

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, MARCH 8, 2012

7:30 p.m.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Brendan Alexander, Chair

Constantine Alexander, Vice Chair

Tad Heuer, Member

Thomas Scott, Member

Mahmood Firouzbakht, Member

Douglas Myers, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:05 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

BRENDAN SULLIVAN: Let me call to order the Board of Zoning Appeals for March 8, 2012. The first matter will be case No. 10147, 131-137 First Street. Is there anybody here on that matter?

(No Response.)

BRENDAN SULLIVAN: I see nobody. Let me state for the record that the Petitioner has been asked to provide some additional information regarding their application and to support the request for relief from the applicable Ordinance for a Special Permit. They have failed to provide same. Also to appear at the hearing of December 1, 2011, and have also failed to appear tonight. And have failed to communicate to the Board or to the secretary at Inspectional Services, and has failed to

comply with Article 10, Section 10.421 which is the notice posting and failed to comply with that section of the Ordinance. And also in reading their pleadings for a Special Permit that, let's say that the post-use is one permitted but only allowed by way of Special Permit. They feel that the traffic generated, patterns of access would not cause congestion, hazard, or substantial change in the established neighborhood. And I would say that their lack of providing information is a determination that this -- I as a member have not been able to fully determine. And that also we have not, because of their lack of information, or I have not determined that it would not be a negative and substantial change in the established neighborhood character. And that this operation has to me has not been determined that it would not affect development or operation of adjacent uses, and that their failure to respond to

specific queries, they have failed to satisfy that no nuisance or hazard would be created to the detriment of the health, safety, and/or welfare of the occupant of the proposed use or to the citizens of the city. And that they have not met the standard to satisfy me that the proposal would not impair the integrity of the districts or adjoining districts or otherwise derogate from the intent and purpose of the Ordinance.

Is there anybody else who wishes to comment?

CONSTANTINE ALEXANDER:

Mr. Chairman, I think just procedurally as we go forward, they have the burden of proof. They're not here -- they haven't given us any evidence as you point out. I think you should read into the record the statement they made when they filed the petition. That's the only thing that they have. Either read it into the record or summarize it or

incorporate it into the record so that we can say we gave them due process in terms of they had an opportunity to present their case.

BRENDAN SULLIVAN: Well, I would -- yes, I mean I would by inference it's a, you know, two pages long. I think that we've all read their supporting statements, and their supporting statements were in the affirmative, and I think that I have just said that because of their lack of providing information and being here, that they have not satisfied any of those specific requirements. All of their statements are that they can meet them and I don't think that they have. So that's all. But I think that by inference and their supporting statements are included.

CONSTANTINE ALEXANDER: Well, again, they've incorporated -- their statements are incorporated into the record and now you're giving the rebuttal as to why

you think those statements do not carry the day in terms of satisfying the burden of proof.

BRENDAN SULLIVAN: Right. I just feel they have not met that standard on any of the requirements for granting of a Special Permit.

Tom, any questions or statements?

THOMAS SCOTT: I agree. I don't believe they met any of those requirements for those standards. And I'm curious, can we vote on this tonight or do we have to continue it again?

BRENDAN SULLIVAN: No, I think we can vote on it.

CONSTANTINE ALEXANDER: I think the notion of continuing is always, Tom, a courtesy on behalf of the Board. And we extend the courtesy. We've extended the courtesy to these folks several times and now they're not even giving us the courtesy as to

why they're not showing up.

BRENDAN SULLIVAN: I mean, the communication and phone messages have been left and there's been no response on the other side at all. So I think I would consider it somewhat unfriendly, discourteous on their part.

Mahmood, any comments?

MAHMOOD FIROUZBAKHT: Well, I would concur with all that you just said. I think that frankly the application being sufficient as being presented to the Board, and there may be additional relief with respect to the parking requirements that they did not apply for and nor was it advertised accordingly. And so I think on those grounds, too, we're well positioned to go ahead and vote tonight.

BRENDAN SULLIVAN: Mr. Heuer.

TAD HEUER: I agree.

BRENDAN SULLIVAN: Let me make a

notion then to deny.

CONSTANTINE ALEXANDER: We make a motion to grant and if it doesn't grant, then we put on the record why it doesn't carry.

BRENDAN SULLIVAN: Let me make a motion to grant the Special Permit to grant a food truck pod at 131-137 First Street as per the application drawings in the file.

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

The Board finds that traffic generated or patterns of access or egress would not cause congestion, hazard, or substantial change in the established neighborhood character.

The Board finds that continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use.

The Board finds that there would not be

any nuisance or hazard created to the detriment of the health, safety, and/or welfare of the occupant or the proposed use or to the citizens of the city. And that the proposed use would not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of the Ordinance.

All those in favor of granting the Special Permit based on those findings.

(No Response.)

BRENDAN SULLIVAN: None in favor.

And those opposed?

(Show of hands).

BRENDAN SULLIVAN: Five opposed.

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

CONSTANTINE ALEXANDER: And the reasons for the opposition are the reasons that the Chair stated earlier and that Mahmood supplemented. I want to get on the

record the reasons why we turned it down.

BRENDAN SULLIVAN: Right.

The Special Permit is denied.

* * * * *

(7:10 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

BRENDAN SULLIVAN: The Board will hear case No. 10188, 21-23 Sciarappa Street.

The Board is in receipt of correspondence on the letterhead of Foley Fiore Architecture addressed to Maria Pacheco. (Reading) I'm writing to ask for a continuance of the case. The Petition was last brought before the Board of Zoning

Appeal on December 1st, but was not heard after the Historic Commission implemented a six-month demolition delay. The East Cambridge Planning Team and the Planning Board also presented minor objections to the design. The BZA chairperson elected to continue the case until a later date to address design objectives as reflected by the Planning Board and the ECPT.

The continuance is being sought to acquire all revised statements before appearing before the Board of Zoning Appeal.

The owner is also seeking a meeting with a representative of the Historic Commission to review the proposed changes and receive comments from them. We request a continuance until the BZA hearing of April 26th. Please let me know if this is acceptable. April 26th.

SEAN O'GRADY: It is.

BRENDAN SULLIVAN: Motion to

continue this matter until April 26, 2012, on the condition that the Petitioner change the posting sign to reflect the new date of April 26th and time of 7:00 p.m.

That the posting sign be maintained as per the requirements in the Ordinance.

That any changes to the application in the file be resubmitted and in the file by five p.m. on the Monday prior to the April 26th hearing. And should any additional or revised drawings necessitate a revised dimensional form, that that dimensional form also accompany any new submittals.

Anything else to add?

All those in favor of continuing this matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.
Matter is continued.

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

* * * * *

(7:15 p.m.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Tad Heuer, Thomas
Scott, Douglas Myers.)

BRENDAN SULLIVAN: The Board will
hear case No. 10106, 7-9 Crescent Street.

Anybody here on that matter?

The Board is in receipt of
correspondence from Thomas and Eleanor
Deegan. (Reading) To whom it may concern:
In connection with ZBA case No. 10106, we
write to request the Board continue this case
to its hearing on March 22nd. In connection
with certain changes to our plans, we have
submitted new application to the Board's
consideration. The hearing for this new
case is scheduled for March 22nd. We would

like to proceed with the new case, and pending the outcome of that, potentially withdraw this case. We appreciate the Board's patience and look forward to the March 22nd hearing. Please feel free to contact me should you have any questions. Eleanor Deegan.

On the motion to continue this matter until --

SEAN O'GRADY: 7:30, 3/22.

BRENDAN SULLIVAN: 7:30 on March 22, 2012. On the condition that the Petitioner change the posting sign to reflect the new date of March 22nd and the time of 7:30.

And should there be any changes to the submittal on this particular case at 10106, that they be in the file on the Monday prior to the March 22nd hearing.

All those in favor of continuing this matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.
(Sullivan, Alexander, Heuer, Scott,
Myers.)

* * * * *

(7:15 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

BRENDAN SULLIVAN: 28 Garfield Street, case No. 10214.

Anybody here on that matter?

(No Response.)

BRENDAN SULLIVAN: I see nobody. The Board is in receipt of correspondence from Rishi P. Reddi, R-i-s-h-i, P. R-e-d-d-i, 76 Garfield Street.

(Reading) To the Board of Zoning Appeal, I'm writing to request a continuance of this case due to a mis-advertisement of the proposed project. I request that the case be heard if possible at the March 22, 2012, meeting of the Board. I'm also submitting a BZA timely decision waiver form with this letter. If you have any further questions, please call me. Sincerely, Rishi P. Reddi.

On the motion to continue this matter until --

SEAN O'GRADY: March 22nd, 7:45.

BRENDAN SULLIVAN: March 22, 2012, at 7:45 on the condition that the Petitioner change the posting sign to reflect the new date of March 22nd, and that it be maintained as per the requirements of the Ordinance.

CONSTANTINE ALEXANDER: And the time, too, Brendan.

BRENDAN SULLIVAN: And that the time be changed to 7:45 on March 22nd. And that any new submittals be in the file by five p.m. of the Monday prior to. And should that re-necessitate a changing of the dimensional form, that one also be submitted.

All those in favor of continuing this matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

* * * * *

(7:15 p.m.)

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

BRENDAN SULLIVAN: Okay. Case No.
10210, 59-61 Jay Street. Anybody here on

that matter?

CAL PIEROG: I am Cal Pierog. My wife and I own 59 Jay Street.

KATHERINE PERDUE: Katherine Perdue, said wife.

DANIEL LABARRE: Daniel Labarre, L-a-b-a-r-r-e. I'm the contractor who constructed the enclosure in question.

BRENDAN SULLIVAN: Okay. Just to reflect and going back a little bit. The violation is a shed that was built within the front yard setback.

Sean, is that correct?

SEAN O'GRADY: That's correct, yes.

BRENDAN SULLIVAN: And it's been considered an accessory structure. Okay. And there was a lot of discussion about it, its location, and some concern of an abutter on it, and we sort of sent you back to huddle and see what has come about that.

So whoever wants to report back.

CAL PIEROG: So we met with our neighbor Amy, and we talked about her concerns and about our needs for storing things outside, and we were unable to reach any compromise that made sense for both parties unfortunately. She doesn't like the height of the structure, and that would be unchanged if the Variance didn't go through. The six-foot fence, which this is our six-foot fence area, is entirely within code and we intend to keep that. What we're here for, what the Variance is for, is to keep the current roof over this area right here. And so she objected not to the roof, but to the fence which is entirely legal, and which we would like to keep.

TAD HEUER: But you weren't intending to build a fence; right?

CAL PIEROG: It was built.

TAD HEUER: But you weren't intending to build a fence.

CAL PIEROG: We're building a -- so what we wanted was a place where the trash cans could be out of sight, you know, separated like no one likes to look at trash cans. They're unsightly. So we were building an enclosure for our trash cans. That was our purpose. We put a roof on it because we wanted our trash cans to not be out in the rain, you know, to be enclosed a little bit more. No dead leaves, you know. No rats to get in there, etcetera, etcetera. So we felt the roof was a good idea. And at the time that we built it, we thought it was within code. We later realized that it is not within code to have a shed so close to the edge of the property.

TAD HEUER: Right, right. So let me just stop you there. Just so I'm clear, you thought you were building a structure.

CAL PIEROG: Uh-huh.

TAD HEUER: That was within code.

DANIEL LABARRE: A mistake was made as far as the location of the shed.

TAD HEUER: Right. You weren't intending to build a fence?

DANIEL LABARRE: The point is that in order to keep the things in context, the shed was very specifically designed and custom built so that it would look -- certainly from the back and side, identical to the existing fence. That is six feet, then it drops to four, and then it would come back up to six. And the idea being that it would be connected ultimately by a trellis and look pretty and all tie in. The winter got on top of us.

TAD HEUER: Right.

DANIEL LABARRE: But winter got on top of us. So it wasn't like we said oh, let's go to Home Depot and drop a fence in. It was built to as much as possible look like a fence enclosure. And the mistake being

that I checked is the fence okay on a property line? Sure. Does the shed require a permit? No. I should have asked one or two more questions to get to the bottom. But since it has been constructed as Cal points out, if the roof is removed, it's completely code compliant, and our abutting neighbor's complaint that it is six-foot tall is fundamentally moot. The argument is that at six feet, it -- with or without a roof it's gonna look identical.

TAD HEUER: Right. So my point is I'm just trying to clarify.

KATHERINE PERDUE: Maybe I can adjust your question. We thought we were doing the neighborhood a favor. That's where the trash cans were gonna go anyway. We figured that no one would want to look at our trash cans that's why we built it.

TAD HEUER: I understand that. You were not attempting to build an enclosed

fence. The reason we're here is because you have a roof on it and that makes it a structure. But your intent really was to build a structure. The reason you're able to keep it, even if we deny the Variance, is because there's a -- I'm going to call it a loophole in the Ordinance, that allows this item to be called a fence and therefore within code. You weren't intending to build a small, miniature fenced area; right?

DANIEL LABARRE: So we have some pictures here. You can see that the fence we built really looks like the other fence. Like, it is actually four walls that look identical except it's not weathered yet to the rest of the fence.

TAD HEUER: But nobody fences with -- what's the area?

CAL PIEROG: This area?

DANIEL LABARRE: It's eight feet.

TAD HEUER: Eight square feet?

DANIEL LABARRE: No, no. It's eight feet in length, and it's about three-foot, four in-depth.

TAD HEUER: Okay, so 25 square feet roughly, give or take?

DANIEL LABARRE: Okay, sure.

TAD HEUER: Right?

Nobody fences a 25-foot area in their front lawn, do they? Fences.

KATHERINE PERDUE: They do, yeah.

TAD HEUER: They do?

KATHERINE PERDUE: Yeah, there's a trash can -- I think of it a corral. There's one on Kinnaird. People -- I mean, people try to put their trash cans so you don't see them. If -- I mean, some people just put them on the street, but there are definitely trash can corrals around.

DANIEL LABARRE: And six-foot fences are not inconsistent from the neighborhood. Just from Western Ave. to

Kinnaird Street, we have eight fences at six feet at each of these addresses going down actually on the odd side of the street, which is where the attempted to look like a fence.

CAL PIEROG: And this one actually is a trash can enclosure.

DANIEL LABARRE: And so they go -- I mean, the style's different.

MAHMOOD FIROUZBAKHT: Without a roof on it, though; right?

DANIEL LABARRE: Admittedly. But the point is the context of six-foot fence is coming to the street and even taking a turn of various styles.

TAD HEUER: Are these all fences that are enclosed on four sides at six feet?

DANIEL LABARRE: No. They are in one case has a return, but for the -- yes, for the most -- well, this one wraps around.

CAL PIEROG: Many of them wrap at least on two or three sides.

TAD HEUER: Two sides I can kind of understand because that's the boundary of your lot; right?

DANIEL LABARRE: Yes.

TAD HEUER: I'm going to hazard that the abutter, although concerned about the height, is also concerned about the massing, I believe the --

CAL PIEROG: What is massing?

TAD HEUER: The phrase that was used at the last meeting was an outhouse in the front yard. That it's not necessarily the fencing that is on the lot line. So your front lot line and your side lot line where you have six feet, is the fact that you're also adding a six-foot fence, quote, unquote, across the front that as you're proceeding down Jay Street, you don't necessarily just see a fence on either side of your lot line; right? At that right angle. You see additionally a full front six-foot fence

running for eight feet through the front yard.

DANIEL LABARRE: With two doors on it, yes.

TAD HEUER: With two doors.

DANIEL LABARRE: Yes.

TAD HEUER: But a solid enclosure? Right?

DANIEL LABARRE: Yes.

TAD HEUER: My sense is that that is also part of the concern. It's not just the height, but it's that you've massed a large object in the front yard in a way that if I'm understanding correctly from the photos you provided, is not common to Jay Street.

DANIEL LABARRE: It's common in two instances. Actually, no --

TAD HEUER: This is common in any instance?

DANIEL LABARRE: The point is that it's not without some level of precedent.

And this, while it does not return, extends so far that they can get their trash cans tucked into the corner in a way that it won't show.

TAD HEUER: Right.

DANIEL LABARRE: But that would require going all the way to here, and even still arguably being able to be seen because we have reasonable six-and-a-half-foot frontage running this way. Actually, no, closer to eight feet, forgive me, of a small front yard that runs across the length of the building.

CAL PIEROG: So, also, we discussed this in great length. Great, great length. And she really objects to this along the fence right here. She's like okay, I come out, her porch is kind of right here. And she says she comes out and she doesn't like this section of six-foot fence. It's not that it has runners like this and this. It is really

that there's --

TAD HEUER: I'm talking about the runner here.

DANIEL LABARRE: Right. But she's quite okay with --

CAL PIEROG: She can't see that.

DANIEL LABARRE: She's okay with a shed at around four feet. She has no problem with the massing of it being a shed wrapped around the front. Her problem is that it's six feet tall.

TAD HEUER: And the other neighbor who spoke --

BRENDAN SULLIVAN: Go back to your statement, it's a bulk, it's a mass.

TAD HEUER: The other neighbor that spoke at the last meeting who spoke was concerned about the massing.

DANIEL LABARRE: That would be her husband.

TAD HEUER: Okay.

DANIEL LABARRE: So I'm not surprised that they might have similar points of view on that.

TAD HEUER: But you've just suggested that those are quite different. In one sense the female is concerned about the height of the fence, the male is concerned about the bulking.

DANIEL LABARRE: No, they're consistent with the massing.

TAD HEUER: All right.

DANIEL LABARRE: The message being they don't want to see six feet.

CAL PIEROG: The compromise they suggested, by the way, was that we have the same exact enclosure as we have it now with a roof but a foot or two lower. That was their suggestion for compromise.

TAD HEUER: Okay. And just for the sake of argument that's not acceptable why?

DANIEL LABARRE: Because the trash

bins that the City of Cambridge --

TAD HEUER: I own some, yes.

DANIEL LABARRE: You know their size?

TAD HEUER: I do.

DANIEL LABARRE: The only way at that point to access them is to lift said roof, then reach in, and lift trash can roof and then get your trash in, which --

MAHMOOD FIROUZBAKHT: Why can't you pull out the trash bins?

DANIEL LABARRE: Each time you fill it with trash?

MAHMOOD FIROUZBAKHT: Yes.

TAD HEUER: Yes.

DANIEL LABARRE: I guess anything can be done as a compromise. Right now you open the doors --

MAHMOOD FIROUZBAKHT: But you didn't do that, though. Wait a minute. So we gave us guys the benefit of the doubt. We

gave you a continuance to go work it out with the neighbors. Gee, that seems like a really reasonable solution to me, but you didn't figure that out.

And so I'm of the mind that we gave them the due chance, they didn't get the job done, they didn't reach a compromise that was reasonable for the parties. Frankly, I don't want to take up any more of the time of the Board discussing this matter. I think it is what it is. They're asking for a Variance. They don't meet the standards. They weren't able to deal appropriately with their neighbors, and I think we should proceed with all due speed to move this along. I don't think this really is worthy of a long, drawn out discussion at this point.

CAL PIEROG: What is the standards that we're in violation you said?

TAD HEUER: Pretty much all of them. So you're --

CAL PIEROG: What are the standards that we're in violation?

TAD HEUER: You're in violation of the front yard setback. You can't have a structure in a front yard setback.

DANIEL LABARRE: Fair enough.

TAD HEUER: You're in violation, and I believe that's sufficient, you can see that you have a roof on something. That makes it a structure.

CAL PIEROG: That's what we're applying for the Variance for.

DANIEL LABARRE: Just the roof.

TAD HEUER: The reason you're applying for a Variance is because the Ordinance doesn't allow it; right? So the Variance is, what, you come and say it's okay enough because we have a substantial hardship, and that's a term that's set by statute, owing to the shape, size or topography or soil conditions of the lot.

