with community support.

BRENDAN SULLIVAN: Quickly. Yes.

MICHAEL BRANDON: If I may. Just that this Board, I believe it would require

a new application, but this Board is empowered to waive any provision, including this new provision 5.22 that legalized multi-family housing in the Res B Zone. You know, so had that not gone through, you would be granting the whole thing anyway. But you can waive that, and I've seen Mr. Rafferty come in and waive before this Board, I forget what it was, but basically waived the whole need for a Special Permit. He got it by Variance, and actually it was problematic from my point of view because this Board was responsible but they didn't necessarily have to apply the Special Permit criteria, you know, which is pretty specific. But I believe it's possible and if the neighbors and Mr. Resnick want to do it, I don't know how much, how expensive it would be, you know, and there are other considerations, but legally I believe it's possible.

BRENDAN SULLIVAN: Well, my tact

would be to grant the relief on the 21 spaces and then let you petition them to change their Special Permit. If you get that in hand and then bring that back to us, that would be the route that I would be comfortable with.

Otherwise --

MARC RESNICK: If we tried to work together with them to go back to the Planning Board and get them to agree for more relief.

KAREN SEDAT: The entire neighborhood would be behind you.

MARC RESNICK: We'll bring everybody in.

MICHAEL BRANDON: Would they have to come back before you? Or could you condition this they would have to come back?

BRENDAN SULLIVAN: They should have to come back.

MARC RESNICK: We would have plenty of time to come back. Because by the time these are being built we're not going to be

building those extra spaces.

BRENDAN SULLIVAN: Okay. We're going to turn into pumpkins and mice very shortly here. What is it?

CHARLES TEAGUE: Sort of the same question. What's happening here is the 5.28 residential conversion and you have which does not allow expansion outside the building envelope, and that's one of the reasons for the Variance for the little dog house.

BRENDAN SULLIVAN: Correct.

CHARLES TEAGUE: So they could -- so what my -- one of the suggestions was to just get a variance that goes on top of the Special Permit. But I think what Michael was saying just -- I just wanted to make sure I got it right, was that they could just come back, they could just not go to the Planning Board, they could come back and apply for -- to convert this building to multi-family residential as a Variance instead of the

special and throw the Special Permit away.

BRENDAN SULLIVAN: That would not be the preferable route that I -- no.

CHARLES TEAGUE: I didn't say it was preferable. I'm just asking if -- I thought that's what he was saying. I thought that's what he agreed.

MARC RESNICK: You said you didn't want to overrule them unless they changed their mind.

ATTORNEY JOSEPH HANLEY: We had an opportunity to have pretty lengthy discussions, meetings with Ranjit with the development and sort out and I'm confident that we've asked for --

BRENDAN SULLIVAN: I think you've gone the right route. That's right. So anyhow.

KAREN SEDAT: Do all of you guys have one car?

BRENDAN SULLIVAN: Yes.

KAREN SEDAT: Every one of you?

TAD HEUER: Brendan's giving me a ride home.

BRENDAN SULLIVAN: Mahmood, any comments?

MAHMOOD FIROUZBAKHT: I'm good.

BRENDAN SULLIVAN: Have you completed your --

ATTORNEY JOSEPH HANLEY: Yes, sir.

TAD HEUER: Tad, what are your thoughts? I just have a question on the condition document. So, Marc, you said you signed it. This would be who are the parties to the document that you've been discussing?

MARC RESNICK: Well, originally we had one agreement that it included many people. Specific neighbors, as well as, like, the North Cambridge Stabilization Committee. But when they went to record the agreement, then like there are things in there that will, like, be nice to the

neighbor. Like, that sort of which you can't really record in the chain of title.

TAD HEUER: Right.

MARC RESNICK: So they were pretty adamant they get it recorded. So when we said -- we went and met with the City Council Leland Cheung to help mediate with us and that's when we came up with this new idea just like last week to and split the agreements and record it in one of them.

TAD HEUER: Right.

MARC RESNICK: But then when we were doing it this morning, their attorney then suggested that they call it a --

BRENDAN SULLIVAN: Covenant.

