

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING
MARCH 11, 2010 7:00 P.M.

in

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Brendan Sullivan, Member

Thomas Scott, Member

Tad Heuer, Member

Slater Anderson, Member

Ranjit Singanayagam,

Commissioner of Inspectional Services

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:00 P.M.)

(Sitting Members: Constantine Alexander, Tim Hughes, Slater Anderson, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call the meeting to order. And the first case we're going to call tonight, as is our practice, we start with our continued cases. We have one continued case, 148 Larch Road. Is there anyone here waiting to be heard on this matter? Are any of you the petitioner? We do make a transcript so please give your name and address.

JOELLEN GAVIN: Joellen Gavin, 148 Larch Road, Cambridge.

STEVEN WEINSTEIN: And Steven Weinstein, 148 Larch Road in Cambridge.

We regrettably need to ask for an additional continuance.

CONSTANTINE ALEXANDER: No problem.

JOELLEN GAVIN: At your earliest convenience.

CONSTANTINE ALEXANDER:
Mr. O'Grady will tell us what our earliest date is.

SEAN O'GRADY: Our earliest isn't until May 27th.

CONSTANTINE ALEXANDER: We have many cases to continue. Yours is not the first one to continue. So it will be May 27th.

STEVEN WEINSTEIN: Okay.

JOELLEN GAVIN: Thank you very much.

CONSTANTINE ALEXANDER: At seven p.m. You've continued this case before so we already have a waiver for a time for decision.

The Chair moves that this case be continued until seven p.m. on May 27th. Noted that there is a waiver for a time of decision that has already been signed. But on the condition that the sign that's on the

building right now or on your premises right now indicates the hearing date. Change it one more time --

JOELLEN GAVIN: Okay.

CONSTANTINE ALEXANDER: -- to May 27th. All in favor of continuing the case on that basis?

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

MALE AUDIENCE MEMBER: Does that mean we can't be heard tonight?

CONSTANTINE ALEXANDER: No. It will be heard on May 27th, seven p.m.

MALE AUDIENCE MEMBER: That's what you get for the neighbors living next-door to you.

(7:05 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Slater Anderson, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call 20-22 Griswold Street. Is there anyone here on that matter? Okay, you'll have an opportunity.

For the record, state your name and address.

ROBERT SULLIVAN: Robert Sullivan, 20-22 Griswold Street.

Good evening. I bought the house in --

CONSTANTINE ALEXANDER: Just one second. Let the people settle down. I'm sorry, go ahead.

ROBERT SULLIVAN: I bought 20-22 Griswold Street.

GERALD DEGNEN: Can you ask Mr. Sullivan to speak louder?

CONSTANTINE ALEXANDER:

Absolutely. We have a mic here. And if you have trouble hearing, you can move closer to the table.

ROBERT SULLIVAN: I bought 20-22 Griswold Street in June of 2009. And it's my intention to renovate the house so that I can live there and possibly raise a family there. The house was built in 1931, and except for some interior repairs due to a fire some 35 years ago, very little has been done to the house to upgrade it. As part of the renovation work, it is my wish to provide two contemporary living units with three bedrooms in each. It's very much a family-oriented neighborhood, and units with three bedrooms are lacking and much sought after. To that end, I wish to make use of the living space in the basement and in the unfinished attic area.

The basement currently has 956 square

feet of gross floor area. And after removing the existing concrete floor, installing the perimeter drain, new plumbing waste pipes, one-inch insulation and 10 mill-polyethylene vapor barrier and the new foreign slab, it actually lowered the floor-to-ceiling height in some areas so that the new floor area is now 637.80 which is a reduction of 318 square feet.

CONSTANTINE ALEXANDER: But the building is still non-conforming in terms of FAR?

ROBERT SULLIVAN: The building is non-conforming, yes.

CONSTANTINE ALEXANDER: You've reduced it, but you're still above what you....

ROBERT SULLIVAN: Yes.

And the attic area contained 387 square feet of gross floor area. But the attic area is totally unfinished and accessible only by

a hatchway that's in the back hall of the second floor. So I would like to make use of the attic area. And the only practical way to construct a building code compliant stairway is to build one at the front corner of the house over the existing stairway. But with the lack of required headroom from stairway to stairway, and stairway to undecided roof without raising the roof rafters and thus the roof line, and also the framing of the roof rafters and the floor joists of those two-by-sixes, are both undersized, we would have to beef up on the floor joists and beef down on the rafters to comply with the energy code. It will make it all impossible without raising it up.

So my dilemma is to access the attic area and build a stairway to it. It's -- basically now just an inaccessible small eave frame area.

TAD HEUER: You don't need height

relief? You're under your height --

ROBERT SULLIVAN: I'm under the height.

GERALD DEGNEN: I couldn't hear what your comment was.

TAD HEUER: You're under 35 feet. So limit the zone for height for a residential building even after raising your roof.

CONSTANTINE ALEXANDER: Mr. Heuer is just confirming that there's no issue with regard to the height of the building to grant relief.

ROBERT SULLIVAN: Correct.

I would request the new proposed height to be 33 foot-9 which would be below I believe the allowed. And also I wish to have a dormer on the -- which would be to accommodate a bathroom. And it's designed to comply with the dormer guidelines in length and distance.

CONSTANTINE ALEXANDER: So the plans you've submitted show a dormer that is

compliant with the dormer guidelines?

ROBERT SULLIVAN: Yes.

So also the current floor area in the attic area is 387 square feet, and I would propose to have 708 square feet. Which means it would be an additional of 321 square feet.

CONSTANTINE ALEXANDER: But because you're subtracting space from the basement, the 321 is less than what you've lost in the basement, right? That's how you get --

ROBERT SULLIVAN: I've lost 318 in the basement, adding 321 in the attic, but I'm also removing the back porch.

CONSTANTINE ALEXANDER: Got it.
Counts as FAR.

ROBERT SULLIVAN: Ceiling, exactly.

So, and also what I would be asking relief on was -- I want to extend my rear porches from six-foot-six to eight feet. And the rear porches are well within the rear setback requirement of 25 feet.

CONSTANTINE ALEXANDER: Okay.

ROBERT SULLIVAN: They're at 29 feet now. And also I've removed the roof.

The result of adding the porches by one-foot-six and removing the roof over the second floor is a reduction of 59 square feet. So right now I have 3952 square feet, and the proposed would bring me to 3895 square feet. Which is both over the, you know, allowable for the size, but everything else is still within the guidelines other than my setback.

CONSTANTINE ALEXANDER: And the set -- you're not extending the setback violation?

ROBERT SULLIVAN: No.

CONSTANTINE ALEXANDER: You have a non-conforming structure now as to setback?

ROBERT SULLIVAN: Yeah.

CONSTANTINE ALEXANDER: And it's going to continue to be non-conforming, no more and no less, except it's going to be more

mass because of the construction.

ROBERT SULLIVAN: Yes, it would just be up.

So the violation of the current Zoning was due to the fact that the existing house was built prior to the Zoning Ordinances and not compliant with the current Zoning Ordinances for the district. So any enlargement would need relief.

I've spoken with a few of my neighbors and explained my proposal. And some have signed a petition actually, which I have.

CONSTANTINE ALEXANDER: Please.

VIKKI GINSBERG: Can you please read the names of the people that have signed?

CONSTANTINE ALEXANDER: When the time comes. Please, ask to be recognized by the Chair.

VIKKI GINSBERG: Okay, sorry.

CONSTANTINE ALEXANDER: Just don't speak right out.

VIKKI GINSBERG: I'm sorry.

ROBERT SULLIVAN: My next-door neighbor Vikki, however, has expressed some concern.

CONSTANTINE ALEXANDER: And they're here tonight.

ROBERT SULLIVAN: Yep.

So in response to her concern, I had two shadow studies done for the house to show what the existing and the proposed is. Originally the plans drawn with the architect was we looked at having two dormers on both sides of the house. And this solution was the simplest and easiest looking solution, cleaner solution. And originally we had the dormer on Vikki's side of the house, and we had called to raise the ridge line three-foot-six. So, after going over it with Vikki, I had two shadow studies done, and we flipped the dormer to the other side of the house and I reduced it by a foot.

CONSTANTINE ALEXANDER: Those are the shadow studies there?

ROBERT SULLIVAN: Yes.

CONSTANTINE ALEXANDER: Have you shared them with the neighbor that objects?

ROBERT SULLIVAN: Yes.

CONSTANTINE ALEXANDER: I only need one pack for the file.

ROBERT SULLIVAN: One is existing and the other is -- they're every two weeks: Ten a.m., noontime and two p.m. I respectfully request your approval for the Variance.

CONSTANTINE ALEXANDER: Okay. At this point questions from members of the Board or should I open it up to public testimony?

(No comment from Board members at this time.)

CONSTANTINE ALEXANDER: Is there anyone wishing to be heard on this matter?

Please come forward and give your name and address for the record, please.

THOMAS SCOTT: There's no basement plan that shows the reduction in the square footage? So the reduction, there's no basement plan that shows the reduction in square footage?

ROBERT SULLIVAN: No. It doesn't -- it's not shown on the plan.

THOMAS SCOTT: There's an existing plan but there's no -- there's no revised plan that shows where you lost the calculated FAR?

ROBERT SULLIVAN: How we lost it was originally it was -- we took the basement floor out, and by adding the vapor barrier and the insulation and the new slab, it brought us up. And due to the fact that there was the fire years ago, a lot of the floor joists were charred. So what ended up happening is we replaced a lot of the old ones. A lot of the old floor joists are seven and three-quarter,

seven and five-eighths. And so in certain spots where the old ones are, I'm literally within a three quarters of an inch over seven feet. So, when we bumped with the new ones, those areas there became over seven feet. So they still would be included.

THOMAS SCOTT: They're still included? Okay. And the area -- okay. I got it.

CONSTANTINE ALEXANDER: I meant to ask you. Do you live in the structure right now?

ROBERT SULLIVAN: I'm going to live there.

CONSTANTINE ALEXANDER: You plan on living there whether or not we grant relief?

ROBERT SULLIVAN: Yes.

CONSTANTINE ALEXANDER: I'm sorry. Your name and address for the record.

VIKKI GINSBERG: My name is Vikki Ginsberg and I'm the owner of the house

next-door, 24-26 Griswold Street.

G-i-n-s-b-e-r-g. Vikki is spelled

V-i-k-k-i.

GERALD DEGNEN: My name is Gerald Degnen and I am Vikki's husband and I live in the same house, D-e-g-n-e-n.

VIKKI GINSBERG: So I've prepared something I'd like to read.

CONSTANTINE ALEXANDER: You can submit it and we'll keep it in the file if you like.

VIKKI GINSBERG: Okay. And also I would like to say this: Robert Sullivan is the nicest neighbor and I look forward to that. We just have a disagreement how it will affect our home and how it will affect our neighborhood which maybe we can make a compromise about.

So, as I mentioned, I'm the owner of a two-family house, 24-26 Griswold. My husband and I lived there for 18 years. I'm

really happy to have the opportunity to speak publicly about the petition for a Variance that was presented to me by my new neighbor Robert Sullivan.

Several weeks ago I received a notice saying that a Variance was requested to do the following: Raise the ridge line three foot-six inches; construct a dormer 14 feet in length and extend the rear porches one foot-six inches. When I thought about it, my immediate concern was for my sun-loving garden on the south side of my house. What affect would a higher roof and dormer have in the sunlight and heat reaching my garden? I expressed my concern to Mr. Sullivan, and he said he would provide my husband and me with a solar study showing the effect of the proposed higher roof and dormer. As I waited to see the study, I realized that although the garden is a concern, the major concern is the impact of the amount of light and heat that

enters the windows of the first and second floor of the house. When we bought our house 18 years ago, a wonderful feature of the house is that how the floor plan is designed to maximize the southern exposure. All family rooms kitchens, dining rooms, living rooms are on the south side of the house. Each room has multiple windows, much bright sunlight and solar heat come in despite the narrow 17 feet between the houses. This is very good for us and for my mother who lives with us. My mother is 90-years-old and has very poor vision, and she benefits from bright sunshine that comes in through the windows. We only have half curtains so it's very sunny for her.

Mr. Sullivan showed my husband and me the solar study which show the effects of a raised roof and dormer on the amount of sunlight that would reach our house and garden at noon. The slides were made at two week intervals for one entire year. After

viewing the slides with us, Mr. Sullivan agreed to put the dormer on the south side of his house rather than the north side as he initially proposed. And we certainly appreciated that. Mr. Sullivan gave us a solar study on a CD-Rom to review in-depth and we analyzed this. When we analyzed the slides and created a table showing the effect at noon of a raised roof on the second floor windows, the first floor windows and the garden. Why don't I just show you this.

It shows you -- maybe you can just hand these out. I have a table to show this. In all these calculations, the dormer would lie on the south side of 20-22 Griswold as agreed by Mr. Sullivan. However --

CONSTANTINE ALEXANDER: I'm sorry, can I interrupt you? The shadow studies that Mr. Sullivan has submitted to you --

VIKKI GINSBERG: Sure.

CONSTANTINE ALEXANDER: -- do you

disagree with them?

VIKKI GINSBERG: I -- it's not a matter of -- well, I disagree --

CONSTANTINE ALEXANDER: You said they're inaccurate.

VIKKI GINSBERG: I didn't say inaccurate.

CONSTANTINE ALEXANDER: I'm asking you. My question is --

VIKKI GINSBERG: Okay, I'm sorry.

CONSTANTINE ALEXANDER: My question is: In addition to the raising of the roof regarding the impact of heat and light on your property --

VIKKI GINSBERG: Right.

CONSTANTINE ALEXANDER: -- Mr. Sullivan has submitted shadow studies which show the impact.

VIKKI GINSBERG: Right.

CONSTANTINE ALEXANDER: Do you think they're inaccurate?

VIKKI GINSBERG: I think that the conclusion we don't agree with. And can I just -- I'll get to that.

CONSTANTINE ALEXANDER: Okay.
Sorry.

VIKKI GINSBERG: No, it's fair.
This is new to me and I appreciate everybody's time. So let's see.

So, if you look at the table. So you see there is -- we feel there is a significant impact on the amount of solar light and heat we received on the second floor and the first floor and the garden. The first and second floors will no longer be as sunny and pleasant as we've enjoyed. If you look at the table, there is a decrease in light reaching the windows. On the second floor 100 percent of sun at noon on the south windows existing 44 weeks a year, January 21st through November 11th. After construction, 40 weeks a year. I mean, there is a change. And what we were

saying as you continue to look through it, zero sun at noon, no weeks a year in the second floor, eight weeks. So what we're saying is in fact when you do raise the roof, it does decrease the amount of light and heat we get. And we think it's significant. That's the difference. When we looked at it, I just assumed when you saw this, you'd say well, there's a significant difference. The first thing it will affect is a garden. You can't grow a garden when you don't get heat and light in the spring.

TAD HEUER: I think the Chairman's question is factually are these --

VIKKI GINSBERG: Oh, I'm sorry.

TAD HEUER: -- as prepared by a neutral party --

VIKKI GINSBERG: Yes, yeah.

TAD HEUER: -- do you dispute that they are --

VIKKI GINSBERG: Yeah, we don't

dispute that.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Thank you.

VIKKI GINSBERG: Okay. I only have the noon stuff. We studied the noon stuff and made tables and so forth and we don't dispute -- I mean, we don't dispute the noon stuff. Just the conclusion is different. I mean, you can look at something and say not significant. If you're a gardener or if you live on the second floor and you want sun, you can say significant. That's the difference.

CONSTANTINE ALEXANDER: I'm sorry, I didn't want to interrupt your presentation.

VIKKI GINSBERG: No, go ahead.

CONSTANTINE ALEXANDER: I'm sitting here and my dilemma is this: If the relief he were speaking were to go above 35 feet, I would be very sympathetic to your condition. I may still be sympathetic, but I would certainly be sympathetic. But here he's

staying within the --

VIKKI GINSBERG: I understand.

CONSTANTINE ALEXANDER: Let me finish.

VIKKI GINSBERG: That's okay, go ahead.

CONSTANTINE ALEXANDER: I mean, because of a really technical requirement because the house is otherwise non-conforming --

VIKKI GINSBERG: Right.

CONSTANTINE ALEXANDER: -- this Board could be one or two, requires relief from us. But what I'm trying to say is, if he had a conforming structure in terms of the size, in terms of FAR, he could do what he wants to do.

VIKKI GINSBERG: I agree with that.

CONSTANTINE ALEXANDER: Okay.

VIKKI GINSBERG: And I'm going to get to that. I agree with that.

CONSTANTINE ALEXANDER: All right, fine.

VIKKI GINSBERG: I still would like it, but I would agree that he could do it because if it was a 2,000 square foot structure on a 4,000 square foot lot, it could be 35 and a half feet tall. I understand that.

CONSTANTINE ALEXANDER: Okay.

VIKKI GINSBERG: So, okay. So this was my first grievance. But I think it is compounded by other things. Can I continue?

CONSTANTINE ALEXANDER: Go ahead.

VIKKI GINSBERG: Thank you. Okay.

So, looking at this our conclusion is that there's a significant difference. When we spoke to -- the second meeting we had Brendan Sullivan was there. And when we looked at the data, he said that it wasn't significant -- it wasn't a significant effect, and that startled me because to me it

is significant. So I want to know is there a quantifiable amount of heat and light you're allowed to take from someone else's house or is this --

CONSTANTINE ALEXANDER: Not from a zoning point of view. Maybe perhaps otherwise.

VIKKI GINSBERG: All right.

So then after this I began my research as to why Robert Sullivan would need a variance because I didn't understand. Never had this before. So I contacted the Zoning Commission and I found out that the house lot is 4,000 square feet, and in today's zoning world a house cannot be built on that lot that's larger than 2,000 square feet. The current house is 3,963 square feet. The proposed house he said would be 3900 square feet. Now this boggled my mind because I know they're making it larger, but this is when I learned about this -- what do you call

it? I call it the technicality. The fact that if the basement is in fact not seven feet high, then you don't add it to the space, you subtract it from the space. Okay.

Well, the -- maybe you can subtract it from the space because it's not seven feet high, but you can't subtract the impact of it. It's making a larger -- I'm a science teacher, the volume of this house is getting larger. The house is getting larger. And it's getting larger which has a big impact on our neighborhood. Aside from the impact, personally I feel this is the only house on the street that has no off-street parking. And the lot is narrow. There is room for two cars in front of the house. I realize legally you can park any place on the street except in front of someone else's driveway. But there's a kind of pleasantness on our street where everyone either parks in their driveway or parks in front of their house.

And when you have a new -- when Robert creates this beautiful -- and it's beautiful. The work he's doing is extraordinary. It's a beautiful place, but it's going to be big. And there are going to be two large duplex apartments where there were originally two small apartments.

CONSTANTINE ALEXANDER: Let's stop for a second, all right? The house is still -- if we were to deny Mr. Sullivan relief, the FAR, the floor area in that house would still be the same as it is today because it might not -- it might not go forward with the project.

VIKKI GINSBERG: He did the basement?

CONSTANTINE ALEXANDER: What?

VIKKI GINSBERG: The basement is done.

CONSTANTINE ALEXANDER: The fact of the matter I'm trying to get at is you're

going to have two people living in that house whether Mr. Sullivan gets relief or not. The parking, he doesn't need relief for parking --

VIKKI GINSBERG: No.

CONSTANTINE ALEXANDER: Well, you raised the issue of parking.

VIKKI GINSBERG: Okay, no.

CONSTANTINE ALEXANDER: And I'm going to point out to you I don't think parking is at all relevant. He doesn't need Zoning relief for that because there are --

VIKKI GINSBERG: How many people do you think can live in an apartment where you're going to have two, three-bedroom apartments? That's just the reality of it. Let's say you live on Griswold Street. You have two, three-bedroom apartments. You have two apartments, that each one -- the first floor apartment will be 1800 -- not real, you don't have to add that square feet.

The top apartment will be 25, 2800 square feet. I mean, in this -- the real world, how many cars do you think are going to be in that house?

CONSTANTINE ALEXANDER: People can ride bicycles. I mean, I don't know.

TAD HEUER: Well, here's part of the issue. You're raising things that are important on the community level, and to a certain extent we listen to those. But we also have to follow the Ordinance. If the Ordinance, for instance, the basement issue, that comes up -- we see that probably every week. People come in and say my basement is six foot-ten, six feet-eleven. If it doesn't hit building code, we can't say that looks really usable, that shouldn't be counted. The law says that it's not and we have to comply with the law, that's our job.

VIKKI GINSBERG: Well, I spoke to someone in Inspectional Services. They said

that's a very itchy point now. Who is this benefitting to allow developers to fill in basements to make it larger and larger and denser and denser?

TAD HEUER: But that's something you need to bring to City Council.

VIKKI GINSBERG: All right. Okay. All right.

TAD HEUER: Even if we agree with you --

VIKKI GINSBERG: Okay. That's fine.

TAD HEUER: -- we can't do anything about it.

VIKKI GINSBERG: My argument then, I guess my argument, it's not going to work. My argument, then, is I think when you come into a community and you build something that the -- why would there be a Zoning to begin with? Why shouldn't it be 2,000 square feet on a 4,000 square foot lot?

TAD HEUER: That's what the City Council decided.

VIKKI GINSBERG: Based on what?

TAD HEUER: Doesn't matter.

CONSTANTINE ALEXANDER: Whatever they think is appropriate for the City of Cambridge.

VIKKI GINSBERG: So, you can't extrapolate that 2,000 square feet means a certain number of people in the house or a certain number of rooms?

CONSTANTINE ALEXANDER: The trouble with an older community like Cambridge, Zoning is relatively recent thing in terms of Cambridge's history. A fairly recently thing. The '40s maybe. '50s. Cambridge was very heavily built up before the '40s, including your neighborhood.

VIKKI GINSBERG: Right.

CONSTANTINE ALEXANDER: So, you had houses that were built perfectly legitimate

legally. And now the Zoning Code comes in and now all of a sudden they're called non-conforming structures. They're grandfathered. They were legal when they were built, and as a matter of basically Constitutional Law, the Zoning Code can't make them illegal so you have to --

VIKKI GINSBERG: I don't think -- I understand. I understand what you're saying. I guess the point that I see that's really sad is that everyone's kind of looking the other way and saying, I mean, you're -- it's going to create a problem on the street. There's no question on my mind. There's already a problem with parking. And if you say you can't do anything about it, maybe I should go to the City Council because it is a problem. Is there a five, in a structure that's going to have six bedrooms, they're gonna be a lot of cars. (Inaudible.) I haven't noticed it on the street. If

everyone is parking in front of their street, you can't even get out of the driveways now.

CONSTANTINE ALEXANDER: That's a problem throughout the City of Cambridge though.

VIKKI GINSBERG: It's exacerbating. This is saying there's a problem and here we're going to let another large structure go up and the street simply can't afford it.

TAD HEUER: We're not letting it happen, it's the law.

VIKKI GINSBERG: It's the law, all right. That's fair. I couldn't meet anyone I like who is nicer than this or who is doing a better job. I'm thinking of the betterment of the street, of my own property. And I mean, if Robert was building a 2,000 -- let's say he took down the structure and he built a 2,000 square foot house that was going to shade my garden, what can I say?

CONSTANTINE ALEXANDER: Nothing.

TAD HEUER: Nothing.

VIKKI GINSBERG: He's conforming. But to me the fact that there's a technicality that allows him to subtract space but not subtract the impact of the space, I think is really questionable. I think it's ethically questionable. But it's not illegal.

TAD HEUER: Certainly not illegal. And all we pass on here is legality or illegality.

VIKKI GINSBERG: Are you trying to change that for the betterment of the city?

TAD HEUER: We can't do that. We can't do anything about it.

VIKKI GINSBERG: Okay.

CONSTANTINE ALEXANDER: We're not a legislative body. City Council is the legislative body.

VIKKI GINSBERG: I got it. Okay. So you have to buy me the beer then. I mean, if you can't do it, then I can't.