And that once you have the substantial hardship, that the relief you're asking for wouldn't substantially derogate from the intent and purpose of the Ordinance. So it's those two elements. Show a hardship, once you've shown the hardship, we look at whether the Ordinance as broadly written should be interpreted to allow this exception for it.

CAL PIEROG: So for hardship. I think we do actually have some reasonable hardship. So, all the other four -- all the other three of the four units in our building have a place where they can store kind of outdoor stuff, you know, dirty stuff that you don't necessarily want in the interior of a nice condo. So the top two have back things that go straight to their basement. The one on the right has a side door that goes straight into their basement. We don't have any of that. We don't have a place where you can store kind of --

TAD HEUER: Do you have a bulkhead that goes to your basement?

KATHERINE PERDUE: No.

TAD HEUER: Was there a bulkhead on the structure before it was renovated?

CAL PIEROG: No.

DANIEL LABARRE: Not at this point they purchased it. At some point there may have been, but not at the point -- it was not removed for this landscape job if that's your question.

TAD HEUER: It was.

BRENDAN SULLIVAN: You're relevant you don't have an outdoor spot. To me I think really what you're saying is we don't have a more desirable spot than that particular corner at the very front because the side and the back of the house have been nicely landscaped. And it's gorgeous. It's very nice. I applaud you for that. And now what do we do with the trash cans? Well, we don't

want them back here because this has become now our outdoor living area. And again, it's an urban oasis. But by putting it here then imposes you're not wanting to put it any place else because it doesn't fit into what you've done. And so that is sort of a logical place for it. But then what that does is that then pushes that out into a public domain. I happen to -- I don't mean to take away, before I lose the thought.

TAD HEUER: Okay.

BRENDAN SULLIVAN: I have gone down the street and have parked at least four or five times, actually, and have up and down the street as to what is going on in the street as far as trash. And yes, a lot of them are in the front. And I think that's sort of very urban, you know, it's probably been going on for years and years and years. And at some point maybe the people -- and I don't know if I got there the day of trash or after trash,

but at some point it migrates to the side or to the back. Maybe people don't want to see their trash cans in their front. And you would like possibly the streetscape to clean-up a little bit by putting up, people putting their trash barrels further away from public view.

So what's the alternative is, yes, you would like to see the trash barrels disappear. But I would not like to see a proliferation of trash sheds in the front. Because, again, I think it goes back to it's a mass, it's a bulk, that I don't really think it belongs in a front yard setback. And if it were a fence that were there, and again, I'm not a fan at all of a six-foot fences especially out in the front of the sidewalk line because I think they're somewhat unfriendly and rather exclusive, you know, it's almost you're creating almost like a walled-in community behind all that. That

it's not much you can do about a six-foot fence. But if it were a fence, and then all of a sudden oh, let's put a roof over it, that's sort of one thing. But I think it was built with the intention of being a shed for the trash. And to me, again, it goes back to your -- I think it's a mass, it's a bulk. And next-door neighbor, yes, I really wouldn't want to see it either.

CAL PIEROG: Right. So the alternative, like, this is where we're going to store our trash cans. The alternative is just seeing the trash cans right there.

DANIEL LABARRE: Because as it turns out, there's no legal location upon which to place a shed on this property.

BRENDAN SULLIVAN: Well, why does it have to be in a shed?

CAL PIEROG: It's more sightly. It does not need to be in a shed. You've walked up and down Jay Street, and many people keep

their stuff --

BRENDAN SULLIVAN: And it could go in the back of the house other than the fact that it is, you know, it's inconvenient and, you know, again, not desirable to have it back there because it's a very --

DANIEL LABARRE: And drag it down this narrow side of the house.

BRENDAN SULLIVAN: We all do.

CAL PIEROG: Yeah.

BRENDAN SULLIVAN: We all do.

CAL PIEROG: So I mean --

KATHERINE PERDUE: But I think so -- we did actually --

BRENDAN SULLIVAN: I mean, that's where I'm coming from. And I'm not convinced at all, at all, that that belongs or in proliferation of those belong on the street.

KATHERINE PERDUE: We did actually like the six-foot part because it gives us a little bit of privacy. So our yard is really

long and narrow. The back here, you can see directly the street. So we feel like we wanted some private space that's outside the front. I think you can interact with people on the street.

BRENDAN SULLIVAN: But it's the city. It's an urban, it's an urban environment, I mean, you know.

DANIEL LABARRE: So what I'm hearing then, and forgive me, and I'm not trying to be in any way flip, great efforts were made to make this look as much as possible like a fence.

BRENDAN SULLIVAN: It's a work of art.

DANIEL LABARRE: Thank you. And it's well constructed.

BRENDAN SULLIVAN: I can see that.

DANIEL LABARRE: Okay. It would be preferable to you to have this removed and look at trash cans because you're concerned

about the massing.

BRENDAN SULLIVAN: No. My preference would be not to see a proliferation of those. And if we were to grant this, then am I giving my impromotto to anybody else who wants one?

CAL PIEROG: So if someone has, you know, someone, not us, has their trash cans right by the street, you would have --

DANIEL LABARRE: A four-foot picket fence.

CAL PIEROG: -- putting a fence around that place where they store their trash cans, like, week in and week out, like, they're always there. Like, a fence to enclose that and, you know, just kind of take that unsightly view from the street, you would object to that?

BRENDAN SULLIVAN: I cannot -- I cannot like it.

THOMAS SCOTT: If it were six feet

tall, I would object to it.

DANIEL LABARRE: Anything shorter you look at the top of the cans.

THOMAS SCOTT: I'm just disappointed that basically what you've done is you come in here and said that if you don't -- if we don't grant this Variance, you're just going to take the roof off and leave it even though you've had this conversation with your neighbor. And the whole purpose of this process is to involve people because you're making a change to their environment.

DANIEL LABARRE: We have had the conversation. She was the one who was adamant about the fact that she wants it in the back of the yard.

THOMAS SCOTT: All she asked you to do was take two feet off of it. And I, I can definitely see her point. I mean, I just -- I agree with the rest of the Board, this is a

massive element that's sitting in a front yard and I wouldn't want to see a proliferation of these things up and down the street. It's terrible. I'd rather see the trash barrels frankly. That's just my opinion.

BRENDAN SULLIVAN: Did I cut you off in midstream there or something?

TAD HEUER: No. I mean --

DANIEL LABARRE: Worse yet I think I did. I'm sorry for doing that.

TAD HEUER: That's all right.

I mean, I'm looking at your other fence. So pick one at random.

DANIEL LABARRE: That happens to be one of the most beautiful fences on the street.

TAD HEUER: It's a gorgeous one.

DANIEL LABARRE: Pick this one at random.

TAD HEUER: Why would I want to do

that?

DANIEL LABARRE: Or this one at random. That works better. To put things in real context.

TAD HEUER: Well, I could, but here you have an abutter -- I mean this is -- yes, we get to --

DANIEL LABARRE: That's a stunner. That's an absolutely stunning fence.

TAD HEUER: I agree.

BRENDAN SULLIVAN: But is that a party fence?

DANIEL LABARRE: Yes.

BRENDAN SULLIVAN: It's a party fence?

DANIEL LABARRE: Well, it's setback from the street to the extent that it has a flower bed in front of it. It is a party fence, yes. It runs between the properties. This is clearly a party fence. This one comes back. This one is definitely a party

fence.

You know, again, there was no malicious intent. It was absolutely saying, all right, within the context of building, we have a six-foot shiplap fence that runs all the way down here. All the way down, by the way, the same abutting neighbor through the backyard. So it's not like all of a sudden we're taking this nice little fence where people chat to each other. It's a six-foot fence, it just drops to four over here and comes across and goes back to six, which the idea was and then we'll tie it together with a trellis like that, and get it all covered. But everything in context.

TAD HEUER: Let me distinguish somewhat that, yes, we've been talking about the neighbor and her concerns. The Board doesn't sit as co-extensive with just whatever the neighbor is and then limits itself to any one concern because no one came

in and we just say I guess you get whatever you want. Yes, we consider that, but we also consider independently. And my concern, regardless whether your neighbor has it or not, is about the massing of a large structure in the front yard setback in an area where large structures in the front yard setback do not exist, certainly do not predominate. So, I take your point that the fence runs six feet through the length of the property, it drops to four, comes back up to six. I would -- if it were my fence, I would -- if it were something like this fence at 30 Day Street that you've shown that does drop to four and drops to four all around. If you wanted it at six, have some kind of spacing above it so it doesn't create a massing on the front. That it creates four feet plus two feet that is more open, more like a trellis. If the trellis ran all the way around, I might be on the lot line sides, I might be -- I think

I would be much more pleased with aesthetically the design. But it's this notion of the front wall of the fence slash structure with the doors that comes across perpendicular to the street in the through the front yard setback, that's what really troubles me because that's what creates the massing, not necessarily the fencing which is the fence that I think the far lot line and the front lot line are fenced lot lines, and I can understand that. I wish they were maybe trellised at the top four feet the way you're going to do in the midsection, but it's really this, you know, wall that comes across the front yard setback, that's what concerns me.

CAL PIEROG: So, I mean, the other fences that you've seen have this thing where they have six-foot run like to the corner and then another fairly substantial, if you look at any of these, six-foot run across the

front.

DANIEL LABARRE: Here, here are good examples.

CAL PIEROG: So if we were to put a six-foot run from here to here --

DANIEL LABARRE: With a gate that nobody can see through.

CAL PIEROG: -- with a six-foot fence, then you wouldn't be able to see any of this massing; right? It would be totally included from the --

TAD HEUER: That's true. And there's absolutely no way I would vote for a roof on that structure because we -- and you don't have the benefit that we do --

DANIEL LABARRE: No, no, no, he's suggesting --

TAD HEUER: I understand what he's suggesting.

DANIEL LABARRE: Okay.

TAD HEUER: That we had a case a

months ago where someone said I'd like to park in the front yard setback. That's also prohibited under the Ordinance. And they said, but no one will see it because I'm going to build a fence all the way across my front yard and so no one will see it and it won't be a big deal. And we voted that down predominantly because it would encourage people to do things the Ordinance expressly says don't do, which is park in the front yard setback, regardless whether it can be seen or not. Because it creates other kinds of issues that the Ordinance asks us not to permit. And the same here. The Ordinance says do not permit structures in the front yard setback. If you can get around it legally by calling it a fence, there may be nothing we can do about it. And if you want to fence across your front yard, you could --

CAL PIEROG: That seems like --

TAD HEUER: Let me finish.

CAL PIEROG: Oh, I'm sorry.

TAD HEUER: If you want a fence across your front yard, you could certainly, and you wouldn't see it. But that doesn't necessarily translate to see no evil, hear no evil. If it's not allowed by the Ordinance, we're somewhat constrained to say where's the hardship, what can you do? I don't think that the proposal that you could fence across your entire front yard would necessarily make me change my view.

CAL PIEROG: That's not our hardship.

DANIEL LABARRE: Nor is it your brother's.

THOMAS SCOTT: And not to mention it could make the massing even worse, frankly; right?

CAL PIEROG: Right, but it's what everyone else has done on the block.

THOMAS SCOTT: I don't think it is

what everyone else has done on block.

CAL PIEROG: Certainly not. But some.

DANIEL LABARRE: Again, it's not what you would prefer see happen.

CAL PIEROG: But the difference between that situation and ours is that we're just trying to store trash cans; right? The Ordinance says don't park there. And so he's putting up a fence to block off the don't park. There's no Ordinance that says don't put your trash cans.

TAD HEUER: Oh, indeed. And if you were here and said I want to put my trash cans there, we wouldn't even be here. We would say put your trash cans there as often as you wish. Go forth and dispose of stuff.

CAL PIEROG: Right.

DANIEL LABARRE: And that would be preferable to the Board?

TAD HEUER: I think it would be

preferable -- I still understand, I think Tom was getting there before I cut him off, and I apologize. But I think what Tom was about to say is he doesn't understand why with these bins, we all know how tall they are, they're about yea high. About four feet. Why a four-foot structure, why a four-foot fence around doesn't solve your problem. I understand, you know, you wish that you could -- I mean, it's kind of like the deluxe disposal method of being able to luxuriously open the doors, find yourself in this small, enclosed space, and be able to dispose of your trash and then depart. But, you know, many people have a small enclosure where they can go, they open the lid, they drop in the bag, they close the lid, they go inside. They don't think about it two days later when they go and drop another bag and go back and walk back inside.

CAL PIEROG: So I think our actual

stated hardship is that we don't really have outdoor space to store stuff.

TAD HEUER: But that's self-imposed.

BRENDAN SULLIVAN: That's false. That's not a true statement.

CAL PIEROG: How is that so?

TAD HEUER: You could put it right here.

DANIEL LABARRE: No, you cannot put the shed there legally.

BRENDAN SULLIVAN: It's not preferable.

CAL PIEROG: You can't put the shed here.

TAD HEUER: Why not? You're in the setback?

KATHERINE PERDUE: No, it's within ten feet of the building.

TAD HEUER: Just build an addition.

DANIEL LABARRE: You can't legally.

TAD HEUER: What do you mean you can't legally? You over FAR?

KATHERINE PERDUE: Five feet from the property line --

TAD HEUER: I'm talking about a shed. I'm talking about building an addition to the house.

BRENDAN SULLIVAN: What you're saying is we don't want to look at our trash cans, so we want to build a structure. But to say that there was no other place for us to store outdoor stuff is not correct.

CAL PIEROG: No, no.

BRENDAN SULLIVAN: There is. It's just that there is no desirable other place other than here. And, again, your fence in the back which is a six-foot fence goes down to four and goes back up again. Fine. This is all your private domain. Once you put it into a front yard setback on the streetscape, that to me becomes a public domain. This is

all private. Do whatever you want there.

CAL PIEROG: Absolutely understood, the private and public distinction. What I am trying to say is that there is no legal place in the entirety of our backyard where we can --

BRENDAN SULLIVAN: Because you're saying we have to put our trash cans in an enclosed structure.

THOMAS SCOTT: You don't have to.

BRENDAN SULLIVAN: And I'm saying you don't have to.

CAL PIEROG: Like a bike. Like, anything we don't want to get wet; right? Like, you know, trash cans happen to be the primary purpose. Now you can imagine putting other things in the shed. And there's, there's literally no place to put something that you want covered in our yard legally.

TAD HEUER: But isn't that impounded

in the price. I hate to go there. That's impounded in the price; right? Like, you paid for a house that had no enclosures and presumably it's impounded in the price that you paid that you had no place to put things. If you had a place to put things, the price would be higher. It doesn't have once the price is lower. That's economics; right?

CAL PIEROG: I think the other side paid fairly similar to what we did. I couldn't tell you off the top of my head, but they have egress to their basement right off their side yard which is where they can store it.

KATHERINE PERDUE: Can I? I think that the -- understanding each other. So we don't have -- so, in my opinion, it's preferable to have something that's totally enclosed, and that's why we say roof and it has a solid fence. If we can't have it be totally enclosed, and plus it also matches

the other side, then I think, we might be open to the idea of making it a trellis or somehow, you know, opening up this the space. I understand what you're saying about that. It's just that it doesn't suit our vision, our idea of what it is, but --

TAD HEUER: I entirely understand. I mean, I get the vision end. I don't think the Chairman is being facetious when he says it's a work of art. It's a beautiful fence. Yes, you've got a really nice structure there. It's just we're arguing about placement, not about quality or anything else. I mean, I think again speaking for myself, it would be -- if it could be trellised, it could be something that would avoid creating a mass bulking, that would be preferable. And --

CAL PIEROG: We're planning on putting a hydrangea on like the sides of these.

DANIEL LABARRE: It's been trained to grow.

CAL PIEROG: So it will look like, you know, flowery and green.

DANIEL LABARRE: Like, right now it's sticking out a lot because it's brand new cedar. And everything else is faded. But give it a season and it will fade down like everybody else's. And yes, there is climbing hydrangea that's designed to go across this fence, up the side, and across the back. Again, it's already been trained across the back to get full year coverage so it just doesn't --

CAL PIEROG: It's not going to be this big.

DANIEL LABARRE: It's the difference in a lot of what you see here.

CAL PIEROG: This wall the entire time.

TAD HEUER: Right. Like I said, I

think, you know, going back to this 30 Day Street fence, not saying -- I'm sure that you'd be happy to build one for this quality for them if they're willing to outlay the --

DANIEL LABARRE: That is a piling.

TAD HEUER: I know. I'm just taking this as the visual example of four feet solid, two feet trellis, my ideal for this would be, and obviously understand that there's no compunction for you to take it under consideration except for listening, it would be something that has that four and two mix across from where you've gone down to four and here and here. And, you know, perhaps have that as a four-foot solid that gives you some setback enclosure. You know, it's -- it brings the height down. It brings the massing down. It still gives you some enclosed area. And, you know, acknowledging that you're in the city environment. You know, you're doing a lot more than most other

people are doing with their trash cans just dropping into the nearest corner of their yard, and I appreciate that. Not having it roofed and, you know, being able to go in, lift, close, and almost have a door without the top. Somewhere along that line in my mind strikes the compromise that your neighbor would appreciate that she has a bit more visualization through the massing, gives you, you know, a six-foot fence that provides some level of privacy, not just straight across. Gives you a place to put your trash cans, but doesn't necessarily have the roofing and kind of like the deluxe quality that you might be ideally looking for. But acknowledges the urban environment that you're in, says we're getting a lot more --

DANIEL LABARRE: So this line is better?

TAD HEUER: Yes. And this is -- 37

Day Street model.

DANIEL LABARRE: And the cans being here is better for you in your mind?

TAD HEUER: Better? I mean, it's better for me in my mind. I think what you'd be suggesting is a return across here along your front yard lot line. And I'd say, you know, if you had something that was trellised that gave you some visualization in your top two feet that came across, I'd be -- that would be much more preferable to what --

CAL PIEROG: So if we just kind of strip out these two feet right here like along both of these sides and put in trellises, you would support the keeping of the roof?

TAD HEUER: Well, I'm not sure how you, I mean. My preference --

KATHERINE PERDUE: I don't know if -- yeah. Maybe to have a trellised roof or something. Like not even a real roof.

DANIEL LABARRE: I just -- I have

trouble visualizing what you're talking about.

TAD HEUER: I mean, the roof issue and, again, you just have to recognize that where we're sitting, we're looking at the entire city that would look at this and say, if they get that, we can roof structures in the front yard for whatever purpose. For here it's trash cans. For their bikes and lawn mower. That leads us down a road that, you know, we would start seeing a lot of petitions saying, hey, the best place for me is to put stuff in my front yard, too. I'm not sure I can go with the roof, but you know, it's something that would give you the kind of privacy you're looking for while still respecting the massing and getting the massing down so you're literally shielding your trash cans. Maybe not fully cloak cocooning. But you're shielding your trash cans from the view to the street, but only to

the maximum extent necessary to, you know, have that visual value that you're looking for without adding additional bulking that some of the neighbors and I personally am concerned about.

BRENDAN SULLIVAN: Doug, can you sort of chime in on this?

DOUGLAS MYERS: No. I think Tad is proceeding along the lines of my thoughts. But I believe some concession along these lines from the Applicant is essential in order to persuade me to not to vote against.

DANIEL LABARRE: Against the roof? So you'd want the roof at a lower point below the trellis?

CAL PIEROG: I think he's saying the roof is fine where it is but the top two feet of the shed needs --

KATHERINE PERDUE: No. I interpret it as a no roof, we're done, and we have your design.

TAD HEUER: I would prefer no roof but with a modified design that gives you a lot of the stuff that you're looking for. If roof is your, you know, gotta have a roof because roofs are just something that you've gotta have, I'm not sure I can go that far. Again, because we're looking at a precedent issue that's beyond just this property, but the entire city that's, you know, coming to -- will be coming to -- coming in front of beating down our door looking for roof enclosures in the front yard because it's a convenient place to put stuff because they'd like to maximize their backyard space.