MARC RESNICK: -- Covenant.

Because we were concerned with that we were going to get released if it was recorded, and who would be authorized to do that? And what if they were in the hospital for a year and I couldn't sell any units for -- what if I got

bound up? So the terms of the agreement we're prepared to sign now and be bound by them, we even agreed in the original agreement when there was only one that we would pay for their lawyer's attorney's fees if we did not follow the agreement. Which the attorney that was drafting the agreement right there was quite confident that if we didn't do what he said, he was going to be very happy charging us when he beat us because the things are pretty specific. Like, bollard lights less than five feet tall. They would be clearer, if they weren't. The air conditioning system is not on the roof, then it will be someplace else and we would be big trouble.

TAD HEUER: It's your trust and who is the other party? If it were actually signed, who would have the enforceable contractual right?

MARC RESNICK: Most of the abutters

as possibly the neighborhood group.

ATTORNEY JOSEPH HANLEY: It's sort of their decision.

MARC RESNICK: That's why it's sort of complicated. Who has permission to sign that agreement on their side? In other words, I know I have on my side. I'm a trustee, but on their side who are we agreeing these things with. We promised them all.

TAD HEUER: So if I have this right, you've got and I'm willing to be corrected. You have an agreement with a known signatory on one side, the reason presumably they want as a covenant because that runs on the land against you so you don't need to know who the other party is because anyone that's afflicted can come in and enforce. And the reason you don't want a covenant or any imposed servitude is because you don't know who the parties are and you prefer a contractual opposite party with an identity

certain.

ATTORNEY JOSEPH HANLEY: Also, it's a long-term obligation for unit owners in the future and it creates title review issues.

TAD HEUER: Right. I get it.

MARC RESNICK: Every changing of the deed, every sale of every future condo, this would show up in the chain of title. And some of the issues are more -- not as clear. You know, like, that we'll work with the Mazzeos.

TAD HEUER: Right.

MARC RESNICK: Well, what if the Mazzeos the house? What if Mrs. Mazzeo gets mad add Mr. Mazzeo and decides to, you know, what would happen in these kind of situations? Once it's recorded it's on the deed versus if they took me to court and said you didn't solve the bollard lights, I would take a picture and show them that they were there. I would feel very comfortable then I could meet all of my requirements from many

in parts a person.

TAD HEUER: Right. So you want something enforceable in Superior Court not in Land Court.

MARC RESNICK: Right.

BRENDAN SULLIVAN: It's somewhat of a quagmire.

THOMAS SCOTT: So what is that, a gentleman's agreement?

ATTORNEY JOSEPH HANLEY: No. It's an MOU which is very standard.

THOMAS SCOTT: A memorandum of understanding?

ATTORNEY JOSEPH HANLEY: Yes, it's in development circles all the time. And I haven't been involved with this negotiation, just the zoning. I know Mr. Cheung, Councillor Cheung very well. I would be happy to put my word up and my time to get this thing done in an MOU form and we'll get it done. Because as has been testified to, we

have most of these issues agreed to.

DOUGLAS MYERS: And that was my question, assuming the document can ultimately be put into proper legal form with parties that are sufficient for the document, are there, in your opinion, are there major important substantive issues that still have not been resolved?

ATTORNEY JOSEPH HANLEY: No.

MARC RESNICK: I don't think there are non-substantial. There are no issues. Just, like, how it gets recorded and who's, you know --

DOUGLAS MYERS: The document is the major remaining issue in terms of community relations.

CHARLES TEAGUE: The only thing that got dropped out was approval of the landscape which would have been Mike Brandon's street trees as well. That's the only thing that got dropped out.

MARC RESNICK: That's something that's actually totally new, street trees.

KAREN SEDAT: We went out and we measured the sidewalk, you and I.

MARC RESNICK: What is a street tree exactly?

DAVID O'SULLIVAN: We'd be happy to put a condition to be working out the landscape details with the staff as part of this.

DOUGLAS MYERS: In principle that shouldn't be a major obstacle.