CONSTANTINE ALEXANDER: We haven't taken a vote yet, but we're trying to explain to you how we're --

VIKKI GINSBERG: No. You're telling me I have nothing to stand on. You're telling me --

CONSTANTINE ALEXANDER: You keep on saying --

TIM HUGHES: Your argument about your impact of the shadow study and the daylight is a legitimate argument, and that's a concern as a neighbor and that's what we listen to. The parking thing is not before us because it's irrelevant to what the variance is asking for.

VIKKI GINSBERG: It's going to make a --

TIM HUGHES: The FAR thing -

VIKKI GINSBERG: Yeah.

TIM HUGHES: -- and, yes, you're right, there's a technicality involved here.

But he's basically -- even though his structure gets bigger, he's reducing his FAR, you know?

VIKKI GINSBERG: Okay. Now I understand. Okay.

TIM HUGHES: And what we do is enforce an ordinance and allow variances in those cases where it's not -- it's not, you know, making the situation worse. It's not creating a bigger problem than already exists. Or, you know, it's a small kind of a relief that's being sought.

VIKKI GINSBERG: But --

TIM HUGHES: Those are when we grant variances. It doesn't have a detriment on the neighborhood.

VIKKI GINSBERG: But this is going to have a big impact. It's a supersize house on a small lot. And people who signed -- you know, everyone I talked to in the neighborhood, they don't think it's a great

idea. But they said to me, you know, Robert Sullivan's father is on the Zoning Commission. Why are you wasting your time?

TAD HEUER: That doesn't matter one bit.

CONSTANTINE ALEXANDER: Exactly.

VIKKI GINSBERG: But I mean --

CONSTANTINE ALEXANDER: Let's make that very clear.

VIKKI GINSBERG: He knows. I mean I'm just saying he knows the law. He knows you can do it.

CONSTANTINE ALEXANDER: You know, you can know the law as well. There's not --

VIKKI GINSBERG: I didn't know the law.

CONSTANTINE ALEXANDER: Well, then you should get an attorney if you don't know the law.

VIKKI GINSBERG: No, no. I'm just saying --

CONSTANTINE ALEXANDER: Now, wait. You keep interrupting me and I'm going to interrupt you.

VIKKI GINSBERG: Okay.

CONSTANTINE ALEXANDER: I want to be very clear for this record that although Mr. Sullivan is on the Board of Appeals, he is not sitting on this case. He has not talked to anybody on this Board about this case. And we're not giving Mr. Sullivan, Robert Sullivan, any special benefits --

VIKKI GINSBERG: Okay.

CONSTANTINE ALEXANDER: -- because of his father. That's clear.

VIKKI GINSBERG: Okay.

CONSTANTINE ALEXANDER: And I want to put that issue to bed.

VIKKI GINSBERG: Okay. The only issue I had with that, I just meant -- I'm sorry you got so annoyed with me. I didn't mean it in a negative way. I meant it that

he knows things like you can subtract square feet of space. I would never have -- if I heard that today, I would have, you know, that's the kind -- that's all I meant. He knows everything. He knows all the ins and outs which I didn't know. I didn't know. There's no way I knew a house could get larger and they told me when it was getting smaller. So I mean that's all I meant by that. And so I figured, you know, but it is going to shade the garden. It is going to crowd the street and the lot really can't support it. So that's....

CONSTANTINE ALEXANDER: Let me read into the record as you asked me to do. We have a letter submitted by Mr. -- a petition submitted by Mr. Sullivan. It says: We the undersigned have reviewed the petition and the drawings as contained therein of Robert Sullivan for the proposed alteration of 20-22 Griswold Street, and conveyed to the BZA our

support for his proposal and request that the Board consider same for their approval.

Thank you.

And I'm not -- I can't read the handwriting of the people of the signatures, but the addresses are 16 Griswold Street; 30-32 Griswold Street; Four Griswold Street; 17 Griswold Street; 75 Normandy Avenue and 1-3 Griswold Street.

VIKKI GINSBERG: Okay. Thank you. That's fair enough. I just have other questions just so that I'm better informed.

GERALD DEGNEN: Sir, there's one number that I didn't have time to write down. First one was 16, right? What was after 16?

CONSTANTINE ALEXANDER: That's the first one I gave you. The next was 30-32.

VIKKI GINSBERG: I just have three questions because I just want to be better informed. I want to know do all health and safety regulations apply to this basement

area that is subtracted?

CONSTANTINE ALEXANDER:

Absolutely.

VIKKI GINSBERG: Okay.

Are there any -- is the space taxed as part of the property?

CONSTANTINE ALEXANDER: I have no way of knowing the answer to that.

TIM HUGHES: I would say not.

CONSTANTINE ALEXANDER: I would assume they're not, but we're not the Assessor.

VIKKI GINSBERG: This is like Never, Never Land. And can children live in the basement?

TAD HEUER: No one can live in the basement.

CONSTANTINE ALEXANDER: No one can live in the basement.

TAD HEUER: It's not a habitable space.

CONSTANTINE ALEXANDER: That's the point.

VIKKI GINSBERG: You can't have a bedroom in the basement?

TIM HUGHES: Not in the portions of the basement that are viewed to be substandard by virtue of the height of the ceiling in the basement.

CONSTANTINE ALEXANDER: That's a state building code.

VIKKI GINSBERG: As I understand it, this basement has an uneven ceiling?

GERALD DEGNEN: Yes.

VIKKI GINSBERG: Well, I've learned a lot. Do you have anything to say?

GERALD DEGNEN: I think you covered it, Vikki.

VIKKI GINSBERG: Okay.

CONSTANTINE ALEXANDER: Is there anyone else wishing to be heard on this matter?

(No response.)

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

Mr. Sullivan, before we close public testimony, do you have anything you want to add?

ROBERT SULLIVAN: I think I just might add that I did push this off twice because I wanted to try and come to -- I wanted to try to come to something with Vikki where it would be, you know, okay. I told her I wouldn't want to put a structure up there that would completely drown her house. And I don't feel that this does. And one of the things I did do was to move it, move the dormer to the other side. I lowered it by a foot. And, again, these shadow studies, I forgot to say were for the raising of three foot-six, and the proposed is only two foot-six. So it would actually be a third less than what

is shown on the drawings.

VIKKI GINSBERG: I appreciate that.

ROBERT SULLIVAN: And as far as the neighborhood impact, I feel like many of the other immediate neighbors are okay with that. And as far as the parking, I feel like, you know, you can have two people in there with three cars. You can have one person in there with two cars. You can have four people in there with no cars. I guess that's it. Thank you.

CONSTANTINE ALEXANDER: Thank you.

Public testimony will be closed.

Any questions, comments from members of the Board?

TIM HUGHES: One comment that I have is that I think one of the things that it does benefit the city and the neighborhood is that it creates housing that has more than one or two bedrooms in it which is usable for families. It's encouraging for families to

move into neighborhoods. And I think for too long, whether a matter of policy or just a matter of development, there haven't been that many three-bedroom units developed in the City of Cambridge. You can see it in the number of, you know, people enrolled in the public school system. Kids enrolled in the public school system, the families have been moving out rather than moving in. And I encourage this kind of development actually.

CONSTANTINE ALEXANDER: Slater, do you have a question?

SLATER ANDERSON: Yes, and just one. And my recollection from the dormer guidelines is the dormer isn't supposed to start from the ridge. It's supposed to start below the ridge. And in this plan it does show it starting above the ridge.

TIM HUGHES: Probably was before.

ROBERT SULLIVAN: I got this from the City of Cambridge, the dormer guidelines.

And I believe it says as long as you're within three foot-six from the sides and one foot-six from the wall you can.

VIKKI GINSBERG: I just want to submit these other graphs that we did to show the difference.

CONSTANTINE ALEXANDER: Any other comments, questions? Can I see the shadow studies?

THOMAS SCOTT: I for one appreciate the fact that you moved the dormer, you know, given their concerns, that you've lowered the height of the ridge and that you did do the shadow studies. And although you said you lowered the ridge even further since that was done, I think all these things are quite admirable and appreciated I think at least by me as a member of the Board. So, I think it just shows that you're willing to work with the neighbor that has the grievance and appreciate that. That's all.

CONSTANTINE ALEXANDER: I'd like to endorse that actually. And my view is the relief being sought legally is rather limited. You're actually reducing the FAR. You're not really extending or violating the setback requirements. Yes, you are increasing the mass on one side, but you have relocated the dormer, which I think is a big, big change. I also endorse what Tim has said about the need to encourage multi-family housing in structures like this. It's a very large structure for that lot, and it has good use for the use Mr. Sullivan wants to put it to. And I can't get into the parking issues. I don't know what the impact of the parking will be. All I know is it is Zoning compliant when it comes to parking. And every structure in the city could have more cars than you would like. And most streets in the city, like Brattle Street have plenty of problems with parking, and that's just the

life in Cambridge. So frankly I'm in support of the petition.

Ready for a vote?

The Chair moves that the Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being that the full inhabitability of the structure would be precluded if we did not grant some relief, particularly with regard to the -- now the attic area which can now be made into usable living space.

That the hardship is owing to circumstances relating to the, basically the shape of the structure and the land. It is a non-conforming structure.

Therefore -- almost -- not almost -- any, virtually any modification to the structure will require Zoning relief. But it is a fact

that it is a non-conforming structure.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this Ordinance. As I said, the relief is technical in nature, minor in nature. That there is a positive as Mr. Hughes has identified, in terms of creating new larger apartments which provides more housing of the kind that will encourage more families to live in the City of Cambridge. And that to my mind there will be no negative impact from the relief being sought that we can verify to the neighborhood.

On the basis of the foregoing, a Variance be granted on the condition that work proceed in accordance with the plans submitted by the petitioner.

Mr. Sullivan, you understand that these are the plans?

ROBERT SULLIVAN: Yes.

CONSTANTINE ALEXANDER: And if you modify them, you have to come back before us.

ROBERT SULLIVAN: Yes.

CONSTANTINE ALEXANDER: Plans submitted by the petitioner dated February 8, 2010. They're 1, 2, 3, 4, 5, 6, 7, 8, 9 pages, first page in which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(Discussion off the record.)

(7:40 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Thomas Scott, Tad Heuer, Slater

Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9885, 1815 Massachusetts Avenue. Is there anyone here wishing to be heard on this matter?

ATTORNEY ADAM BRAILLARD: Thank you, Mr. Chairman, members of the Board, Adam Braillard with the law firm of Prince, Lobel, Glovsky and Tye located in Boston, Massachusetts. I'm here with the applicant Clear Wireless. We're here in connection with a Special Permit for the Board to modify an existing wireless communications facility on the rooftop and the existing tower located on the main building of Lesley University located at 1815 Massachusetts Ave. With me is a Mr. Jaikumar, and his last name is spelled J-a-i-k-u-m-a-r, and he's a representative of the applicant's radio frequency department. He's here to answer any technical questions that the Board may

need for the technology.

As I said, we're here to modify an existing facility on the Lesley University's main building. I've got photo sims that are part of the application.

CONSTANTINE ALEXANDER: I hope they're better photo sims. I've got a real problem with those.

ATTORNEY ADAM BRAILLARD: I know you do. And we increased the resolution so that --

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY ADAM BRAILLARD: I also made these that are blown up for the Board to pass around and review. I know, I understand how important the visual exhibits are for the Board.

CONSTANTINE ALEXANDER: These are the same that are in the file, just a better resolution?

ATTORNEY ADAM BRAILLARD: Better

resolution. Same viewpoints, right.

So essentially what exists there with respect to the applicant and its affiliate Sprint Spectrum are two panel antennas per sector. And three sectors with six panel antennas are existing. There are other antennas there for other, that are existing with other carriers. The proposal for this installation is to install one panel antenna per sector which is substantially similar to the existing antennas. Essentially four feet in length, less than one foot in width. And one backhaul dish antenna per sector which would be approximately one foot in diameter. And those would be located in parallel with the existing installation for the most part. There's a couple of exceptions there and I can go through those.

The other proposal to the part of the installation to the proposal is to add, what exists there are two radio equipment cabinets

on an existing equipment platform in the backhall portion out of view of the building. And we would add one additional radio cabinet to that.

CONSTANTINE ALEXANDER: That's all in the plans?

ATTORNEY ADAM BRAILLARD: All in the plans.

CONSTANTINE ALEXANDER: You met with the Planning Board?

ATTORNEY ADAM BRAILLARD: We met with the Planning Board twice.

CONSTANTINE ALEXANDER: Why don't you tell us about it.

ATTORNEY ADAM BRAILLARD: Great. We met with the Planning Board on two different occasions. The first time I met with them they did have a concern -- we didn't actually really discuss the actual application. They had a concern with the existing aesthetics of the tower.

CONSTANTINE ALEXANDER: You mean there's too much stuff up there?

ATTORNEY ADAM BRAILLARD: Right. My understanding.

TAD HEUER: That's my concern, too.

ATTORNEY ADAM BRAILLARD: Sure.

SLATER ANDERSON: Yes, can we do something with the other one?

TIM HUGHES: Wait a minute, what carrier are those? That might be my phone.

ATTORNEY ADAM BRAILLARD: What we proposed to do during the first meeting with them was to not only make sure that our additional antennas were painted to match and placed in the recessed darker portion of the tower, but also repaint the existing Sprint antennas that were there. Similar to what we're doing at 288 Norfolk Street. They liked that idea, but wanted to talk with the representative of Lesley University. So George Smith who is the Director of

Operations at the university, he and I talked and he went to the next meeting on the 2nd, March 2nd, and we spoke at length with the Planning Board. And George stated that it's his complete intent to talk with the carriers to see what they can do to either move their antennas into that recessed area and paint them to match, get them off the edges of the tower and see what he could do to increase or decrease any aesthetic concerns that the Planning Board may have. They liked that idea. We did caution them and I'll caution you folks here.

CONSTANTINE ALEXANDER: You can't control it.

ATTORNEY ADAM BRAILLARD: It depends upon what the leases say with those other carriers. It's very difficult to get them to do -- they'll obviously work with the property owners in town -- in the city, but it's difficult. And I had mentioned to David

that -- I'm sorry, George that we could -- I would offer my help in terms of who I knew with the carriers, but that only goes so far.

TAD HEUER: Is there on the tower right now, besides what's being moved, is there anything on the tower now that isn't being moved to a sustained place that's a Clearwire facility?

ATTORNEY ADAM BRAILLARD: The affiliate is Sprint, yes.

TAD HEUER: Yes.

ATTORNEY ADAM BRAILLARD: There are two antennas per sector. And I have to -- I'm pointing to the photo sims. The best sim for me to show, this is View 2. And at the top there are, I believe, that there are -- it's -- I think it's AT&T. I'm not sure. It may be Verizon.

TAD HEUER: This is the one on the corner on the left and then the one in the upper --

ATTORNEY ADAM BRAILLARD: In the upper portion I guess on the exterior.

TAD HEUER: Upper portion. That's fully facade mounted?

ATTORNEY ADAM BRAILLARD: Right. Those are not Clearwire's obviously because Clearwire isn't there yet. They're Sprint Spectrum. They're Sprint Nextel. The lower array, the two antennas that are --

TAD HEUER: The really bad brick to match?

ATTORNEY ADAM BRAILLARD: Right.

TAD HEUER: The two that are separated to match?

ATTORNEY ADAM BRAILLARD: Those are Sprint's and those we're going to propose to paint one color, the maroon color in the recessed so that they will match better.

Now, MetroPCS is that antenna down below that you can barely see. They did a great job and that's our, that's kind of our

baseline in terms of how we're going to paint these.

TAD HEUER: And you have them on the south side as well?

ATTORNEY ADAM BRAILLARD: Yes.

TAD HEUER: So View 3, are any of those yours already?

ATTORNEY ADAM BRAILLARD: Yes, it's a similar array. There's two on the second array, the lower portion of the antennas on the second -- on the lower part. And they're spread, they split into three recesses. So there's -- that actually might be the same -- that View 2 and 3 are actually I think of the same view, just at a different angle.

TAD HEUER: View 2 is from the north looking south and 3 is from the south looking north.

ATTORNEY ADAM BRAILLARD: Okay. So they're different.

TAD HEUER: So on View 3 the south

looking north, you -- the lower tier, yours are the ones on the left and the right columns; is that right?

ATTORNEY ADAM BRAILLARD: Right.

TAD HEUER: That are in the middle, and that's another MetroPCS one on the left?

ATTORNEY ADAM BRAILLARD: Yes.

TAD HEUER: So you would, from my perspective, literally my perspective when I look at this building, those are the ones that have the either the paint peeling and those are under your control anyway?

ATTORNEY ADAM BRAILLARD: Yes.

TAD HEUER: So, would you at all object to the conditioning of this Variance to requiring the paint to match before yours go up as a requirement?

ATTORNEY ADAM BRAILLARD: No.

Under the Special Permit? No.

TAD HEUER: Sorry, Special Permit.

ATTORNEY ADAM BRAILLARD: And I

don't mean anything by that. I --

CONSTANTINE ALEXANDER: Not only with the new antennas would be painted to match the facade but you'd upgrade the painting of your other existing?

ATTORNEY ADAM BRAILLARD: Of the Sprint.

CONSTANTINE ALEXANDER: Okay. Only on yours.

ATTORNEY ADAM BRAILLARD: Which are the ones that are essentially a potential culprit.

CONSTANTINE ALEXANDER: When I get to the motion, make sure I get that in.

SLATER ANDERSON: Was there some condition like that with the Planning Board?

CONSTANTINE ALEXANDER: Not quite. They're a little bit vague.

ATTORNEY ADAM BRAILLARD: Right. We made the same similar condition in Norfolk. The difference between Norfolk and

here there was an allegation with Norfolk that they weren't compliant.

SLATER ANDERSON: Can I ask a historical question for Sean?

SEAN O'GRADY: Yes.

SLATER ANDERSON: These ones that are just awful on the corners of the building, were those prior to these regulations? I mean, what's the history with --

SEAN O'GRADY: I don't know the history of those.

CONSTANTINE ALEXANDER: My guess is the prior Board issued the Special Permit.

SLATER ANDERSON: They're not as aesthetic as this Board?

CONSTANTINE ALEXANDER: There's always been an issue on the ability to regulate telecommunications carriers because of federal law that says (inaudible).

Anything more, Mr. Braillard?

ATTORNEY ADAM BRAILLARD: No, that's all I have.

CONSTANTINE ALEXANDER: The Chair will read into the record a memorandum received from the Planning Board dated March 4th relating to this case.

"The Planning Board met with representatives of Lesley University, the building owner and the applicant, at the March 2, 2010 Planning Board meeting to discuss the existing installations at 1815 Mass. Ave. in the context of the new proposal. The Planning Board is concerned about the cumulative visual results of the antennas. George Smith of Lesley University explained their intention as landlords to require more pleasing antenna installations, specifically to move all the antennas to the red recessed portions of the tower to require organized spacing of the antennas, and to ensure the refinishing and maintenance of the

finishes on the existing and future antennas. While some Board members felt that this approach does not adequately address the issue of the visual chaos and clutter, others were satisfied that the matter will be addressed adequately going forward. As for the specific Clearwire installation on the March 11th agenda, the overall opinion is that the antenna installation should be orderly and in keeping with the plan outlined above with the usual conditions attached, that the wiring be secured tightly to the facade and the entire installation finish to match the facade in color and texture."

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

(No response.)

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

Questions, comments from other members of the Board?

(No response).

CONSTANTINE ALEXANDER: Besides the visual discussed on the clutter on top of the roof.

TAD HEUER: My question is, and it may not be, and, Counsel, maybe if you have an answer. It seems that part of the problem with this building besides the outlier AT&T antennas that are clearly in the wrong place by being corner-mounted instead of facade-mounted, is that -- and I've got this little schematic. That looks terrible because you have scattered antennas. If you have dummy antennas running down the side, even if there was nothing in that space and they were painted to match, I think they'd draw a lot less attention than putting up an antenna. I understand the first time the antenna goes on the building you kind of hope that no one notices and it blends in. Now that we're at the stage that that building

being the tallest building by far and everyone wanting to be on that building, I'm not sure how you would get to Lesley to put dummies that are painted to match and put something in, they get swapped out for a real one. But to be additionally -- subtraction by addition.

CONSTANTINE ALEXANDER: Well, the point, you touched on a good thought. I hope you would convey to Lesley University that to the extent that they're going to be leasing antennas, further relief for this building can be before us, we're going to look for a quid pro quo in terms of improving the situation that's there right now. It's just not going to be completely adequate. I think starting with tonight, we're looking to see now an improvement in the overall visual impact of that roof line. So Lesley should be forewarned that we're not going to be so sympathetic in the future with regard to

petitions unless we see, as I say, a clear improvement if we grant relief.

THOMAS SCOTT: It seems they should be able to hire somebody to address the aesthetics.

CONSTANTINE ALEXANDER: I think Mr. Braillard points out correctly these are leases. You can't guarantee that they're going to cooperate.

TAD HEUER: Well, I presume AT&T wants to put up other antennas in the city. So....

CONSTANTINE ALEXANDER: That's where we get them.

SLATER ANDERSON: You run up contract law. They have contract.

CONSTANTINE ALEXANDER: We can't deny relief someplace else on the condition on the grounds that they --

TAD HEUER: No, but we can certainly ask or how we usually do this is the only and

best possible feasible site for this facility.

CONSTANTINE ALEXANDER: I think your point is absolutely well taken. We're going to be much more probing and demanding in the future with regard to people who have got this clutter on top of the roof. In the meantime they've done something to improve it.

SLATER ANDERSON: I think taking that message back -- they're not to your clients necessarily, but a landlord that your clients are working with in general is probably a good message, saying if you want a favorable response as you come with almost a master plan for your building for future and existing applications.

TAD HEUER: It might not also be a bad idea for Lesley to come themselves and sit here as quite frequently we end up with absentee landlords and send you, you're hired

counsel, and this isn't against you personally clearly, but to have the landlords themselves, because they are the ones who own the physical structure in Cambridge that we're concerned about. We're not necessarily concerned about antennas per se. We're worried about the antennas attached to buildings. So, frequently we seem to just get the antenna side and we get radio frequency engineers, and you guys do a great job telling us why it's necessary, but we don't get the building owners, the liveability side of it as well the communication side of it is addressed.

ATTORNEY ADAM BRAILLARD: We -- the George Smith had heard it from the Planning Board, very similar concerns. George and I have a pretty good relationship now a days from this particular installation as well as the Board together with Lesley. And so I have a pretty good relationship with George

and we'll convey that to him absolutely.

TAD HEUER: And we're not singling you out. You just happen to be the first one here. When AT&T comes in, they'll get the same speech.

THOMAS SCOTT: I think they should be responsible for that building and have some historical significance for Cambridge. And you should take that message back to them.

CONSTANTINE ALEXANDER: Sure.
Ready for a motion?

The Chair moves that the Board make the following findings:

That the petitioner has submitted evidence not mentioned in their oral presentation but certainly in the file, that it is a duly licensed FCC carrier in good standing.

That the extent of the visual impact of the proposed relief will be minimized through the -- and we'll impose further conditions to

improve the minimization of the visual impact.

We have to make further findings for the Special Permit. The general findings. That installing the antennas on this building as proposed will not impact traffic, generation or regress or cause congestion, hazard or substantial change in established neighborhood character. The point of fact being that these antennas are quite minimal maintenance and, therefore, moving an increase of traffic by maintenance facilities, personnel to service the antenna.

That the continued operation or development of adjacent uses will not be adversely affected by the additional antenna on the building.

And that no nuisance or hazard will be created to the detriment of the health, safety and/or welfare of the occupants or the

citizens of the city.

And that the proposed antennas would not impair the integrity of the districts or adjoining districts or otherwise derogate from the intent and purpose of this Ordinance.

On the basis of the foregoing a Special Permit shall be granted the petitioner to add three Wi-Max panel antennas; three wireless backhaul dish antennas and one radio equipment cabinet to the applicant's existing and previously approved wireless communications facility currently operating on the rooftop of the building. Such Special Permit would be granted on the following conditions:

That work proceed in accordance with the plans submitted by the petitioner numbered T1, G1, C1, A1, A2, A3, A4, A5, S1, E1, E2, the first page of which has been initialed by the Chair.