BRENDAN SULLIVAN: And they would not be as nice looking.

TAD HEUER: Oh, indeed. Right? They would just have a roof stuck in the front yard.

BRENDAN SULLIVAN: You've set a high bar and we would get everything at a low bar.

TAD HEUER: We'd get a lot of chain
ling fences with a sheet of plywood.

BRENDAN SULLIVAN: Or corrugated
metal. Believe me.

I would not support a roof structure in
the front yard setback.

DANIEL LABARRE: Period.

BRENDAN SULLIVAN: Period.

However you want to --

DANIEL LABARRE: No matter how it
was designed?

BRENDAN SULLIVAN: Correct.

Correct. And I think your sentiments 20
minutes ago were that.

MAHMOOD FIROUZBAKHT: Yes, I would
concur. The application before us is for a
six-foot shed. If there's a, if there was a
four-foot shed in front of us, then perhaps
with neighborhood support, it would be a
different story, but that story isn't before
us. The story before us is a six-foot shed

with a roof on it, and I think we can vote on that.

BRENDAN SULLIVAN: Okay. Let me just open it up to, get a final word here.

DANIEL LABARRE: We do have support from a neighbor, too -- but for what that's worth.

BRENDAN SULLIVAN: Let me just open it up to public comment.

Is there anybody here who would like to speak on the matter 59-61 Jay Street? If you would please sort of identify yourself again for the record.

AMY THOMPSON: Amy Thompson. I'm a direct abutter. Yes, I think it's very unfortunate we're here tonight. This is not what I'd like to be doing and I don't want to be arguing with my neighbors. We did meet and I have told them very clearly that I would support a four-foot high shed. I believe it has a cement foundation. It's a true shed.

I think part of the problem here is they don't only want to keep their garbage in there and they want to hang their bikes, and that's why they have the height that it's at. In trying to speak with them and negotiate, I told them that, you know, I've been there since 1984 and I have a clear view from my house out to the street. They erected this six-foot, eight-foot structure with a roof on it, and it's -- I don't think it's beautiful, but then maybe that's just my taste. To me it looks like a box. I appreciate the expense that they put into it, but I -- it goes directly to the street. Their shed is literally on my property line with no fence in between and it's abutting the sidewalk. There's no setback, nothing. I think the Board agreed last time that there is nothing like it on the street. In fact, in the entire neighborhood. And when I spoke to my neighbors, I said, there's been a lot of

break-ins, that I felt that it coming right to the street and that it -- I felt unsafe, and that it blocked my view and I thought it was unattractive. The options that I was given in an e-mail was would it be okay if we grew greenery all over it? Well, greenery isn't year round and I don't see that as a solution. Then they asked me if I would attach a mirror to my house so I could see people coming up and down the sidewalk. Which I think frankly is ridiculous. And lastly, for their suggestions and, again, my house has been there since 1984, and I can look out and see everything from my windows. They actually wrote that my house is in the way of my view, and that I should rebuild my front steps to come out further to the street. Which I also find quite ridiculous. And lastly, they told me that I should put my money where my mouth is and pay for the structure to be reduced. When, in fact,

their contractor who is an experienced, talented guy, built them a totally illegal structure. And I've also told them that I am very willing to support their structure at four feet high with a top. They wouldn't be able to keep their bikes there, but they would be able to enclose their garbage. And I really feel that I'm trying to make some concessions because I'd prefer the garbage not to be there at all, but it is and I understand why they want it there and not on their side yard. They also have a huge basement where they can store a lot of their things. So, I think I clearly have stated my position and I thank you.

BRENDAN SULLIVAN: Thank you.

Anything else?

DANIEL LABARRE: Not worth mentioning that would be argumentative.

DOUGLAS MYERS: I didn't hear you. I didn't really hear you.

DANIEL LABARRE: Not worth mentioning that would simply be simply argumentative as to facts stated and other people that have other opinions not necessarily the three of us here.

BRENDAN SULLIVAN: That's fine. Thank you. Let me close the comment part of it and discuss among the Board.

Mahmood.

MAHMOOD FIROUZBAKHT: I think I've expressed -- I'm disappointed that this is where we're at. I was hoping that there was going to be some resolution. I think massing is definitely the issue here, and I think we have -- if the neighbors have been able to work out a solution, it might address the concerns of the abutting neighbor, that probably would have dealt with the massing that many of the Board members have a problem with. And so it's disappointing that we are where we are. And I think, you know,

hopefully after tonight, there still would be some work done because I think it would be unfortunate, too, to leave off a six-foot fence without a top on it to the extent that that's, you know, the result of the vote tonight. So hopefully, you know, you can go back to the drawing board and come up with something that's a little bit more reasonable appearance and address some of the concerns that you've heard.

BRENDAN SULLIVAN: Tad, your thoughts?

TAD HEUER: So, like I've said, you know, I won't be able to vote for the roof largely because of precedent issues. I think it creates a massing. I understand the point that it will look very similar, but the legal standards that we need to meet just aren't there for me so I don't think I can. I hope that you'll be able to go back and, you know, having heard some of what we discussed

tonight and where some of the Board members, what it should look like and recognizing your desires for, you know, certainly a legitimate need to put trash in, I'm not saying it's legitimate I don't think. But acknowledging that there's maybe some need to strike a bit of a balance between how that's done. And also acknowledging you sunk a cost into this. I understand that. Looking long term, and we see these cases a lot, people will come down and have these disputes that, you know, we see you for half an hour, you get to live next to these people, if it works well, for the next 20 or 30 years. So I really do hope that you will be able to come to some kind of accommodation that will meet your needs but also being able to build a relationship with your neighbors. And my sense is that, at least from my perspective, you know, kind of a two plus one approach, you know, four feet on the bottom, two on the top, it's a bit more

open, you know, reducing some of the massing on the street as you go down Jay Street, would in my mind strike that balance and improve, you know, your quality of life in terms of your relationship with your neighbors, as well as giving you some of the benefits, practical things that you were seeking with building this in the first place.

DANIEL LABARRE: May I ask a clarifying question just so I'm clear?

TAD HEUER: Yes.

DANIEL LABARRE: In as much as the entire Board hasn't voted but I can sort of see where it's going. If the massing part of the fence, i.e., the solid, were covered with a trellis, not necessarily of this style, but of appropriately attractive style, trust me at that. Would they at that point be allowed to have the roof over their trash cans if that were lowered to the four feet? Or in no case are they allowed to have the roof over their

trash cans?

TAD HEUER: I think that's an individual Board --

BRENDAN SULLIVAN: In no case would it be allowed as of right. Is that what you're saying? Is that your question?

DANIEL LABARRE: I'm asking if we are to make the accommodations of taking a six-foot fence down to a four-foot height emulating this with a style of lattice that would be appropriate, can at this point, the four-foot point or the four-and-a-half-foot point, whatever it needs to be, can that have a roof over it? Or is it no roof, no how period?

BRENDAN SULLIVAN: Well, it's no roof for me anyhow.

DANIEL LABARRE: I just, I just want to make sure I'm clear as to the direction that the Board is --

MAHMOOD FIROUZBAKHT: You would

still need a Variance to put a roof on a four-foot shed; right?

DANIEL LABARRE: I'm asking if the Variance is being allowed with the proviso that the design along the lines per the suggestion, is that acceptable?

MAHMOOD FIROUZBAKHT: That's not before us. And that's what I'm disappointed about. Because that's what should have been before us.

BRENDAN SULLIVAN: Well, I think it's a two-part question.

No. 1, it's not allowed as of right.

But No. 2, it would not satisfy me, anyhow, being one member anyhow.

DANIEL LABARRE: I just want to be clear on our direction.

BRENDAN SULLIVAN: Right. Okay. Any thoughts, Doug?

DOUGLAS MYERS: I was impressed by Mr. Heuer's constructive sympathetic

statement of the facts and our present situation. But as I understand his position and the Chair's position, even your last suggestion doesn't get there. So I really have nothing to add to what he said except as matters now stand, I will vote against.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: Yes, I would not vote for a shed structure in the front yard setback, and I'm hopeful that there could be some compromise with your neighbor.

BRENDAN SULLIVAN: Let me make a motion to grant the relief requested to maintain the shed that was built in the front yard.

As per the application, the Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would require the Petitioner to remove the roof of the current structure at some great expense.

The hardship is owing to the fact that Petitioner states there is no other practical location on the property to site a trash can enclosure to be accessible at No. 59 and 61 Jay Street.

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

All those who are in support of the granting of the Variance.

(No Response.)

BRENDAN SULLIVAN: There is none.

All those opposed to the granting of the Variance.

(Show of hands.)

BRENDAN SULLIVAN: Five opposed.

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

BRENDAN SULLIVAN: The Board would note that the standards for -- that the Board finds that a literal enforcement of the provisions of the Ordinance would not involve a substantial hardship to the Petitioner regardless of the cost associated with it, which is of a personal nature and is not addressed by the Ordinance.

The Board finds that there is no hardship demonstrated which relates to the soil conditions, shape, or topography of the land or structures at which especially affects this particular land or structure, and not the general Zoning District in which it is located.

The Board finds that substantial -- that there would be substantial detriment to the public good in the granting of this Variance.

And the Board finds that if we granted relief, it would nullify and substantially

derogate from the intent and purpose of the Ordinance of locating a structure within a front yard setback.

Anything else to add to that?

Okay. Sorry.

DANIEL LABARRE: Thank you for your consideration.

* * * * *

(8:05 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

BRENDAN SULLIVAN: The Board will hear case No. 10120, 101 Larchwood Drive.

Whoever is going to speak, if you would introduce yourself, spell your last name for the record.

ZEEK BROWN: Zeek Brown, B-r-o-w-n, the architect. We -- this application has some history with the Board. We first started in September I think last year, and the project has gone to continuance a couple times. With feedback from the Board, we've

worked really hard to minimize some of the Variance relief that we were here for. And we changed the plan around quite a bit then what it was before. So essentially for members that haven't heard it before, we are, we're looking to expand this house, to put a kitchen addition on, and to expand the second floor bedrooms for two girls who are entering their teen years. And the house is small, and the owners want more space.

We also have a conversion of the third floor which is sort of not used terribly well now to become a master bedroom. And there's a dormer on the third floor.

Basically what we are here for are a couple of things. On the side yard, the right side yard, we have a setback violation of about six or seven inches for approximately four feet. It's an extension of -- it's because the house doesn't sit quite parallel to the property line. So we want to

extend the line of the house out. So for that four-foot extension, we've got about a six or seven-inch setback violation on the side.

CONSTANTINE ALEXANDER: Don't you have a setback violation right now?

ZEEK BROWN: Yes, we do, existing.

CONSTANTINE ALEXANDER: The increase of the setback violation is two and a half inches or inch and a half.

ZEEK BROWN: Right. And on the other side we actually have reduced our setback violation because we've taken an entry, we're proposing to take an entry away and a bulkhead away which are in the setback. So we're sort of trading those.

The front yard, the front yard we're proposing to put a covered entry. Now, the FAR is -- we are over the FAR only by the amount of that covered entry. So we've worked really hard to get the whole program within the Article 5 requirements, but for

good building practices and neighborhood continuity we want to have covered entries so the sill doesn't rot and the door's safer. And those, those are essentially the reasons -- and in doing that, in doing that covered entry, our front yard setback also gets a little worse by about like five or six inches.

TAD HEUER: And that's only at its worst, quote, unquote, point because you have a curbing in the front yard?

ZEEK BROWN: Yeah, correct.

TAD HEUER: And just for those who didn't sit on it before, just so we have it on the record, originally your plan was to do most of the addition to your left side?

ZEEK BROWN: To our left side, correct.

TAD HEUER: To the left side of the house.

ZEEK BROWN: Yeah.

TAD HEUER: And now the bulk of the addition is to the rear.

ZEEK BROWN: In the back.

TAD HEUER: Which doesn't create any setback violation because you have a fairly large rear setback.

ZEEK BROWN: That's correct.

TAD HEUER: And your dormer, your dormer was -- were you originally on the front?

ZEEK BROWN: The dormer was always in the back.

TAD HEUER: Okay.

ZEEK BROWN: And the first application we had, it went up to the ridge and it was flush with the exterior wall and we've created those both.

TAD HEUER: So your dormer is dormer guideline compliant?

ZEEK BROWN: Yes, it is.

TAD HEUER: And just one point you

made, and it doesn't really matter one way or the other, the bulkhead on the left side, I don't believe that that counts in terms of a side yard violation. So if for some reason you wanted to keep your bulk down, I don't know if you have plans to move bulkhead elsewhere --

MARION ODENCE-FORD: It would just jut out.

ZEEK BROWN: Right, we do have plans to put a new bulkhead.

TAD HEUER: Okay. I was going to say to the extent that that was something you took out in order to avoid a side yard setback violation in addition to the door, that's not something that I don't think Inspectional would care about and you could leave it there if it works better for you.

MARION ODENCE-FORD: I think it's more aesthetic.

TAD HEUER: I didn't want you to

think it was a requirement you do it for side yard reason.

BRENDAN SULLIVAN: Just very briefly, originally you're sort of bumping out to the left side and there was some discussion with the neighbor; is that correct?

ZEEK BROWN: On the left side, yes. The neighbor to the left attended one of the hearings and was in support of what we were doing before and they were the most affected by that proposal at that time.

BRENDAN SULLIVAN: Okay. And so basically you're rearranging the interior layout, and the kitchen is now in the front of the house?

ZEEK BROWN: Yeah.

BRENDAN SULLIVAN: And you're pushing that to the back.

ZEEK BROWN: Correct.

BRENDAN SULLIVAN: And having a more

traditional layout of the house: Entry, living room, dining room, and then pushing the kitchen to the back.

On the second floor, that bumping out of the kitchen will then allow you to expand the two bedrooms upstairs?

ZEEK BROWN: Not exactly. We're sort of -- that's the -- that is the line of the existing house.

BRENDAN SULLIVAN: Oh, I'm sorry, that's correct.

ZEEK BROWN: So we're sort of extruding the mass of the house to the rear.

BRENDAN SULLIVAN: Pushing that back wall --

ZEEK BROWN: Right. Out four and a half feet. And then the kitchen addition is one story and it goes out further.

BRENDAN SULLIVAN: Okay. And the need for that additional is basically -- well, it's functional but also

aesthetics, also. It's just that while you're doing all this disruption is let's push that wall out to make it a --

ZEEK BROWN: We wanted to have larger bedrooms for their children. And that's essentially what we're doing. But it also -- that second floor addition happens to make a nice covered entry porch down below into the kitchen, in and out of the kitchen. So, it's over in here. And that's all calculated in the FAR as square footage. So I've caught all of that.

BRENDAN SULLIVAN: Okay. And then the third floor now used as a master bedroom?

ZEEK BROWN: No, it's used as a guest room.

BRENDAN SULLIVAN: Okay. So on the second floor there is -- well, you have bedroom, bedroom, and guest room. One of the children are a guest now or something?

ZEEK BROWN: No, no.

BRENDAN SULLIVAN: We won't tell you which one. Don't tell us which one.

And that's a master bedroom now?

ZEEK BROWN: Was there, yeah.

BRENDAN SULLIVAN: And then basically girl's room, girl's room --

MARION ODENCE-FORD: And those are the two children.

BRENDAN SULLIVAN: Okay.

And third floor is sort of a realignment of some of the interior space pretty much I would think; is that correct?

ZEEK BROWN: Yep.

BRENDAN SULLIVAN: Okay.

Any questions by the Board at this time? Gus, anything?

CONSTANTINE ALEXANDER: I don't have a question, just an observation. Excuse me, you're exceeding the FAR because of the inclusion in the covered entryway, but disingenuous. You're going over the FAR

because you're adding 500 square feet. And you chose to -- if you wanted to, I'm not saying you have to, you could have reduced the sides of the addition from other aspects to bring you under the 500 square feet with a covered entryway.

ZEEK BROWN: I don't understand. I mean, our FAR's 0.5.

CONSTANTINE ALEXANDER: Yes.

ZEEK BROWN: And that means we're allowed to go up to 2681 square feet in the house.

CONSTANTINE ALEXANDER: Yes.

TAD HEUER: He's just suggesting that FAR is fungible; right? Where you put a square foot doesn't really matter.

ZEEK BROWN: Okay.

TAD HEUER: You could have taken 22 square feet, you know, one foot in on the 22-foot line and gotten back here.

MARION ODENCE-FORD: Okay.

CONSTANTINE ALEXANDER: That's an observation. I personally have no problems with the plan.

ZEEK BROWN: I've been squeezing and pushing and pulling this and, you know.

CONSTANTINE ALEXANDER: You put it in the best possible light.

ZEEK BROWN: The 2680 was hard to get to.

TAD HEUER: A number that you thought of many times as you were trying to fall asleep at night over the last few months.

ZEEK BROWN: Yeah.

BRENDAN SULLIVAN: Tom, any thoughts at this point?

THOMAS SCOTT: No, I'm pretty good with this.

BRENDAN SULLIVAN: Mahmood?

MAHMOOD FIROUZBAKHT: I'm fine.

BRENDAN SULLIVAN: Tad, anything at this point?

TAD HEUER: No, I'm fine. I appreciate very much that you've taken our comments and thoughts and really done what looks like something that works for you that really does minimize the Zoning violations here. An inch and a half on your right side. Most people are coming in looking for feet, not inches. You're making your left side something we almost never see. You're converting a non-conforming setback into a conforming setback on your left side, which I very much like seeing. And I think the FAR is a very minor addition. And you have a lot of FAR to work with as of right, and I'm not that concerned that the -- although it's fungible, you know, you are looking at FAR over a doorway which I think is a safety issue and something that's well within the realm of, you know, necessity. And where your structure is placed on the lot, I think does necessitate some of the things that you're

asking for, too, particularly in terms of your setbacks where you've tried to minimize those as much as possible. I'm at this point in favor of it.

BRENDAN SULLIVAN: Okay. Let me open it to public comment.

Is there anybody here who would like to speak on the matter at 101 Larchwood Drive?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance.

There is correspondence in the file that --

MARION ODENCE-FORD: That's from our neighbor from our former setback.

BRENDAN SULLIVAN: Mr. Maniotis (phonetic).

MARION ODENCE-FORD: Maniotis, that's right.

BRENDAN SULLIVAN: He's writing to you. He's writing to agree to your request

for Variance which would replace the extension of your house five-foot, six from his property line. He understands that the proposed extension will be 15 feet from his garage and fence, and that you will provide the appropriate landscaping in the buffer zone. And this is before the changes.

MARION ODENCE-FORD: We no longer have that issue.

BRENDAN SULLIVAN: Right. He's even far more happier now.

There is correspondence -- well, it's from you just regarding this continuance. So not a comment. And that's all there is on the -- you've spoken to all your neighbors obviously or at least to those who expressed some interest?

MARION ODENCE-FORD: Yes.

BRENDAN SULLIVAN: Anything to add, delete, change? None.

Let me make a motion to grant the relief

requested for the additions to the present house as per the plans. No changes? This is it?

ZEEK BROWN: This is it.

BRENDAN SULLIVAN: As per the plan and initialed by the Chair.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner.

The Board finds that the existing house which is -- there is some existing non-conformities to the house now. So that the de minimus addition is that a requested, is a fair and reasonable request, and would require some relief from this Board.

The Board finds that it would be a hardship to the Petitioner because it would severely limit the realignment of the space, and a better utilization of the interior space of this house which predates the

existing Ordinance.

The Board finds that the hardship is owing to the pre-existing non-conformity of the house. The siting of the house on the lot, and it would be impractical to relocate it to another location to be Ordinance compliant.

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

Anything else to add to the decision?

CONSTANTINE ALEXANDER: Just make it clear that the decision will be conditioned on the work proceeding in accordance with the plans. You identified them but it should be specifically a condition.

BRENDAN SULLIVAN: Correct, right.

That there be no changes to the drawing.