MARC RESNICK: That's one thing, thought, that never was in the agreement, put in or take it out.

MAHMOOD FIROUZBAKHT: Could we go from the list of conditions and could you pick out, you know, the five or six that you would be comfortable to get on record?

MARC RESNICK: Do you have a list, an list?

ATTORNEY ALISSA DEVLIN: Yes.

MARC RESNICK: So there are window treatments. That the condominium documents for the Trust Property shall contain a requirement that for all rear facing units on the east side will have 100 percent light blocking window treatments that shall be installed by the buyer, the initial occupancy to cover at least 100 percent of the glass surface.

So the people that are facing the rear of our building were concerned that they could look in and, like, see people naked. So we made a requirement in the condominium documents that any unit owner's required to have some sort of a blind or drapes or whatever that would block 100 percent of the light. So you can't have like a half blind where you can see half a person. That would be in the condominium documents so it's easily enforceable. You can look up the

documents. They get recorded. It's either in there or -- we said we would so we will.

We agreed that we would put in brick sidewalks along the entire frontage of 22, 27, and 27 Cottage Park prior to the issuance of a certificate of occupancy unless specifically prohibited by any relevant City of Cambridge authorities.

So you can see that recording something like that leaves open who are the official Cambridge City authorities and what is an official prohibited, you know, and relevant -- who is a relevant city -- so in other words, agreeing to it is one thing, and then having it recorded leaves open a different kind of an issue.

We agreed condominium form of ownership. The Trust agrees that the structures to be constructed or redeveloped at 22 Cottage Park, shall be 16 condominium units with at least one parking space. The

dwelling units will be available for sale, not for rent by the Trust or any related entity. Every unit will be sold with an easement for the exclusive use of at least one space.

So 27 Cottage Park, the Trust also owns 27 Cottage Park Ave. This property shall be used exclusively for at least 20 parking spaces and green open space.

See now originally that had 22 parking spaces but then they didn't approve it so they knocked it down to 20.

Certified arborist. The Trust shall engage a certified arborist to evaluate the large trees on the north and south boundaries of 27 Cottage Park Ave., and perform any work recommended by the arborist to preserve and enhance such trees.

So they were concerned that possibly that possibly some (inaudible). There was a constant 50 years. So and so we agreed to

have an arborist confirm that the trees were safe.

Parking lot lighting. The Trust shall illuminate the parking lot on 27 Cottage Park Avenue using bollard style lighting fixtures of not more than five feet in height above the grade of the parking surface.

Air conditioners. All living space in the Trust property is to be air conditioned, cooling as well heating, and condensers for air conditioners, except -- it actually says one, but we've discovered there are actually two things out there on the south side of the trust property, shall be located on the roof.

So there's two -- one thing has two units so it's two zones, two units.

And the last one that's a real issue is the conditions -- oh, they ask that the Trust, the committee intend that both paragraphs shall be conditions as set forth on the issuance of any Variance in the cases

10 -- you know, and then it goes on and on.
And then --

CHARLES TEAGUE: You left out this.

MARC RESNICK: Oh, the very first one I missed the landscaping. The backyard of the Trust Property shall be landscaped within 90 days after the repointing scaffolding is removed before the Certificate of Occupancy is requested. And the landscaping shall be in accordance with Exhibit A which we brought many a copy and passed out today.

MAHMOOD FIROUZBAKHT: You know, I guess --

MARC RESNICK: The landscaping --

MAHMOOD FIROUZBAKHT: Hold on.
Given all this, I mean, it sounds like there's a good amount of content there. What maybe what I would say to the extent that there may be one or two or perhaps three things that would be appropriate to put in as conditions

to our decision to the extent that we grant a decision tonight, that we do that, but then let the parties figure out what they wanted to record as a covenant or agreement or MOU or recordable MOU or whatever they want to call it, and a non-recordable MOU. I think that the rest of that is left best up to the parties to figure that out.

MARC RESNICK: I'm willing to agree to let them pick the ones that they think are the most important.