And also that the work proceed and be consistent with the photo simulations submitted by the petitioner, the first page of which has been initialed prepared by Bay State Designs and appears to have a date of June 2009.

On the further condition that the antenna, the equipment being installed be painted to minimize the impact of the viewed materials, that the texture and color view blend with the chimney to which this is going to be attached.

That the petitioner also upgrade the painting and maintenance of the other equipment it has on the building so to minimize the visual impact. And not only to do that now, but during the course of the use of this building to periodically upgrade and maintain the paintings to keep it fresh and vibrant and to continue the minimization of the visual impact.

On the further condition that the wiring be secured tightly to the facade of the building.

And lastly, that should you cease to use this equipment for any period of six consecutive months, that the equipment be promptly removed and the building be restored as close as possible to its state before the removal of the antenna.

All those in favor of granting the Special Permit on the basis I proposed, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

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

(8:05 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer,

Slater Anderson.)

CONSTANTINE ALEXANDER: We're now onto the regular agenda. The Chair will call case No. 9898, Nine Sibley Court. Is there anyone here wishing to be heard on that matter?

ATTORNEY JAMES RAFFERTY: Good evening Mr. Chairman, members of the Board. For the record, my name is James Rafferty. I'm an attorney with the law firm of Adams and Rafferty located at 130 Bishop Allen Drive, Cambridge.

CONSTANTINE ALEXANDER: Excuse me, just before you start your presentation I do want to be clear. We have this case and the next case involving the same premises. Am I correct that if we grant the relief you're seeking in this case, we reverse -- we grant your appeal, the next case becomes moot?

ATTORNEY JAMES RAFFERTY: That's right.

CONSTANTINE ALEXANDER: Okay. If we deny your appeal, then the next attempt is the second case?

ATTORNEY JAMES RAFFERTY: Correct, yes.

CONSTANTINE ALEXANDER: Okay. It's all right. Either or kind of thing. Thank you.

ATTORNEY JAMES RAFFERTY: Thank you.

As the Chair noted, this is an appeal from the determination of the Building Commissioner. And it's unusual frankly in my estimation that such a procedure is necessary. But this happens to be a rather unique case, and I understand the determination of the Building Commissioner, but I respectfully think that it involves a piece of interpretation that I think can best be addressed by the Board in a full context hearing. I provided a copy of the relevant

sections of the Ordinance. I know the Board is familiar with it, but this involves of course Article 8, the section dealing with non-conforming structures. And, you know, this has evolved over time because so much of the housing structures in the city are indeed not conforming. I remember well when it was amended about 12, 15 years ago -- big push by the City Council as the city was down-zoning neighborhoods and people were understanding the effect of non-conforming structures and what it meant to them. So there really was an effort undertaken by then City Councillor Ed Sear to at least provide some opportunities for certain discrete changes to these non-conforming structures. Now as someone who practices Zoning Law, of course that was of great concern to me. Because if people didn't need lawyers, I was going to pursue another line of work. But nonetheless, they did create a series of

exceptions to what had previously been a requirement to get a Variance almost to do anything. So listed within these exceptions at Paragraph H was a particular exception, and it had its genesis in the Section 6 issues that you might recall you dealt with on Foster Place a few weeks ago. That it's a different treatment for one and two-family houses.

And it says for one and two-family houses you can do a few things as of right. And one of the things that you can do is you can see H1 which is what this case is about, is that you can put a dormer on a second -- on the second story of such a house even if the wall in which you place the dormer on is non-conforming. And this section of the Ordinance has been around for decades and people rely upon it generally and use it all the time.

Mr. Seitchik has a house on Sibley Court. We reviewed his proposal, it was approved by the Historical Commission although it's not all

that relevant to this session. He went to get his building permit and the Commissioner's determination after reviewing the application was that while it was true that the dormer could be constructed, the dormer couldn't contain windows. I was, I was amazed at that interpretation because I thought to myself, whoever heard of a dormer without windows? There was a guy here two weeks ago passing out the dictionary definitions of things, and I know that's generally not --

CONSTANTINE ALEXANDER: We don't want to go there.

ATTORNEY JAMES RAFFERTY: I don't want to emulate that because I don't know if a flag pole is a structure.

TIM HUGHES: It's a support actually.

ATTORNEY JAMES RAFFERTY: If you go in the old Webster's dictionary, inherent in

the dormer is a window. My God, I read the definition a projecting window built out from the slope of a roof. I mean, that's the definition of a dormer. Of course we all know the dormer guidelines, and we like to see the dormer guideline that has windowless dormers. The whole purpose of having a dormer was it adds air and light. They put in sloped roofs and I thought --

CONSTANTINE ALEXANDER: Another purpose of a dormer is to create additional space.

ATTORNEY JAMES RAFFERTY: With air and light.

CONSTANTINE ALEXANDER: Yes, yes.

TAD HEUER: You want a big walk-in closet and you say I've got a pitched roof and I desire a walk-in closet but I can't get one in here. And you come in and say that you want a big walk-in closet. How tall do you want it? A big closet. We want it to be at

lest seven feet high. That strains the FAR. What are you going to do? I need to put a dormer on. How long? 20 feet.

ATTORNEY JAMES RAFFERTY: No, no. There's no FAR here. I mean, that's going to need a Variance.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: I agree. Okay.

So the notion, the notion of a dormer without a window is one that I'm totally unfamiliar with. So --

CONSTANTINE ALEXANDER: You learn something every day.

ATTORNEY JAMES RAFFERTY: Exactly. I haven't seen these closets and perhaps that's something that the city wants.

TIM HUGHES: I don't think so. Because according to the dormer guidelines, the front face of the dormer is supposed to be 50 percent windows.

ATTORNEY JAMES RAFFERTY: Gee, wouldn't that have some relevance in this interpretation?

CONSTANTINE ALEXANDER: We are talking apples and oranges here. The dormer guidelines are for if you're going to build a Zoning compliant with a Variance compliant dormer. This is something different. We're talking about a modification of a non-conforming structure. And this structure by definition is this kind of structure, you're too close to the lot line.

ATTORNEY JAMES RAFFERTY: That's right.

CONSTANTINE ALEXANDER: So, one of the issues when you do anything that's too close to the lot line is privacy issues. All of sudden if you're going to do something, you're starting to intrude on your neighbor's property and your neighbor's space. And one other way you can intrude is if you have a

window. Because a window obviously allows people to look out into the neighbor's yard or neighbor's house and vice versa. So, I want to hear from Mr. O'Grady on this, but it doesn't strike me completely off the wall -- that's perhaps a bad choice of words, off the wall to have a windowless dormer. I mean, this is the purpose of the statute it seems to me. It may not be the only way you can read it. And it may be in the past, maybe, I don't know, I haven't been sitting here that long, in the past we allowed under this section, or the Inspectional Services allowed in this section windowed dormers. But policies change.

TAD HEUER: My question would be can you explain to us how we would square your argument with the fact that we routinely are required to grant Special Permit for windows that are moved around in setbacks in existing walls?

ATTORNEY JAMES RAFFERTY:

Completely. Thank you for the opportunity.

Because what you do when you look at 8.221 you look at these are the exceptions. If you look at the lead in to the paragraph, it says the following items can take place without need of -- by virtue of a building permit. So if you fit into one of the categories, you don't go into another category. You don't need to satisfy a through i to do this. So in a case of a wall on a house that didn't represent a dormer, and you simply had an existing non-conforming wall and you had to add a window, well, gee, you -- probably then when you go through this line, you'd probably get tripped up, that you would then be under a d. You would be relocating, enlarging or adding windows of similar opening provided that the facade of the building upon the conforms to the yard requirements or faces a street.

So, but of course you'd need a Special Permit. So if this was a house and it was a non-conforming wall and you had a family room, you'd say, gee, it would be nice to have a window on that wall. Oh, gee, you can't do that.

What H says is it creates a special category for dormers. And it says for dormers you can do this. And by the definition, I would say the plain definition of the dormer, is the dormers are to provide air and light. It is with all due respect I've yet to see -- and this is what it gets to interpretation, I brought a case with me that I know the Board is familiar with because it gets cited often. It's the Green case that directs Board on how they construe their Ordinances. It was referred to recently by the Appeals Court in actions by this Board. And it says the Zoning By-Laws should not be so interpreted as to cause absurd or

unreasonable results when the language is susceptible of a sensible meaning.

I would suggest that a sensible meaning here of a dormer is something that contains glass. We promulgate dormer guidelines. I don't know why we would ignore the impact of the dormer guidelines. They're not part of the Ordinance, but they certainly set forth a design exception for the dormers. So the City Council created an exception for dormers that says you don't need to get a Special Permit. But to interpret that to say oh, well, you can have your windows dormer but you have to get a Special Permit for a window. I do think we are now approaching the cautionary language of a decision. That creates an illogical result that the City never intended, or given its attitude toward dormers and by its very own guidelines to create dormers without windows. And I don't think it's a case of well, there's a conflict

here. What there is is there are a series of exceptions, and if you fit in one of these exceptions, I should note that there's correspondence from the Commissioner in here that says there is no authority in the Ordinance for having windows in non-conforming walls. That's not an accurate statement. When you look at this language here, if you look at d, and presumably we're being told that d, that d is a, is the operative word here, that dormer isn't non-conforming. This d refers to openings of the building of which -- do not conform to the face the street. Well, in this case the dormer isn't non-conforming because the dormer qualifies as an exception. You wouldn't call that dormer a non-conforming facade because the Ordinance says you can put a dormer up there. Your conforming to the Ordinance. It just so happens that the setback. The setback is

violated by the main wall.

So I must say I don't come here often with appeals, and this struck me as quite extraordinary. And I thought to myself, well, how could we as a City promote a build out or a design implication that had windowless dormers? Well, why don't you just go ahead and file --

BRENDAN SULLIVAN: I think we're getting tripped up here is what is your common image of a dormer? And the common image of a dormer is a structure which protrudes from a roof which obviously adds space to the inside and has windows in it. And that would be the purpose of the dormer.

However, I think a strict definition of a dormer is a projection from a roof which adds space to an interior space. It projects it out.

ATTORNEY JAMES RAFFERTY: With all due respect, where is that definition set

forth?

BRENDAN SULLIVAN: Well --

ATTORNEY JAMES RAFFERTY: It's not in the Ordinance or the Building Code.

CONSTANTINE ALEXANDER: Now, we're getting in the interpretation of the Zoning Ordinance.

ATTORNEY JAMES RAFFERTY: The Court says when the language is accessible of a sensible meaning. So I guess, what I'm suggesting to the Board and I will leave it at that, whether the Board would conclude that a sensible meaning of a dormer is a windowless protrusion. And if the Board thinks that, I won't waste any more time on this case. I leave with a different view of the Board but, you know.

BRENDAN SULLIVAN: But it may be sensible to allow for a windowless dormer so that if you wanted to put in windows, then there's a review mechanism. Because

that -- those windows within that setback may then infringe upon the next-door neighbor.

CONSTANTINE ALEXANDER: You cited this Green case. I'm going to cite another case, the Hurley Street case which you were not involved. But the Hurley Street case involved part in part an appeal of the decision of the Inspectional Services Department, and the Court acknowledged that it was entirely appropriate for this Board to give deference to give interpretation made by the Zoning enforcement officers. And that is issue before us.

I want to hear from Mr. O'Grady as to -- and I have a short memo from Mr. Singanayagam. But what is the position of the Inspectional Services Department as to how you construed the section that Mr. Rafferty has cited to get to the result you've gotten to?

SEAN O'GRADY: Well, quite simply h1

is for dormers or additions. It allows you to build a dormer in addition if you meet the requirements, and the building does, to have a dormer or addition in the setback. It doesn't address whether dormers or additions have windows and, you know, I'm not going to sort of revert to Webster's to try to convince you one way or the other on that issue.

Windows are directly addressed in d, and properly so, and they say only under two circumstances may you do this to a non-conforming window; if you're not in a setback or if you face a street. Neither of those apply. So the plain language of the Ordinance is clear to us that this would not -- while you could have this dormer or addition, it cannot have windows.

Further, if you buy the argument from Webster's that this construction must have a window, I'd simply say it's not a dormer. It's an addition. Dormers, if they have to

have windows, would not be allowed under this section because windows clearly aren't allowed under d. And this is not -- you know, we're not talking just sort of, wow, on first blush it seems like a dormer should have a window and therefore we should just put a window in here. Where windows are addressed in d, they're addressed for a very simple reason, privacy. Privacy is about having windows in setbacks and setting up situations that invade people's privacies. It would be silly to assume that the wall under which the dormer or addition sits, which is in the setback, somehow invades the privacy and yet the window directly above it does not invade privacy through some sort of interpretation of h1 that says dormers -- that this has to be a dormer and dormers have to have windows. That just sort of flies in the face of construction.

So I would say just under the plain

reading you can't have a window here. You can't really follow this dormer argument because it doesn't have to be a dormer. And under the -- if you dig a little bit deeper, you'll see that the issue is privacy, and that issue's got to be protected whether it's in an addition that comes under h1 or whether it's in the building itself. I don't think that it's absurd for the Board to make that determination. And we're not speaking against the window and saying that we don't want this window. We're just saying windows in setbacks have to be reviewed by the Board under a Special Permit, and that's this case.

CONSTANTINE ALEXANDER: Questions from members of the Board, either Mr. Sullivan or Mr. Rafferty before I open it up to the public at this point?

SLATER ANDERSON: How long has this dormer been in existence?

ATTORNEY JAMES RAFFERTY: Oh, no

we're going to construct it.

SLATER ANDERSON: You're going to construct it? It wasn't clear to me because this file doesn't have plans in it.

ATTORNEY JAMES RAFFERTY: Right. No, the issue was the building permit.

SLATER ANDERSON: I was going to say that H suggests you need to be building a dormer not an existing.

ATTORNEY JAMES RAFFERTY: Yes, yes. It's a dormer case and it's proposed as a dormer. And the plans were approved with the dormers without windows. So the construction is ongoing. And there are one of two several outcomes obviously.

SLATER ANDERSON: You said the construction is --

ATTORNEY JAMES RAFFERTY: Ongoing.

CONSTANTINE ALEXANDER: Other work inside the house.

ATTORNEY JAMES RAFFERTY: Including

the dormers. The dormers are authorized. The question is only the windows in the dormers. Right?

So there's a case following this one which I suspect we'll get to very quickly. I had my letter of withdrawal of that case and I'll put that away. We'll be hoping to get a Special Permit for that.

SLATER ANDERSON: Why were there no windows proposed initially?

ATTORNEY JAMES RAFFERTY: Oh, they were.

SLATER ANDERSON: They were removed because of denial.

ATTORNEY JAMES RAFFERTY: Walk-in closets are very popular.

SLATER ANDERSON: By the way, I have a dormer without windows. It's not a skylight.

ATTORNEY JAMES RAFFERTY: People in glass houses shouldn't throw stones. People

in non-window dormers shouldn't be permitted to sit --

CONSTANTINE ALEXANDER: And sarcasm doesn't advance your case.

ATTORNEY JAMES RAFFERTY: It's gotten me this far, Mr. Chairman. It's the only game I know.

But I'm going to stop talking in this case because even I with my low level of sensibility knows where this conversation is going and I won't go on any further and I thank you for your time.

CONSTANTINE ALEXANDER: Anyone else? I'm going to open it to public testimony. Is there anyone wishing to be heard on this appeal? Not on the next case, this appeal.

(No response.)

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

We do have a letter in the file from

Mr. Singanayagam, the Commissioner of Inspectional Services.

By the way, excuse me, Mr. Rafferty, you have a letter submitted in support of the relief you're seeking. I assume that you've covered everything in your letter in the presentation.

ATTORNEY JAMES RAFFERTY: Thank you, I have.

CONSTANTINE ALEXANDER: Do you want me to read it into the record?

ATTORNEY JAMES RAFFERTY: No.

CONSTANTINE ALEXANDER: "This is in reference to the appeal made by attorney James Rafferty to my determination that windows are not permitted on dormers facing non-conforming setbacks. Pursuant to Article 8, Section 8.22.1.H.1 of the Cambridge Zoning Ordinance, a dormer was granted to the above referenced property. However, the windows were not permitted on

the non-conforming side pursuant to Article 8, Section 8.22.1.e. there is no language in the Zoning Ordinance permitting windows/doors in as-of-right dormers facing a non-conforming setback."

Public testimony being closed.

Comments from members of the Board? Ready for a motion.

TIM HUGHES: I -- my only comment is that I'm very fond of Webster's dictionary. And that definition works for me. And I think it worked for the people that constructed the dormer guidelines. I am sensitive to the idea that the windows in the setback should be reviewed for privacy issues, and I expect that's what we're going to do next. But I would vote to uphold the appeal.

CONSTANTINE ALEXANDER: I'm open to suggestions from the Board. I will make the motion in terms of denying the appeal. We

can take a vote that way or I can phrase the motion the other way granting the appeal. I think the sense is -- I'm sorry.

SEAN O'GRADY: I would request that you ask to grant the appeal.

CONSTANTINE ALEXANDER: Grant the appeal.

SEAN O'GRADY: I'm not asking that you grant the appeal. Just to avoid the motion --

ATTORNEY JAMES RAFFERTY: We don't get four votes.

BRENDAN SULLIVAN: You should do it in the affirmative.

CONSTANTINE ALEXANDER: You're right. Thank you very much.

The Chair moves that the appeal of the petitioner be granted on the condition that -- not on the condition, be granted on the basis that it is the most consistent way of reading or interpreting Section

8.22.1.H.1.

That the common sense of a Webster's dictionary definition of dormer includes a window, and that the section I have just cited talks by a dormer and, therefore, it should be a dormer with a window if that's what the petitioner desires.

All those in favor of approving that motion to grant the appeal say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: One in favor.

(Hughes.)

CONSTANTINE ALEXANDER: Motion doesn't carry.

CONSTANTINE ALEXANDER: I think we should make further findings for the record.

That the appeal has been denied on the basis that one, extend deference to interpretations of the Zoning enforcement officers at the Inspectional Services

Department.

That there is nothing further that there is the section involved here just refers to dormer, and there is no -- it does not follow that a dormer by definition allows or permits a window.

And that further that if you read all of 8.22 in context, it is appropriate that a dormer with a window require -- does not cover the benefits of this section but requires other relief, primarily because of the issues of privacy that may be created by a dormer with a window that sits too close to a side yard.

All those in favor of making the findings for the record.

(Show of hands.)

CONSTANTINE ALEXANDER: Four in favor. Appeal denied.

(Alexander, Sullivan, Anderson, Heuer.)

(8:25 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9899, Nine Sibley Court. Is there anyone here wishing to be heard on that matter?

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chairman. Again, James Rafferty on behalf of the applicant on my right Adam Seitchik the property owner.

This is a single-family home that is undergoing much needed renovations. It would be the home of Mr. Seitchik and his wife. They have acquired it a few years ago and have spent a fair bit of time in the regulatory process. The home sits in the Marsh Crown Conservation District.

The plan -- the home originally had a bigger scheme attached to it for which the

Board granted a Variance. The Board might recall in that case, an abutters appealed and the matter was in the court, and the property owner elected not to engage in litigation. So they pursued what they thought at the time was an as-of-right scheme. When returned to the Historical Commission with a scaled down version which enjoyed the support of many neighbors in a certificate of appropriateness being granted.

As I mentioned in the prior case, this proposal contains dormers with windows. And it's all about the size of the lot. It's a very unusual size lot in that it is at the end of a private court. And if you have an opportunity to review the site plan, I can point out to you --

CONSTANTINE ALEXANDER: I've seen the property site plan.

ATTORNEY JAMES RAFFERTY: One of the ways that the home is non-conforming is in

terms of its setback, in determining where the front setback is on this house was a matter of some conversation with the Department as well, and understanding it's kind of a T-shaped thing. But suffice it to say there's a non-conforming rear setback. And the rear of the lot is dominant by a very long masonry structure owned by Harvard University that houses graduate students on Shaler Lane on the back side of that, on that property. One of the dormers faces in that direction for which we sought a roof. If you go around the house on the next side, there's actually, it's the most conforming wall and there's a significant amount of open space in the setback. And you'd see there's a window dormer being added there that is not the subject of relief because that meets the setback.

On the opposite side of the back, which might be considered the front, there's

also -- but depending on how you measure the front, there's also a dormer. And that dormer is on a wall that may or may not be non-conforming depending how you average the front yard setbacks. But for the purposes of conversation I think we set the easiest path here, it would be to suggest the relief for that would be needed.

CONSTANTINE ALEXANDER: This is the dormer that without the window you got a permit to construct.

ATTORNEY JAMES RAFFERTY: Right. There's one on each side, one in the front and one in the back, right?

CONSTANTINE ALEXANDER: One of those two doesn't require Zoning.

ATTORNEY JAMES RAFFERTY: No, there's three. The one on the side doesn't require it. The one on the front and the back do. The one facing the Harvard property, they want to have a window in. And the one

facing the other abutter.

CONSTANTINE ALEXANDER: The other abutter, let me just stop you right there.

The other abutter, how far are you from -- is your property from the lot line of that abutter and how far are you from your house and your window to the next house?

ATTORNEY JAMES RAFFERTY: Close. And there's a letter of support from that abutter.

CONSTANTINE ALEXANDER: We'll get there.

ATTORNEY JAMES RAFFERTY: Okay. You probably know the number.

ADAM SEITCHIK: It's about 5.8 feet from the property line to the house.

CONSTANTINE ALEXANDER: To your house?

ADAM SEITCHIK: To our house. And we think it's about 13 feet to the dormer.

CONSTANTINE ALEXANDER: And the

other house on the other lot?

ADAM SEITCHIK: It's probably about five feet from the lot. It's about eleven feet between the houses.

ATTORNEY JAMES RAFFERTY: They are admittedly, Mr. Chairman, the most impacted abutters. Because it is there, and they have been very cooperative. You'll see their house here. They've been very cooperative in working with the Seitchiks in coming up with a design.

CONSTANTINE ALEXANDER: There's a letter of support.

ATTORNEY JAMES RAFFERTY: From Ms. McCormick.

CONSTANTINE ALEXANDER: We have that.

ATTORNEY JAMES RAFFERTY: And that is their structure.

The privacy concern, with the two properties that faces -- one is the

institutional --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES

RAFFERTY: -- housing, which has a non-conforming wall lined with windows facing towards the Seitchik home. And there's the McCormick's home which is the other one. And understanding, of course, the rationale behind the Special Permit requirement on windows, the person most affected by that is supportive of the Special Permit.

CONSTANTINE ALEXANDER: And Harvard which is affected on the other side -- you have not heard from Harvard? They have not expressed any opposition?

ADAM SEITCHIK: We haven't heard from them.

ATTORNEY JAMES RAFFERTY: And there have been a series of public hearings, and Harvard at no point has chosen to participate

in the process. But they themselves have the very same characteristics.

So here is Sibley Court, so the house that the Chair is referring to is the McCormick's home. The dormer is across from them. Here is the Harvard property and the dormer over there. This is the dormer that is on the conforming wall. So if the dormer faced the street, you'll know, you'll recall. So then there was a conversation about well, does this dormer face the street? Because there's the street. Does it qualify as a dormer facing the street? We can't -- it's too hard to figure that out. And we're in for a penny and figure we'll go for a pound. Why don't we get a Special Permit for both of those dormers or at least make the request for it. Particularly when we've had the utmost cooperation with the abutters.

CONSTANTINE ALEXANDER: That's to me the key factor. If you had opposition

from the McCormicks, I would be concerned.

ATTORNEY JAMES RAFFERTY: It is a Special Permit standard.

SLATER ANDERSON: That's not the plan? These are the old --

ATTORNEY JAMES RAFFERTY: This is the old plan. I apologize. But I don't have a plan that shows this site plan.