Anything else to add to it?

All those in favor of granting the relief requested.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

BRENDAN SULLIVAN: Good luck.

* * * * *

(8:20 p.m.)

(Sitting Members: Brendan Sullivan,

Constantine Alexander, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

BRENDAN SULLIVAN: The Board will hear case No. 10140, 2 Hutchinson Street.

Introduce yourself for the record, please.

EDRICK VAN BEUZEKOM: Edrick, E-d-r-i-c-k. Last name is van Beuzekom, v-a-n B-e-u-z-e-k-o-m. I'm the architect of the project. And my client is Jody Schindelheim. J-o-d-y S-c-h-i-n-d-e-l-h-e-i-m.

BRENDAN SULLIVAN: Okay. Since last we met.

EDRICK VAN BEUZEKOM: Since last we met. We were here in August. At the time we were proposing a fairly large addition on the second floor of this existing structure. It's on a small lot. It's a one-story addition on the second house. We're proposing to go up. We since then scaled

back the plan. We were here in December. At that time we had to ask for a continuance because Jody had forgotten to keep the sign posted on the property. And we were going to come back I think in January which we couldn't get the Board together. So anyway, we're here now.

What we are proposing is two pieces of the project here. One is a small addition on the third floor. And so let me start with that, which is basically an increasing size of existing dormer.

BRENDAN SULLIVAN: How is the third floor used now?

EDRICK VAN BEUZEKOM: The third floor currently is a master bedroom. And the second floor actually -- yeah, I'll run through how the house is currently.

Yeah, so the third floor currently has a master bedroom with two dormers in it which both have very limited headroom.

BRENDAN SULLIVAN: Hutchinson
Street being there.

EDRICK VAN BEUZEKOM: Excuse me?

BRENDAN SULLIVAN: Hutchinson
Street being there.

EDRICK VAN BEUZEKOM: Yes, exactly.

And stairway coming up. There's a
small bathroom in the front, and there's a
couple small closets here.

The second floor currently is
used -- this is a walk-in closet basically
for this room in the front here. This room
here used as a library/study. My client, who
works -- I'll let him talk about how he uses
his space in a moment. But anyways, so maybe
before I talk about more of the
architectural, I should have Jody introduce
why he wants to do this project and explain
what the goal is here.

JODY SCHINDELHEIM: Yeah, well,
good to be back. Yeah, I've lived in this

house for about 20 years, I've been in the neighborhood, and I'm very comfortable there. And as I explained last time, Andrea, who I'm with now has adopted a little girl from China and we're raising her child together. Andrea lives in Cambridge as well, and we'd like to move together, raise a family, and you know stay in this house if possible.

Part of our thinking is that, you know, in terms of the other option of buying a bigger house, this would require Andrea sort of getting her place together and selling it. Me getting my place together and selling it, and buying a third and getting a third place, all of which seemed a little daunting both in this market and also in the process of having jobs and raising a child. So our thinking was to move in to my house, get a little more space and stay in the environment and the neighborhood that I really like. So that's

why we want to get a little more space on the third floor in terms of making it more usable space and expanding a little bit on the second floor much less than we had come to the Board in the past. As you say, the neighbors had signed a petition saying that the first plan which was quite a bit larger was okay by them, but we have reduced it quite a bit, and we were hoping we can, you know -- that we can have that additional space and we can move into the house, or Andrea and the child can move into the house.

EDRICK VAN BEUZEKOM: So, what we're proposing on the second floor is basically bumping out above that one-story addition in the back here with that addition that extends back six-foot, four-and-a-half, and then the width of it is -- and the width of it is let me guess, six feet, nine-and-a-half. So that is sort of the most substantial piece of this project.

On the third floor what we're proposing is to take this existing gable that comes out one side of the house on the left side if you're facing it from the street, and basically right now, that gable comes right down to the floor, so you really only have about three feet of usable space in the center of it.

BRENDAN SULLIVAN: So it's not very functional.

EDRICK VAN BEUZEKOM: Exactly. What we'd like to do is extend the walls up, keep the gable, and keep it within the height of the neighbor. And that's what you see in the 3-D view here.

On the other side of the house, there's a small dormer, and we're basically just proposing to increase the size of that just by a couple of feet, again, bringing the height of that up a little bit because it, right now it's down and about five feet tall.

I just want to get it out to six-foot, eight space. So it's actually more usable space there. But basically keeping the same general form of what's there. It's just a shed dormer, it's not really changing significantly there.

TAD HEUER: So what is your knee wall go to?

EDRICK VAN BEUZEKOM: The new one?

TAD HEUER: Yes.

EDRICK VAN BEUZEKOM: We have it six-foot, eight. But I believe that's --

TAD HEUER: So your -- the floor on the third floor actually starts pretty much right above the second floor, is that what you said?

EDRICK VAN BEUZEKOM: Yeah.

TAD HEUER: So the addition gives you whatever space you had there above this. So that times that distance there is --

EDRICK VAN BEUZEKOM: That's what

we'll have for -- actually no, I'm sorry, this is --

TAD HEUER: You're getting six, eight there; right? Down the center.

EDRICK VAN BEUZEKOM: Right.

TAD HEUER: From the ridge line?

EDRICK VAN BEUZEKOM: Rather than walls, we're getting five feet in that area.

TAD HEUER: Okay. So you have a five-foot knee wall on the side and you'll be able to get useful at its max?

EDRICK VAN BEUZEKOM: Yeah.

TAD HEUER: Okay, that's fine.

EDRICK VAN BEUZEKOM: We have some 3-D views here to give you a sense of the dormer. And I also have a couple shots from the street. I don't have multiple copies of this. Maybe you can pass it around. That's showing the proposed new dormer. The shed dormer that's slightly expanded on the side. And this would give it a view from the rear

of the --

CONSTANTINE ALEXANDER: I've seen them.

EDRICK VAN BEUZEKOM: Okay.

So, and they are -- the total gross floor area that we're adding is just under 189 square feet total. Of that amount, 100 square feet is basically the second floor addition. And the remaining of that --

BRENDAN SULLIVAN: I'm sorry. You're adding 189.

EDRICK VAN BEUZEKOM: A hundred and ninety --

BRENDAN SULLIVAN: Is that right?

EDRICK VAN BEUZEKOM: We're going from 2,047, to 2,236 is that what you have on there?

TAD HEUER: Add 180.

BRENDAN SULLIVAN: 189. And I'm sorry, 100 square feet of that is?

EDRICK VAN BEUZEKOM: Second floor.

And the other 89 would be the third floor on the dormers that we basically just picked up what is floor space now, but not usable floor space.

CONSTANTINE ALEXANDER: And you're not -- you don't need any setback relief?

EDRICK VAN BEUZEKOM: We are -- for the second floor addition we do. We are -- the house is currently in violation of the side yard setback, so we are extending that setback violation just a little ways.

CONSTANTINE ALEXANDER: From what to what?

EDRICK VAN BEUZEKOM: The current, currently it's five-foot, one, the existing wall. We're just extending out -- continuing that five-foot, one line out an additional six feet.

CONSTANTINE ALEXANDER: And what's the requirement, 10?

EDRICK VAN BEUZEKOM: Requirement

is seven and a half.

BRENDAN SULLIVAN: On the right side; is that correct?

EDRICK VAN BEUZEKOM: On the right side, yes.

BRENDAN SULLIVAN: Five-foot, one?

EDRICK VAN BEUZEKOM: Yes.

BRENDAN SULLIVAN: All right. It says four-foot, eight here. Okay. So you're not changing the wall? You're not --

EDRICK VAN BEUZEKOM: I'm sorry. Five-foot, one is labelled. I think the four-foot, eight is probably correct.

BRENDAN SULLIVAN: I'll just leave it where it is. But you're not changing the footprint of the house, you're basically going --

EDRICK VAN BEUZEKOM: Yes. It's existing.

CONSTANTINE ALEXANDER: And the additional 189 feet that you're adding to the

structure creates the FAR issue? You're already non-compliant --

EDRICK VAN BEUZEKOM: That's right. We're already non-compliant and now we're increasing the FAR.

CONSTANTINE ALEXANDER: So you're going -- if my math is right, basically your form is right, from 0.57 which in a 0.5 district, you're going to 0.62?

EDRICK VAN BEUZEKOM: Correct.

CONSTANTINE ALEXANDER: So roughly 10 percent increase from where you are now?

EDRICK VAN BEUZEKOM: Yes, just a little bit under that, yeah.

Jody has spoken to all his abutting neighbors as well as the house beyond each of the abutting neighbors. There's a petition on file from the original project. And then he also got another petition signed in December when he failed to keep the sign up. So there's definitely --

CONSTANTINE ALEXANDER: The sign is up. I checked. It is up.

JODY SCHINDELHEIM: Taped and nailed.

EDRICK VAN BEUZEKOM: So, looking around the neighborhood, I don't know if -- I have a few photos of other properties surrounding if you want to see. First of all, this is Jody's garden in the back.

BRENDAN SULLIVAN: It's an eclectic --

EDRICK VAN BEUZEKOM: It is. These two photos -- this one is basically looking off if you're in the backyard sort of looking to the side toward Appleton Street. So this large house here is right on the corner of Appleton Street, and this one is the next one down that gives you a sense of sort of the scale. And then the -- yeah, the -- his house plus that. Same house and beyond.

This, these prints didn't come out too

well. But this photo shows that's Jody's house and the houses on the other side which were probably built around the same time. Very similar structures. And these two photos are of -- this is the house directly behind him. And these are the ones sort of to the right of that house if you look behind him.

BRENDAN SULLIVAN: How long have you owned the house?

JODY SCHINDELHEIM: About 20 years, I think. '91.

BRENDAN SULLIVAN: All right, '91. Because in 1989 the previous owner had added to it. But you had --

JODY SCHINDELHEIM: He renovated.

BRENDAN SULLIVAN: But you had not.

JODY SCHINDELHEIM: No.

EDRICK VAN BEUZEKOM: But we did. Jody did add to the house in 2003 I think it was.

BRENDAN SULLIVAN: In which way?

EDRICK VAN BEUZEKOM: That was the back. That was the back which was part of that was there, and he added this angled piece on the conner here that jutted out a little bit further.

BRENDAN SULLIVAN: Okay. At one point the house was probably conforming with FAR but that's subsequent. I think the previous owner threw it over the line.

JODY SCHINDELHEIM: Yes.

BRENDAN SULLIVAN: You kind of nudged it over the line.

EDRICK VAN BEUZEKOM: Yes.

BRENDAN SULLIVAN: We saw the one in 1989. We didn't see the one in 2003.

SEAN O'GRADY: Was it a BZA case?

EDRICK VAN BEUZEKOM: Yes, it was. I'm not sure if Maria has that.

BRENDAN SULLIVAN: Somehow I sort of remember that.

EDRICK VAN BEUZEKOM: You were on the Board at that time. I think you were, too.

CONSTANTINE ALEXANDER: No. I wasn't even living in Cambridge at that time.

BRENDAN SULLIVAN: Okay, let me open it to public comments.

Is there anybody here who would like to speak on the matter of 2 Hutchinson Street?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance. I thought there was. Do you still have copies of that petition?

EDRICK VAN BEUZEKOM: I do have a copy of it.

JODY SCHINDELHEIM: Two of my neighbors came last time when we got canceled because I didn't have the sign up. But they weren't available now.

EDRICK VAN BEUZEKOM: Yes, here's a copy.

TAD HEUER: They still were here for support.

EDRICK VAN BEUZEKOM: Here's signatures, and on the third page is a letter from the --

BRENDAN SULLIVAN: The Board is in receipt of correspondence. (Reading) To whom it may concern: We the undersigned have reviewed the drawings for the proposed renovation and addition to Doctor Jody Schindelheim's residence at 2 Hutchinson Street. We support the plans for the proposed addition and do not oppose this application for a Variance. And it's signed by the owners at 173 Appleton, 159, 11 Hutchinson, 53 Vassal Lane, 15 Vassal Lane, 153 Appleton, 153 Appleton, 11 Vassal Lane, 151 Appleton, and 157 Appleton.

JODY SCHINDELHEIM: The e-mail is from the immediate neighbor. They're out of the country.

BRENDAN SULLIVAN: And 4 Hutchinson would be your immediate?

JODY SCHINDELHEIM: Correct.

BRENDAN SULLIVAN: (Reading) We the undersigned reviewed the drawings. We support the plans for the proposed addition and do not oppose the application.

Okay. We'll keep that in the file; is that all right?

EDRICK VAN BEUZEKOM: Sure. That's my only copy but can you have it, that's fine.

BRENDAN SULLIVAN: When you come back again, they can pull it out for you. There may be another one here. I don't know, Edrick. I thought it was here. But I can't put my hands on it. We can make copies of it and get it back to you so you can have it for you your file.

Okay. Anything to add, delete, change? These are the drawings.

EDRICK VAN BEUZEKOM: These are the

drawings. We tried to scale it down as much as we could and still keep the spaces to meet the needs of the client. And we tried to be sympathetic of the scale of it within the neighborhood.

BRENDAN SULLIVAN: Yes, I think from my thought that the original plan that you had come back with is a little bit too much massing. I think that this particular plan I think you were receptive and addressed the original concerns. And I think that by raising this is somewhat fairly traditional. Actually, I think it adds to the aesthetic value to the house. I also think on the other side with the dormer, on pushing that up a little bit back up, and a little bit of expansion is probably neither one of those is going to be very noticeable. That the back addition I think is probably necessary in order to get an adequate bedroom back there. And, again, it doesn't change the footprint

of the house, and hardly noticeable other than the neighbor's agree on which I think it does not affect. And by their support, obviously, they find it not a bit of a problem. So I think I would support this.

CONSTANTINE ALEXANDER: I concur with your views, and as Tim Hughes would say if he were here, "I'm good."

THOMAS SCOTT: I agree. I think, you know, the changes to the house especially from the front seem to be very minimal even though they're adding a lot of space and making the house more usable. So from that aesthetic standpoint it just seems very minimal change for a pretty sizable impact. I just have a question on the third floor level. The master bedroom, I guess, it seems to have a double door to the flat roof area as opposed to a pair of windows that's shown in the elevation. I was wondering why there's a conflict.

EDRICK VAN BEUZEKOM: That's a good point. I think the double doors are remnant of the old plan.

THOMAS SCOTT: So those should be windows?

EDRICK VAN BEUZEKOM: Yes. X that out and refer to the old visions.

THOMAS SCOTT: That should be a pair of windows then?

EDRICK VAN BEUZEKOM: Yes.

THOMAS SCOTT: And I think the modest addition on the, you know, the second level above that first floor addition especially where it's in the rear of the house has a minimal impact to the neighborhood. So I'm in favor of it, the petition.

MAHMOOD FIROUZBAKHT: Sorry if I missed this, but the first floor, is that changing at all?

EDRICK VAN BEUZEKOM: No.

MAHMOOD FIROUZBAKHT: And then the

use of the third floor is as a family room?

JODY SCHINDELHEIM: Well, it's a family room, study. I have -- sometimes I have small classes or seminars in the house, so, you know, sort of space for maybe to seat five or six people to sit around. But I also do work in the study at home. I just -- preparing stuff, that sort of thing. But as a family, family room, TV, desk, that sort of thing.

CONSTANTINE ALEXANDER: Excuse me, can I -- you just peaked my curiosity. You're going to have seminars on the third floor?

JODY SCHINDELHEIM: No, not seminars. I'll sometimes have people come and discuss a case or something like that. You know, it's on occasion.

CONSTANTINE ALEXANDER: I'm sorry. Elaborate a little bit more. What would you do up there? Are you running a business up

there?

JODY SCHINDELHEIM: No.

CONSTANTINE ALEXANDER: That's what I want to hear.

JODY SCHINDELHEIM: No, I'm not. It would just be having colleagues, two or three colleagues, four colleagues, come over and talk about a reading or, you know, a case that, you know, someone presented a case.

CONSTANTINE ALEXANDER: How frequently will you have these sessions?

JODY SCHINDELHEIM: I think I had in the last two years or three years, I might have had ten sessions or ten meetings, something like that.

CONSTANTINE ALEXANDER: It's not a regular weekly or twice weekly basis?

JODY SCHINDELHEIM: No.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: You're associated with Tufts Medical?

JODY SCHINDELHEIM: Tufts Medical School.

EDRICK VAN BEUZEKOM: I might add Jody uses the space as an art studio, too. So that's one of the functions that trying to accommodate.

MAHMOOD FIROUZBAKHT: And that's indicated on the first floor; right?

EDRICK VAN BEUZEKOM: Right. But now with the young child in the house she's going to take that over.

MAHMOOD FIROUZBAKHT: Yes, that happens.

JODY SCHINDELHEIM: All sorts of stuff.

MAHMOOD FIROUZBAKHT: Plastic.

JODY SCHINDELHEIM: Motorcycles, bicycles, stomp rockets, and the whole bit.

MAHMOOD FIROUZBAKHT: I think otherwise it's reasonably scaled appropriate and I think it's a good proposal.

BRENDAN SULLIVAN: Mr. Heuer.

TAD HEUER: I agree. I think it's appropriately scaled. As Tom has said, you've done -- I think gone from the ideal, you know, what your ideal goal would be down to something that, while not ideal, but it gives you the space that you need to work. So I agree that it's reasonable. I think you're on a small lot, an, you know, not a significantly undersized lot, but undersized lot nonetheless. That doesn't necessarily mean that any addition would be pushing out and running up against your neighbors. You do have some space on your side lot lines. I think that constraining it to the footprint also helps me be the more comfortable with that regard. And essentially you're keeping everything, you know, below your existing height. You're adding up to the back and existing roof. You're adding a dormer on one side. You know, the question of the knee

wall I think takes an existing element and expands it very modestly without any indication that you've changed the structure of the sense of the house in the way that if you were raising the roof to add an additional floor, that would become, you know, potentially not in character with the rest of the neighborhood or with the house that you have right now. So, I think I'm in favor of it. And I also would express our gratitude for your patience and going through this process and having to re-advertise for the re-hearing. It's not something we like to do. We're happy that you -- not that you had much choice in the matter but that your good graces and understanding.

EDRICK VAN BEUZEKOM: We appreciate you getting us in with that situation.

BRENDAN SULLIVAN: I'll make a motion to grant the relief requested as per the application for the additions as per the

dimensional form and also the drawings which are initialed by the Chair with the one notation at the third floor level.

EDRICK VAN BEUZEKOM: Yes.

BRENDAN SULLIVAN: Substituting the shown doors on one sheet for the windows as shown on another sheet.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to Petitioner because it would preclude the Petitioner from a realignment of a more sensible use of the interior space with the addition of an adopted child and the need to provide adequate space for the new family members.

The Board finds that the hardship is owing to the existing non-conformity of the house in the size of the lot, the FAR, and the front/year setbacks, and the open space requirement which predate the enactment of

the current Ordinance. And that any change, in the Board finds that this is a fair and reasonable request, would require some relief from this Board.

The Board finds that desirable relief may be granted without the use of the detriment to the public good. And the Board notes the letters of support from the immediate abutters and their support thereof.

And the Board finds that this relief would not nullify or substantially derogate from the intent and purpose of the Ordinance.

Anything else to add to that?

All those in favor of granting the relief.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

* * * * *

(8:45 p.m.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Tad Heuer, Thomas
Scott, Mahmood Firouzbakht.)

BRENDAN SULLIVAN: The Board will
hear case No. 10219, 31 Shea Road.

If you could introduce yourself for the
record.

CRAIG HIGHLAND: I'm Craig

Highland. I live on 31 Shea Road. My family's here behind me, Katherine, Didi, Drew, Ezekiel, and Elias. Those are our kids.

PETER WRIGHT: I'm Peter Wright, W-r-i-g-h-t, the architect.

BRENDAN SULLIVAN: Okay, what is it that you you'd like to do?