DAVID O'SULLIVAN: What I was just going to clarify for the Board, is that the parking lot lighting, the air conditioners, are things that are reflected in the drawings have been presented to you. They should just go away. We comply with the drawings.

TAD HEUER: Indeed.

DAVID O'SULLIVAN: And No. 5 that they have in here that 27 Cottage Park should be used for parking and green space only.

Those three are in the plan which it helps. The other condominium ownership, the sidewalk, window treatment, those are hard to put in conditions.

CHARLES TEAGUE: This was the whole recordable section, and then there was whole other section that as I said, the health, safety and other protections for, as I say, the -- generally the elderly who live in the neighborhood which is a whole separate thing and wasn't going to be recorded and everybody's fine with that.

MARC RESNICK: And that one was sort of like an access in the field, because we'd be putting up scaffolding behind our building. Then they sort of got combined into one big agreement and then we split it back in half again.

TAD HEUER: So now that it's been split, we've got those things that you've just read, those are variance type things.

And we've got some other things that we don't have to care about; is that right?

MARC RESNICK: We already agreed so it's good.

TAD HEUER: Good for us to go.

BRENDAN SULLIVAN: Sorry?

TAD HEUER: Nothing.

BRENDAN SULLIVAN: Are we done?

DOUGLAS MYERS: Yes. The thought occurs to me that we're done.

BRENDAN SULLIVAN: Let me make a motion to grant the relief requested to subdivide 22 Cottage Park from the adjacent lot at 18 Cottage Park Avenue and convert the existing commercial building and to make a small addition as per the plan submitted.

Relief being requested is from Article 5, 5.31, the dimensional requirements. Article 55.15, the subdivision, Article 6, Section 6.22.2, which is the location of the parking. And I'm sorry, the Board of

Zoning -- we can grant a Special Permit for that. So 6.22.2 should be under the Special Permit; is that correct?

6.43.6 --

ATTORNEY JOSEPH HANLEY: 6.22.

BRENDAN SULLIVAN: -- is also a Special Permit.

All right, let me just go back and again and regarding the subdivision and the Variance for the subdivision and for the small addition at the back of the building and also the front entryway. Is that correct? Is there a canopy on that?

DAVID O'SULLIVAN: The canopy exists.

BRENDAN SULLIVAN: The canopy exists. All right.

A literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Thus failure to grant this relief would prevent the property

at 22 Cottage to be used, maintained, or improved without being encumbered by the existence of another structure on the property, albeit at 18.

The Board finds that the proposed proposal for relief from the Ordinance would be fair and reasonable to allow this property and structure thereon to be independent and stand-alone, a condition which is enjoyed by a vast majority of the properties in this neighborhood.

The hardship is owing to the fact that the property was developed before the enactment of the current Zoning Ordinance, hence its non-conforming in nature, and developed and used for a different purpose than the adjoining lot at No. 18.

The siting and the size of the structure precludes being able to comply with the Ordinance Section 5.31, and the dimensional requirements of that section.

That's on the subdivision. That is the only Variance required for this property?

TAD HEUER: No. There's dimensional conditions.

BRENDAN SULLIVAN: I'm sorry?

TAD HEUER: The addition.

BRENDAN SULLIVAN: I included the addition.

ATTORNEY JOSEPH HANLEY: And Section 5.31.

BRENDAN SULLIVAN: I've included Section 5.31.

TAD HEUER: Do we need to make a hardship for --

BRENDAN SULLIVAN: The addition is for a handicapped --

TAD HEUER: Right.

BRENDAN SULLIVAN: -- entryway.

The Board finds that it's a fair and reasonable request as with the public interest and the occupants of the existing or

the proposed use of the building to have such an enclosed handicap entrance.

DOUGLAS MYERS: Is it clear that our approval contemplates only the 21 parking spaces?

BRENDAN SULLIVAN: Well, I haven't got to that part yet.

DOUGLAS MYERS: Sorry.

BRENDAN SULLIVAN: I'm just sort of on the subdivision.