CONSTANTINE ALEXANDER: We don't have that in there. I couldn't find that in the file.

ATTORNEY JAMES RAFFERTY: Right. This is a site plan from an old, an older version. But I was just using it for the context of the McCormick house.

SLATER ANDERSON: These are shed dormers?

ATTORNEY JAMES RAFFERTY: Right. The elevations are correct there. But just the relationship to the McCormick house. But, yes, the McCormicks have been very

cooperative, understanding of the effort. There's been collaboration of responsiveness between the families. They supported the prior Variance. They supported the project at the Neighborhood Conservation District Commission. And they have been a model of neighborliness and cooperation and we're grateful for their support of the Special Permit. And we hope that would allow the Board to reach the necessary guidelines for the granting --

CONSTANTINE ALEXANDER: You have a Certificate of Appropriateness of the Half Crown Marsh Conservation District?

ATTORNEY JAMES RAFFERTY: Right.

TAD HEUER: What's the length of the dormers on each side? I know it's in here, but do you know?

ADAM SEITCHIK: I don't recall. There was a lot of discussion about the dormers themselves after the Conservation

Commission hearings, and they were 98 percent conforming with the dormer guidelines.

There was some slight issues about the size of the dormers, but they were approved, but I don't remember the details of that.

ATTORNEY JAMES RAFFERTY: But, again, the dormers are as of right. We're here for the windows.

TAD HEUER: I know.

ATTORNEY JAMES RAFFERTY: I don't want to be flip. I hear you.

CONSTANTINE ALEXANDER: Other questions from members of the Board at this point?

Is anyone here wishing to be heard on this matter?

(No response).

CONSTANTINE ALEXANDER: The Chair would note no one wishes to be heard.

We do have a letter in the file. I will also note for the record, as I mentioned

before, that there is a Certificate of Appropriateness from the Half Crown Marsh Neighborhood Conservation District. And the plans they approved in giving the Certificate are the same ones that are in our file.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: And there is also a letter from Magda, M-a-g-d-a and Mike McCormick who reside at 10 Sibley Court addressed to Mr. Singanayagam. "We are writing to respond to the plan being reviewed at the March 11th meeting. Our neighbors at 9 Sibley Court are requesting approval for one dormer windows and two, a new entry roof." That's not quite right. There's two windows, right? They're only concerned about one.

ATTORNEY JAMES RAFFERTY: The one that's facing them they're referring to.

CONSTANTINE ALEXANDER: I know

they're referring to that, but there's actually two windows in the petition. "We are the abutting neighbors along the east quarter of the property directly parallel. So we are the only neighbors affected by the dormer windows. We understand the need for windows in the new dormers and support this request. The entry roof is also a logical need which we also support. We hope the requests are granted at this hearing and the project can proceed in an efficient manner."

TAD HEUER: We don't have an entry roof before us, do we?

ATTORNEY JAMES RAFFERTY: No.

TIM HUGHES: If we did, that letter is in support of it.

ATTORNEY JAMES RAFFERTY: We're not -- but we may be appealing that determination, too. Or we may be back to you yet again.

CONSTANTINE ALEXANDER: Questions

or comments from members of the Board?

TIM HUGHES: No, I'm good.

SLATER ANDERSON: I got a question for Sean.

CONSTANTINE ALEXANDER: Go ahead.

SLATER ANDERSON: A skylight would have been by right?

SEAN O'GRADY: As long as the leading edge didn't invade the setback. And they're literally inches away. Yes, almost any skylight would be as of right.

CONSTANTINE ALEXANDER: Well, I'm not sure Mr. Rafferty specifically noted it, but in Special Permits basically you start with the presumption that relief should be granted unless we find reasons not to grant it, which is in star contrast to Variance which is the opposite. And it strikes me that the issue only with regard to windows and setbacks is one we always wrestle with is privacy. But the person whose privacy might

be affected by this is in support of the petition. So our decision's been made.

Further comments or should we take a motion?

TIM HUGHES: Ready for a vote.

CONSTANTINE ALEXANDER: The Chair moves that a Special Permit be granted to the petitioner on the basis of the following findings:

That allowing a window in this dormer will not impact traffic or patterns of access or egress or would not cause congestion, hazard or substantial change in established neighborhood character. The reason for that being obvious we're talking about building a window.

The continued operation or the develop use or adjacent uses will not be adversely affected by the nature of the proposed use. The only potential adverse effect would be on the privacy of one abutter and that abutter

has said that they were not concerned about the privacy invasion.

That no nuisance or hazard would be created to the detriment of the health, safety and welfare of the occupant or of the proposed use or the citizens of the city. Again, to the extent that it could be detriment is privacy and privacy is not an issue.

And that the use would not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purpose of this Ordinance.

The Chair would not that this structure is -- we have an unusual lot with an unusual structure, and the proposal would certainly upgrade the neighborhood in terms of the inhabitability of the structure. And this window is just one more feature that would improve the overall impact of the neighborhood.

The Special Permit would be granted on the condition that work proceed in accordance with plans submitted by the petitioner.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, can I make --

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY JAMES RAFFERTY: Because there's -- I'm sure those are right. But there's an existing building permit out there. I don't know if you can reference the fact -- I'm 99 percent sure. I'm just wondering if that is the --

CONSTANTINE ALEXANDER: These are the right plans?

ATTORNEY JAMES RAFFERTY: They're the right plans, but the building permit plan always has a -- what happened here there is a building permit issued for the job which shows these windows. They are exactly where those are. So, I was only hoping that in addition there could be some language that

also includes the existing building permit. So if there was a finding that it was something in the building permit set.

CONSTANTINE ALEXANDER: I don't have the building permit. We don't have it before us. I hate to do that without knowing what I would be incorporating into the decision.

ATTORNEY JAMES RAFFERTY: It's something totally unrelated to the windows might be present in the building permit that a slight change in the field, as it were, that would then if the relief -- I'm saying could we limit the relief to the windows in the dormers?

CONSTANTINE ALEXANDER: Oh, yes. We have to. By definition it has to.

ATTORNEY JAMES RAFFERTY: Because there is another building permit.

CONSTANTINE ALEXANDER: It doesn't make a difference. If that building permit

set doesn't affect the window in the dormer.

ATTORNEY JAMES RAFFERTY: I'm trying to avoid a scenario where it could -- and I'm not looking for trouble. I admit. I don't know if that's the case. But I do know there's live building permit with a set of drawings, and if there was something slightly different about that, that had nothing to do with the dormers and the windows, I would not those plans to trump the building permit.

CONSTANTINE ALEXANDER: I would say move that with respect to the construction of the window in the dormer, that the work proceed in accordance with the plans that would clearly be the case anyway.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: Plans submitted by the petitioner, prepared by Spacecraft Architecture. They appear, the latest date April 29 -- no, no, December 21,

2009. Numbered X1, D1, A1, A2, F1, S1, FAR0, B1.

Again, reiterating that although we're going to reference all of these plans, they only refer to -- the only relevance of these plans is with respect to the dormer, the window in the dormer and no other aspects of these plans are applicable.

ATTORNEY JAMES RAFFERTY: Thank you.

CONSTANTINE ALEXANDER: All those in favor of granting the relief on the basis -- and initialed by the Chair. All those in favor of granting the relief proposed, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Relief granted.

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

(8:45 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9900, 53-57 River Street/218 Auburn Street. Is there anyone here wishing to be heard on that matter?

Good evening.

ATTORNEY VINCENT PANICO: My name is Vincent Panico. I'm an attorney at 2348 Mass. Ave. in Cambridge. And on my left is the petitioner.

NELSON ARIAS: My name is Nelson Arias, 55 River Street.

STEPHEN ZECHER: Steve Zecher, I'm

an architect and address is 42 Fayette Street, Cambridge.

CONSTANTINE ALEXANDER: And you're here for a Special Permit?

ATTORNEY VINCENT PANICO: Yes, sir. And also one of the petitioners, Luis Arias, L-u-i-s.

CONSTANTINE ALEXANDER: There's some confusion I have. The petition says 53-57 River Street. The window that's proposed is going to be at 61 River Street? And I couldn't even find 53-57. I saw the sign for the hearing, but it was on 61. How does the numbering go?

ATTORNEY VINCENT PANICO: They're all one building and the Assessor's have it one way.

CONSTANTINE ALEXANDER: Is that the issue? Is that how it is?

ATTORNEY VINCENT PANICO: The same building.

CONSTANTINE ALEXANDER: I've seen the building. I was puzzled.

ATTORNEY VINCENT PANICO: It's a very simple issue. It just involves one window, and this is a building, the entire building. It's occupied by -- part of the building is occupied by four family members. And the only issue is the proximity of the window to the property line as the architect will explain there are some details. If we built it, the window according to the Ordinance, if we build 13 feet into the room which would render the room useless. And all we're asking is that we can build it closer to the property line.

CONSTANTINE ALEXANDER: As you heard from the other case, when it comes to windows, it's privacy issues. What do your neighbors say, the person who is impacted by this window?

ATTORNEY VINCENT PANICO: The

window actually just looks out on a stairwell at an angle. It's just an exit.

CONSTANTINE ALEXANDER: So there's no neighbors who are going to look into your window or you're going to look out?

LUIS ARIAS: It doesn't look on to anybody's property.

CONSTANTINE ALEXANDER: You've been before us before to convert the storefront.

LUIS ARIAS: Yes, exactly.

CONSTANTINE ALEXANDER: I was on that case. For the record, I think you've done a wonderful job on the exterior. It's much nicer than it was before. Maybe you get the kudos. Great job. You've improved the housing stock for the City of Cambridge as well as far as I'm concerned.

STEPHEN ZECHER: I think it's been a nice improvement.

CONSTANTINE ALEXANDER: I think so.
Questions from members of the Board?

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

(No response).

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. I don't think there's anything in the file besides the plans.

Questions from members of the Board while he's looking at that? Tim.

TIM HUGHES: No, I'm good.

SLATER ANDERSON: I'm good.

CONSTANTINE ALEXANDER: Ready?

The Chair moves that a Special Permit be granted to the petitioner to erect -- to install a new window in the rear bedroom near the first floor of unit No. 61 on the basis of the following findings:

That this window will not impact, will not create traffic that would result in the congestion, hazard or substantial change in established neighborhood character.

Self-evidence I can vouch for the fact that it's the window in the rear of an apartment unit.

That the continued operation or development of adjacent uses would not be adversely affected by the nature of the proposed use. To the extent that there might be privacy concerns that are spelled by the fact that this window will not look out on other windows and other neighboring abutters but rather into a window well.

That there will be no nuisance or hazard created to the detriment of the health, safety or welfare of the occupants for the citizens of the city. That being self-evident from the fact that we're talking about a window that looks out only into a window well.

And that the proposed use will not impair the integrity of the district or otherwise derogate from the intent and

purpose and intent of this Ordinance. In fact, it will be consistent with the intent and purpose of the Ordinance in that it will improve the inhabitability by creating a window where a window does not now exist.

The Special Permit would be granted on the condition that work proceed in accordance with four pages of plans in length prepared by Mr. Stephen Zecher, Z-e-c-h-e-r.

They're dated October 21, 2009. As I said, they're four pages. I'm going to initial the first page.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(8:50 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9901, 148-150 Western Avenue. Is there anyone here wishing to be heard on that matter?

FAWAZ ABU RUBAYAH: My name is Fawaz Abu Rubayah. I live on 144 Western Ave, Cambridge, Mass.

CONSTANTINE ALEXANDER: Your problem is you have a structure -- I guess you don't own it. You're going to lease it.

FAWAZ ABU RUBAYAH: I own the upstairs and the vestibule.

CONSTANTINE ALEXANDER: Okay.

This is a residential district and this is a storefront, and so commercial activities are not supposed to be done without a Variance in a residential district. So you have to persuade us that we should -- there are special reasons why we should grant you the relief you're speaking.

Tell us a little bit about what you want to do this cafe? Is that what it is?

FAWAZ ABU RUBAYAH: Yes, I want to open up a 148 Western Ave., a coffee shop, just coffee, no food for the neighborhood.

CONSTANTINE ALEXANDER: I want to elaborate and go on that a little bit further. It's basically you're going to have some food. You may not cook on the premises, you're going to have pastries?

FAWAZ ABU RUBAYAH: Yes.

CONSTANTINE ALEXANDER: Maybe sandwiches and salads?

FAWAZ ABU RUBAYAH: Small cafe.
Coffee, cappuccino.

CONSTANTINE ALEXANDER: Okay. But
not a dinner menu with table cloths?

FAWAZ ABU RUBAYAH: No cooking, no
grill, no stove.

CONSTANTINE ALEXANDER: Any cooking
on the premises?

FAWAZ ABU RUBAYAH: No.

CONSTANTINE ALEXANDER: No?
You've got to do something.

FAWAZ ABU RUBAYAH: No. Just
everything cold stuff. I buy ready, you
know, from bakery. We serve it inside, you
know.

CONSTANTINE ALEXANDER: Okay.
You're not going to bring any back lava or
anything like that?

FAWAZ ABU RUBAYAH: We have it.

CONSTANTINE ALEXANDER: You're not
going to make it on the premises?

FAWAZ ABU RUBAYAH: No, no.

You know, I rent the store like two time from 2003 to now. The first one is there two years. He didn't do business, he left. The second one is radio taxicab leased there another year, and another year we didn't pay no rent because it's very -- business very slow. And I take the store for rent almost 12 month and nobody rent it. And I tried open it for my wife to -- just small cafe, you know.

CONSTANTINE ALEXANDER: There's no parking.

FAWAZ ABU RUBAYAH: It's not for -- it's not like big store. It's small cafe for the neighborhood.

CONSTANTINE ALEXANDER: I understand that. What I'm trying to say is because there's no parking around that structure on-site, your property is not susceptible to a lot of other commercial uses because people can't drive there and park

their car and buy some clothing, say, if there's a clothing store.

FAWAZ ABU RUBAYAH: Just from people in the neighborhood, just come in and relax. Small cafe. No cooking, no stove, no grill, no nothing.

CONSTANTINE ALEXANDER: And you sought similar relief, at least in terms of commercial use in 2003.

FAWAZ ABU RUBAYAH: Right.

CONSTANTINE ALEXANDER: And the members of the Board then -- I don't think anybody on this Board --

FAWAZ ABU RUBAYAH: Right. We try to open up before that a restaurant with a grill.

CONSTANTINE ALEXANDER: That's what was being proposed then?

FAWAZ ABU RUBAYAH: Yeah. Before we try to open it.

CONSTANTINE ALEXANDER: Okay.

Because there was a complaint from the abutter.

FAWAZ ABU RUBAYAH: I speak with the neighbor and we have like signatures.

CONSTANTINE ALEXANDER: In addition to what I have?

FAWAZ ABU RUBAYAH: No, no, it's different this time.

TAD HEUER: And this is a residential zone, correct?

FAWAZ ABU RUBAYAH: Yes, sir.

TAD HEUER: Have you ever thought about converting the commercial space back into residential space? And if you have and decide not to do it, what has been the --

FAWAZ ABU RUBAYAH: It's hard to do because that small skinny store.

CONSTANTINE ALEXANDER: I was going to ask how much square footage?

FAWAZ ABU RUBAYAH: Around that 480, 490.

CONSTANTINE ALEXANDER: 490 square feet?

FAWAZ ABU RUBAYAH: Right.

CONSTANTINE ALEXANDER: So that's not a very -- it's a studio apartment at best if you wanted to convert it.

FAWAZ ABU RUBAYAH: Yeah, it's like very hard. Skinny store. Because it's big building. I buy a half a side. The other side is my neighbor, he live in the other street, but he rent behind me. He offered me that last summer, I told him to have his signature to open a coffee shop. He told me, no way. If you want you buy my side or I buy your side. I say okay. How much do you want for your side? And he say, I don't know. I want to send you real estate friend. And he send me his friend and she offered me like 350,000 for my side. I say I'm not happy with this. What about this side, can I buy his side? And he say no, I change my mind, I

don't want to sell my side. The only thing I want to buy your side. I'm not happy to sell my side, you know.

CONSTANTINE ALEXANDER: What are your hours of operation going to be for your cafe?

FAWAZ ABU RUBAYAH: From ten to ten.

CONSTANTINE ALEXANDER: Roughly ten to ten. Five days a week?

FAWAZ ABU RUBAYAH: Five, six days a week. Just like for my wife, like, small cafe. I don't bother make noise or something, you know.

CONSTANTINE ALEXANDER: What are you going to do about -- well, people are going to be taking takeout or something, trash removal. In terms of making sure that there's not litter around.

FAWAZ ABU RUBAYAH: I can move to my brother's store. He have a store in Brookline Street. I can move the trash every

night.

CONSTANTINE ALEXANDER: I'm thinking more in terms of people who -- what's the word I'm looking for? People who go to your restaurant, will there be a receptacle, waste receptacle where they can throw the trash?

FAWAZ ABU RUBAYAH: Yeah, yeah. They can sit, I can have 16, 18 seat for the small cafe.

CONSTANTINE ALEXANDER: But there will be a receptacle for the trash?

FAWAZ ABU RUBAYAH: Yes, they can put that.

CONSTANTINE ALEXANDER: We have a lot of letters in the file for and against. Before I get to those, at this point questions from members of the Board?

BRENDAN SULLIVAN: Well, in reviewing the plan you're proposing a number of tables and 18 seats?

FAWAZ ABU RUBAYAH: Yes.

BRENDAN SULLIVAN: I noticed that you have shown one rest room.

FAWAZ ABU RUBAYAH: Right.

BRENDAN SULLIVAN: I believe that two are going to be required, men's and women, and that they would have to be handicapped accessible if you're creating them.

FAWAZ ABU RUBAYAH: I talk to Ranjit and he said less than 19 people, you need just one bathroom. If you have more, you need to have bathroom.

BRENDAN SULLIVAN: Is that right?

SEAN O'GRADY: That's not my side of the business, but that's -- I think that is right.

CONSTANTINE ALEXANDER: In any event, if we grant relief and he needs two bathrooms, you've got a problem.

FAWAZ ABU RUBAYAH: Right, I talk to Ranjit, he told me less than 19 people that's

okay with one bathroom.

BRENDAN SULLIVAN: I just raise it to make you're aware of it that's all.

CONSTANTINE ALEXANDER: What he's saying this is not a Zoning issue. It's not something we're going to pass on tonight. But if you need two bathrooms, you're going to have other problems.

FAWAZ ABU RUBAYAH: Yes.

CONSTANTINE ALEXANDER: Even if we grant you relief tonight. That's the point I'm trying to make to you. All right.

Okay, I'll open up to public testimony. Is there anyone wishing to be heard in this matter? One second I assume you're in opposition?

ATTORNEY JAMES CURRAN: Yes, I am.

CONSTANTINE ALEXANDER: Okay. Let me see if anybody wants to speak in favor first.

No one wishes to speak in favor,

although we have letters of support in the file which I will read. Now, sir.

ATTORNEY JAMES CURRAN: Thank you members of the Board. My name is James Curran, C-u-r-r-a-n.

CONSTANTINE ALEXANDER: We have a memo in the file from you. Can I assume that I don't have to read this into the record because you're going to cover it?

ATTORNEY JAMES CURRAN: Right, I'll cover it and save you the trouble.

CONSTANTINE ALEXANDER: Use the mic.

ATTORNEY JAMES CURRAN: Sure, thank you.

I'm here on behalf of Ben and Jane Cory (phonetic) who live at 158 Western Ave.

BEN CORY: I'm Ben Cory. I'll identify myself.

ATTORNEY JAMES CURRAN: Ben is 92, Jane is 88. They also own 18 Kinnaird Street

which I will give you a picture of 18 Kinnaird Street in relation to the premises. As you can see, it's essentially one structure. They rent that out, and I believe there's three residents in there?

BEN CORY: Two residents.

TAD HEUER: Just for clarification. I see a 16 Kinnaird. Is that the building we're talking about?

ATTORNEY JAMES CURRAN: Yeah. They basically -- at some point way in the past they divided the lot through the middle of the building. It's just kind of a party wall there.

I guess where I would start is I'm not quite sure that the applicant has shown any kind of hardship. As he's said himself, he's rented the commercial spaces to other commercial uses.

CONSTANTINE ALEXANDER: The hardship being -- the hardship -- are you

objecting to the -- the issue here is whether we allow first of all, commercial use in a residential district. And I think the hardship he's made is that given the nature of the structure, that structure is not susceptible to residential use, therefore, commercial use should be permitted. And then the further question is if we're going to grant a Variance for commercial use, are we going to restrict the -- put conditions on the Variance not for any commercial use. It could be just for a cafe. Just for purpose of the people in the audience. We could grant I believe, if we so choose, grant relief tonight on the basis that we would grant a Variance to permit the operation of a cafe on this property. A cafe that serves a cafe menu, that has no cooking on the premises and that it is basically limited to drinks, soups, salads, sandwiches.

ATTORNEY JAMES CURRAN: Right.

CONSTANTINE ALEXANDER: Let's to be sort of clear. That's where we could go if we wanted to go.

ATTORNEY JAMES CURRAN: No, I understand the relief. There's also a literal reading of the statute or the Ordinance would allow grandfathered uses. He's had uses in there that have been there before. There's actually a fax or a money transfer place that's been in there with taxicabs. Then I assume those uses didn't need relief. Whether he's decided to take them off the market to kind of create a situation that won't allow him to grandfather these other uses in. His property is not unique to that area. If you go up and down Western Avenue, there's a number of properties that in the district that have this type of commercial frontage that are connected to a residence either on top or in the back. There are also in close proximity

to others. So, in terms of his property being that the district it's in, it's not unique and it's not unique to that district. But I think more importantly it derogates from the public good.

He has 18 seats. That means that people are going to come and he anticipates people coming and staying. Whether we may wish that they all come by bicycle or walk, unfortunately, the fact of the matter is a few of them are going to come by car. You know, that area is already heavy traveled. Western Avenue has no public parking. It's all permitted whether on Western Ave. or Kinnaird Street which is across the way.

CONSTANTINE ALEXANDER: Did you ever think people are going to be driving to get a cup of coffee? I mean, it's not Starbucks. Some people drive to Starbucks. But in any event --

ATTORNEY JAMES CURRAN: If you're

going to have 18 seats, there are plenty of places you can walk around there. Assuming 18 seats they're going to come and stay.

CONSTANTINE ALEXANDER: 18 seats they're going to drive?

ATTORNEY JAMES CURRAN: Perhaps. I don't think you can't make the assumption that they won't.

TAD HEUER: Can you make the assumption with six seats? What does the -- isn't it the nature of the business rather than the seats?

ATTORNEY JAMES CURRAN: The nature of the business is considering the people go and enjoy coffee for a long period of time. If there are seats, assuming they're going to say --

TAD HEUER: I'm challenging that because I'm thinking Harvard Square, for example, the Starbucks in Harvard Square in the old carriage house, and that has I think

about 18 seats. I don't think a single person drives there. Now, your argument could be and I might be a little more sympathetic that in this particular location you have people who are accustomed to driving, always drive. It's, you know, not the Harvard Square type area. But I don't think making an argument based on the number of seats gets you there.

ATTORNEY JAMES CURRAN: I think the characteristic of what 18 seats does, somebody that's going to stay, you're going to trade a lot more use for that particular corner.

CONSTANTINE ALEXANDER: If we deny relief, we're going to have a vacant storefront. It's not going to be converted to residential use.

ATTORNEY JAMES CURRAN: Right. I think that I would also -- there's other commercial uses and whether they could be

grandfathered in or not, other commercial uses that would be less intense of the area and I'll get to that in a moment.

Essentially there's also waste and sanitary uses. A restaurant unlike a lot of other commercial uses, particularly small commercial uses, whether it's office space, a studio of some type, a printing place, creates -- generates quality and quantity of waste that are a lot different than those.

CONSTANTINE ALEXANDER: A restaurant. We're talking a cafe. And we could limit our relief to a cafe which, you know, eliminates cooking odors. Eliminates all kinds of food waste that has to be disposed of. It eliminates the amount of deliveries to the structure that impact on the traffic. I mean, I'm just -- you're a little bit too fast about talking about restaurants. He's not proposing a restaurant. And we're not considering a

restaurant before us tonight.