CRAIG HIGHLAND: Well, our house now has three bedrooms and with four kids it's kind of tight. So we'd like to create another room by moving up five feet and making the attic space into a room that would fit at least two of the boys.

BRENDAN SULLIVAN: Do you currently use the attic space?

CRAIG HIGHLAND: Just as storage.

BRENDAN SULLIVAN: And access to it is by way of?

CRAIG HIGHLAND: There's kind of tight stairs that go steep up to it.

PETER WRIGHT: A ladder essentially.

BRENDAN SULLIVAN: So for all intents and purposes, there is floor area up there which is not accessible. Well, it's accessible but it's not usable.

CRAIG HIGHLAND: Right. You bump your head.

PETER WRIGHT: I'd like to make one note if you don't mind. This plan shows the visual part of the house. I don't know whether you have the site plan. There is a part of the house right here that is -- and I apologize that -- oh, it's on the site plan right here. So the area in question is actually the old original part of the house that is right on the front facing the street, Shea Road. And that's the area that we're proposing to telescope up five feet. The rear part of the house was renovated six, seven years ago. We had to tear down at one

part that was in very, very bad shape and then we -- we actually had appeals to do a bedroom, kitchen, and a dining room area in the back of the house. That we are not touching whatsoever and we're focusing the, this proposed addition on the front of the house.

CONSTANTINE ALEXANDER: Did you have to get Zoning relief for the addition in the back?

PETER WRIGHT: We did, yes.

TAD HEUER: Here.

CONSTANTINE ALEXANDER: I didn't see that before.

PETER WRIGHT: And so we're, we're gonna continue this -- reflect the same pitch on the roof as the existing and go up to 35 feet. And we get an additional 328, I believe. Yeah, 328 square feet close floor area as a result. It does involve two dormers. Shall I continue? I'm sorry.

CRAIG HIGHLAND: Yeah.

PETER WRIGHT: It does involve two dormers, shed dormers. We set them back more than the suggested of the -- we're able to go back on one roughly four and a half feet and another one eight feet from the street. We do have our mechanical system up there, which we have been maintained as you can see on the plan.

BRENDAN SULLIVAN: But the dormers, basically you're extending the exterior wall of the house --

PETER WRIGHT: Yes.

BRENDAN SULLIVAN: -- straight up.

PETER WRIGHT: See, it's only a 20-foot wide -- it's a rather small house. We're rather limited there. It's only 20 feet wide. And for us to come in, we found would be severe compromise. I can do it structurally I know, but we tried to get -- we have 11 plus by 14-foot bedroom plus a closet in this little tiny study and the bathroom.

And if I may, the -- on the other side of the street all the houses and also -- they're all very much 35 feet tall. In fact, it's amazing how continuous they are.

BRENDAN SULLIVAN: What about the ones on either side?

PETER WRIGHT: No. There's an exception there. There is a one-story home for --

CRAIG HIGHLAND: It's assisted living place.

BRENDAN SULLIVAN: Except for that one.

PETER WRIGHT: Assisted living, yeah. And they are on the south side. The people on the north side -- we had demonstrated a computerized shadow study for them to understand what. And so we suggested a smaller dormer on that side. Nine-foot wide dormer. And they saw exactly how it was

shaded in different times of the year, and they had written a letter. I don't know their names. Sorry.

CRAIG HIGHLAND: George and Judy. If you don't have it, we actually have a copy. It's George and --

BRENDAN SULLIVAN: What was the address?

CRAIG HIGHLAND: Oh, God. What's George and Judy's address?

KATHERINE HIGHLAND: 35 I think.

BRENDAN SULLIVAN: Okay, I'm sorry, go ahead.

PETER WRIGHT: I just want to mention that was our major concern was the shadowing of their house. We are -- obviously we're keeping the same footprint so we're not increasing the coverage on the property. We are increasing, of course, the gross floor area and, therefore, the FAR by 13 percent. We're

violating, because the house already is violating the setback, both the -- only the left-hand side and the front if I remember correctly. Yeah.

BRENDAN SULLIVAN: And what is before us is the minimum I would think; is that correct? Or to create space for some additional bedrooms? Is that it? Just sort of realigning of the existing?

PETER WRIGHT: We consider it to be modest, but we're trying to get a bedroom for the children. They still will be sharing a bedroom, but better than what is going on now.

CRAIG HIGHLAND: Well, it will be as the baby starts to get bigger.

BRENDAN SULLIVAN: And the house tends to appear smaller?

PETER WRIGHT: You might want to talk about your investment in the property.

CRAIG HIGHLAND: In the neighborhood?

PETER WRIGHT: Yeah.

CRAIG HIGHLAND: We love our neighborhood, too. We can't imagine moving. We're friendly with a lot of families around. There's a lot of other kids in the neighborhood so we'd really like to stay.

BRENDAN SULLIVAN: On the dimensional form I think there was some miscues on that. Do you have that?

PETER WRIGHT: Yes, I have it in front of me.

BRENDAN SULLIVAN: Yes, on the rear, existing condition is 16.1. The request is 35.3. I think we're looking for that 16.1.

PETER WRIGHT: Yeah.

BRENDAN SULLIVAN: It's basically to the main body of the house.

PETER WRIGHT: Yeah, yeah.

BRENDAN SULLIVAN: The other one on the right side which is at three-foot, nine, that should also be three-foot, nine.

PETER WRIGHT: Yeah, I wasn't sure. I asked Sean and I think he might have misunderstood me. When I asked for it, was it the addition?

SEAN O'GRADY: I think I probably gave you a wishy-washy answer. I've seen it both ways.

PETER WRIGHT: Yeah. To clarify I was -- on those two numbers it is the actual addition that was reflected there.

BRENDAN SULLIVAN: That's right. And you're going to go from 2424 to 2752; is that correct?

PETER WRIGHT: Excuse me, what's that for?

BRENDAN SULLIVAN: 2424 is the existing?

PETER WRIGHT: Yes. An additional 328 area above five feet and not including the mechanical.

BRENDAN SULLIVAN: So that's a 13

percent increase?

PETER WRIGHT: Yes, it is.

TAD HEUER: And that's 0.97 to 0.11 in a 0.5 district?

PETER WRIGHT: Yes, it is. The lot is also non -- terribly non-conforming. It's less than half -- excuse me.

TAD HEUER: It's 2512?

PETER WRIGHT: Yeah. And 5,000 is the suggested.

TAD HEUER: Required.

PETER WRIGHT: Required, yeah.

TAD HEUER: And originally in your 2004 -- 2003/2004 petition, you went, you were at 0.61 and you went to 0.91 in a 0.5.

PETER WRIGHT: Yes.

TAD HEUER: So we've already granted you a one-third increase above allowable increase, above the allowable minimum.

PETER WRIGHT: Absolutely, yes.

TAD HEUER: Right.

BRENDAN SULLIVAN: Anything else, Gus, at this point?

CONSTANTINE ALEXANDER: I have no questions. I think you brought out the facts that I wanted to bring out; namely, about the nature of the relief being sought and the amount of the relief being sought. I'll save my observations until later on.

BRENDAN SULLIVAN: Tom, any questions at this point?

THOMAS SCOTT: Not right now.

BRENDAN SULLIVAN: Mahmood?

MAHMOOD FIROUZBAKHT: I would like to take a look at the plans.

BRENDAN SULLIVAN: I sort of dissected them here.

Tad, anything at this point?

TAD HEUER: No. I think I'm going to have significant questions about the scope of relief being requested, and the number of different types of relief that are necessary

for this project, but I think I would save those for later.

BRENDAN SULLIVAN: Okay.

Mahmood, I'll come back to you. Let me open it public comment.

Is there anybody here interested in commenting on case No. 10219, 31 Shea Road?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance. There is correspondence --

CALVIN LEMORE: I would like --

BRENDAN SULLIVAN: Oh, I'm sorry. Come forward and state your name and give us your address.

CALVIN LEMORE: Calvin Lemore, L-e-m-o-r-e. I'm the neighbor on 17 Shea Road. I've got no objections to this. We wanted to come and find out what our neighbors were up to.

CHARLES BENT: I'll speak. Charles Bent, 36 Shea Road. We're actually right

across from these guys. Our two kids -- our two older -- our two kids are around the same age as their two older kids, and we want to say not only do we not have any problems with this, we hope it goes through because we're really close friends and we certainly would want them to not move away from the neighborhood.

BRENDAN SULLIVAN: Okay, thank you.

Anybody else who would like to comment?

(No Response.)

BRENDAN SULLIVAN: You okay with what he said?

PAMELA LEMORE: I echo. We'd like to see this happen.

BRENDAN SULLIVAN: Okay.

The Board is in receipt of correspondence from 16 Shea Road. (Reading) I'm writing to lend my voice in support of the planned renovation at 31 Shea Road. The Highlands have described the project to my

husband and me in depth and we are fully in favor. We believe it is a good thing for our neighborhood and hope you'll permit to move forward. Karen Dempsey, D-e-m-p-s-e-y, 16 Shea Road.

Correspondence in the file from Kim Burke, B-u-r-k-e. (Reading) We are writing to express support for the Variance proposed by our neighbors Katherine and Craig. They have shared their architectural plans with us, and the project they propose strikes us as a logical and unobtrusive addition to their home. As such, we have no objections to the Variance as it will enhance their property and improve the value of the neighborhood. And she lives at 45 Shea Road.

There's correspondence in the file from Jill and Charlie Bent, B-e-n-t. (Reading) We would like to write in favor of our neighbors Craig and Katherine. We live across the street from the Highlands for nine

years and have witnessed them making positive changes to their home which have enhanced the appearance of our street. We feel that this change in the roof line will only add to the curb appeal of their home and of our neighborhood. We know that it will make the living area in the interior of their home more spacious to accommodate their growing family. We hope that you will approve the Highlands' appeal for a Variance.

Correspondence from Ronald Levesque, L-e-v-e-s-q-u-e, 32 Shea Road. (Reading) In regard to the building proposal at 31, we live directly across the street on 32. We have no problem with this building project. The Highlands are a family who have recently grown and who need space as a family neighborhood, and the Highlands are very much a part of it. Moreover the addition that they propose will have a minimal impact on the neighborhood.

There is correspondence from George Smith and Judy Smith who live at 35 Shea Road.

(Reading) Dear members of the Board:

Regarding the above-referenced case number and Variance we request, please be advised that we have reviewed the scope of the work and shadow study prepared by the architect and have no problem with the Variance being issued or the work proceeding as designed. And that's -- have I covered all the letters? Okay.

That's the some substance of the correspondence and I'll close public comment.

Mahmood, any questions at this point?

MAHMOOD FIROUZBAKHT: I think Tad raised some. How many bedrooms will be total in the house after the proposed renovation?

CRAIG HIGHLAND: One more. There will be four.

MAHMOOD FIROUZBAKHT: Four total.

And so there's one bedroom proposed for the third floor; is that right?

CRAIG HIGHLAND: That's right. And a bathroom.

MAHMOOD FIROUZBAKHT: How long have you lived in this house for?

CRAIG HIGHLAND: Oh, 10, 12 years.

KATHERINE HIGHLAND: 12 years.

MAHMOOD FIROUZBAKHT: Teach at the Baldwin School?

CRAIG HIGHLAND: Baldwin School, yeah.

MAHMOOD FIROUZBAKHT: Good school.

PETER WRIGHT: Because of him.

MAHMOOD FIROUZBAKHT: I don't have any other questions.

BRENDAN SULLIVAN: I don't know if you have anything to add or maybe you want to respond to some of the comments or something at this point.

PETER WRIGHT: Well, I don't know

how relevant this would be but concerning your bringing up the fact that we had previously gone through an appeal. This, if I may put some color to that. When I first met with the Highlands I recall Craig taking me upstairs in this old part of the house, and I remember the stair treads sinking down. And each tread was canopies as they went up. The house was, the house was in very, very bad shape. And the investment sadly was great. I mean, it was a lot of money and a lot of work, and it was, you know, certainly well done. So, it's -- I know you might think that well, why don't they go ahead and get a bigger house.

TAD HEUER: Indeed, that's going to be my comment you're going to hear it, but continue.

PETER WRIGHT: And I'm sure Craig can address it better, but their investment, of course, in the neighborhood, their

children's and in their house which has some very nice loving detail, nothing fancy, but, you know, they put a lot of work into that earlier design, a lot of work. And it was gratifying that it came out nicely. That's why it's hard to leave.

CRAIG HIGHLAND: It's also the neighborhood. We've really grown to know a lot of the families in the neighborhood. Our kids play over in the Somerville side and down the other side. It's a great family neighborhood. We've really grown to be a part of.

BRENDAN SULLIVAN: Okay. Comment?

CONSTANTINE ALEXANDER: Yes. By the numbers, this is a gruesome case. I mean, you're seeking -- you're well over what is permitted now and you want to go even farther over. For me, the fact that you got relief once before that got you to where you are right now, is not that troublesome. You

did that many years ago. You did it at a time when your family situation was different. You have less kids it would appear.

CRAIG HIGHLAND: We only had two kids at that point.

CONSTANTINE ALEXANDER: I get concerned when we have these kind of cases, what I call a salami approach, where you really want to do a lot of work and you say, I'll get it by the Board by doing a little bit now and a little bit next year. To me this is not this case. So I don't put too much stock in that.

I think also the notion that you can always buy a bigger house and that will solve your problem. To me, it's very little bit of a fast analysis. You're invested in this neighborhood. You've got young kids. It's not that easy, even if you handle the economics, to find another neighborhood and uproot your kids. So I think again I don't

put too much stock in that. I really wish the numbers weren't as severe as they are, but I think you also have, to me, substantial hardship. You do need more space.

You -- your neighbors, and I think, I'm impressed by the fact that your neighbors are all enthusiastically it would appear in support of the petition. I do think this is a situation where it would allow citizens of the town, young citizens to continue in their homes and to make them adapt to the size of their family and their circumstances. So all in all, I would be -- somewhat reluctantly but I would be in favor of granting relief.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: Did you talk about the height of the proposed addition? What's the -- are you under the 35 feet?

PETER WRIGHT: Yes, we are. We're going to 35 and no more.

THOMAS SCOTT: And the houses across

the street, are they at or lower than 35?

PETER WRIGHT: I actually measured them. Most of them are 35, a few inches over if we were to go to the grade, actual grade. But they were all rather consistent. In fact, it's rather interesting as you drive down the one way street, you can see that they line up those gables.

CONSTANTINE ALEXANDER: They do.

PETER WRIGHT: Yeah.

THOMAS SCOTT: And I think the dormers are appropriate except for the fact that that wall is not broken, but I can understand why given the narrowness of the house.

PETER WRIGHT: I do understand how important that is, and aesthetically in other jobs. And -- but I couldn't do it here. I would be forced unfortunately.

BRENDAN SULLIVAN: The house is 20 feet wide?

PETER WRIGHT: Yes, it is. It was a rather -- it was a humble little house originally of course. The back was extremely rotten. We had to tear it off and it was like an old kitchen shed that you often see.

BRENDAN SULLIVAN: So your thoughts, Tom?

THOMAS SCOTT: I think -- I mean, I like what you've done to the house aesthetically. I think it fits along as the other houses in the neighborhood are appropriately or that this becomes appropriately scaled to them and doesn't exceed that. I think it's a reasonable proposal. I'm a little bit troubled by the FAR which, you know, we should be as Zoning Board members, but I can understand the family situation and why they need the additional space. So, I'm getting there I guess.

BRENDAN SULLIVAN: Mahmood?

MAHMOOD FIROUZBAKHT: I think I'm pretty much where Gus and Tom are. FAR is a little extreme. I mean, it looks worse than what it is because you're raising the roof. So I think in that regard impact is not as extreme on the surrounding neighborhood yet, you know, that captures a significant amount of FAR. I do wonder whether the space on the third floor could be used, you know -- I mean, you've got a fair amount of space there for HVAC. You've got a fair amount of space for storage up in the attic. So, you know, in that regard, I do wonder, geez, could you have paired this back and maybe been a little bit smarter use of some of the space there that's not living space per se on the third floor? But I think all in all, you know, given the other circumstances and the hardship, you know, I think I would be willing to support this case.

BRENDAN SULLIVAN: Okay.

Mr. Heuer.

TAD HEUER: Are you planning your kids growing?

CRAIG HIGHLAND: Yes.

TAD HEUER: And if they get bigger than they are now, you'll have four kids but they'll all probably want their own room. Are we going to get another application saying --

CRAIG HIGHLAND: No. No, our kids -- actually we're really comfortable.

TAD HEUER: Two 16-year-olds in the same room.

CRAIG HIGHLAND: Are you guys good with that?

CONSTANTINE ALEXANDER: Put them under oath.

CRAIG HIGHLAND: They're good with it. They always -- it wasn't really a problem with the sharing. And the truth is

if we had two boys and two girls, it wouldn't have been as big of an issue because -- and when -- if we do this, if we go up, I'm sure all three boys will go up and be in that room. They look to be together. So I think we'll always be sharing rooms at one point. And I think that's just part of how it is.

TAD HEUER: All right.

CRAIG HIGHLAND: And I'm fine with it. I'm fine with posing it, too.

TAD HEUER: So, to put this in somewhat perspective where I'm thinking and I'm not --

CRAIG HIGHLAND: We couldn't go up further; right?

TAD HEUER: Indeed.

PETER WRIGHT: By the way, excuse me. Considering the previous addition, we kept that lower, we kept it as a flat roof because it was behind of course the original part of the house and we wanted to keep a lower

profile there.

TAD HEUER: Indeed.

So for some perspective in addition of 328 square feet if I'm remembering the cases that I've sat on the last four years correctly, would be the second or third largest in terms of absolute square footage we have ever granted. Even more so because it is a 328 square foot addition to a lot that is half the size. It's not just a mildly undersized lot. You know, and so the previous case we had 120 -- 180 square feet or so on a 360 square foot lot, mildly undersized.

PETER WRIGHT: Understood.

TAD HEUER: Here we're talking about a lot that's half the size and we're looking at my recollection, I could be wrong, at least in the top five in terms of absolute square footage requested on a very small lot. So that does concern me. 0.97 to 0.11 in a 0.5

is -- you're asking for twice the amount of house that the city is ordained should be there.

Now, and I certainly appreciate and, you know, everything I'm going to say is going to sound very negative. I want to make sure that you understand that I absolutely value what you've done with the house. I seem to recall the house in its previous state. It was delapidated is an understatement I suppose. What you've done with it is fantastic. And, you know, I think the first Variance you went from, you know, a 1500 square foot house up to, you know, 2300. That's big, but you're starting from a small house that, you know, is hard to live in with the family. It's essentially maybe one child in today's environment.

I think once we're looking at a house that's 2752, that starts to be a big house even by Cambridge standards for some of these

neighborhoods for single-families that hasn't been split into a two-family. And the concern that I have, and I understand Mr. Alexander's point that, you know, it's somewhat (inaudible) to go find a new house. My concern is systemic for the City of Cambridge in that every time we start with a 1500 square foot house and we add 500 square foot to it because we want to enable a family to stay there, and that's great, and here we're being asked to add another 300 square feet to allow a family to stay there and that's great. When the family moves on or downsizes as kids go to college, what have you, we've then created a 2700 square foot house in Cambridge, very desirable, that's a house that a family starting out can't buy. Whereas the house that they started with, the 1500 square foot, maybe the 2,000 square foot house is one where we've essentially taken one of the limited housing stock in Cambridge

of that kind of transitional house off the market because we've added well above what the FAR is. And I think the Board of Zoning Appeals does have an obligation to look at the housing stock of Cambridge as a whole and say we're not going to skew to the higher end because it would be great temporally for the family that's in it to be able to stay there, that there is certainly merit in saying the houses that are of the size of city as ordained are there for a reason and they're there at that size so that people can have transition. Essentially what we're being asked to do in many situations is to ossify a neighborhood in order to allow the people who are there currently to stay there. And while I agree that that's a value to have a neighborhood stability, I think that there's equally value in having houses that are able to be transitioned to different family sizes in different statuses in life. And, you

know, when I joked to you are you planning on having your kids growing, you know, at a certain point there's a cut off that going finding a house is absolutely something that should be considered a necessity even though it's hard and maybe more expensive and may require some, you know, internal family tumult that at a certain point houses are too big for what the city is requesting on the lot size. And at a certain point moving has to be -- the Board of Zoning Appeal I don't think is not there to indefinitely expand houses to those who wish to expand them.