The Board finds that desirable relief may be granted without substantial detriment to the public good, and relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

All those in favor of granting the Variance for the subdivision and for the small addition to the rear of the building?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Heuer, Scott,
Firouzbakht, Myers.)

BRENDAN SULLIVAN: Now, regarding
the --

TAD HEUER: Is there a separate plan
for the subdivision 22 provided?

MARC RESNICK: I think it's the same
plan just with the same line.

TAD HEUER: But for 18 we have an
indication of what you --

MARC RESNICK: But 18's the same as
22, it's just the other half.

TAD HEUER: Right, but for 18 what we
have, we have the lot lines, fully we have 18.
Do we have -- it's a technical matter.
Counsel, can you provide to the file a
certified plot plan for recording that would
provide the dimensions of the property to be
at 22?

MARC RESNICK: I see what you mean.
We need to go back to the site plan guy and

get it.

BRENDAN SULLIVAN: And be specifically identifying this as 22?

TAD HEUER: Yes.

BRENDAN SULLIVAN: Is that what you're saying?

TAD HEUER: Yes.

BRENDAN SULLIVAN: Okay.

Now regarding the Special Permit for the parking, Article 6.622.2 which is the location of the parking, the Board may grant a Special Permit for off-site accessory parking not allowed in Sub-Section 6.22.1 provided that convenient and with safe access from the parking facility to the use being served is provided in accordance with the following condition:

No outside accessory parking facility may be located on a lot which has a more restrictive zoning classification than the lot on which the use is being served.

Off site accessory parking facility shall be located within 400 feet of the lot being served for residential uses. And we can attest that is true.

Regarding the common driveways relief, I mean, the Board affirms 6.43.6. We may grant the Special Permit authorizing owners of adjacent properties to establish common driveways under mutual easements, but such Special Permits shall not become effective until an appropriate easement has been duly recorded at the Middlesex County Registry of Deeds.

Condition of the Special Permit.

6.44.1 driveway setbacks. Except for one, two, or three-family dwellings, especially at the time of the effective date of this Ordinance, no on grade open parking spaces or driveways shall be located within five feet of any side or rear property line.

The Board waives this requirement and

notes the plan as submitted for 21 vehicles, initialed and dated by the Chair.

What else, Counselor, have we covered everything?

MAHMOOD FIROUZBAKHT: Have we covered the skylights?

BRENDAN SULLIVAN: I'm sorry. And also let me make a motion to grant the installation of the new skylights.

The common driveway was insufficient setbacks which actually is covered.

The Board finds that regarding the skylights that the requirements of the Ordinance can be met. The continued operation of or development of adjacent uses as permitted to the Zoning Ordinance would not be adversely affected by the nature of the proposed use.

There would not be any nuisance or hazard created to the detriment of the health, safety or welfare of the occupants of

the proposed use. In fact, the entrance of the sunlight is a benefit.

The proposed use would not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of the Ordinance.

On the motion to grant the Special Permits: The skylights, the common driveways, and the requirements of Article 6 and those subsections. All those in favor of granting that?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Heuer, Scott, Firouzbakht, Myers.)

BRENDAN SULLIVAN: Also it's subject -- this was one for 22?

TAD HEUER: Yes.

BRENDAN SULLIVAN: Subject to the plans submitted and also the certified plot plan as submitted with this application.

Okay. Now have we covered everything for 22?

ATTORNEY JOSEPH HANLEY: And you got just Section 8.22.

BRENDAN SULLIVAN: I got that. The existing non-conforming, yes.

ATTORNEY JOSEPH HANLEY: Yes, that's everything.

* * * * *

(12:00 a.m.)

(Sitting Members: Brendan Sullivan, Tad Heuer, Thomas Scott, Mahmood Firouzbakht, Douglas Myers.)

BRENDAN SULLIVAN: 27?

The Variance to demolish the existing

quonset hut located at 27 Cottage Park Avenue and to convert the property into an accessory parking facility for a proposed 16-unit multi-family dwelling at 22 Cottage Park Avenue which is located directly across the street.