ATTORNEY JAMES CURRAN: Well, Zoning doesn't have a particular definition of a cafe, but be that as it may. I understand the conditions you can put on this the relief that he wishes, but the fact is he's going to have food there. I presume it will have some sort of container or dumpster of some type that he'll need to utilize for the waste that will be generated. He'll have 18 people coming in, unlike a retail store where you have one or two people at a time that creates no waste or an office space that creates no waste. He will need a container that will need to contain this and presumably will have to be shipped off either through a truck coming in or some other means. He's not going to be able to use barrels. It's not efficient. The addition of the food type of waste will also -- there's a great chance of rats and pests and vermin that will be present

in the area. This is particularly troublesome when you look at where the location of this use will be in relation to the other residents. There's actually picture here which shows -- well, there's a picture here where it shows the areas in the back and where that access is from the -- for the abutting property. There's also -- the parking area is right next to, not only the back property, but also to the property on the side. Presumably that's where a dumpster would go because it's the only place that's off the street so to speak. It would be off the sidewalk and there's also a curb cut there. Now even if you fenced it in, the proximity of that dumpster, container for the waste is going to create I believe a detriment to the neighbors not only on the sides but in the back.

CONSTANTINE ALEXANDER: Can I interrupt you for a second? How are you

proposing -- he's making a valid point. How are you proposing to deal with waste and trash from the operation of your --

FAWAZ ABU RUBAYAH: I can move it to the -- my brother's store. I don't need to leave any trash down there. No dumpster, no nothing.

CONSTANTINE ALEXANDER: If we said you can't have a dumpster or a barrel in the back --

FAWAZ ABU RUBAYAH: We would not leave it there.

CONSTANTINE ALEXANDER: If we do that, if he agrees to that and we impose that as a condition, how do we address that?

ATTORNEY JAMES CURRAN: Well, I guess how would a condition like that work in reality? In terms of an 18 seat restaurant is going to generate a certain amount of trash. What exactly is he going to do with it? Is he going to --

CONSTANTINE ALEXANDER: That's his problem.

ATTORNEY JAMES CURRAN: Is he going to put it in a van and drive it? I'm not sure that's allowed.

CONSTANTINE ALEXANDER: That's another issue. If he puts a dumpster or any kind of trash receptacle in the backyard, I'm sure your client will call Mr. O'Grady up lickety-split and he'll have to remove it.

ATTORNEY JAMES CURRAN: But that's -- these are the problems that are there. I'm not quite sure that's satisfied in terms of allowing him just to take it out. I'm not quite sure if that's feasible.

CONSTANTINE ALEXANDER: That's his problem.

ATTORNEY JAMES CURRAN: I know. It also becomes a problem for a neighborhood.

CONSTANTINE ALEXANDER: Only if he puts trash barrels in the back or litter

covers the street, and then you can deal with that if that happens. I'm not going to speculate if whether that's going to be a problem until we find out that it is a problem.

ATTORNEY JAMES CURRAN: Well, I guess from our perspective of allowing somebody to take trash from one place and travel it through the neighborhood is any better condition than putting it in the dumpster. Now he's taking it from a location and traveling throughout the district with it. I'm not sure if that's even feasible or whether that's even enforceable. I think it creates more problems than it solves.

BRENDAN SULLIVAN: Counsel, not to take away some of your thunder there, what would Mr. and Mrs. Cory like to see there or what would they accept being there? Because we could go around the what ifs sort of here all night long.

ATTORNEY JAMES CURRAN: Right. Well, generally there's commercial uses that are less intensive in term of generating waste and people generating traffic.

BRENDAN SULLIVAN: So there is nothing really that is allowed for that spot as of right. So anything --

ATTORNEY JAMES CURRAN: Other than residential, that's correct.

BRENDAN SULLIVAN: So most anything is going to require some relief, you know?

ATTORNEY JAMES CURRAN: Unless it gets grandfathered in.

CONSTANTINE ALEXANDER: There's no grandfather.

BRENDAN SULLIVAN: There's no grandfather because once it's out of there for two years, if you go back to the Table of Uses, a club facility, a fraternal organization, meeting room is permitted there. Other than that, there is very, very

little. So something is going to need relief.

Historically that Western Ave. is no different than any other sort of neighborhood in the city that has a little variety store. Sometimes it has a little lunch counter over the years, a place where you get the paper, a coffee. And those things would not be bad ideas. Those were good ideas, it's just that the neighbors and the neighborhood never supported them. And so consequentially they became out of style, out of vogue. And, again, I'm not saying I'm all for this. I'm just saying that I perceive this as sort of an establishment where they're going to serve pastry, probably mini pastry or something like that. They're probably going to serve different types of coffees and teas. The amount of trash that's going to be generated on a daily basis will probably fill up a green bag that would probably be taken off site or

something like that, and disposed of properly or something. It does add a little bit of life. And sometimes some of the stuff can be somewhat infectious that if you occupy and use an unused delapidated storefront, than maybe somebody else may do something to theirs. And so there's sort of pluses there.

I almost get the feeling that there's something else in the background here that we're going to object to most anything and I'm trying to find out.

ATTORNEY JAMES CURRAN: Well, no. There have been uses there that my clients and other neighbors have not objected to. It's not in terms of they don't want anything there. It's just this particular type of use for this area. I mean, this is really what it is. It's other -- a dry cleaner, for example, has a car pull up, he drops off his clothes and he leaves.

TAD HEUER: You want a dry cleaner

there?

ATTORNEY JAMES CURRAN: No. As a use, it's probably more acceptable to the neighborhood. They had a taxicab dispatch. I believe there was a barber shop there at one time. As I said, there's a money transfer, fax place, coffee place. You could probably use it as office space either for a small accountant or a lawyer. There's -- he has granted down zoned it and used it for a residential use which may -- while it looks like he may have to do a fair amount of work on the structure as it is, which would probably be the same thing to transfer it over. But in any event, I think he needs to focus on his particular use because that is what he's proposing here.

BRENDAN SULLIVAN: Is it the food aspect of it? Is it the -- I'm just trying to get my handle on --

ATTORNEY JAMES CURRAN: There's a

food aspect. There's a -- granted you could put the conditions on it. But there's the food aspect of it. He can create waste and create the rats and the pests and everything else. It's never the use as far as we can tell has never been used for that. The proximity of it will affect those neighbors. He will require some relief of deliveries to get his milk and other food stuff. I assume he'll be successful and a fair amount of turn] over from the product he sells. This will require deliveries and trucks. He has no loading area. That means he'll have to load on Western Ave. And basically if you have a truck there, and God forbid it's double parked, and as you know, Spears (phonetic) Funeral Home is up the street. And when they have a service, every parking space in the area is taken, it's limos and everything else is double parked up there.

The road is a main thoroughfare out of

the city to the river. So these type of considerations have to be taken into account. The street is very narrow to allow parking on both sides. None of those residents have off street parking. When cars are parked on both sides, they narrow the driving area. Plows, public vehicles, and essentially what you're looking at here is, in my mind -- I understand that we all make assumptions here, that somebody's going to have an operating restaurant or cafe, I think a percentage of them are going to get there by vehicles at some time. I believe vehicles in and of themselves are going to require -- I'm going on the assumption he's going to be successful. That means a lot of people coming there that essentially the area had not really had before. There's one thing when you have 18 people plus let's say three employees there at one time, when that's a big difference from maybe half a dozen people who

are running two small businesses.

Also, with this use, now I understand that's -- that he's not willing to cook or anything like that, but the fact is he will have, I assume, power brewers or some kind of mechanical devices or machines that will help him prepare his food. Any odors that he may emit that he prepares, particularly coffee, the people behind him literally share the structure with him which make them --

CONSTANTINE ALEXANDER: I grant you that there will be coffee odors, that's about the only odor. And I don't think that warrants -- my mind is not persuaded. I'm of a mind that properly conditions relief is the best use of that property. It's certainly better than what's there now. And I don't, and I think if it's properly conditioned I think -- you raise some very good issues. I think we can minimize the adverse impact of what the petitioner wants to do.

ATTORNEY JAMES CURRAN: Well, I guess just in kind of getting back and also applying it to one of the things is whether it takes away from the intent and purpose of the Ordinance. Literally reading the Ordinance is to -- you want to guard against congestion on the streets. There may be, I believe it will increase the congestion on the streets, and I believe that use will, particularly in comparison to other uses. I think that the sanitary issue is going to be an issue. I think that the increase in rats and vermin into the area is going to derogate the public health.

I think that also whatever hazards he may create as a cafe which do not currently exist, and there are numerous commercial uses that wouldn't exist, are going to directly affect him. And God forbid there should be a fire or anything like that. And granted you could put conditions, but the fact is food

preparation of any type, you have a greater chance of fire than a lot of other uses particularly in kind of non-retail use. The closeness of all the structures could create a situation where it spreads very easily. These are older structures made of wood. So I believe it derogates or deviates from the purpose of the Zoning in terms of kind of guarding against those types of disasters spreading across the neighborhood. And I just believe that the use is incompatible with the residential nature of it. I don't think it's -- there's other more benign, less intense commercial uses that could be used there.

And I guess finally what I would like to say is there was a prior ruling not that long ago on this specific -- it may have changed a bit, but really I don't think the conditions of the building or the neighborhood or anything have really changed

all that much. Granted he says that he hasn't rented it, but my client says the place last been used continuously since that time. It appears a good public policy would be try to maintain a consistency on the -- how the land is regulated and how it is improved. I believe that calling it a cafe for a restaurant for Zoning doesn't really differentiate between the two. I understand there are conditions, but all that does is kind of create more enforcement and arguments between the neighbors later on.

Particularly here where there's going to be a lot of so-called moving parts. There's going to be a number of conditions. You'll probably have a couple pages of them to kind of, if you were to grant it, that all that's going to do is have the neighbors probably keep an eye on -- it's not going to create any kind of acceptance or harmony within the neighborhood. And it's probably a good

chance well, he's violated the condition, we need someone to go in and take a look at it, Inspectional Services and everything else. So with the prior ruling I think, like I said, I think consistency makes good public policy particularly in this sense.

CONSTANTINE ALEXANDER: Thank you. Did you --

ATTORNEY JAMES CURRAN: Ben, would you like to say something?

BEN CORY: Yes, I would. My name is Ben Cory as you probably already know. I'm 92 years old and I've spent most of my life in Cambridge except for the periods where I went off to World War II and all the guys in my -- in our age we were the greatest generation, and then I had to go off to Korea. Now here I am back here, and incidentally my wife is 88 and she was in World War II and she can tell you some stories about Cambridge and knows it quite well.

However, he had said things that are not true and I'm quite disturbed by. I am also a lawyer in good standing of the Commonwealth of Massachusetts. And I'm also an engineer. Now, the -- I want to point out that he said that I wanted to sell my property. I did not say that ever.

CONSTANTINE ALEXANDER: That's not an issue before us.

BEN CORY: He came to me.

CONSTANTINE ALEXANDER: We don't care whether he tried to sell it.

BEN CORY: I know you don't care, but I'm trying point out his character.

CONSTANTINE ALEXANDER: Now, we're not going to get into this gentleman's character tonight. We're talking about a specific Variance case. This is not -- let's not go there, please, sir. Let's not go there. We don't want to get --

BEN CORY: I don't want to do it but

he brought it up.

CONSTANTINE ALEXANDER: It doesn't mean we're going to consider it. That's irrelevant. So let's drop it.

BEN CORY: Okay. The -- I have -- I've talked to the neighbors and these are neighbors around Kinnaird Street and Western Avenue in that particular area. And the -- I have observed in the records that he has gotten some people from 262 and 266 Western Avenue. And it's way down the street, and they've got three and four and maybe five places down there, but the places that they have down there have no residents attached to them.

CONSTANTINE ALEXANDER: We'll read into the file all the letters. This proposal has generated a lot of commentary among the citizens of Cambridge. We'll get into and we'll take into consideration where people live in how much weight we give them.

BEN CORY: He's talking about things, you might as well have vending machines in there. And he says he wants that just for the vending type sandwiches and how is he going to make the soup? He mentioned soup. He's got to cook that.

CONSTANTINE ALEXANDER: He can make it off site and heat it up.

BEN CORY: Heat it up. You can heat up soup but you're still cooking.

CONSTANTINE ALEXANDER: Okay.

BEN CORY: And he mentioned something up in Harvard Square about the --

CONSTANTINE ALEXANDER: Starbucks.

BEN CORY: Starbucks. But you pointed out quickly, and I have to emphasize it this is not Harvard Square.

CONSTANTINE ALEXANDER: That's true.

BEN CORY: And I've spent a lot of time up there when I went to school. So I

know about it. And even the Air Force sent me there, too. So I know more about Harvard Square.

CONSTANTINE ALEXANDER: Thank you.

BEN CORY: I do say -- I mean, we feel in the neighborhood that there should not be any cafe there because one, it's like the camel putting his nose into the tent. And that's what's going to happen.

CONSTANTINE ALEXANDER: Thank you, sir. I appreciate you taking the time to come down.

BEN CORY: Well, I've got cancer of the blood and I would appear here by myself except I didn't think I could make it.

CONSTANTINE ALEXANDER: Thank you.

BEN CORY: Thank you for listening to me. I appreciate it.

CONSTANTINE ALEXANDER: We're here every other Thursday night. This gentleman here wanted to speak.

Sir, come forward please and give your name and address for the record.

KALMAN GLANCE: Kalman Glance, 12 Kinnaird Street.

The first thing I wanted to make sure is that you all understand that there's an ongoing business there, that has been there all this time and it's successful I would imagine.

CONSTANTINE ALEXANDER: In this space?

KALMAN GLANCE: In this space, right. There's two spaces side by side, and the one on the left is -- has got a business in it that's working, so I don't see any real hardship here.

CONSTANTINE ALEXANDER: Well, the hardship would be, just -- the hardship would be he can only use this property, the vacant property for residential purposes. And the hardship is this space is not susceptible to

residential use, therefore, it's got to be commercial use. He's proposing a specific kind of commercial use which is the cafe. And that's before us tonight as to whether to say we'll give you a use Variance to allow this use. And we may do it with conditions to minimize the impact on the residential neighborhood. And you've heard some of the suggestions at least from me, I'm shooting my mouth off, but you heard suggestions like he would be limited to a cafe menu. Well, you can roll your eyes, sir, but wait a minute let me finish. Limited to things like drinks, sandwiches, salads, soups. With the food not being prepared on the premises. Further condition would be with regard to removal of no dumpsters in the back and/or any other trash receptacles in the back that would have an adverse impact on the residential abutters. Those are the kinds of things we could do if we so granted. So that's how we

deal with these issues, okay? Because the alternative is to allow space that's not susceptible to residential use to continue to sit there vacant.

KALMAN GLANCE: Well, there have been a number of businesses in there already.

CONSTANTINE ALEXANDER: Yes, and every number of them is gone.

KALMAN GLANCE: Yeah. But nobody's objecting to that use, of commercial use of that space. The only objection is to a restaurant.

CONSTANTINE ALEXANDER:
Understood.

KALMAN GLANCE: Food service.

And the one last thing I would say in terms of a Variance, is that people buy a house because the Zoning is a particular nature and you buy in good faith based on the Zoning that exists at that time and to go and make a change in the Zoning is definitely

going to impact everybody on the street. Not only because of their lifestyle doesn't seem fair to me. But I'm not a lawyer.

CONSTANTINE ALEXANDER: That's something we look at very carefully every time. Whether people buying the property being zoned and seeking us to give a Variance to increase the value of that property. We're very, very sensitive to that we assure you. Thank you.

BEN CORY: May I have a post-script here?

CONSTANTINE ALEXANDER: Sure. If you want to come forward.

BEN CORY: I want to make one point that -- I was talking about nothing. I'm not going to talk about character.

CONSTANTINE ALEXANDER: Please.

BEN CORY: What I wanted to point out was in my living in Cambridge I've observed the occupancy of those -- of the retail space

there by retail people, and have been there all their -- they've been there. Antique stores there, and convenience stores, and all sorts of things there. And I just want to point out that there is -- and even while he's had it, he's had a couple of different people, but I don't know how much he was charging, it's not my business.

CONSTANTINE ALEXANDER: Nor ours.
Thank you.

BEN CORY: But, they -- so there's the possibility of getting people in there of other types as my attorney has said -- has pointed out.

CONSTANTINE ALEXANDER: Okay.

BEN CORY: It was just my long experience in Cambridge.

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

(No response.)

CONSTANTINE ALEXANDER: The Chair

notes no one else wishes to be heard. We are in receipt of much communication so I think I will turn to that right now read it into the record.

We have a letter from Jeanne, J-e-a-n-n-e Koopman, K-o-o-p-m-a-n. "As a neighbor and owner of a two-family house at 248 River Street, I would be pleased to have a cafe at 148-150 Western Avenue. I support the variance question."

I'm reading these in random order. So there's no rhyme or reason why I'm picking them out as I am.

We have a letter from several people, from Chris and Julie Messina, M-e-s-s-i-n-a, 268 Western Avenue; Joe Teller and Kiralie, Kiralie McCauley (phonetic) at 266, No. 1 Western Avenue; Lori Bittman, B-i-t-t-m-a-n and Megan Krey, K-r-e-y at 266 No. 2 Western Avenue; and Abdula Daoud, D-a-o-u-d who resides at 262-264 Western Avenue. The

letter states: "As neighbors and Western Avenue residents we write this letter in support of the application to open a cafe at 148-150 Western Ave. Our neighborhood has particularly lacked this sort of amenity and would welcome a cafe. It would be especially nice to have one that served breakfast and espresso coffee drinks. Thank you."

We have a petition in opposition to the application. It says: "Now come the undersigned who have chosen to make this statement regarding the application of Fawaz --I'm going to mispronounce your name, I'm sorry -- Mohamed Abu Rubayah and Asma Nofal for a Variance to allow 148-150 Western Avenue, Cambridge, to be used as a 18 seat cafe restaurant. We the undersigned hereby declare our opposition to the application of the petitioners for the allowance to have a 148-159 -- it must mean 150 -- at Western Ave., use of the restaurant and urge the Board

of Zoning Appeal to deny the Variance application and the use it seeks to be the premises." And I'm going to just give the addresses of the persons who signed this petition. 11 Kinnaird Street, 32 Kinnaird Street, 165 Western Avenue, 169 Western Avenue, 55 Magazine Street, No. 63, 138 Western Avenue.

Another petition, "We the undersigned citizens of Cambridge living in the neighborhood as the proposed restaurant at 148-158 Western Avenue object to the allowance of that cafe. There will be a further infusion of mice, rats and vermin into this neighborhood which we have long suffered and managed to exterminate a large population." I assume it's population of rats. "In addition parking spaces in this area are exceedingly difficult to find and could cause violence to obtain a parking spot." And the addresses of the people who

signed are 162 Western Ave, Seven Kinnaird Street, 12 Kinnaird Street, Four Kinnaird, Three Kinnaird, 169 Western Avenue, 15 Kinnaird.

An identical petition but different group, different signatories. Again, it's a petition in opposition signed by persons residing at 18 Kinnaird, 18 Kinnaird. I'm not sure which Kinnaird that is. There's some number Kinnaird, 18 Kinnaird, 18 Kinnaird and 18 Kinnaird. Is there an apartment house nearby?

ATTORNEY JAMES CURRAN: Yes.

CONSTANTINE ALEXANDER: Same petition signed in opposition signed by residents at 10A Kinnaird, 39 Marie Street, 302 Western Ave, and 158 Webster.

And then we have -- before I get to a letter, petitioners in support. They don't have addresses on this. They have -- I'm going to say there's about 25 signatories for

this petition in support. And I cannot read the handwriting of the persons who signed, they did leave their phone numbers.

And lastly there was a letter in the file, this time a letter, from the Benjamin Cory and Janet Wenner Cory. Mr. Cory, everything that's in this letter, have you presented to us? Do I have to read it into the record? Do you want me to read it? This is your letter. I assume you've covered everything in this letter in your oral testimony.

BEN CORY: Yes.

CONSTANTINE ALEXANDER: I won't read it if that's all right with you.

BEN CORY: Yes, that's all right with me.

CONSTANTINE ALEXANDER: Thank you.

BEN CORY: I mean, as long as the Board knows --

CONSTANTINE ALEXANDER: I certainly

heard and understand the points you've been making.

ATTORNEY JAMES CURRAN: I think you've already got this already.

CONSTANTINE ALEXANDER: These are new ones.

ATTORNEY JAMES CURRAN: I think they're pretty much the same.

CONSTANTINE ALEXANDER: 18 Kinnaird. And, again, sir, as Slater pointed out, your letter in opposition, I'm not going to read it.

ATTORNEY JAMES CURRAN: I covered the points that were contained in particular. I've also attached the pictures which I've given to you and also the ruling which I referenced.

CONSTANTINE ALEXANDER: The chair will call to close -- unless, sir, you have anything else you want to add?

ATTORNEY JAMES CURRAN: No, thank

you.

CONSTANTINE ALEXANDER: Put a close to public testimony and I think it's time for us to consider the case on its merits. Anyone wishing to be heard on this? I think I've expressed my views. I think the petitioner does satisfy the requirements for a Variance. There is a substantial hardship if we don't grant relief, and that is the building is in a unique conditions, the nature of the structure is such that it can't be used for residential purposes. The question then comes down to do we allow -- give a Variance for this specific purpose? I believe that the conditions, as I've already outlined, we should do so because I think it improves the -- is consistent with the intent of our Zoning By-Law. It facilitates commercial development in an area that it's needed, frankly. And if the conditions are imposed,

I think the adverse impact, it could be adverse impact and to the extent the conditions are not satisfied, the neighbors have appropriate recourse to the Building Department and the conditions will be enforced I have no doubt. Those are my views. Anyone else have a view or we can go to a vote?

TAD HEUER: I think am leaning in favor of it, and I think the reason is because this property to me appears to be a strained property. That it was not a property which was -- or at least in the recent past, was residential, purely residential. It's not as though someone has taken a two-family house and decided they would like to open a commercial facility on the first floor. Anyone walking by this facility, as it's clear from the occupied facility next to it, would say this is a commercial space and expect it to be a commercial space. I don't think anyone that's walking through the

neighborhood is wondering what the Zoning of that would be. I think those would be surprised it's not a commercial space. With all of its characteristics, it's commercial, it's in a commercial space. My sense is if the parking difficulty is as significant as the opponents claim it is, and I have no reason to doubt it isn't, I don't imagine anyone going down Western Ave. is going to be circling the spot going in that cafe. If there are no spots, they'll move on. There are other coffee shops that people can get to.

And I also think that with the lack of parking there, you would need something to fill that space that is walkable. I think putting something in like an antique shop, while it seems to be a less intensive use in some respect, unless the Kinnaird Street residents have not had their fill of antiques yet, that's going to be something that would direct people who like to drive and put what

they purchase in the back of their car. And I think lots of those things will attract people that like parking. And in this situation it's a neighborhood amenity that's only used by those in the neighborhood and what you can walk to. So in that situation I understand the parking objections, but I actually think they cut the other way. And also I agree that it can be conditioned to limit the number of these things that are enforceable conditions. It's not something that Inspectional Services is unfamiliar with in terms of enforcing conditions. And there's something that the neighbors can certainly be aware of and vigilant of to make sure the applicant is adhering strictly to whatever we put forth. So for all those reasons I think having this space -- and finally, I think the most important reason, the petitioner is coming to us not necessarily saying that he necessarily wants

this type of use. He's saying that he's had many uses in the past and hasn't been able to hang on to them. And, you know, certainly that could be a reason for high rent fee charge or what have you. But at least the sense I'm getting is the petitioner is trying to get something in there and hasn't yet had the opportunity so he's had numerous tenants who haven't worked out. If he's successful with this, I think it goes to one aspect of the Zoning Ordinance which is ration economic development in the City of Cambridge in a space that does look to me, and to most people who walk by it, as a commercially designed space. And that I think that if you have a commercial space, that's something that try to occur. If it doesn't wok out, it doesn't work out.