On the issue of height is 35 feet and that's where the neighborhood is. I think one of the reasons that we have a height limit is a proxy for massing. That the, you know, we look at FAR and we say is the FAR really as bad as it should be? And is it raising a knee wall and what have you. When you're looking at height, height is something that

says we're containing it with a certain level, literally putting a ceiling on it. And by putting a ceiling on it, the City Council has said we're trying to constrain and bulk of the massing of houses, and to the extent we're adding more and more FAR and the reason we can add the FAR is because we have the additional height that we can go up to. I don't think that's the intent and purpose of the Ordinance, that you can go up to 35 feet of height in order to say don't worry about FAR, the height is just fine, we're staying within the footprint. I think the FAR does matter in that situation because all these things are proxies for bulking on the site, overbuilding a site, over-massing a site. Certainly it's preexisting, non-conforming. But like I said, I think that's where some houses have to say that at a certain point you're pushing out to your lot lines, you're pushing up and bulking your site, and I don't

think that's the intent of what the Ordinance is.

As to the dormer, I think I would share Tom's concern that the dormer essentially is creating an -- it's running through your wall, you're breaking the soffit. It's -- I think you do your best in the supporting statement to say, you know, we meet most of the dormer requirements. But I -- that one to the extent that we care about them, I do, is the one that we are frequently the most concerned about. We occasionally go on length. We occasionally go into the ridge line if there's a case that's made. It's very rare that we allow kind of two-story fronting of a dormer without any break in the soffit just because it kind of gives a sense of tacking a townhouse onto the side of a house aesthetically from the street. I understand the architect needed the construction reasons for doing it internally

and how it makes the house work. I just don't think that that's -- you know, it's yet another element to this.

So, overall my concerns are the FAR. The exceedingly high FAR both in terms of absent floor area and terms of percentage. My concern going up in the setback and, you know, creating a dormer that essentially is a two-story dormer is something that the dormer guidelines ask us not to do. And essentially, you know, overbuilding a lot that at 2500 square feet probably shouldn't be the size it is now. Probably shouldn't certainly be, in my opinion, be significantly larger. So, I entirely understand how you want to be in the neighborhood. I get it. I totally get it. I just think that this one is tipped over the balance for me on too many of the parameters that's difficult for me to overlook three or four different violations either of the coordinates or of the guidance

to be able to say that being able to keep the family in the house at the size they are now is going to be a sufficient hardship to grant a significant amount of relief here. And again, relief that will remain on that site in perpetuity long after the family is grown, moved away, etcetera. That house is there. Stays at that size of that sizable shape and financial value. So --

KATHERINE HIGHLAND: Can I add anything or is it passed my time?

BRENDAN SULLIVAN: No, go ahead.

KATHERINE HIGHLAND: So this whole conversation about square footage, I totally get it. But part of I think what's going into the numbers is our basement. Which is we have a finished basement, you know, like half the area under the kitchen. So, yes, it counts for the FAR, but kind of if you look at the houses across the street and you go inside, they're significantly bigger than

our first and second floor. So I get the numbers and I understand that, but to me it's a little --

TAD HEUER: Is it a finished basement?

KATHERINE HIGHLAND: It is. But it's essentially it's a playroom.

TAD HEUER: So essentially it's again, as we discussed in one of the previous cases, and I understand that it's certainly different if you have had a flat slab and you were trying to get --

KATHERINE HIGHLAND: Or if we had a second living room or something. You know, we have a living room, dining room, kitchen and bedroom.

TAD HEUER: Sure.

KATHERINE HIGHLAND: We don't have a lot of --

TAD HEUER: And I think we heard on some of the previous cases, that, you know,

FAR is fungible. Could you have taken it from somewhere and put it somewhere else? You're able to have a playroom in the basement because you don't have it where you have a bedroom on the second floor. If you had a lower than height basement and you said what we really need is a place to put the plastic, and a fellow Board member mentioned it, you'd have to put that where you have the bedroom now and you couldn't have a bed there. Yes, you know, it's in the basement and it doesn't contribute to the massing in that way, but you're -- the question for additional room going up is essentially more space because you're able to use the finished basement for something that otherwise would be used on the upper stories of the structure.

KATHERINE HIGHLAND: I guess my only point is in relation to the street in terms of the sizes of the houses --

TAD HEUER: Understood.

KATHERINE HIGHLAND: -- adding this isn't going to make this the biggest house on the street by any means. So, thank you.

TAD HEUER: I understand.

BRENDAN SULLIVAN: So, I just have one question on the front of the house. As to what is this, is this glass?

PETER WRIGHT: No, just a panel. We're trying to break it up a bit.

BRENDAN SULLIVAN: Okay.

My only concern and, again I, I guess I would echo Mr. Alexander's comments earlier and the other members of the Board fully understanding why you need to do what you're doing. I'm very familiar with also raising the house up in order to get that space up in the attic which right now it's somewhat, according to my calculations, about 162 square feet that is really not accessible, not really usable. And living space which are in the calculations, now you

obviously expanding upon that. But I'm concerned a little bit by the streetscape and how this house is viewed with the other houses. And I know you don't go across the street and you don't necessarily stand there and relate this to that as much as you did coming down and relating how you are and that's assisted living or whatever it is normally in the street. If that were glass, I think it would be sort of an overkill.

PETER WRIGHT: Sorry, I should have rendered it differently.

BRENDAN SULLIVAN: It would really to me shine a light too much so on the massing I think.

PETER WRIGHT: Right.

CRAIG HIGHLAND: I don't know how much this matters. I think the house before the assisted living house which is Pam and Cal's house, I think it's three full stories, too. And I don't know if that matters in

terms of what you're talking about.

CALVIN LEMORE: I was pondering that, too, exactly how high ours is. As high as you're talking about if not more. And the other thing I'd just like to comment, every time I go passed their house, walk by all the time, I'm surprised at how small it looks from the street because it's in the back.

BRENDAN SULLIVAN: They were initially built as worker's cottages if you will, the original style.

PAMELA LEMORE: And our house is also we have a smaller porch and we're very, very close to the sidewalk.

BRENDAN SULLIVAN: And then all you do is walk around the corner and see on the adjoining streets that are maxed out.

PETER WRIGHT: In the previous appeal we had taken some of the old the porch back a bit. It was bigger than what we presently do have in our attempt to reduce the

massing on the street.

BRENDAN SULLIVAN: Okay. Let me make a motion.

Make a motion to grant the relief requested to raise the roof line and creating habitable space on the third floor. Also, to include the shed dormer on each side of the ridge as per the plans and the application submitted, the Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner and it would preclude the Petitioner from providing much needed bedroom space and living space for a growing family.

The Board finds that the hardship is owing to the existing non-conforming nature of the house, and the few inherent violations connected to that non-conformity. Hence any further additions to the house would require relief from this Board.

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

The Board finds that desirable relief may be granted without substantial detriment to the public good.

The Board notes the letters of support from neighbors in the immediate area, and also the presence of people in the neighborhood to speak in favor of this proposal. And that granting of this relief would not nullify or substantially derogate from the intent and purpose of the Ordinance.

On the condition that the work be done in conformity to the plans and the related dimensional form as submitted with the application.

Anything else to add?

All those in favor of granting the relief.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Alexander, Scott,
Firouzbakht.)

BRENDAN SULLIVAN: One opposed.
(Heuer.)

BRENDAN SULLIVAN: Any other
descending views other than what's on the
record?

TAD HEUER: Only that in my opinion
the relief is not due to the shape, size, or
topography of the lot, or the structure
sitting thereon. That the hardship is due to
the size of the family inhabiting the house,
it's not a requisite element of Chapter 40-A
and therefore it does not meet the standard
for a Variance as set forth in the General
Laws.

BRENDAN SULLIVAN: Good. Granted.
Thank you.

CONSTANTINE ALEXANDER: Good luck.

* * * * *

(9:20 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

BRENDAN SULLIVAN: The Board will hear case No. 10221, 153 Brattle Street.

Is there anybody here interested in that matter?

(No Response.)

BRENDAN SULLIVAN: There is correspondence in the file if I can get to it on the letterhead of the Grassi Design Group (phonetic) to Mr. Sean O'Grady dated December 5th. (Reading) We would like to request a continuance for a Board of Zoning Appeal hearing for the aforementioned project. We are scheduled for March 8th, and would like to be rescheduled for the April 12th hearing.

My understanding is that the Historical Commission, which they have to have a full hearing and have a disposition, that they

have not concluded their hearing. They're not scheduled to hear it until next month; is that correct, with Historical?

SEAN O'GRADY: I'm not sure exactly.

ATTORNEY JAMES RAFFERTY: For the record, Mr. Chairman, James Rafferty representing the Petitioner. As is so often the case, you are correct, Mr. Chairman. The Historical Commission did commence an initial hearing. A Certificate of Appropriateness is required, but they continued the hearing at their most recent meeting in March and it will be back before them in April. So, a date was coordinated with Ms. Pacheco that would fall after the April hearing of the Historical Commission, and that's the purpose for the request.

CONSTANTINE ALEXANDER: What is the date of the Historical?

ATTORNEY JAMES RAFFERTY: They meet the first Thursday of every month.

BRENDAN SULLIVAN: They're on the April 5th.

CONSTANTINE ALEXANDER: Okay, we have a week then.

BRENDAN SULLIVAN: Yes. Is there anything to add? To basically they're asking for a continuance.

UNIDENTIFIED MALE: No, we just showed up for the hearing.

CONSTANTINE ALEXANDER: Is April 12th a convenient date for you?

SEAN O'GRADY: That's not a good date for us.

CONSTANTINE ALEXANDER: Don't answer that question.

SEAN O'GRADY: We're not open until May 10th.

ATTORNEY JAMES RAFFERTY: I wondered how that would be?

BRENDAN SULLIVAN: May 10th?

FROM THE AUDIENCE: Sure.

BRENDAN SULLIVAN: At this point it seems okay.

Let me make a motion to continue this matter until May 10, 2012, on the condition that we have a waiver. Do we?

ATTORNEY JAMES RAFFERTY: I believe.

SEAN O'GRADY: Do we have one?

ATTORNEY JAMES RAFFERTY: Yes, Mr. Grassi signed one he informed me. Ms. Pacheco sent him one.

SEAN O'GRADY: Yes, it says it right there. You're all set.

BRENDAN SULLIVAN: On the condition that the Historical have a deciding motion on this particular case before we hear it on May 10th. Also, that the posting sign be changed to reflect the new date of May 10, 2012, and the new time at seven p.m., Sean?

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: And also that the

posting sign be maintained as per Article 10, Section 10.421 of the Ordinance which requires posting 14 days prior to the May hearing, and that that it be posted within 20 feet. Both of which are in violation at this moment.

And so that it comply with that section of the Ordinance for posting requirements.

Anything else to add to it?

CONSTANTINE ALEXANDER: I just want to make it clear that not only do we want Historical Commission to have met on this matter before we have our hearing, but that we receive the decision of the Historical Commission.

BRENDAN SULLIVAN: That we have a final --

CONSTANTINE ALEXANDER: I just wanted to make it clear. Okay.

BRENDAN SULLIVAN: And that if there is there are any changes to the drawings in

the file and the application, that they be in the file on the Monday prior to the May hearing.

CONSTANTINE ALEXANDER: Fine.

BRENDAN SULLIVAN: Okay. All those in favor of continuing this matter to May.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

UNIDENTIFIED MALE: There would be notification. And if the Historical Commission -- you may know about it, but the abutters will not know that that is changed? We've been here for an hour and a half tonight.

BRENDAN SULLIVAN: Yes, you should call the Building Department prior to the May hearing to see how it was disposed.

UNIDENTIFIED MALE: Under what circumstances will that be postponed for,

i.e., the last minute like today.

BRENDAN SULLIVAN: Well, I won't know that until at the table basically.

UNIDENTIFIED MALE: : Okay. Thank you.

BRENDAN SULLIVAN: Contact the Building Department prior to the May hearing to see if it's still on the schedule Tuesday morning prior to the May hearing because there may be something coming in on the Monday night before five p.m. which could be some changes, No. 1. Or if some more submissions are not timely filed and we would continue it again. Okay? So the public really needs to be aware at least by five p.m. on the Monday prior to that May hearing.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, I'm happy to represent that I'll get the names of the abutters and any other interested parties, and we would be happy to keep you abreast of the proceedings

both at the Historical Commission and this Board. I apologize I didn't realize, because the continuance was actually submitted a day or two ago and it was the result of the Historical Commission continuance.

BRENDAN SULLIVAN: And the final comment is that it will be behoove the Petitioner to have outreached to the community so that you would be fully apprized of what's going on.

UNIDENTIFIED WOMAN: We've never met them.

CONSTANTINE ALEXANDER:
Mr. Chairman, just one observation, we sometimes don't get in writing the decision of the Historical Commission until maybe a day or so or even the day of the hearing. So if you call on Tuesday morning, we may not have the results in. We may know orally what it is, but we may not have it in writing.

We've had that issue in the past. Just to alert you. But Mr. Rafferty's pointed out he'll probably let you know at least orally what the decision was and give you some head's up and take it from there.

ATTORNEY JAMES RAFFERTY: But given this date now there should be nearly a month between the Historical Commission's decision and this hearing. Unless it's further continued.

CONSTANTINE ALEXANDER: You're right, Mr. Rafferty.

UNIDENTIFIED MALE: I live at 929 House and I live on the first floor. I just wanted to know what's --

BRENDAN SULLIVAN: That's the next case, okay? We're not there yet.

UNIDENTIFIED MALE: Okay.

BRENDAN SULLIVAN: We'll get to you in two minutes.

Anything else?

On the motion, then, to continue this.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

* * * * *

(9:30 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

BRENDAN SULLIVAN: The Board will hear case No. 10220, 929 Mass. Avenue/10 Centre Street.

LOUIS MILLER: My name is Louis Miller and I represent the owner. L-o-u-i-s And I'm here with David Surface who is the property manager.

The building currently has 115 parking spaces built in the early seventies. The electrical switch was the original equipment and they decided it has to be replaced. And the new equipment is larger than the old

equipment. So in order to accommodate the new equipment, they have to build a larger electrical room and a larger electrical room will impose on two of the parking spaces. So we're asking relief to go from 115 spaces which is currently required to 113.

The occupancy in the building tends to be less than 50 percent. Occupancy of the parking -- I'm sorry. Occupancy of the parking garage tends to be less than 15 percent. Occupancy of the building is close to 100 percent. So it's, I think it's a de minimus reduction and it's hard to see how it will have any affect at all on the neighborhood.

CONSTANTINE ALEXANDER: Where did the 115 parking spaces come from? Was it required?

LOUIS MILLER: I believe it was a 1971 Variance.

CONSTANTINE ALEXANDER: It was a

variance?

LOUIS MILLER: Yeah.

CONSTANTINE ALEXANDER: You sure it was a Variance, it wasn't a Planning Board?

LOUIS MILLER: It was 1971 and before my time and we were unable to find it and we were told it was a Variance.

CONSTANTINE ALEXANDER: I checked with the Inspectional Department and they had no prior record given by this Board, that's why I'm curious.

LOUIS MILLER: Well, it was 1971.

CONSTANTINE ALEXANDER: That's not the issue. I just want to have the framework for this. As to someone thought it was significant that you should have 115 spaces.

LOUIS MILLER: It might have been -- I mean, it's less than what would have been required. I think they've got relief to do that. But again as I said, in fact, and during the day the occupancy tends to be about

39 percent of the parking spaces used at night. It's about 46 percent. Which is consistent with the when you look at the percentage of people that tend to use automobiles in that neighborhood, that's consistent with those numbers.

MAHMOOD FIROUZBAKHT: How many units again?

LOUIS MILLER: 127. Currently 126 are occupied.

MAHMOOD FIROUZBAKHT: And commercial space as well?

LOUIS MILLER: Yes. There's 12,300 square feet of commercial space at which 8,780 is occupied.

MAHMOOD FIROUZBAKHT: By what?

DAVID SURFACE: Law offices and then a research lab.

MAHMOOD FIROUZBAKHT: And how many spaces do those commercial uses get?

DAVID SURFACE: Total between

everybody, they have about six spots in above ground not in the underground parking.

LOUIS MILLER: There are 14 assigned to the office. They use six. And according to the parking study, assuming full occupancy of the everything, it would still be somewhere between 40 and 60 excess spaces in the garage.

CONSTANTINE ALEXANDER: And your testimony, your representation to us is first that this new electrical work is necessary, it's not an optional item? It's something that you have to do.

LOUIS MILLER: It's a safety issue, yes.

CONSTANTINE ALEXANDER: Safety issue?

LOUIS MILLER: The equipment makes it what, 40 years old.

CONSTANTINE ALEXANDER: It doesn't necessarily make it unsafe.

LOUIS MILLER: But the company has determined that it's a safety issue, they have to replace the equipment.

DAVID SURFACE: The system is not efficient. The safety --

LOUIS MILLER: I was told it was both.

CONSTANTINE ALEXANDER: Let's be clear why you have to do this. Is it to make it more efficient or make it safer?

LOUIS MILLER: I was told it was both.

DAVID SURFACE: Both. So we've had -- we haven't had issues recently, but we've had issues in the past of electrical --

CONSTANTINE ALEXANDER: What kind of issues?

DAVID SURFACE: Outages, short outages.

CONSTANTINE ALEXANDER: I don't hear any safety issues. I'm sorry.

LOUIS MILLER: Shortages.

CONSTANTINE ALEXANDER: Okay.

You're making it work better. There is no other solution then to take away two other parking spaces? Have you explored other possibilities?

DAVID SURFACE: Yeah. I mean, there's no other spot. And these two spots are right where the existing switch is. So it would just be basically a cage and we would extend the cage further.

MAHMOOD FIROUZBAKHT: Are there additional amenities or upgrades that are contemplated for the building that are necessitating this upgrade to the electrical?

DAVID SURFACE: Nope, we have no. We have no amenities, no like gym or anything like that. We have no plans or even space that we want to put.

MAHMOOD FIROUZBAKHT: And correct

me if I'm wrong, but the heat in this building is electric, correct?

DAVID SURFACE: Correct.

MAHMOOD FIROUZBAKHT: So is that part of what's driving the need for more capacity?

DAVID SURFACE: No. I mean, we've always had the same, same number of HVAC units. There's been no additions or subtractions to that. No.

BRENDAN SULLIVAN: You need to replace the equipment, the new equipment is larger?

DAVID SURFACE: Uh-huh.

BRENDAN SULLIVAN: Is there an issue with the new Building Code that you would have to then provide certain distance around the equipment for accessibility and hence the enclosure needs to expand, also? Is that become an issue? Or is that the engineers have decided that you need this new equipment

and it needs to take up so much space?

DAVID SURFACE: Correct.

BRENDAN SULLIVAN: And you may not have gotten into the minutia of exactly why except that you accept it in fact. Because there may very well be a Building Code issue which is relatively new that in certain space around this equipment is required for maintenance.

CONSTANTINE ALEXANDER: That's what I was trying to elicit with my questions, but I haven't gotten the answers that I thought I was going to get.

DAVID SURFACE: I was told there needs to be an enclosure but they didn't specify why.

BRENDAN SULLIVAN: They didn't give you key element why? And I think that's really the reason why.