The proposed accessory parking would consist of 21 off street -- I'm sorry. How many are in?

DAVID O'SULLIVAN: 20.

BRENDAN SULLIVAN: 20 off street parking because the other one is across the street.

Mr. Hanley, if you could just run us briefly, very briefly through Article 4.

ATTORNEY JOSEPH HANLEY: Request for accessory parking for the residential use, this is very close in proximity, as you will see in the plans that were provided. It is also noted the Planning Board has approved the relief necessary for the conversion for

the residential use of the subject property at 22 Cottage Park Ave., and the 20 parking spaces are being utilized exclusively for the residents of that new conversion.

BRENDAN SULLIVAN: Is there anybody here who wishes to comment on 27 Cottage Park Avenue?

(No Response.)

BRENDAN SULLIVAN: I see none. There is correspondence in the file from the Cambridge Historical Commission in which I previously read into the record and shall be referenced here regarding the quonset hut. The fact that the Historical Commission finds that the existing quonset hut is significant but not preferably preserved, and ongoing discussions are being held with a developer regarding the final disposition of same.

The Board is in receipt of the correspondence from the Planning Board regarding the Planning Board granting a

Special Permit 5.28.2 for the conversion of the building and the maximum number of 21 off street parking spaces.

The Board accepts the parking plan for the 21 parking spaces and the landscape plan as contained therein unless further amended by an agreement.

Is there any discussion by the Board regarding the parking at -- the demolition of the quonset hut and the parking at 27 Cottage Park Avenue?

Any further discussion at all?

THOMAS SCOTT: Only that they've -- the applicant has said that they'd go back to the Planning Board to discuss up to 25 spaces; correct?

MARC RESNICK: We're prepared to do that as long as they want us to, absolutely.

THOMAS SCOTT: Okay. I guess should we note that for the record?

BRENDAN SULLIVAN: It could be the

sense of the Board if you want.

DOUGLAS MYERS: I have no comments.

TAD HEUER: I have no comments.

BRENDAN SULLIVAN: Anything further to add?

MAHMOOD FIROUZBAKHT: I'm sorry, what are we --

BRENDAN SULLIVAN: The sense of the Board would be that we're granting 21, but that the Petitioner has expressed a willingness and is preferable by the Board to return to the Planning Board and ask for an additional four spaces as per the original plan.

MAHMOOD FIROUZBAKHT: I'm not in favor of that.

BRENDAN SULLIVAN: Not to include that or not in favor of doing it?

MAHMOOD FIROUZBAKHT: I'm not in favor of 25 spaces for the site. So I'm --

DOUGLAS MYERS: I would just say

that I would leave that entirely up to the applicant. That's entirely their decision.

MAHMOOD FIROUZBAKHT: Yes, right. They can go back to the Planning Board, they can amend it and they can come back here.

BRENDAN SULLIVAN: Okay. Anything else to add?

ATTORNEY JOSEPH HANLEY: No, sir.

BRENDAN SULLIVAN: Let me make a motion to grant the relief being requested in Article 4.31.G to demolish the existing quonset hut and to allow for 20 off street parking spaces which will service No. 22 Cottage Park Avenue.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude the Petitioner from converting an existing building at 22 Cottage Park Avenue into residential use and allowing for this

particular site to be used for the accessory parking.

The Board finds that the hardship is owing to the unique size and shape of the lot, and the fact that it is desirable to use as parking to allow for the conversion of building at 22.

The Board finds that relief may be granted without substantial detriment to the public good, and that relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

All those in favor of granting the Variance as per the application and the site plan as included.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Heuer, Scott, Firouzbakht, Myers.)

BRENDAN SULLIVAN: Anything else we

can do?

ATTORNEY JOSEPH HANLEY: No, sir.

Thank you.

MARC RESNICK: Thank you very much.

(Whereupon, at 12:10 a.m., the

Board of Zoning Appeals

Adjourned.)

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original of the Errata Sheet has been delivered to Inspectional Services Department.

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**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 20th day of February 2012.

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

My Commission Expires:
April 23, 2015

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