BEN CORY: Can you speak a little louder, please.

TAD HEUER: Certainly.

I don't think in this situation and this space is the type of use is so intensive and so clearly derogates from the intent and purpose of the Variance, the Ordinance or that Variance.

CONSTANTINE ALEXANDER: Anyone else wish to be heard or go to a vote?

TIM HUGHES: I totally agree with Tad in terms of the parking. I just think that, you know, people can't find a place to park they're not going to, you know, double park or stop for a cup of coffee. There are other options. I see the cafe as a social neighborhood amenity. And one thing I would add to what Tad didn't say, he's tried to rent this place out, he's had varying success with that, but now this is something that he's going to keep in the family. His wife is going to run this cafe. So it's like, there's a -- there's this more of a personal stake involved in this thing which I think

would -- is going to make it -- I don't know more effective. At least he's going to have more of a personal interest in it and not just, you know, be an absentee kind of landlord about the project or establishment that's there. So I think for all of those reasons I would be in favor.

CONSTANTINE ALEXANDER: I would point out, Tim, though, as I say, I agree with your conclusion. Is that if we were to grant the relief with the conditions, he could tomorrow sell it to someone else. So it would be an absentee person running the cafe that we would permit. But I think the intent is clearly -- the outset would be hopefully forever or as long as you're around, you would keep it within the family.

BEN CORY: I think that --

CONSTANTINE ALEXANDER: No, sir, public testimony has been ended.

Anyone else wish to speak?

SLATER ANDERSON: Well, I would say it is going to be a neighborhood amenity and it's going to succeed or fail based on its neighborhood relations. And I think it's in the greater interest of the community to have for the opportunity to be made available to see if it can succeed. And I do -- I think that the benefits outweighing given the conditions, we will consider as part of it.

CONSTANTINE ALEXANDER: Brendan, do you want to speak? You all set?

BRENDAN SULLIVAN: No.

CONSTANTINE ALEXANDER: Ready for a motion?

The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being that under the terms of our Ordinance, this is a residential

district, and that -- but the structure or the premises in question are not susceptible to residential occupation. There are storefront, small amount of space, and it's historically been used as a commercial purposes.

The hardship is owing to circumstances relating to the nature of the structure itself. This is simply a commercial building in a commercially zoned neighborhood and -- and in a residential zone. Thank you.

And that most importantly we can grant relief without substantially detriment to the public good or nullifying or derogating from the intent or purpose of this Ordinance. We can grant that relief if we impose the conditions that I'm going to suggest in a second.

But the relief is simply that there's no detriment to the public good. That what

we're talking about is a more rationale use of a structure in the City of Cambridge. One that there's better to be occupied and used for commercial purposes than to stay vacant.

That the proposed use is not going to create traffic problems. And I concur with all the other members of the Board that the nature of this cafe will be such that it will be foot traffic. People will go there and walk there if they're going to go there at all. And, therefore, I don't see congestion or traffic impact.

And, again, although there can be impact of this kind of use on neighboring properties, we believe that with the conditions that are going to propose and other members may add to will minimize the impact. And, therefore, in the end we will have rationale economic development of a piece of property in Cambridge that's not being used right now.

So the condition -- the Chair moves that a Variance be granted to the petitioner on the following conditions:

That the property may be used only for a cafe that essentially serves a cafe menu which we define to be drinks, hot and cold drinks, primarily hot and cold drinks, soups, salads and sandwiches. That no food can be prepared -- cooked on the premises. That the extent that you use the premises, you heat food up or you bring food in from the outside.

That you provide within the premises a trash receptacle for customers to dispose of their trash, and you take reasonable efforts to make sure that people throw out trash outside as they back out. Don't use the receptacle, that you clean it up and you keep the neighborhood as clean as you can.

And lastly that any -- you cannot maintain on your premises a dumpster or other waste disposal facility. You'll have to

arrange to remove the waste from the premises whatever way you wish. But if we do all those conditions, I believe that there will not be the impact of odors, rats, vermin on neighboring properties. The purpose of these conditions is to minimize that and to strike an appropriate balance between your proposed commercial use and the adjoining residential uses.

All those in favor -- any other conditions? We can put a condition for hours of operation as suggested. You said it would be ten to ten you think?

FAWAZ ABU RUBAYAH: Yes, sir.

CONSTANTINE ALEXANDER: Public testimony is over. You had your opportunity. I think let's just be -- that the hours of operation be no earlier than nine a.m. -- are you sure of that? If you're going to serve breakfast and coffee.

FAWAZ ABU RUBAYAH: From eight in

the morning would be nice.

CONSTANTINE ALEXANDER: The hours of operation cannot be any earlier than eight in the morning and no later than eleven at night.

BEN CORY: No, not eleven.

CONSTANTINE ALEXANDER: I'm sorry, sir. Anybody disagree with that?

BRENDAN SULLIVAN: I would go about ten only because I think the presentation said.

CONSTANTINE ALEXANDER: All right. Ten o'clock. No earlier than eight o'clock. No later than ten o'clock. Any other conditions?

BRENDAN SULLIVAN: Sean, it still has to go before licensing, does he not?

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: And subject to health department inspection?

SEAN O'GRADY: Absolutely. Can I

get some clarification?

CONSTANTINE ALEXANDER: Sure.

SEAN O'GRADY: Are you limiting to sandwich, soups and salads or cafe type?

CONSTANTINE ALEXANDER: Cafe menu. By way of example. The more important condition that no food can be cooked on the premises. That gets you there anyway.

SEAN O'GRADY: And no exterior trash?

CONSTANTINE ALEXANDER: No exterior trash.

BRENDAN SULLIVAN: No food can be cooked on the premises except hot beverages.

SLATER ANDERSON: Or heating of previously prepared food.

CONSTANTINE ALEXANDER: Yes.

SEAN O'GRADY: Okay.

CONSTANTINE ALEXANDER: You all set? Any other condition? Okay.

Anyway, the motion will be granting a

Variance subject to those conditions. All those in favor of granting the Variance, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The Variance is granted.

FAWAZ ABU RUBAYAH: Thank you very much.

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

(9:45 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Tad Heuer, Thomas Scott, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair is going to call case No. 9906, 76 Fayerweather Street. Is there anyone here wishing to be heard on that? Please come forward.

MICHAEL SZALAJI: I'm Mike Szalaji, architect of record. Last name is spelled S-z-a-l-a-j-i. Address is 20 Chestnut Street, Cambridge.

CONSTANTINE ALEXANDER: One more Special Permit for windows.

MICHAEL SZALAJI: Correct.

The homeowners could not be here. They're out of town. They had a couple of letters of support they wanted me to give.

CONSTANTINE ALEXANDER: Give it to me before you finish. I don't have anything in the file right now.

MICHAEL SZALAJI: Thank you. This is a copy of the drawings.

CONSTANTINE ALEXANDER: If we were to grant you relief, just so you understand, we want to be subject to compliance with these plans. These are the plans. If you're going to modify them as you come forward, you have to come back before us.

MICHAEL SZALAJI: Absolutely. They'll be dimensioned for the contractor in. The spirit of the plans will be the same, correct.

CONSTANTINE ALEXANDER: Go ahead.

MICHAEL SZALAJI: Basically the house is a non-conforming structure, and the

owners are requesting relief to reposition some windows. It's currently a two-family residence. They own both the properties that relate to back to single-family living. In doing so, the layout of the rooms changes which is required that some windows change specifically on the south and the rear of the east elevations, and I've highlighted the windows that are actually changing. Up here in smaller elevations are the sustained elevations with the current layout. We're not increasing footprint. We're not changing floor area. We're just looking to relocate windows and fortunately they're in the setback.

CONSTANTINE ALEXANDER: And a lot of windows that you're adding. What about the neighbors that face those windows, are those in letter of support?

MICHAEL SZALAJI: They are -- they all express their support. And actually the

lot is -- there is a flag lot that has access from Fayerweather that is right next to the south side of this. So, the abutters immediately to the south of this elevation is actually 20 feet away because of this access to a lot from Huron Street. I believe it's a school. It was a previous school.

SLATER ANDERSON: But you're close to the flag lot line.

MICHAEL SZALAJI: Correct.

The other issues that they're asking for relief there's an existing front porch which they'd like to maintain but just update aesthetically by changing the railings and putting in new posts on, but not changing the footprint on it. As well as on the back, changing the architecture of the back porch. Unfortunately is within the setback as well. And that's the picture down here, the existing. And we're proposing just to lighten it up.

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

TIM HUGHES: No, I'm good with it.

CONSTANTINE ALEXANDER: Anyone here wishing to be heard on this matter?

(No response).

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

The Chair will read into the record the following letters: There was a letter to us from someone in Nan Stone -- here it is. William and Nan Stone, 69 Fayerweather Street, addressed to us. "We are neighbors of Mr. and Mrs. Simonsen who have described to us the work they wish to do on their home involving changes in the fenestration on one side and modifications of their porches, front and back. We support their petition and urge you to allow them to go forward with the work they plan. This kind of improvement to homes is good for the neighborhood,

enhances the value of the homes for all of us and harms nobody. Thank you for considering this letter of support."

And then there's also -- it says "I as the petitioner, I as a neighbor of 76 Fayerweather Street in Cambridge support the changes Rick and Kimberly Simonsen plan to make to their home. I understand there will be changes to the placement of windows and the addition of windows as well as changes and improvements to their front and rear porches." And it's signed by residents of 77 Fayerweather Street, 71 Fayerweather Street, 322 Huron Avenue. It looks like 74R, near Fayerweather, 324 Huron, 74 Fayerweather, 73 Fayerweather.

The Chair will close the public testimony.

Comments or observations from members of the Board? Ready for a motion?

The Chair moves that this Board make the

following findings:

That the proposal will not impact traffic or patterns of access or egress that will cause congestion, hazard or substantial change in established neighborhood character. In fact, what we're talking about here is essentially -- not essentially -- the relocation in the addition of windows as well as the renovation of porches.

That the continued operation of adjacent uses will not be adversely affected by the nature of the proposed use. The only potential adverse affect would be upon the privacy of those who face the new windows. But the Chair would note that these persons have supported the relief being sought, and so seem to have no concerns about their privacy being invaded.

That no nuisance or hazard would be created to the detriment of the health,

safety and welfare of the occupants or the citizens of the city. Again, we're talking about windows, and to the extent there would be detriment or nuisance, it would be through privacy issues and none seem to exist.

And that the proposed use would not impair the integrity of the district or otherwise derogate from the intents and purpose of this Ordinance. In fact, what's being done is to upgrade the inhabitability and the quality of the structure involved which is one of the purposes of our Zoning By-Laws, to create a vibrant and always improving residential neighborhood for the City. And this will accomplish that.

Special Permit will be granted on the condition -- the Chair moves that a Special Permit be granted on the condition that work proceed in accordance with plans prepared by On the Boards Design, dated February 1, 2010. And they're numbered A.1, A.2, A.3, A.4 and

A.5. The first page has been initialed by the Chair.

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

"Aye."

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

MICHAEL SZALAJI: Thank you very much.

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

(9:50 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9902, 25 Harrington Road. Is there anyone here wishing to be heard on that matter?

WALTER GRACE: My name is Walter Grace, 25 Harrington Road.

WILLIAM SCHAEFER: My name is William Schaefer. I'm the architect for the project.

MARY GRACE: Mary Grace.

CONSTANTINE ALEXANDER: And you're seeking a Variance to convert an existing deck into a proposed sun room. And your issues are that you have an FAR problem. Right now you have a conforming structure of 0.46 in a 0.5 district. And if we grant you the relief you're seeking, you'll go to 0.54. You'll go to in compliance from slightly out of compliance.

WILLIAM SCHAEFER: Yes.

CONSTANTINE ALEXANDER: Although you're not going to intrude further into the setbacks, this deck is close to the lot line and we're talking about a, if you will, a greater massing which has in turn an intrusive effect on the property. That's the reason you're before us tonight.

WILLIAM SCHAEFER: That's the reason we're before you. I'll just make a short presentation.

Mr. and Mrs. Grace have lived at 25

Harrington for the last 37 years since 1973. They are petitioning to use an existing deck and enclosing it with an all season sunroof. The hardship is as you stated, that the existing lot has smaller setbacks than required. The Graces need additional space for several reasons:

One, Mrs. Grace is no longer able to tolerate direct sun for medical reasons.

And, second -- there's several reasons but a second major factor is that their daughter has moved back into the Harrington Road residence with her two young children and this room will give them the necessary space for the enlarged family requirements. The house is quite small as it is now. The adjacent neighbors to the left have given their approval to the plans, and the abutters to the rear are minimally affected as there are large pines that shield the Grace's rear yard.

Mr. and Mrs. Grace have distributed plans to all the abutters to make them informed and have received no negative feedback from the neighbors. Therefore, we're asking the Zoning Board to approve this application so that they can achieve a better use of their house for themselves and daughter and their young grandchildren.

CONSTANTINE ALEXANDER: Thank you.

Questions from members of the Board at this point?

Anyone here wishing to be heard on this matter?

(No response.)

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

So you've just got oral assurances to --

MARY GRACE: They did offer to write a letter.

CONSTANTINE ALEXANDER: That's all

right. There's no need to have it. You represented to us that you spoke with your neighbors. We take your representation on its face that you at least talked to the neighbors, particularly the one that's most affected.

MARY GRACE: Yes.

CONSTANTINE ALEXANDER: I'll close public testimony.

Anyone? Any comments from members of the Board? Ready for a motion?

BRENDAN SULLIVAN: Is it going to be three season or is it going to be heated?

WILLIAM SCHAEFER: An all season porch.

BRENDAN SULLIVAN: So part of the living space?

WILLIAM SCHAEFER: Yes.

CONSTANTINE ALEXANDER: An addition?

WILLIAM SCHAEFER: Yes.

WALTER GRACE: There's additional photographs. This is the pine trees that shield the deck. And then to the left of it there's a high fence. So it's really quite secluded. And the house in terms of the shadows will cast more of a shadow than the intended sun room.

CONSTANTINE ALEXANDER: These are the final plans, sir, again?

WILLIAM SCHAEFER: These are the final plans with no changes.

CONSTANTINE ALEXANDER: You understand there would be no changes if we grant relief?

BRENDAN SULLIVAN: Do you have an interest?

FEMALE AUDIENCE MEMBER: No.

TAD HEUER: In this picture on the left you see your neighbor's house. Most of these houses were all built about the same time; is that right? On your side --

MARY GRACE: The house on Cedar Street is a main house. We're down about five or six feet from Cedar.

TAD HEUER: And all these were built around the same time?

MARY GRACE: Right.

TAD HEUER: I'm looking at their backs. Do most of them have the type of --

MARY GRACE: Yes, we do.

TAD HEUER: This kind of addition, this half story that you're trying to put on.

MARY GRACE: We already have that on our house, too.

TAD HEUER: Okay. I guess I'm looking at this one. What's this one here, the striping, if that's what it is?

MARY GRACE: That's up the street of what was an old barn years and years ago.

TAD HEUER: All right.

CONSTANTINE ALEXANDER: I'm not rushing you.

TAD HEUER: The only reason I'm hesitating, and I think I would regardless, just in general my concern is going from a non-conforming -- going from conforming to non-conforming use. Usually what we do, we're over or under, but it's another type of relief like a setback relief. Here we're kind of, and the big thing in front of us is FAR, and we're going from the -- they told us 0.5 and we're going over. You know, I see there's clearly mitigating factors in terms of the size of the family and the kids coming back. You know, it's the end of a dead end street so it's not as though there's a huge visual impact. But I think I also hear your concern about increasing the massing, the deck there, too, it's not taking up any more space. You're increasing the space going up into the setback. It's not just your back deck out the back intrudes, but you see you're adding some bulk as well. I'm not sure, you

know, I'm balancing opposed or balancing in favor of it.

BRENDAN SULLIVAN: I guess in a perfect world I would probably prefer that it not extend beyond the house because I think that adds sort of a bit to it. But being long term residents, and I think being sensitive and respectful of your now personal situation with a family member moving back in and a need to find a space for them, I think that benefit outweighs what harm is it.

SLATER ANDERSON: And the extent of the expansion frankly is modest. If we were going from whatever it is, 0.46 to 0.8 or something like that, I would question it. But I, you know, my first reaction we're making a conforming a non-conforming, but that threshold to me, it's sort of we're going from just one side on it to just on the other. So I think it's reasonable. I don't have a problem.

TAD HEUER: Are you on an undersized lot?

WILLIAM SCHAEFER: We are, yes, yes. We're on an undersized lot. And in adjusting the FAR ratio, we're at the 0.54. We will be 115 square feet over.

TAD HEUER: Okay.

WILLIAM SCHAEFER: It is rather minor.

SLATER ANDERSON: It's 2835 is the lot.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Ready?

The Chair moves that the Board make the following findings:

That a literal enforcement of the provisions of this Ordinance would involve a substantial hardship to the petitioner. Such hardship being the need for additional space, living space. And that given the size of the structure and the location and size of

the lot, that the only way to obtain additional living space is through the addition that's being proposed. And that -- well, the proposed.

The hardship is owing to basically the shape of the lot and the structure. There is no way of producing additional needed living space without granting relief.

And relief can't be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of the Ordinance. In fact, although as has been pointed out, we are granting relief of conforming structure and making non-conforming like Mr. Anderson pointed out, it is conforming just slightly and non-conforming slightly. So the impact of this allowing this relief is there but it is not great, and it's counterbalanced by the need for additional living space and the lack of any neighborhood opposition. The

neighbors most affected by this or the neighbor has told to us they are in support of the petition. In fact, all of the neighborhood seems to be in support of the petition. And certainly that no one has come forth in writing or in person to object to the relief being sought.

So on the basis of the foregoing findings, a Variance be granted to allow the petitioner to convert an existing deck to an enclosed sun room.

The Variance will be granted on the condition that the work proceed in accordance with the plans submitted by William Schaefer and Associates architects. They are 1, 2, 3, 4, 5 pages of which the first page of which has been initialed by the Chair.

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

(Aye. Alexander, Hughes, Sullivan, Anderson.)

CONSTANTINE ALEXANDER: Opposed?

TAD HEUER: Abstain.

CONSTANTINE ALEXANDER: Four in favor, one abstention.

(Heuer.)

CONSTANTINE ALEXANDER: Relief granted.

(10:00 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9903, 3-5 Watson Street. Is there anyone here wishing to be heard on that matter?

SCOTT ZINK: Scott Zink.

CONSTANTINE ALEXANDER: You were here before us for a Variance relief. We granted you the Variance and you discovered during the process that one of the things you

wanted to do was to relocate windows or put windows in a setback. And it was the sentiment of the Board that you have to get a Special Permit for that and not a Variance. And we said you have to come back before us and you're back before us.

SCOTT ZINK: That's right.

CONSTANTINE ALEXANDER: Are these the same plans we saw the last time?

SCOTT ZINK: The most updated plans are 8202, which should be in the file.

CONSTANTINE ALEXANDER: January 28th.

SCOTT ZINK: No, I have more recent.

CONSTANTINE ALEXANDER: I don't see them in the file.

SCOTT ZINK: I did bring them by a couple weeks ago. 8202? Bottom right.

CONSTANTINE ALEXANDER: 8204, 04, 02 and 02.

SCOTT ZINK: Okay. Exactly.

CONSTANTINE ALEXANDER: So these are the plans in the file. But these plans -- how do they differ from the plan we saw when we approved the Variance?

SCOTT ZINK: Well, when I was doing the interior layouts, I had to move a couple small windows back and forth. It's a slight adjustment.

CONSTANTINE ALEXANDER: It's the same windows in the setback, same issue?

SCOTT ZINK: Correct.

So basically I'm shifting the height of the windows on the second floor up above a foot. And as you can see, in the middle of the building where I've labelled windows 1 and 2, I've taken out a double hung and I'm putting a small casement window and a small awning window.

CONSTANTINE ALEXANDER: What kind of window casement?

SCOTT ZINK: Awning.

CONSTANTINE ALEXANDER: Awning?

Okay.

SCOTT ZINK: Also on the first floor I'm shifting a couple windows three or four feet.

CONSTANTINE ALEXANDER: And in terms of anyone in the neighborhood you talked to your neighbors, and particularly those being affected by the windows?

SCOTT ZINK: Yes, on the west side is a vacant lot owned by MIT. I talked to the neighbor today. He was in support of the Variance and in support of the permit.

CONSTANTINE ALEXANDER: Questions from members of the Board?

Anyone here wishing to be heard on this matter?

(No response.)

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

I will close public testimony. Ready

for a vote or further discussion?

The Chair moves that the Board make the following findings:

That granting the Special Permit to all three windows in a setback as requested by the petitioner will not have an impact on traffic or patterns of access or egress that would cause congestion, hazard or substantial change in established neighborhood character. That being self-evident from the fact that we're talking simply about the location of windows.

That the continued operation of adjacent uses will not be adversely affected by the nature of the relief being sought to the extent that there could be adverse established change in the privacy issues. I mean, sorry, impact and development of the adjacent uses. And that in fact these windows face either a vacant lot or a property as to which the neighbors have expressed no

opposition.

That no nuisance or hazard would be created to the detriment of the health, safety or welfare of the occupants or citizens of the city. Again, to the extent that there should be a nuisance or hazard or a privacy issue, and none appears to be present here.

And that the proposed use would not impair the integrity of the district or adjoining district or otherwise derogate from the purpose of this Ordinance. Allowing the relocation of the windows would permit a more attractive structure, more usable structure, and it is consistent with the desire of the city to upgrade our housing stock. And it also is consistent with the relief that we granted previously with regard to a Variance in terms of just general impact on the community.

The Special Permit would be granted on

the condition that work proceed in accordance with plans A-204, A-204 -- 202 all of which have been initialed by the Chair.

All those in favor of granting the relief of the Special Permit on these conditions say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. All set.

SCOTT ZINK: Thank you.

(10:05 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9904, 45 Lawn Street. Is there anyone here wishing to be heard on this matter?

Have I got this case straight from reading the file? You started out by wanting to build dormers or a dormer, more than one. That would send you over the FAR so you would have to get a Variance. You chose not to do

that with respect to demolishing the porches. We brought you by losing that space you're now compliant with the dormers and FAR. And now you're coming back and wanting to put the porches back and put you over the FAR. You chose to seek a Variance for reconstruction of porches as opposed to a Variance for the dormer. Why?

GINA FORD: Yes. Good question. This has become a critical issue for our family. We have three of us, including our two-and-a-half-year-old daughter, my husband James and myself. We've been living in 870 square feet including --

CONSTANTINE ALEXANDER: How much?

GINA FORD: 874 square feet with one bedroom with the three of us. My daughter has been living in the dining room and my husband has a home office there. This is a major space issue for us, it became critical last fall. She's getting up and moving

around.

We would have sought a Variance except our neighbor who is here to speak on our application, our downstairs neighbor was on sabbatical this spring. She was a professor at Northeastern University and she was going to be writing out of the house. So she really asked us to speed up the construction so she could have a quiet spring in which to write.

We brought this issue to Ranjit and said, what should we do. You know, it's critical. We don't want to have bad relations with our neighbor. He said, do your construction, as long as you can live with not having a porches if the Board decides, and then apply for the Variance after the construction.

CONSTANTINE ALEXANDER: For the porches, and the porches right now, the floor boards are they usable?

GINA FORD: No, they're not usable.

CONSTANTINE ALEXANDER: You did comply before you gave up the porches for the time being?

GINA FORD: They're using it for staging for construction.

CONSTANTINE ALEXANDER: Right. And just for the record, with the demolition or the demolishing of the porch and addition of the dormer, you're Zoning compliant. You're at 0.5 FAR in a 0.5 district. But by adding back the porches, you're then going to go to 0.53. So you're going to be just in conformance to slightly out of conformance and that's why you're before us.

JAMES MAYEUX: Correct.