TAD HEUER: When you said it's the number of parking spaces below or the

utilization of your parking spaces is below your capacity, for the residential units does the parking space come with the unit?

DAVID SURFACE: No.

TAD HEUER: How much does a parking space cost?

DAVID SURFACE: \$150.

TAD HEUER: And what's your rent range for the use of the building?

DAVID SURFACE: Total, we have anything from studios to three-bedrooms. And then the average would be about 210.

TAD HEUER: What's your two-bedroom average?

DAVID SURFACE: About 25. Of the 127, 95 are bedrooms. So most of our apartments are one-person apartment.

TAD HEUER: What's your average one bedroom?

DAVID SURFACE: Right around 2,050.

TAD HEUER: Okay. So one question I

have is how much of the lack of utilization is due to the fact that you're charging that rate for the parking space versus that at some point somebody determined that a hundred -- less than 148 is what you -- you needed 148, somebody at some point, either us or somebody else, said no, you don't need 148 but we have determined that 115 is the right number. Seems like a rather specific number that somebody has designated to give you relief from. They could have said 113 for instance. Somebody thought that 115 spaces was the right number for this building. You may have been able to artificially reduced it by setting a price that not everyone was willing to pay.

DAVID SURFACE: What I'll say is I don't know why it was 115 in the past, but just from working here in the last two years, most of our people don't have cars. They're taking the train to work. They're graduate

students at MIT and Harvard, they walk. So we just -- most of the people that come in don't have a car. We have eight ZipCars that a lot of people use as well.

MAHMOOD FIROUZBAKHT: Do you make the spaces available to the public for rent?

DAVID SURFACE: We have a certain amount, yes, yeah, above ground spots. Not the ones that are underground that are secure that if anyone in the area wants to rent they'd rent.

MAHMOOD FIROUZBAKHT: Will this upgrade make the building more energy efficient?

DAVID SURFACE: Yes.

MAHMOOD FIROUZBAKHT: In what way?

DAVID SURFACE: I don't, I don't -- I know that anything as a company -- I don't know the specifics for this piece of equipment, but as a company, any electrical equipment that we order is required to be

Energy Star efficient. But I don't know the specifics on this exact case.

MAHMOOD FIROUZBAKHT: Word to the wise, you might want to bring more specifics to the hearings. I think it would be helpful to have someone on your team who's got some more information about the specifics of, you know, the mechanics of whatever this upgrade is. That would be helpful to members of the Board. I don't know if Counselor Rafferty will be able to play that part for you. It would probably have to be an engineer.

BRENDAN SULLIVAN: Well, I think that there are more questions than there are specific answers to some of other concerns, that's all. As to, you know, why do we need it? Well, we need it because someone told us. You know what I mean? I understand that -- they're leaving out some of the key elements, that's all, in order for us to formulate a lucid decision.

Anything else at this point?

MAHMOOD FIROUZBAKHT: I guess obviously there's a resident in the crowd here. Are there any issues with respect to impact of this new equipment on the residents who are on the first floor, so can you elaborate on that?

DAVID SURFACE: The actual residential floors don't start until the fourth floor anyway. I don't see it impacting anybody, but the first three levels. The first level above our garage is our office for the staff. And then the two levels above is commercial. And then it goes to residential. So there's no residential floors below the third floor anyway. I don't see it impacting.

MAHMOOD FIROUZBAKHT: In terms of noise or anything like that the residential units would be --

DAVID SURFACE: Fourth floor and

above.

THOMAS SCOTT: I'd like to see a specific plan as to why you need the additional space. Like, there's nothing here that shows me the layout of the equipment and why you need the space. You're just saying we need this space, and I don't think that's sufficient, you know, to, you know, to build your case. I don't understand, you're missing information here.

CONSTANTINE ALEXANDER: This case is reminiscent --

BRENDAN SULLIVAN: We're trying to pull information out rather than --

CONSTANTINE ALEXANDER: This is reminiscent of our telecom cases where they come in and say we've got to do it this way. And we have no way of knowing whether that's true or not. And one second, sir. I echo what Tom said. I am distressed. I heard two different reasons why you need it from two

different people who represent this. And I'm not persuaded by either one of them.

THOMAS SCOTT: There should be a blow-up plan of this room showing us the equipment, the existing equipment, whether it's being removed or not removed and the proposed equipment and why the room needs to be enlarged, you know, before we give up two spaces that were approved by this Board probably years ago, you know. We'd like to have more specifics.

BRENDAN SULLIVAN: Any other questions at this point?

Let me open it to public comments. Is there anybody who would like to speak on the matter?

UNIDENTIFIED MALE: Yeah, that's me. When I first --

BRENDAN SULLIVAN: If you can just give your name.

JAMES FLYNN: James Flynn. When I

first moved into 929 House before he took over for manager. I live on the first floor and I had a plumbing problem on the first floor. Somebody over me was throwing stuff down the toilet and clogged my, my first floor apartment, got flooded out. And I had to call the maintenance guys and everything to fix my apartment and everything. Then I had a couple of leaks. A couple leaks. I think somebody was leaving the windows open over me and when they had rainstorms, there was, like, leaks in my bedroom ceiling. That's all I want to say. That's all I want to say.

BRENDAN SULLIVAN: Okay, thank you.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: There's no other correspondence in the file other than from Historical. The property's located in the Mid-Cambridge Conservation District where exterior alterations are subject to review and approval. After review of the plans of

the staff, a Certificate of Non-Applicability was issued for the scope of the work. See the attached.

And that's the sum and substance of the correspondence. There is a memorandum from Howard Stein Hudson Associates regarding a parking supply and demand assessment of the 929 House, basically stating that it is underutilized for the residents and the occupants of the commercial space at this time.

Let me close public comment and the comment that I hear is that I think the Board is looking for some more specific.

LOUIS MILLER: We'll be happy to provide you with whatever you like about the -- about the equivalent -- we're really focusing on the statutory requirement is the effect of the parking on the building and the neighborhood which I think we've addressed. I think there's more than enough parking.

The elimination of the two spaces will have any effect -- I think the statutory criteria for parking is certainly met. It's hard to argue that it's not de minimus. If the Board would like more information on the electrical equipment, we'd be glad to provide it. Well, we would be glad to provide it if the Board would like it.

In terms of the legal requirements of finding whether there is allowed or not, I am not sure it's relevant, but if you like it, we'd be happy to provide it to you.

BRENDAN SULLIVAN: Well, any time we take away parking that I think that we find that yes, it is relevant.

LOUIS MILLER: Then we're happy to provide it.

TAD HEUER: If you can try today if it was us or the Planning or something, if you can find some background on why 115 was a magic number or non-magic number.

LOUIS MILLER: I'll be happy to look into it. My very strong guess the decision -- I don't have any idea. These people weren't the original developers, I'm almost certain, of the building. So they didn't apply, they bought it subsequent to it being built.

TAD HEUER: Is this a 40-B project?

DAVID SURFACES: I don't believe so. It's 8020.

BRENDAN SULLIVAN: A fellow by the name of Elon Ali Ogli (phonetic) developed this building who lived on Huron Avenue at this time.

LOUIS MILLER: I'll be happy to look into it. I can't promise anything, but I'll be glad to try.

CONSTANTINE ALEXANDER: Check with the Planning Board because Inspectional Services Department has no record of any kind of Zoning relief granted.

LOUIS MILLER: We will. We will.
We asked, but we'll be glad to look into it.

BRENDAN SULLIVAN: Sean, what's the
very earliest date?

SEAN O'GRADY: May 10th.

BRENDAN SULLIVAN: Is that creating
a hardship, May 10th?

LOUIS MILLER: Well, whatever is
convenient for the Board. We'll be happy to
provide you with -- I mean, parking spaces.
We will be happy to provide you with whatever
you need.

BRENDAN SULLIVAN: Let me make a
motion, then, to continue this matter to
allow the Petitioner some additional time to
respond to concerns of the Board and provide
some additional information as requested by
the Board.

On the condition that the petitioner
sign a waiver of the statutory climate for a
hearing of a decision to be rendered thereof.

And that the posting sign, which I would ask instead of it being on the second planter facing west, that it be on the first planter facing the street. Because I don't think it's in the proper location right now.

DAVID SURFACE: Yes, I know exactly. The other one is in good -- because there's two.

BRENDAN SULLIVAN: There's two. The one in the back is fine. The one in the front is facing the wrong way basically. And put it on the first planter so it's easily readable from the street.

That that sign be maintained for a period of 14 days prior to the May 10th hearing, and that it reflect the new date of May 10th and the time of seven p.m. And that all submissions be in by the Monday evening prior to the May 10th by five o'clock.

CONSTANTINE ALEXANDER: One submission that we're looking for as Tom

pointed out, is a better sign of the room.

LOUIS MILLER: We'll be happy to do that.

CONSTANTINE ALEXANDER: Make sure you get it in by five p.m. on Monday before the hearing.

BRENDAN SULLIVAN: All those in favor of continuing the matter until May 10th at seven p.m.

(Show of hands.)

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

* * * * *

(9:50 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

BRENDAN SULLIVAN: The Board will hear case No. 10222, 1678 Mass. Avenue.

Mr. Rafferty, have you seen correspondence in the file?

ATTORNEY JAMES RAFFERTY: I have heard about it, but it wasn't there at four o'clock.

BRENDAN SULLIVAN: Want to take a

minute to read it?

ATTORNEY JAMES RAFFERTY: Thank you.

BRENDAN SULLIVAN: The floor is yours.

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 in Cambridge. I'm appearing this evening on behalf of the Applicant Brandon Woolkalis, W-o-o-l-k-a-l-i-s. Mr. Woolkalis is seated to me right. Mr. Woolkalis has filed an application for a Variance to allow for a fast order food use at this location. Located in a Business A-2 District along a stretch of Mass. Avenue between Harvard Square and Porter Square.

The request is a Variance because in the BA-2 District a fast food uses are not

permitted, but there happens to be quite a few of them in this stretch. Cafes and coffee shops and restaurants are permitted uses. And the reason Mr. Woolkalis has sought this relief is that he intends to operate this establishment very much as a sit-down style environment unlike some locations that have limited seating. If you look at this the floor plan, Mr. Woolkalis envisions a range of seating here, casual, soft seating, table seating, with seating to accommodate as many as?

BRANDON WOOLKALIS: Of up to 40.

ATTORNEY JAMES RAFFERTY: Up to 40 people. By contrast some uses of this type have four or five seats, and it's very much a take-out oriented establishment.

Mr. Woolkalis does operate two other Dunkin' Donuts coffee shops in Cambridge; one on Mass. Ave. near the Arlington line for which he received a Variance for several

years ago. We converted a former gas station to a space that really has become a neighborhood amenity. It's a gathering spot. It's popular with the range of residents in the area. The elderly, who have a housing project across the street, as well as students and business operators frequent it.

This location has an appeal to Mr. Woolkalis because of its close proximity to residential and institutional users. He has had conversations with area residents who live there, who work there, who attend school there. He believes that this would be a good opportunity for him to deliver a service to the neighborhood.

The space itself is rather narrow. It's a unique space in that its length runs from Massachusetts Avenue all the way to Bowdoin Street. And it has had a, it has had a few uses that have not succeeded there.

The most resent was a for a small period of time it was annex of the Harvard Law School Bookstore. But suffice it to say there are certain challenges given the limited frontage. It has less than 25-foot frontage on the Avenue, so many traditional retailers would find it a challenge. I think the thinking here is that this is a location that would very much rely on walk-in trade. There is no parking. The Ordinance doesn't require parking because of the age of the structure, but in this case the reality is that the limited amount of on-street parking suggests that uses here and there, and there are several of them. There's a Starbucks down the street. There's a High Rise Coffee across the street. There's a Simon's Coffee Shop across the street. None of them provide parking, and that is the case for many of the retail establishments on that stretch of Mass. Avenue.

So Mr. Woolkalis is an experienced operator, understands the challenges of deliveries, operational issues around trash and the like, and he takes great pride in the reception that his two stores have received in the communities that they're located. Board members might recall that when he initially came forward with his proposal at 808 Memorial Drive, a resident group came forward and they were concerned about the impact a food use would have in their building. And I'm pleased to report that after being in operation now for over a year, the people that appeared here in objection are actually some of his strongest supporters and customers.

Mr. Woolkalis grew up here, works in the city and takes great pride in his businesses. This would be the third opportunity. And he is here and eager to provide the service.

As I said, the hardship is related to the unique size and dimensions of the space itself, and I think the question is to whether or not this is compatible with surrounding uses. I think it meets that test rather well in terms of his experience in providing gathering spaces. I think there are some voices that suggest that mom and pop operators should be distinguished from chains. To be candid the Ordinance doesn't recognize such a distinction, but this has vestiges of that because Mr. Woolkalis is an owner/operator. He is very hands on involved in the operation of the store, of his two other stores, and that will continue to be the case with this store. So for those reasons we're asking the Board to grant the relief to allow for this use at this location.

CONSTANTINE ALEXANDER:

Mr. Rafferty, given the narrow frontage, store frontage, what about signage? Are you

going to be seeking relief or is your client seeking relief for a Variance in the future for a signage?

ATTORNEY JAMES RAFFERTY: I don't believe any relief is contemplated. I think it -- I think we're familiar with the standards associated with that. But I -- to be candid, we haven't discussed that at length. The application doesn't seek any relief and I did point it out to Mr. Woolkalis when he came to see me, that it would -- the application in its current form would presume that --

CONSTANTINE ALEXANDER: I'm aware of that. Obviously your application doesn't seek signage relief. I'm going to be frank, I don't want to see you six months from now if we grant relief tonight, saying oh, my God, I need to get a bigger sign or a different kind of sign that the Zoning Law allows, and I need a Variance.

BRANDON WOOLKALIS: Right, correct.

CONSTANTINE ALEXANDER: You're not getting a sympathetic vote here.

MAHMOOD FIROUZBAKHT: What is the signage plan?

BRANDON WOOLKALIS: Just a standard Dunkin' Donuts sign. I'll show you actually something -- this is the newer sign that they have out. And it's like a cloud sign which is accepted by the city. The city -- actually, it's one of the ones that they like. That's the store on Memorial Drive.

MAHMOOD FIROUZBAKHT: You're not proposing awnings at this location, correct?

BRANDON WOOLKALIS: No. I think we're probably going to do an awning just because it tones down the exterior of the building. It looks nice. Those are a brown awning, and they're actually very pretty. And we plan to put, like, we're going to

heavily landscape the outside with planters because it's all sidewalk. There's not much, you know, green space. Trying to make like a little oasis in the front with that little small patio with like cafe tables and the wrought iron chairs.

Actually in the picture, you can't see there, we made a patio on the Memorial Drive store; it's in the corner, but it's really nice. It's all bricked out in wrought iron railings and patio tables and people love it. People come to the store and they're so happy that it's in the neighborhood, someplace for some people to go and enjoy and relax and just take a break during the day.

CONSTANTINE ALEXANDER: If you want to put tables on the -- I'm okay -- on the sidewalk would you need relief from the city, some other relief?

ATTORNEY JAMES RAFFERTY: There's a process for sidewalk seating. It involves

the DPW, vote of the City Council, and ultimately the License Commission.

CONSTANTINE ALEXANDER: There will be other checks and balances?

ATTORNEY JAMES RAFFERTY: There is an established protocol, right.

TAD HEUER: Sir, if I'm reading my Zoning map right, you also -- this is -- the front of the building is in Business A-2.

BRANDON WOOLKALIS: Correct.

TAD HEUER: The rear is in Res B or no?

BRANDON WOOLKALIS: I think it's still BA-2.

ATTORNEY JAMES RAFFERTY: I don't know where the line --

TAD HEUER: And I could be wrong. I'm just looking at the not so accurate general map that's provided by the city in the in the back of our Zoning books.

ATTORNEY JAMES RAFFERTY: The

general principle is that it's a hundred feet in from the avenue. So I'm looking at --

TAD HEUER: Right. I'm looking at kind of the dog leg part it have in the back. It would just be -- I mean, it's kind of surprising to me that on Bowdoin Street it won't be something that would have crossed into residential just to capture the residential side of Bowdoin Street.

ATTORNEY JAMES RAFFERTY: It might. It's a good point. Many of the commercial spaces between Hudson and moving towards Martin Run full length, they probably stop after this. But I know the two restaurants, the former Forest Cafe, the others, they all have entrances on the back side.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: You may be correct. There may be a point so --

TAD HEUER: I guess my question is does that mean anything for what we have here

tonight?

ATTORNEY JAMES RAFFERTY: Well, I think it's a Use Variance from beginning to end in that case. It's not permitted in the BA-2. If it was a fast food case, it might be suggested that a Variance was also needed. But the Use Variance D would --

CONSTANTINE ALEXANDER: Sorry, I didn't mean to interrupt you. We have down the street the Greek pizza place was, there were issues about using the rear of the structure because the impact on the residences to the rear.

ATTORNEY JAMES RAFFERTY: Well, that issue had been brought to our attention this evening. We were provided a letter by a neighbor in the rear. And Mr. Woolkalis quickly responded that he's -- he would be happy to abide by a restriction that there would be no deliveries in the rear. There would be no use of the rear as exit. Anything

beyond an emergency egress not unlike the case of the Turkish restaurant on Hampshire Street a few years ago where the neighbors -- there was a porting of the building that extended to the residential district and the concern was the rear door. So a limitation on the use of the door merely for a secondary means of egress emergency, not from employees to hang out and smoke and not for deliveries or any other activities associated with the business.

CONSTANTINE ALEXANDER: Good.

BRENDAN SULLIVAN: My great concern and one that I would make as a condition of the granting would be that the rear of that building not be used as storage and used to supply the other stores that you own.

BRANDON WOOLKALIS: Oh, no.

BRENDAN SULLIVAN: The last thing I would want if I lived on Bowdoin Street would be at five o'clock, six o'clock in the morning

to have, you know --

BRANDON WOOLKALIS: Trucks.

BRENDAN SULLIVAN: -- trucks, people, coming and going, taking material, stock to -- for other stores. The use of that back door would be emergency only.

Everything comes through the front door.

BRANDON WOOLKALIS: Yes.

BRENDAN SULLIVAN: So that would be my concern anyhow.

ATTORNEY JAMES RAFFERTY: That would include trash and deliveries, and we made that known.

BRENDAN SULLIVAN: Correct. Correct. Okay.

TAD HEUER: The other uses, the Starbucks and High Rise, I can't remember how High Rise came to us, but were those also Use Variances or did they -- were they able to get under the -- they would be cafe's? Do you know?

ATTORNEY JAMES RAFFERTY: Well, my personal knowledge of Starbucks because I represented the applicant in that case. And we did obtain a Variance for there. I'm not sure of the High Rise. It's a recent introduction.

CONSTANTINE ALEXANDER: We didn't give any relief -- it may have fallen under the relief for Lesley to build the building in the first place. You represented them. There was a point where we thought we needed, High Rise needed relief but it was concluded by Inspectional Services that no relief was necessary. That came as a matter of right just so you know.

TAD HEUER: Okay.

I wanted to clarify that we have granted a Use Variance on this block for a very similar establishment in the Starbucks. Or this -- not this spot but this or two block vicinity.

ATTORNEY JAMES RAFFERTY: Right.
Two block, one block. And I believe recently
did the pizza operator get a Variance?

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: He did.
It's also now in court. It's being appealed.

BRENDAN SULLIVAN: Tom, anything at
this point?

THOMAS SCOTT: Just you say that the
majority of the customers will be walking.
There's no parking obviously.

BRANDON WOOLKALIS: Correct.

THOMAS SCOTT: Are you concerned
about, you know, people trying to pull over
or double park and how are you going to police
that I guess?