CONSTANTINE ALEXANDER: Questions from members of the Board?

TIM HUGHES: How big are the dormers?

GINA FORD: It's one dormer.

TIM HUGHES: Yes.

JAMES MAYEUX: So it's about 19 and a half feet wide and 26 and a half feet long. It's a single -- I can show you -- I submitted a view of it.

CONSTANTINE ALEXANDER: We have a drawing somewhere. It's a simplified view of it. This is the mass of it.

TAD HEUER: So it's a house on top of a house?

JAMES MAYEUX: It is, it is, yeah. Conceptually I think so.

TAD HEUER: Is it common in this anywhere in Cambridge?

GINA FORD: Actually if you look at the pictures that we have of adjacent houses, we've done this study. All of these houses in our section of Strawberry Hill in Cambridge were built roughly the same time, between 1928 and 1930. They all have roughly the same floor plan, and they both have

porches on the front and back. To your point -- I know to your point actually, the house right around -- right within our view shot of our house -- we're here. This house No. 5 which was built by the same people, the same developers has the same style of dormer. So there's one right adjacent to us. And many of them --

CONSTANTINE ALEXANDER: The dormer, I didn't mean to interrupt you. The dormer is not before us. The dormer has been built.

TAD HEUER: I disagree with that.

CONSTANTINE ALEXANDER: Well, no, it's there. We have to decide. We can say we don't like the dormer there so we're going to deny the right to rebuild the porches. But dormer is built.

TAD HEUER: I don't think it's about like or not like. I think it's about -- I think it's either porches this kind of force the dormer.

CONSTANTINE ALEXANDER: All you can do is deny the porches. You can't deny the dormer. The dormer is already there.

TAD HEUER: I think proceeding as though the dormer was not there and remove the porches to get that dormer, I don't think coming back to say we would like the porches back. The reason we got to do it by right is you didn't have a porch. If you want the other way around, we'd like to keep the porches but relief on FAR on this dormer. My sense speaking personally is that I would have been not inclined to do it. I don't see -- I'm not convinced of the logic of seeing them in the reserved position make me any more sympathetic.

GINA FORD: We were concerned about it too, but it really was an issue of wanting to keep the relations with the neighbor. We would have had to push the construction off a year to enable not have the disruption of

the construction, and that was really intolerable with us with a family of three.

BRENDAN SULLIVAN: That's a time frame of a semester, two semesters? And this is going to be here forever. I mean, I just, again, it's not about the dormer. The dormer's done. I find it totally inconsistent with the neighborhood. It's in the dormer guideline of what not to do as far as what dormer is concerned. And I believe that there was of an agreement of a tradeoff. We agreed to build a dormer as per this plan and take down the porches. And now it's -- well, now we want to -- so, I would say no. I think a deal was made, a deal was struck and the deal is a deal.

SLATER ANDERSON: Was the deal struck with Inspectional Services or this Board?

CONSTANTINE ALEXANDER: Not this Board.

GINA FORD: We went and we talked with Ranjit about what we should do and this was the advice we were given.

BRENDAN SULLIVAN: You can do this if you do this. They went ahead and did this. But they haven't done part two.

GINA FORD: We're prepared to live without the porches because the habitable space is critical to our family.

CONSTANTINE ALEXANDER: I assume.

GINA FORD: But we've talked with every one of our neighbors. Everyone is in support of this dormer. They think it's a beautiful addition to the neighborhood. We had people come and comment to us today looking at the construction saying how great it is to invest in this part of Strawberry Hill. The porches aren't going to rob any light or air or views. It's contributing to the neighborhood safety and security. It's our means of --

CONSTANTINE ALEXANDER: It wasn't about the porches. Put away from the cinderblock garage. It also violates our Zoning By-Law. It's non-conforming before. It violates the Zoning By-Laws because of the space between the structure because it's too close. That's the other Variance you need to grant relief to allow you to build the two structures too close together.

GINA FORD: Yeah.

CONSTANTINE ALEXANDER: Are there safety issues involved?

GINA FORD: Well, to that first point I believe 8.122 or i.g. or 1g enables porches that are non-conforming to be reconstructed or improved as long as it's not outside their footprint.

CONSTANTINE ALEXANDER: Yes, but you're not entitled to that because you're seeking a Variance. If you are FAR compliant, that would be exactly in point.

But you're not FAR compliant, so that section doesn't apply. You've got to satisfy the Variance requirements.

GINA FORD: The safety issues that you alluded to, we have two stair means of egress and both of those are non-conforming. The front is too narrow. The back is a double wider that has a zero radius, you know, didn't have a -- it doesn't meet today's building codes. And so like I said, there's staging construction off the garage because that's really an easy way in and out in case of an emergency.

SLATER ANDERSON: You still have a front porch?

GINA FORD: We do.

SLATER ANDERSON: You wouldn't be left without a porch?

GINA FORD: No. But we would have an uncovered back entrance.

TAD HEUER: But that's the tradeoff

you made when you were looking for the dormer.

CONSTANTINE ALEXANDER: Tad's point is well taken. You took your risk. You made your deal. What risk were you going to take? Putting off the dormer for a year or going the route you did? And going the route that we may not allow you to build the porch.

JAMES MAYEUX: Our thinking is that we wouldn't know in a year's time how the Board would decide --

CONSTANTINE ALEXANDER: That's true.

JAMES MAYEUX: -- in terms of FAR, and it was better for us to build the space now.

CONSTANTINE ALEXANDER: No, no, I understand that. No one's quarreling that. You can do that as a matter of right. The only quarrel as someone put it, I guess, Brendan, you sort of made a deal, loosely speaking, a deal. And now you're trying to

change the deal. I think that's what Brendan's said. We allow you to build the dormers first, the dormer first. You took a risk that we would not give you relief if you came back. And that's what you're hearing, some objection whether we're going to grant you relief.

BRENDAN SULLIVAN: Taking each component individually, I would probably not be in favor of the dormers as designed. And I would not be in favor of granting relief to build porches so close to the garage. So individually I would not approve them, and I surely would disapprove of granting them collectively.

SLATER ANDERSON: Yes, I mean I know the dormers aren't before us and, you know, you chose the sequence that you did. But we would have sent you back to the drawing board with these dormers. So I'm -- I know it's not before us.

CONSTANTINE ALEXANDER: That's the point that Tad has made. I'm persuaded by it as well. You basically made your deal. You made your choice.

GINA FORD: Right. But you all are making a case that you would make us go back to the drawing board on a dormer that actually is legally within our rights.

CONSTANTINE ALEXANDER: The dormer is gone.

TAD HEUER: The porches are on.

TIM HUGHES: No, it wouldn't have been with the porches.

TAD HEUER: If you wanted that extra FAR, you would have had to come back to us and it would have been on the dormers and not the on porch.

GINA FORD: Can I make a couple of points about hardship issues. I know we already talked about the issue, but we also have a non-conforming lot and so our request

would be smaller. Our square footage would be smaller. We have a 4900 square feet instead of 5000. That's another point.

And the other point we wanted to make is that this addition that we've done, though you clearly don't like the appearance of it, is highly sustainable. It's got a really thick insulated wall shell and roof. It's very green, and we think that that's something that we think is a positive aspect as well.

One of the things that means, though, is because of our thickened walls on the upstairs, we have deep window sills. And all of those have been asked of us to be considered usable square footage. That's about 25 square feet of space that's just in window sill. Which arguably we would say we can't really do much with them. Some of them are actually high up in the dormer so you can't actually access the window sills.

And the other thing is that a lot of families in this neighborhood, as they've needed space, have enclosed those back porches. And you see it all over the neighborhood, and front porches. None of our porches are enclosed and we can never enclose the back porches because they are too close. We can't. This was really our only means of accommodating our family.

CONSTANTINE ALEXANDER: Further comments from members of the Board? Ready for a vote?

BRENDAN SULLIVAN: Well, I'm sorry --

CONSTANTINE ALEXANDER: I'm sorry, I didn't mean to cut off public testimony.

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

KATHLEEN KELLY: Yes. My name is Kathleen Kelly and I live downstairs at 47. And I totally understand, let's put deal in

quotation marks here. But this was a deal that was made without me involved. And the impact it's having on my quality of life. The downstairs porch is common area, but it's one that I use quite frequently and I'm very distressed at losing the roof over the first floor. I understand that there's also a problem with timing here. I understand that they went ahead and did their building where before -- you know, what you have preferred to see is the Variance first. But I was putting pressure on them because I am on sabbatical. And my study is in the front right where they're going bang, bang, bang, bang, bang upstairs. And so it's important to me that I have that quiet time. So we thought this was a risk worth taking. But I do want to emphasize that this was a deal that I wasn't involved with, and this is having a very negative affect on me.

Also as far as the neighborhood goes,

yes, we have front porches. But if you look at the building, the front -- my front porch, on the first floor is really high. But it's the back porch where community and neighborhood happens. I have a dog. Everybody in the neighborhood knows my dog. Hi, Otis. And it's because we're on the back porch. We're going in the driveway and we're making that connection with the neighborhood. Losing that porch means I'm not going to be using it as much.

It's also a safety issue for me because my bedroom window is on -- that one end of the porch onto the porch. I really appreciate -- we have a light sensor in the driveway. But I really appreciate having that roof, having some sense of privacy. I will feel very much more exposed without that roof on the first floor.

The second -- what I'd like -- or third or fourth, wherever I am. What I'd like to

say about the dormer, it's an incredibly discrete dormer. It's beautifully designed. This is like one of those places where you go whoa. You can hardly see it. You need to move back from the house a lot to look at it. And it's got lots of windows, too, I should add.

So, anyhow I understand your point about the FAR, but also you're saying we're just going a little bit over the FAR. But if you think about the impact on the neighborhood, everybody's for our putting back the porches, but I'm saying please, to me this is important to my quality of life. I'm a big gardener. I'm outside as they will attest, 12 months of the year.

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

GINA FORD: I'd just like to say --

CONSTANTINE ALEXANDER: Let me close public testimony. Public testimony

has been closed.

Now go ahead, you can make final remarks, go ahead. Go ahead.

GINA FORD: I just lost my train of thought. I just want to say we really have reached out to all of our neighbors. We believe we built something that's green and sustainable and we feel a little bit like we've been penalized this 25 square feet for it. We've had everyone around us sign the letter saying that they love the look of the dormer. That they want us --

CONSTANTINE ALEXANDER: Have you submitted that letter, have you?

GINA FORD: Yes, I have. I have a copy if you don't have a copy.

So every one of the abutters has signed that and we've had constant conversation about it and everyone thinks it's really a beautiful addition.

JAMES MAYEUX: It is a viable egress

for us. Our back stair and our front stair are quite steep. If you go down them in a hurry, you will fall. The back porch is a straight shot out of the house onto the garage roof, and it's eight feet onto the ground. It makes our house safer. Losing that means either too dangerous stairs if you're in a hurry or wait for the firemen.

CONSTANTINE ALEXANDER: There's no way you can make the stairs more safe if we were to deny the relief you're seeking?

JAMES MAYEUX: We go down carefully.

CONSTANTINE ALEXANDER: Always a good idea.

GINA FORD: You know --

JAMES MAYEUX: It's not ideal.

GINA FORD: -- the risk that we took just so you know, we're takin' our shots for it. We're going to have to pay to have all that demolished and to be taken away and pay to have it all put back. So, you know, we....

SLATER ANDERSON: So
you're -- looking at the dimensional form.
So you're basically 60 --

CONSTANTINE ALEXANDER: And what
the dimensional form doesn't pick up, they
have a second Variance, they're too close to
the garage. And so to grant them the relief
they're seeking, you would need a Variance on
that requirement as well.

SLATER ANDERSON: But the bottom
porch exists, the footprint.

JAMES MAYEUX: It will be there.
You have a photograph of it? This portion,
the ground floor portion of the porch can
remain, will have to remain as access to the
back doors. The upward super structure
would also remain, just the floors and the
roof portion of it.

SLATER ANDERSON: Is that what it
looked like prior?

GINA FORD: Right. It looks very

similar to that now except without the roof.

And the other thing, if you feel we've crossed the line by doing the phasing that we have or we've really asked for too much here by building, we would be happy to do the one. In other words, just the deck on this level is what we've requested is really the whole system is to be rebuilt. But we'd be happy to not have the deck just to give Kathleen the covering.

SLATER ANDERSON: Not the roof?

GINA FORD: Yeah, yeah.

CONSTANTINE ALEXANDER: But on that we can go one of two ways: We can continue the case as a case heard. You have to wait a few months and you would come back before us with new plans showing the removal. Or we can put it to a vote tonight, and if we turned you down, you can come back and seek a different Variance. Because I think, it wouldn't the two-year rule because it would

be the different project, at least in my opinion. I think you can come back with those revised plans. My preference would be to take a vote tonight.

GINA FORD: Okay.

CONSTANTINE ALEXANDER: Because you will have an opportunity to do what you may have to do at that time. Anybody disagree with that by the way?

GINA FORD: Okay.

CONSTANTINE ALEXANDER: Brendan?

BRENDAN SULLIVAN: Well, I mean --

CONSTANTINE ALEXANDER: If we thought we couldn't come back for two years, I wouldn't --

BRENDAN SULLIVAN: I think it's really quite similar. It's just basically the same petition, just a very slight modification putting the roof over.

CONSTANTINE ALEXANDER: Other members of the Board feel the same way? I'm

going to urge that this case be continued to give them the chance to come back with a different -- you may have the same results, but it will give you at least an opportunity to present the alternative plans.

TAD HEUER: What's the (inaudible) we're talking about?

SLATER ANDERSON: 60 square feet.

TAD HEUER: And what's the --

SLATER ANDERSON: 0.53. They're at 0.5 now. Putting the porch back it puts them at 0.53.

TAD HEUER: You have to get the march.

GINA FORD: Oh, yeah. 0.53. I'm sorry, I misunderstood.

CONSTANTINE ALEXANDER: That's what your dimensional form shows.

GINA FORD: It's 115 square feet would be the relief we're seeking because it's 79 square feet on both levels as you were

saying.

CONSTANTINE ALEXANDER: If they take the roof off the top, that would affect their FAR.

SEAN O'GRADY: Yes.

GINA FORD: That's the other option.

TIM HUGHES: It's more than 60 but the sum total is 0,53.

SLATER ANDERSON: I'm just reading what the dimensional form says.

GINA FORD: You're right.

CONSTANTINE ALEXANDER: If the view was if we take a vote tonight and we turned you down, that you cannot come back with your alternative proposal for two years. That's the law. Two years. I'm of a mind that -- so, therefore, if you think you have a better chance of getting relief with one deck, if you will, rather than two. I think you should do what I encourage you to do, is continue the case, come back with new plans

showing the one deck and -- but you may not get any different results. I can't give you any assurance.

GINA FORD: I guess then I would like to ask for clarity. We heard a case two cases before that was pretty identical that they were seeking relief. The phasing was different, but that was something, you know --

TIM HUGHES: Maybe I can provide some clarity. I mean, yes, the 0.3 is not extreme, but there does seem to be this kind of feeling like a bait and switch here. Because the dormer itself, if it come before us for relief, we definitely would have sent it back for a redesign because it didn't come anywhere close to what we considered inside the dormer guidelines. I feel a lot less like there's a bait and switch having heard the testimony and having heard the support of your neighbor than I did when I looked at the

plans and read the petition. So on the one hand if you looked at this as if you'd gone in a different phase, yes, we probably wouldn't have approved the dormer. You know, I'm not saying we definitely wouldn't have. It wouldn't have been customarily for us to approve a dormer like that.

On the other hand, it's what you're looking for now is very modest. But it's, you know, it's confusing to figure out how much relief we should grant even if it's modest considering the way it did go.

GINA FORD: We tried to be very, you know, upfront with Inspectional Services and talk through this issue. We weren't in any way trying to bait and switch.

TIM HUGHES: I believe you. I'm saying when I read the file, you know, that's what it looked like.

GINA FORD: Yeah, I didn't understand that. We genuinely --

TIM HUGHES: Because we see this once in a while.

GINA FORD: We weren't trying to trick anybody. We were trying to get a living space that could accommodate the family and the neighbors and be good neighbors.

SLATER ANDERSON: And as member of a young family with young kids in Cambridge whose lived on upper floors, I mean, one solution is to say I think, you know, to deal with the collateral damage here to your neighbor downstairs, I think that the porch needs to get covered somehow. The question is do we give you usable space on that level on the second floor or just say no, it needs to be, you know, some sort of a sloped shed roof.

GINA FORD: Right.

SLATER ANDERSON: But that requires you have to -- there's a door there that would

need to be removed. That you don't want kids running out a door on to a flat roof. To me that seems a reasonable solution, but I sort of -- I'm inclined to go with the interim solution with the no covered porch on the second floor that takes care of the neighbor. And I think, you know, it's a safety issue and it's --

CONSTANTINE ALEXANDER: That -- we have to --

SLATER ANDERSON: That's my opinion on the result. How we get there? That's what I could live with.

TAD HEUER: How do we get there?

CONSTANTINE ALEXANDER: That is the issue.

TIM HUGHES: I can agree with Slater on that. Because I don't think the downstairs neighbor should be penalized. We can get a continuance and redesign. Like Gus said that doesn't mean it's going to pass.

CONSTANTINE ALEXANDER: You have to get four votes.

GINA FORD: I have to understand what the real objection is. I understand you don't like the dormer, but what's the objection of this?

CONSTANTINE ALEXANDER: Let's get away. I mean, we've used the words bait and switch. As Tim has pointed out correctly, that was surface impressions. The issue is simply this:

If you had come before us originally seeking relief for the dormer, we would have not granted you relief for that dormer. However attractive you believe it is, and it very well may be we have dormer guidelines in our city and this dormer doesn't come close to complying with that. So we regularly, when people come in seeking relief for a dormer and it doesn't comply with dormer guidelines, we say go back and redesign the

dormer. We didn't get a chance to have that dialogue with you because you did what you did. Now you're coming before us to rebuild the decks. And the only reason you tore those decks down which was to allow you to build the dormer, which is a dormer that didn't come before us. So now it's saying well, gee, if we had seen that dormer, we wouldn't have approved it. Should we now allow you to do something at the end of the day that allows you to build a dormer of the exact same problem you had before, the decks in the back, and we're a little bit troubled about that.

GINA FORD: Can I explain one more thing just because it's relevant to your point? The dormer we built is really the only kind of dormer we could build here because of the garage.

CONSTANTINE ALEXANDER: Okay. I'm not even going to dispute that. We didn't

have a chance to have that debate with you. You took a course of action which was completely legitimate on your part. You took a chance. You ran the risk and you've seen the risk tonight, that when you came back before us to rebuild that porch, we might not be too sympathetic to that because we saw a dormer that doesn't comply with the dormer guidelines being built without us having a chance look at it. And now you're asking us to allow -- this is my issue, maybe not the other Board members -- allowing you to build something too close to another building on the lot. We have to treat this porch as if it were gone and you're building it in the first instance. You came before us to build two decks with a foot or two from the garage, I wouldn't support that.

GINA FORD: I thought that was allowed by the 8.22 that you could reconstruct porches with a non-conforming --

CONSTANTINE ALEXANDER: But it's not non-conforming once you got the demolition permit. It's as if those porches were never there. It's like building anew. You're starting all over. And since you're starting with a -- you're starting with -- you're extending the non-conformity. In other words, you're too close to the garage.

SLATER ANDERSON: I think it's an important procedural clarification here for you as well. If you forward -- if we continue this case, and we say go back and redesign it, this is a case heard. You are going to come back before these same five people. If we take a vote on this as is and it gets approved, well, you're on your way. If it gets denied, as Gus suggested, you can submit a different plan, let's say without the roof. In that case it doesn't have to be these five people you see. You may end up with these five

people, we don't know. But that's an important, I think, procedural distinction for you.

GINA FORD: I think I understand your issue because if you take the dormer out of it and focus on what we're asking for which is the relief of the porches, your concern is that it's too close to the garage.

CONSTANTINE ALEXANDER: My personal concern.

GINA FORD: If it was just a shed roof over the lower porch you would be okay with --

CONSTANTINE ALEXANDER: I want to see the plans. I understand the dilemma of the person downstairs, and that might outweigh my concerns about the porch being too close to the garage. I want to see everything in a package.

GINA FORD: Does anybody else have other concerns or is that really the main

concern is that it's too close to the habitable --

CONSTANTINE ALEXANDER: You had concern from two members and that's big because you need four. At least four that simply the whole process that you went through. The decision you made, building dormers that don't comply with the dormer guidelines, not giving this Board a chance to say you can't build that dormer is such that the Board members are not inclined to support the rebuilding of these porches, because that's how you got to build the dormers that this Board would not have allowed you to build.

GINA FORD: Because you don't like the addition we're doing, you won't grant us relief for a separate issue? I just want clarity for the future.

BRENDAN SULLIVAN: Regardless of what my opinion is of the dormer, the fact

before me is that you came down, presented a plan and there was an understanding and an agreement on your part to the Building Department, you give us a building permit to build this, and in order for us to get that building permit, we have to remove the porches. That's an agreement. You have to comply with that agreement as far as I'm concerned. I mean, there's nothing more variable than that. You agreed?

GINA FORD: Yeah.

BRENDAN SULLIVAN: So the --

GINA FORD: The case that was here two cases ago, were they asked to go over the FAR?

BRENDAN SULLIVAN: I'm going by your case.

GINA FORD: So if it was different owners and they wanted to build a porch?

BRENDAN SULLIVAN: No, you made an agreement with the Building Department in

order for you to proceed with your work.

GINA FORD: We didn't leverage it. We -- actually, the building permit was as of right, right?

BRENDAN SULLIVAN: Provided that you took down the porches.

GINA FORD: I'm sorry. Do you understand?

BRENDAN SULLIVAN: No matter how we spin it, no matter how many times, we will do this to eliminate FAR so we can build this. We built this. Now you have to do this.

CONSTANTINE ALEXANDER: And it's not involving you personally. If you were to sell your property tomorrow and people bought it from you and said, gee, we'd like to have two porches back there. And they came before us, we would say your prior owners made arrangements prior as Brendan has described, and we're not going to change that agreement. It was basically a process you went through,

a risk you took. And maybe the risk was proven to be, you know, a risk you shouldn't have taken. I think on balance you should be ahead, you got your dormer.

BRENDAN SULLIVAN: I find it hard to believe, it's not true, that you went down, you got the building permit, you conveyed that to your co-owner of the building that yes, we got a building permit. We can build this but we have to take down the back porches. Did that conversation ever exist?

GINA FORD: Of course.

BRENDAN SULLIVAN: You were aware of it. I mean, you said it was all done without your knowing.

GINA FORD: No, it was all done with many conversations.

KATHLEEN KELLY: Is it all right if I speak?

BRENDAN SULLIVAN: Never mind, I've heard the answer.

GINA FORD: We had many conversations about that.

BRENDAN SULLIVAN: Okay, that's the answer.

CONSTANTINE ALEXANDER: I've gone over this a lot in terms of procedure. I would suggest you go for the vote tonight. If you lose, you wanted to try to convince us with a -- not covering the porch on the second floor, you would file a new application with the plans for that. And you'd have to persuade the five members who are sitting on that night. And Slater has correctly pointed out, it could be not any of us five. Most likely some of us, but maybe not all of us. And you have to convince us that this project with one roof is substantially different than what we turned down tonight. If we were to be convinced of that --

TAD HEUER: How many votes? Four or five, same relief.

CONSTANTINE ALEXANDER: Then there would be a second hearing where we would consider this on the merits. And, again, who knows what five would be sitting. But then you have to convince the four of the five sitting on that night about this. And you would be faced with the same issue that you're faced with tonight as Brendan has described several times. Is that in the context of this there was a decision made on your part to do what you did and --

JAMES MAYEUX: We asked Ranjit in as many ways as is possible what should we do given this type of --

CONSTANTINE ALEXANDER: Ranjit gave you, in my judgment, good advise in accomplishing your immediate objective which was to get more living space. That you accomplished. Now you're asking us to come back and give you what you gave up to get that result. And that's where you're finding

resistance from members of this Board.

SLATER ANDERSON: Ranjit I would assume suggested that they come back for the porches.

JAMES MAYEUX: No. No. He just said this was --

CONSTANTINE ALEXANDER: This is the solution.

SLATER ANDERSON: Sean, can I ask a point of clarification.

Could they by right -- let's say they come back with modified second floor porch plan and that gets denied. Could they still then choose to at least cover the porch with the -- so the first floor is protected with some sort of a shed membrane, roof or something, so that the first floor tenant has or owner has a covered first floor but the second floor wouldn't be usable in effect? You know what I'm saying?

BRENDAN SULLIVAN: You're still a

distance between structures.

SLATER ANDERSON: That's the issue.

SEAN O'GRADY: And FAR.

CONSTANTINE ALEXANDER: And FAR.

You're still counting FAR.

SLATER ANDERSON: It's not usable -- you're saying FAR on the first floor?

TAD HEUER: Right.

BRENDAN SULLIVAN: Any common structure?

TAD HEUER: It's the amount underneath.

CONSTANTINE ALEXANDER: I'm going to suggest we take a vote now. And I don't see any benefit to thinking it through from Slater's point to continuing the case heard. You will have, if we turn you down, you're not completely without alternatives. But none of those alternatives will give you any assurance. Again, will be accomplishable.

But you will have an opportunity to come back before us and try to persuade us for a different thing and cover the porch on the first floor. And make the second floor porch not usable.

Let me read into the record for completeness. I'm going to call it a petition addressed to the Board. "James Mayeux and Gina Ford presented their plans dated November 27, 2009 for the proposed improvements, 45-47 Lawn Street in Cambridge, Massachusetts. By signing this letter, I attest to the following: That I am the owner of the abutting property 45-47 Lawn Street.

"That I support their efforts to renovate and improve their home for their growing family.

"That the improvements as shown will be an attractive addition to the neighborhood.

"That I will support a future Special

Permit and/or Variance to maintain the existing back porch and roof system." This letter is dated December 2, 2009. It's signed by the residents of 47 Lawn Street, 65 May Street, 33-35 Lawn Street, 27-29 Lawn Street, and 49 Lawn Street. And there's also a letter from Kathleen Kelly. But I think you've said everything that's in that letter.

KATHLEEN KELLY: I would like to say one more word if I may.

CONSTANTINE ALEXANDER: Only one more word.

KATHLEEN KELLY: Safety. Moi.

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

The Chair will move that a Variance be granted to the petitioners to allow them to rebuild the porches at their premises at 45 Lawn Street on the basis of the following findings:

That a literal enforcement of the

provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship being that without these porches there being a loss of living space plus the creation of a safety issue for the occupant of the ground floor unit.

"That the hardship is owing to circumstances relating to the -- basically the shape of the land and the structures. We're talking about a small lot that is a corner lot, as I recall, and it's unusually shaped and needs, requires the use of these porches.

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

Such a finding would be made on the basis that there is substantial neighborhood support for the project.

That there have been porches in this location in the past, and so it is not the creation of new porches that have never been there before. And that overall, the inhabitability of the property will be improved by allowing these porches to be rebuilt.

The Variance will be granted on the condition that work proceed in accordance with the plans submitted by the petitioner. They're numbered A-99, A-100, and A-101, A-104, A106, A206, A207, A208. The first page of which has been initialed by the Chair.

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

(No response.)

CONSTANTINE ALEXANDER: There are none in support. Therefore, the motion does not carry.

This Board will make further findings that the relief was not granted because there

is not a sufficient hardship to the petitioner.

That the petitioner made a choice to demolish the porches and granting a more desirable dormers the petitioner has achieved. The petitioner has achieved greater living space, which was a primary object of the activities on the property.

That although there are safety issues, there are ways of addressing the safety considerations. But in the event that was a decision that was made in the context as going forward with the dormers. And that by allowing these porches to be rebuilt which effectively has allows you to build dormers, a dormer not in compliance with our dormer guidelines would be to the detriment of the public good and would derogate from the intent and purpose of this Ordinance.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(10:45 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9905, Seven Holyoke street. Is there anyone here wishing to be heard on this matter?

You're here for a Special Permit of a fast food establishment.

ATTORNEY SEAN HOPE: Good evening, Mr. Chair, members of the Board. Attorney Sean Hope on behalf of the petitioner, Ayr

Muir, CEO of Clover.

We're here requesting a Special Permit to operate a quick serve or a fast food restaurant in Residence B in the Harvard Square Overlay District. Clover started as a food truck service business in Kendall Square and was known for its fresh food that was fresh, seasonal food and its locally grown ingredients. Clover is now seeking to open up a full restaurant in the Harvard Square Business District. Part of the business model would be that the packaging at Clover would be 100 percent biodegradable. So, instead of using the traditional recyclable and trash bins, we would encourage our clients to use --

CONSTANTINE ALEXANDER:

Composting?

ATTORNEY SEAN HOPE: Yes, composting bins, excuse me. It's been a long night.

CONSTANTINE ALEXANDER: Not for you.

ATTORNEY SEAN HOPE: The location and the type of restaurant that this would provide would not cause traffic or congestion or parking problems. The majority of the clientele based on the location would be foot traffic, pedestrian traffic. Also, we do feel that the health, safety and welfare of the inhabitants and the invitees of the district would actually be served by the freshness of the food that exists there.

CONSTANTINE ALEXANDER: Are you suggesting that other food, other restaurants are not fresh?

ATTORNEY SEAN HOPE: Not as fresh.

CONSTANTINE ALEXANDER: I mean, we had Mr. Rafferty, your colleague, was before us oh, I don't know, a year or so ago with Johnny Be Good a block away, and that was the same argument. We're going to serve fresh

food and it's going to be unique to Harvard Square. So we right now have something in Harvard Square, I assume, he was telling us the truth that serves fresh food you're not unique.

ATTORNEY SEAN HOPE: Well, and I do think you're identifying that part of the Ordinance requires a need, and use the word need in the Ordinance for fast food. And I'll let Mr. Muir really speak about the difference between Subway and Be Good and other restaurants in that district, but I think that Clover has a specific uniqueness about the types of food and the way they prepare it.

CONSTANTINE ALEXANDER: Just to make sure you understand this. I'm not going to dwell on this. I've made this speech -- Rafferty's heard this speech before, and I'm going to make the speech again.

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: Because one of the things we have to find, just so you understand, is that your establishment fulfills a need for such a service in the neighborhood or in the city.

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: Tell me why in Harvard Square, with all the fast food establishment we have, Au Bon Pain, Johnny Be Good, Cordoba all of which are a stone's throw from where you are. Why do we need another fast food establishment? Fast food by the way as defined in the Code. Why do we need another one? How do you meet that requirement?

AYR MUIR: Well, other than the food tastes really different, but one of the largest differences is the food is all vegetarian which is fairly unique in Harvard Square.

CONSTANTINE ALEXANDER: Now wait a minute. Every restaurant I've identified serves some vegetarian options, maybe not a full vegetarian menu but they have vegetarian options.

AYR MUIR: Yes, I think that's different. Yeah, I don't think it's the same. But there's one vegetarian restaurant in Harvard Square. It's, you know (Inaudible). The food we -- if you look at our menu in and our ingredients, and we're coming in about 60 or 70 percent of our ingredients are organic. Most restaurants you look at in Harvard Square, even fine dining is 10 or 15 percent. It has -- we have about -- it varies, this time of year there's not a lot of food available.

TAD HEUER: (Inaudible.)

TIM HUGHES: (Inaudible.)

AYR MUIR: You know a lot of root vegetables. And actually the next month is

even worse. When we come into the seasons where we can use food from our growers, our menu changes from 70 to 80 percent of the foods coming from New England growers, also very unique. I think Bistro is otherwise in Cambridge are only the other places that due to that level of working with local vendors. So those are some pretty unique traits to what we're offering and we're offering it at a prices that folks who don't shop at Whole Foods are able to afford and access, and we're looking to sell people sandwiches for five dollars.

CONSTANTINE ALEXANDER: What's the hours of operation going to be?

AYR MUIR: We're looking to serve breakfast from seven a.m. and through to eleven p.m.

CONSTANTINE ALEXANDER: Are those hours comparable to Au Bon Pain? Probably are.

AYR MUIR: I can't speak -- I actually don't know. I'm guessing.

CONSTANTINE ALEXANDER: And I notice you're going to have outdoor seating?

AYR MUIR: Yeah.

CONSTANTINE ALEXANDER: What are you going to do about trash? Particularly the trash in the street. Not so much trash inside, but trash in the street.

AYR MUIR: Right. We'll have it properly labelled and placed bins. I mean, we're very excited about people to compost and put all these things back into the system. So we don't want to see any of it go out.

TAD HEUER: What was the last tenant of that space?

AYR MUIR: It's Harvard. Yes, it's Harvard housing. Harvard University housing office use.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Also one

other thing that we're going to do, maybe we're pushing ahead of it. We have to make a finding that your establishment will comply with all state and local requirements applicable to ingress, egress and use of all facilities on the premises for handicapped and disable persons.

ATTORNEY SEAN HOPE: Part of the application that we were going to work with the landlord Harvard University and the engineering to ensure that we have seating on the second level. That, you know, we're in full compliance with all the state and building codes before we begin operations. So that's part of the plan that in terms of the landlord and outfitting --

CONSTANTINE ALEXANDER: You're saying if we were to grant you the Special Permit at the time you're granted, you would not have egress to the second floor for handicapped folks?

ATTORNEY SEAN HOPE: I don't think the building hasn't been completed now. If you look at -- the plan in the file now shows that we have planned to have appropriate access and egress to the second floor. I can't say that as of now Harvard Housing already had that situated there.

AYR MUIR: There hasn't been any thought on that.

CONSTANTINE ALEXANDER: If we want to grant relief, we can grant conditions that the project go forward with this.

BRENDAN SULLIVAN: I understand that we have to find that it is accessible to handicap people, but do we have to find that the entire area has to be accessible? In other words, the ground floor obviously is.

ATTORNEY SEAN HOPE: Right.

BRENDAN SULLIVAN: So it's not that it's not inaccessible to handicap people. It's just that the entire area may not be.

And I'm just wondering if --

CONSTANTINE ALEXANDER: I have the same reaction to this, Brendan. To me the code is not clear.

BRENDAN SULLIVAN: I would shy away from a condition that requires them to have access to the site.

SLATER ANDERSON: Because there's bathrooms, handicap accessible bathrooms.

AYR MUIR: That will be part of the construction of the bathrooms.

BRENDAN SULLIVAN: They go back to Harvard with that, and they're worse to deal with than we are.

SLATER ANDERSON: Is the sidewalk seating, is that a sort of a by-right option?

CONSTANTINE ALEXANDER: City of Cambridge allows it.

BRENDAN SULLIVAN: They're encouraging it.

AYR MUIR: And it's something that

Harvard really wants. They desire it. And I guess I don't know exactly how that works. It's a wide sidewalk and they have some aspect.

BRENDAN SULLIVAN: Streetscape and everything.

SEAN O'GRADY: License Commission has a whole process.

CONSTANTINE ALEXANDER: Yes. Well, I would make a note to make my speech, maybe members of the Board maybe didn't hear it. But I am opposed to -- not opposed, I don't believe fast food establishments in Harvard Square can satisfy the requirements that are set. I don't think there's a need in the Harvard Square area. I don't think Harvard Square is amply served by many fast food establishments. I'm sure your food is more organic than others, and it may taste better. That's not the need. I think to my mind Harvard Square is one of the more

important areas in the city. Its popularity to Cambridge beyond the limits of the city. And the reason why Harvard Square has been a treasured area is because of its diversity and we are losing that diversity in Harvard Square. And I just can't support -- not just me, and I've lost this vote before, but I want to go on the record one more time and say that I don't think you meet the requirements. Nothing to do with your business by the way. There's just not a need for another fast food establishment.

ATTORNEY SEAN HOPE: And just in rebuttal, I think the idea of fast food kind of encompasses, you know, from pizza, burger and fries. And so you can look around and there are dozens of places to eat. But I do think one, and when you judge the need, I think you can judge it by comparing it to other like venues. But you can also say commercially when the need is there, does it

survive? Does it create enough business? So I think the market force will determine whether is there a need for, you know, fresh food like Clover that's being brought in? I think any market forces will decide that. So, I think there's a difference between Subway, Pinocchio's and Clover. But what I think those differences are, I guess, are determined by I think the market force that will determine whether there is a need for that particular brand of food. So I think the code, because it lumps everything into fast food, and I think basically because of the percentage of food that's eaten on premises versus food that's taken away, I think unfairly groups all those different restaurants together. But I do think market forces should control. Because if there's not a need or not a desire, then they won't be in business.

CONSTANTINE ALEXANDER: If that

were the case, though, Sean, you wouldn't need this section in the code. If we didn't have that in there and you didn't fulfill the need, you would go out of the business. The City of Cambridge, the City Council had something in mind when they put this in. They're not going to let market forces to control. They want the Board to make affirmative findings if there is a need for this type of fast food establishment. I can't get there.

ATTORNEY SEAN HOPE: Right. And maybe we should have brought some food in so you can see Clover. Because I think the idea of need, you know, whether that's needed or not, I think is you can't necessarily judge it by they're all fast food. I think there are specifics to what Clover is offering. And I do think nationally there is a move away from trans fat. There's a move away from the burgers and fries that are typical. And I do

think there is a need for, especially the City of Cambridge for this type of accessible fresh food that is non-existent I think. And like you said you can go to Whole Foods and get a sandwich to go. I don't think because the time constraints of urban living that you can actually go get a salad, fresh fruit, you know, options for breakfast that are going to be as healthy and I do think that's what the need is for.

AYR MUIR: I'm sympathetic to your skepticism about the word fresh which is you know -- we don't use, you know, when we talk to our customers because it's lost meaning. But if you look at our operation, there is no freezer. If you look at the floor plan. Which is, you know, a better way of speaking to that. I mean, there's not frozen food that we're reheating. Soups.

SLATER ANDERSON: There's a cooler.

AYR MUIR: There is a cooler. You

have to keep your vegetables cool when they come in. But there's, you know, the soups are made on premises. We're running it on the truck right now. You see us chopping up onions that are going to be in the soup that you have.

BRENDAN SULLIVAN: I'm sensitive to what you're saying, and I thought the same thing from the neighbors, a lot of people. When upper Crust came before us and that's one of the most successful establishments in the entire city. And so to me I'm not sure if there can be too many of them. I mean, yes, I really shy away from the McDonald's and Burger Kings and Kentucky Fried Chickens, stuff like that. But I think this type of establishment relying on local growers' fresh produce and whatever, I am all for it. I don't think it can be enough.

TAD HEUER: I'd have to agree. I mean, I think that there's a variety issue

here. I think one of the things that Harvard Square does attract is people coming to a lot of different things. And, yes, if you, had you know, the standard talk about the Kentucky Fried Chicken, McDonald's right next to each other, those are essentially interchangeable to each other. Do I want greasy chicken or a greasy hamburger?

People will rotate between them. I don't get the sense that you're going to draw that kind of a crowd. I think particularly if you're in the Harvard area, right in the center of Harvard campus, you're drawing a lot of student traffic which put a dining hall -- it's Quizno or John Harvards, not necessarily what they can get and that's why they're going to get an establishment. I live in Harvard Square. I think I've eaten in all the restaurants. There's not only -- there's adversity of restaurants, but I think it's a good point people try what they

would never go there again. It doesn't necessarily mean there's a (inaudible) so, I think all those things go toward diversity. That although they're all classified as fast forward by our Ordinance, speak to very different in some cases not even overlapping populations of consumers. And I think also the fact that it's not a chain facility. It's something that, you know, literally on a truck right now and he's trying to find a more permanent home. They can drive in and park somewhere around Harvard Square in open space. Here they like to get out of a transient existence, put themselves in a space that quite frankly if you walk by there right now is underused. I don't even think anyone uses if you're walking southbound, it even looks on the right-hand side of the building, it's a big blank wall. I think having foot traffic and having a small outdoor seating there will actually help that

entire area in such a way that there's a street over where you have a wide variety of not just restaurants but also, you know, some other entities on that street that you don't necessarily have where I believe most of the restaurants are mostly on the eastern side of that street. So in my view it livens up that street. It gets people to think about that side of Harvard. The Holyoke Center is a viable commercial destination. It remains like other establishments.

SLATER ANDERSON: Is there any -- do you run up against -- what's on the interior wall there? Is there a potential for access from the Holyoke Center?

AYR MUIR: No, there's not.

SLATER ANDERSON: My concern, frankly, and I'm compelled by the need. I totally think that this does fill a nitch, a growing nitch. And so I'm over that threshold. My concern is, frankly, the

location. Holyoke Street is not a highly traffic street. Like a lot of people go right down Mass. Ave. and don't go down there. Maybe the outside seating and so that's a whole other issue. With you my concern is the location. Now, there is economics to that location versus something in a higher rent in a more prominent location, so, I'm --

BRENDAN SULLIVAN: If you build it, they will come.

SLATER ANDERSON: And you've got a reputation obviously. You've established a following. So that's --

CONSTANTINE ALEXANDER: Excuse me, we have to make a finding about traffic. What about the since you are fresh food and organic. How many deliveries? Will the delivery and the parking issue work out?

AYR MUIR: So we'll have deliveries like we have in food service typically. We use Russo's for our produce.

CONSTANTINE ALEXANDER: How many delivery trucks a day?

AYR MUIR: A day? It's hard for me to say exactly. But I would expect it would probably be one or two deliveries a day. Produce is something we do almost daily. Other deliveries are once a month. You know, paper products things like that.

CONSTANTINE ALEXANDER: Holyoke is a narrow street and with parking on both sides. We've got a food service truck parked there and it delivers during the daytime hours.

AYR MUIR: They make them usually very early in the morning.

SLATER ANDERSON: Will they be street delivery?

AYR MUIR: In that location there is not any rear access.

BRENDAN SULLIVAN: No different than the other chains. It is what it is.

AYR MUIR: Yes.

CONSTANTINE ALEXANDER: Okay.

Ready for a vote?

TIM HUGHES: I'm ready for a vote. But I'd like to add, I don't think we're talking about fast food. We're talking about need as a type of food necessarily. I think we also need different business models. We need variety which you certainly spoken to.

CONSTANTINE ALEXANDER: That's my point.

TIM HUGHES: And I think the Upper Crust -- what swung me about them was a different business model and a different approach to, you know, fast food. And I, you know, I don't personally need a vegetarian restaurant, but I think Harvard Square does.

AYR MUIR: You know, 80 percent of our customers are not vegetarian. So you might be right in the zone.

CONSTANTINE ALEXANDER: I think we're ready for a vote. Oh, I'm sorry, I thought you were part of --

CHARLIE ATKINSON: I just have a couple comments. One is I've been in Harvard Square since 1954 --

CONSTANTINE ALEXANDER: Can you give your name?

CHARLIE ATKINSON: My name is Charlie Atkinson. And I've been in Harvard Square since 1954. And my -- I've got a doctorate from the school of education, and I've been in the business of providing training to the global pharmaceutical industry for all the diseases that are caused in the world. The thing that's attracted me, No. 1, to Clover, and I don't know whether they put these little things up or whether you put them up as part of their promotional efforts but I certainly have to hand it to them --

TAD HEUER: The speaking to the clovers.

CHARLIE ATKINSON: Their innovative PR, but certainly that's going to get people down Mass. Avenue just a couple steps down to find their store as they have down on Carlton Street. But the idea that healthy food that is not meat-based that is attracting 00 percent carnivores to it in a world that is in the United States obesity is a No. 1 epidemic. And if you go to the Vatican, you will see all the Americans, they are bigger than the Clover food truck, okay? So, I think that -- I spoke to Jason Ponton (phonetic) the editor in chief of Technology Review. He said that the Clover food trucks will revolutionize the eating habits of Americans. And it is the best thing that ever happened to Cambridge.

CONSTANTINE ALEXANDER: Thank you.

TAD HEUER: If you serve something

other than a porta bello mushroom, I mean -- we talk about --

CONSTANTINE ALEXANDER: Sean will be on your case in a moment.

TAD HEUER: We talk about all these vegetarian options, default, even the vegetarians don't want to eat.

AYR MUIR: That's right.

CONSTANTINE ALEXANDER: The Chair moves that a Special Permit be granted to the petitioner to operate a fast order food establishment as defined by our Zoning Ordinance at Seven Holyoke Street. And so in making that motion the Chair moves that we make the following findings:

That the operation of the establishment will not create traffic problems. That to the extent there are food deliveries, they will be for the most part a non-traffic intensive times. That the operation will not reduce available parking. It's

anticipated that likely that most of the people who use the establishment will be on foot, not have need of parking spaces.

That the establishment will not threaten the public safety and the streets and sidewalks. In fact, this gentleman told us it's going to increase the public safety by decreasing obesity. That it will not encourage or produce double parking on the adjacent public streets as I've indicated. Most people we anticipate using these premises will be on foot.

That the physical design of the establishment shall be compatible with and sensitive to the visual and physical characteristics of other buildings, public safety and uses in the particular location. In fact, he's planning to use an existing structure with window treatments will be different and no seating outside, but there's no other modifications for the structure as

it is now.

That the establishment fulfills such a need for such a service in the neighborhood in the city.

The Board will find that there is a need for a vegetarian oriented restaurant or fast order food establishment. That the uses a substantial amount of organic goods. That is a need that is not being served currently in the Harvard Square area. We have made a finding -- I have to cite all these just bear with me. We believe that the establishment will attract patrons primarily for walk-in trade as opposed to drive in or automobile related trade. That you have represented to us that the establishment shall, to the greatest extent feasible, use biodegradable materials in packaging your food and utensils sills provided thereof.

Plastic spoons and --

AYR MUIR: Biodegradable.

CONSTANTINE ALEXANDER: The establishment will provide convenient, suitable and well marked waste receptacles to encourage patrons to properly dispose of all packaging materials and utensils provided with the sale of food. And you represented that you will have receptacles inside the premises and outside nearby the outdoor so people can't throw the trash in the street.

And that the establishment will comply with all state and local requirements applicable to egress and use of all facilities on the premises of handicapped and disabled persons. It is represented that at least the first floor will satisfy this requirement. And that is sufficient for purpose of the Zoning By-Law if you choose to make it compliant on the second floor that's your choice, but it's not required by our Board.

And then we have to make the further

findings that are required for all Special Permits, some of these we've covered, but I have to repeat them anyway. We will not cause impact on the traffic generated or congestion, hazard or substantial change in established neighborhood character. In fact, the established neighborhood character of Harvard Square is eating establishments attracted primarily to foot traffic which will not have an impact on vehicle traffic.

That this will have an impact on the development of the adjacent uses, and they would not be adversely affected by a fast food establishment.

That no nuisance or hazard will be created to the detriment of the health, safety and/or welfare of the occupants or the citizens of the city. In fact, you're going to improve the health of the residents of the city. We have testimony to that effect.

And that the proposed use would not

impair the integrity of the district or adjoining district or derogate from the intent or purpose of this Ordinance. In fact, Harvard Square has numerous fast food establishments not of the same nature of yours, but in fact one more establishment would not impair the integrity of the district.

And the Special Permit would be granted on the condition that the work proceed in accordance with these two pages of plans. These are the plans?

AYR MUIR: That's right.

CONSTANTINE ALEXANDER:

Dated -- numbered SD.05 and SD.06, both of which have been initialed by the Chair.

All those in favor of granting the Special Permit on the basis so stated, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in

favor.

(Hughes, Sullivan, Heuer,
Anderson.)

CONSTANTINE ALEXANDER: One
opposed.

(Alexander.)

CONSTANTINE ALEXANDER:
Congratulations. Thank you.

(Whereupon, at 11:10 p.m., the
meeting adjourned.)

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

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

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

this matter.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of March 2010.

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

My Commission Expires:
April 23, 2015

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