BRANDON WOOLKALIS: I guess to bring
it right to point is a big concern with my
Mass. Ave. North store was of course a traffic
issue. And, you know, I remember we had a
detail there for three months or so. And

there was no issue. And that was a concern of the neighbors. Like are people going to double park on Mass. Ave. and shut the lane down? It just doesn't happen there. In this site, I mean, you can go out there at seven in the morning, you can go out there at noontime or nine o'clock at night, and at nine o'clock at night I was shocked. There are people by the droves walking up and down the sidewalks. And it's primarily -- what I see -- and the reason why we're building it out like this, I mean, to have a store with 40 chairs is a huge, huge endeavor. I mean that's a lot of space to have people sit down. And that's what we're looking for. We want people to come in. We're going to have WI-FI. We want people to come in. We want people to relax, do business, do their homework, do their schoolwork or just hang out and surf the internet. And that's what we want with this feel. And at the Memorial

Drive store we did something similar, we went to soft seating. So we have nice leather couches and marble tables and arm chairs. So, again, what I'm looking for is a cafe even more so than what we did in North Cambridge, because we have no parking, so we have to make money from people walking by that want to come in enjoy our services, enjoy our coffee, and just enjoy the day. That's why I'd love to do the patio in front as well to get people to come sit down and be able to watch people walk by. But, I mean, the inside with the 40 seats, and what I'm planning to do also, is have artwork on the walls, so it's just a real homey feeling. And it's just totally different than most of the Dunkin' Donuts. And I know some people in the neighborhood were talking about the Porter Square store, and that's not me. That's a franchisee. He's got lots of stores. He doesn't care. And it is, it's

dirty. And I'm ashamed that he runs it. And actually Dunkin' Donuts has been talking to him about it. But my stores are immaculate. And if you go to, you know, Mass. Ave. North or Memorial Drive, you'll see a spotless, you know, spotless store.

CONSTANTINE ALEXANDER: What would the menu be like in this -- given you want a cafe, are you going to have a typical Dunkin' Donuts menu or not?

ATTORNEY JAMES RAFFERTY: Only croissants.

CONSTANTINE ALEXANDER: That's Cambridge why not?

BRANDON WOOLKALIS: We'll have pretty much the same menu that my Mass. Ave. store has. We're trying to come out with a new line of afternoon sandwiches. Turkey and ham sandwiches. And actually a lot of them have been rolled out already. There's also about bringing soups in. And I've been

a big advocate of that. I remember years ago Dunkin' had soups before -- way before I was involved, as a child, and they had soups and salads. And that's what I'd like to bring back. I've also pushed -- and we've been allowed to get yogurt and stuff like that. A lot of healthier options we're going to. We have, you know, egg white sandwiches and healthy flat breads.

CONSTANTINE ALEXANDER: Enough, enough. But what about the impact on the neighborhood in terms of odors, cooking odors, safety? I mean, you're talking about doing a lot more internally in the store that could have an impact on the neighborhood.

BRANDON WOOLKALIS: Yeah. Everything, all the doughnuts will be fried off site. So that's the biggest concern with like a donut shop is the smell from the Fryolators. And they're all cooked off site so you won't smell that. We do cook our

bagels and muffins on-site fresh. But we use an electric oven so there's no venting of the smells into the neighborhood. That was a big concern actually on Memorial Drive. We had a lot of people worried about -- they lived right above, and they were worried, you know, it's going to smell. And they're very happy it doesn't.

CONSTANTINE ALEXANDER: Does your menu and your food offering here the same as on Memorial Drive? I'm hearing different.

BRANDON WOOLKALIS: Yes. The same to start with but we're pushing for more of a, you know, yogurt and healthier items. Because you realize that's a neighborhood that wants a little bit different. You know, a little bit more healthy, salads, yogurts, etcetera. And that's what we're trying to push into that field. And you have to get approval from Dunkin', and I've done it before. You just have to keep pushing back

on them and it works in the end.

ATTORNEY JAMES RAFFERTY: You know, think it's worth noting that the relief is tied to the fast food aspect of this. So cafes and restaurants, many of which may have the issues that you've been discussing, are a permitted use. So you could have a restaurant as you have on that block also. And if they weren't attentive to issues around odors and things, that that's all present. I think that the relief here is requested to fast food is put in a separate category because -- and we paint a broad brush with fast food, but different locations -- fast food is seen as harmful or I think regulated because how portable is it? Do people leave? Do people drop wrappers? Is it in and out? Is it dashing? Does it cause traffic problems? I think the attempt here to mitigate it and make it less fast food, and the more seating and the more time

people -- the more percentage of consumers or patrons that remain on premises the less fast food it becomes. The test in the Ordinance is more than 20 percent. I never really had an auditor come in and test that, it's a yardstick that I think frankly is hard to measure, but admittedly in the case with Dunkin' Donuts, it probably exceeds 20 percent. I think what Mr. Woolkalis is trying to demonstrate is the whole orientation of this store is going to skew it less towards fast food and more towards a sit-down style cafe which is a permitted use.

BRENDAN SULLIVAN: Which would be somewhat in sync with the neighborhood.

BRANDON WOOLKALIS: Exactly. And that's the way we want to keep the building. Basically there's not much going to be much done with the building. Just paint it like probably that tan color that you saw on the Memorial Drive store with the brown awning.

Just make it blend in and make it nice and; look pretty just like I've done.

BRENDAN SULLIVAN: Well, and again, it's one of the requirements is that the Planning Board has commented on what the frontage is going to look like. And that makes me a little bit nervous because Dunkin' Donuts wants to distinguish themselves -- I mean, you can actually even see them from the space shuttle, and that's not exactly what I want to see when I come up Mass. Ave.

BRANDON WOOLKALIS: That's correct.

BRENDAN SULLIVAN: You know, blinking neon lights type of thing.

Anyhow, I'll focus on that in a minute.

Mahmood, any questions at this point?

MAHMOOD FIROUZBAKHT: Could you speak to the need for this proposed use in this neighborhood?

BRANDON WOOLKALIS: As you know, it's a big investment for me. I mean, it's

really scrapping up everything I have to go forward with this. So, just on my own personal thing I know there's the need because I wouldn't put all that money on the line. But just by going out there and I mean going out there really and just standing on the sidewalk -- and I actually, you know, a key part of our business as you know morning, afternoon. I was shocked when I stood on that sidewalk at nine o'clock at night and there was just a flurry of people. What I didn't realize is, you know, people going to late classes and students and stuff. So I mean. I really think we're just -- it's going to be a really great store. And it's going to be a great -- the reason it's also a need is, you know, everyone has their own choices. You know, you can choose to go where you want to shop for your groceries. You can choose where you want to go to dinner. Some people like Starbucks. Some people

like Dunkin' Donuts. And it's a different flavor, a different taste. It's also, you know, the pricing is a little bit better for students and people who are working class. So that's where I see the need. And also, not just a need, but we're going to bring 30 jobs to the neighborhood, 30 plus. And that's people -- it's a bad economy and it's something to help the neighborhood. And that's what we're trying to do is, not only are we providing a need -- fulfilling a need in the neighborhood, we're also giving back by giving jobs. And I mean, my other stores we always do charitable contributions. We sponsor Little League, City Sprouts. There's a bunch of things we do because we always want to give back. I've done ice cream socials. And it's what I like to do. I want my face to be associated with that store and people see me.

BRENDAN SULLIVAN: This will be the

west division now. Just as a little side commentary.

CONSTANTINE ALEXANDER: What would your hours of operation be?

BRANDON WOOLKALIS: We're looking for probably, you know, five a.m. to maybe ten or eleven o'clock at night. But usually the Licensing kind of gives me a better idea where they want to go. But that's kind of where we'd like to be, you know.

CONSTANTINE ALEXANDER: How late is Starbucks open till?

BRANDON WOOLKALIS: They're open pretty late. I think they're open passed eleven. But I don't know what time they open in the morning. I've only been there a few times. They have a good breakfast sandwich. Can't have mine all the time.

BRENDAN SULLIVAN: Anything else, Mahmood? No?

Tad.

TAD HEUER: So in the application it says you're using 220 square feet of the 33?

BRANDON WOOLKALIS: Correct.

TAD HEUER: Where is the other 11? Is that in the rear?

BRANDON WOOLKALIS: 2200 and the 33.

TAD HEUER: Did I read that right?

BRENDAN SULLIVAN: Correct.

ATTORNEY JAMES RAFFERTY: The basement?

BRANDON WOOLKALIS: The basement maybe. That's what it is. Because upstairs actually measures 2150. The architect was in there and actually measured it out.

TAD HEUER: All right. You'll be utilizing the entire building, but your customer utilization space is just the 22 on the top floor?

BRANDON WOOLKALIS: Just the top floor. And that's why we've got a bunch of seating.

TAD HEUER: Right. And as this is a Use Variance, this is better asked of the landlord than of you I suppose, but one thing that we would look at is unusually shaped building is the landlord had difficulty renting this to someone who could use it as a by-right space. For instance, renting it to a bookstore or a co-op.

BRANDON WOOLKALIS: He had it with a professional broker for a quite a while and didn't get any responses. That's when I picked up on it. He actually had his own sign on it and we talked about it. It is a difficult site. It was very narrow. It was difficult for me to do a floor plan. I mean, we're looking at it and we're, like, wow, we've got to stretch the kitchen area and office area out, and we've got to utilize the basement for a lot of storage which we don't like to because the employees have to bring stuff up from the basement. But what it did

help for us is it made a huge space for us to put seating in.

CONSTANTINE ALEXANDER:

Mr. Rafferty, I have a question for you or maybe you don't know the answer or not. In certain of the business districts, fast food establishment is permitted with a Special Permit. Here it's prohibited. Why did the City Council draw the distinction between this type of business district and others?

ATTORNEY JAMES RAFFERTY: It is a good question. I don't know. You're correct. In the business districts there's Business A, Business A-1, Business A-2, and Business B. I think Business A-2 may be the only business district where it isn't permitted.

I think our views on fast food are somewhat antiquated frankly. It hasn't been looked at in quite a while, and bakeries are now often considered fast food. I could

never understand -- I represented Starbucks and got a Special Permit in Harvard Square which Ms. Gifford appealed with the defense fund. We had to litigate that in Superior Court, and along came Peet's Coffee and they didn't have to get a Special Permit. And I didn't understand why. I was told because they're a coffee retailer and Starbucks is -- I think those distinctions get blurred a bit. And I don't have an answer for why in this district. But I think it's a legitimate point of land use policy that's worth examination as to, you know, is this the case? Because some suggest that it has, you know, fast food is always associated with chains. But then when one off fast food, and a lot of entrepreneurs come along, they're embraced more readily.

CONSTANTINE ALEXANDER: Just as someone, someone, the City Council thought that there are certain business districts

where they don't want to have fast food establishments, this district is one of them.

ATTORNEY JAMES RAFFERTY: No, I think that's fair. I think that -- why that was the case and how recently it's been examined. I noticed some Councillors have weighed in support of this and other City Councillors haven't. So I, you know --

BRENDAN SULLIVAN: I think sometimes they do that, exclude an area or define an area as no, just for review purposes I would suspect.

CONSTANTINE ALEXANDER: Well, the review purposes are through the Special Permit; right?

BRENDAN SULLIVAN: Right. So that it would at least have a -- as opposed to an as-of-right that each case be handled individually and be subject to review.

CONSTANTINE ALEXANDER: I agree with it, but that's -- those are the districts

where you have Special Permit review. Here they said no.

BRENDAN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: Can't even do it by Special Permit.

BRENDAN SULLIVAN: Well, you're trying to figure out the wisdom of the City Council.

CONSTANTINE ALEXANDER: You're right.

BRENDAN SULLIVAN: Good luck.

ATTORNEY JAMES RAFFERTY: I've heard it said in down-zoning efforts as recently as this past month and a client of mine's property was being down-zoned. I was told by one of the advocates of the down-zoning petition. Don't worry, we'll down-zone it and then we'll work with you to get a Variance. And I tried to explain the shortcoming of such an approach and why they should come with me on a Thursday night if

they think it is something that's done easy.

I do think that sentiment has existed for a while. That you know what, we'd rather control it through a Variance without -- as opposed to a Special Permit.

BRENDAN SULLIVAN: Just for the Board's edification, the previous tenant in this space which was the Harvard University Employee's Credit Union was also subject to a Variance, which the Board granted. And having sat on that, I think one of the reasons was that it was a very difficult space to rent. And that what was happening along there, the places boutique places would take this small space, would open and close, open and close, open and close, and so it was sort of a large turn over. They thought that the credit union was going to be there for a while. I thought it was only going to be there until the law school built the building basically. But anyhow it is somewhat of a

difficult space.

CONSTANTINE ALEXANDER: Yes, I agree with that. I acknowledge that.

ATTORNEY JAMES RAFFERTY: It might be interesting to note the use on the second floor of the abutting building is a permitted use in the Business A-2 District. One might suggest it's not any more compatible with the residential use than the cafe.

TAD HEUER: You don't frequent that?

ATTORNEY JAMES RAFFERTY: No.

CONSTANTINE ALEXANDER: The tattoo parlor?

ATTORNEY JAMES RAFFERTY: One could have a tattoo parlor on the block but not a Dunkin' Donuts.

BRENDAN SULLIVAN: Okay. Let me open it to public comments.

Is there anybody here who would like to speak on the matter of 1678 Mass. Avenue?
Yes.

RON AXELROD: Speak in favor or against?

BRENDAN SULLIVAN: Whatever, just general comment. If you would, give your name and please give your address.

RAN AXELROD: Hi. My name is Ron Axelrod. I live at 26 Shepard Street. I've lived there 35 years. It's just around the corner from this establishment. I'm here to speak against this establishment. The notice said it was to be a coffee shop and not a fast food restaurant. And so I'm sorry that it came across that way because we really didn't know that was happening. It has been vacant only about two months. The Harvard Coop moved out of there in January, January 1st. So there hasn't been a long vacancy period. In fact, the owner of the building had asked neighbors of what they saw as interest of what might be in that space. And many of us sent different comments to them.

Mostly more on a service basis in terms of shops that would be more applicable. Right now we have within 200 feet, less than a two-minute walk are three coffee shops and eight restaurants. I can't say that we're underserved in terms of food service facilities. There are -- concerning the parking, there is very little double parking available on Mass. Ave. This is an establishment that is going to have its food cooked off site, bring it along Mass. Ave., move it in and also bring all its garbage out on Mass. Ave. The loading zones are already allocated one to Evergood which has its -- it's our only real food store on the avenue between the law school and Porter Square, and we have been working on a master plan for Mass. Ave., a streetscape master plan that the city has funded, and part of that process -- and I sit on the steering committee with Fred Meyer representing

Aggassiz, and I represent Neighborhood 9. And that steering committee consists of Community Development Department, three representatives, the Transportation Department, and the DPW. And the idea is to try to balance the parking and the loading zones along Mass. Ave. so that we don't destroy the businesses and allow them some opportunity to have parking along the way.

This business will obviously impact traffic along the avenue because people come to Dunkin' Donuts to buy a coffee and a donut and then move on. We have more than enough restaurants and coffee shops to serve our neighborhood.

One of the things that I also wanted to mention was that the continuity along the avenue is most important for the businesses so that they're not disrupted by the traffic that's gonna happen with the blockage that's gonna happen for trucks delivering and taking

out food, trash from this restaurant or this fast food operation. And I think it would be damaging to the other businesses along the avenue. Our master plan, and we're working with the businesses and we've done a survey to try to balance out the curbside accessibility for cars, for parking, for loading, and to work with the businesses. This would not help. This would only hurt those adjoining businesses because of that type of loading and unloading that would exacerbate parking and the loading situation.

So, I appreciate the person's interest in coming to the neighborhood and trying to serve us, but I have to say we've got quite a few restaurants and we're very well satisfied with the restaurants that we have and with the food service facilities that we have in terms of the coffee shops. So I would oppose this.

CONSTANTINE ALEXANDER:

Mr. Axelrod, if my memory is correct you were a supporter of the Lesley dorm across the street.

RON AXELROD: I was.

CONSTANTINE ALEXANDER: And the reason you supported it was because of the retail space created along Mass. Ave.

RON AXELROD: That's correct.

CONSTANTINE ALEXANDER: And one of the uses as it turns out is a fast food enterprise; namely, High Rise Bakery. They didn't need relief from us.

RON AXELROD: Yes.

CONSTANTINE ALEXANDER: Are you rethinking your support of --

RON AXELROD: No, I'm not rethinking my support. We supported it because we wanted to have a continuity of retail along the avenue. One of the advantages of having a High Rise at that location is it's a loading

zone in front of it. There's a loading zone also in front and on the side of Starbucks. Those places and even further down over at Tommy's and at our 7/Eleven. And so those places are served by those loading zones, not only for their loading but also for people as you know, we can park 15 minutes in a loading zone. So those conditions work well. There is no opportunity for a loading zone there in front of -- because it's gonna take away a significant amount of parking spaces. And I think what we did in support of Lesley, my friend here was supportive of that, too, was very beneficial to the neighborhood. The people have enjoyed having that continuity of space, and it's been very helpful to us.

CONSTANTINE ALEXANDER: Okay, thank you.

BRENDAN SULLIVAN: All right, thank you. Anybody else who wishes to speak? Somebody? Yes, come forward. Just your

name and address for the record.

CAROL WEINHAUS: My name is Carol Weinhaus. I live at 64 Oxford Street and I thank you for the opportunity to talk tonight.

I'm coming here not only as a neighbor that's lived in the Aggassiz neighborhood since 1978 and Cambridge since 1969. In addition, I'm a very active member of the Aggassiz Neighborhood Council and I'm actively involved in setting the agenda for each meeting. And I've been a member of the Mass. Ave. Master Plan for improvements along Mass. Ave. which is Ron. I've also been part of the three neighborhood groups that produced the map when people shopping along Mass. Ave. and, you know, this has been ongoing work for over ten years of the neighborhood actively trying to have a wonderful retail stretch along the avenue. I've also been part of ten years of

negotiations with Harvard University and Lesley University and we -- a lot of us in the neighborhood get along with the universities and have a wonderful relationship the.

You've seen me here for the Lesley University. We've actually asked for more housing for the students, because we felt that would add to the neighborhood. So part of what I would like to say about what Ron said and, sir, I don't know your name, but your question about the loading zone, is that stretch had already had loading zones because of the teller machine. And so even before Lesley thought of the dorm, the neighborhood had as part of a ten year part of group planning, asking for the teller machines and retaining the loading zones and we moved the bus thing. So it wasn't just, you know, a kind of this building is going up, it's been part of a very long process of looking at the avenue, its loading zones, and how things get

impacted.

One of the things I wanted to say is that I found out at 6:15 about this. So I can tell you that without Craig Kelley's e-mail to some of the neighbors, I can tell you that nobody that I know in Aggassiz even knew about this happening. That the listing does not say fast food. It says coffee shop. You know, it doesn't say Dunkin' Donuts. This was the listing from the BZA website of the agenda. So there's no way that anybody in the neighborhood would know. So although I'm personally against this, and this is nothing against you as a person. And, you know, it has to do with the needs of the neighborhood rather than, you know, you personally. I also believe that the neighborhood was not given any notification. And I think that certainly I know people in the neighborhood would want to know and talk about this at minimum. But based on my years

of experience working on these issues, a lot of us have been actively promoting local businesses. And I would say it's wonderful that you, you personally want Dunkin' Donuts there to have yogurt, but you said you would have to pressure the company. It's not like the company is already doing this. So that when we've been asking for things in the neighborhood, we're trying to get more services, more things, that actually are not just become a restaurant row. And as Ron said, there's all kinds of other issues we've been looking at.

The other thing I would tell you is that in addition to the one's Ron mentioned, there's also the Oxford Spa that does food and has coffee. There are a lot of places that serve meals that go beyond, you know, just the coffee shop. Plus Urban Coffee has gone in and up by Porter Square.

Let me just see if there's anything

else. Basically I really would request that you didn't grant the Variance. And, you know, I didn't come very much prepared because this was such brief notice.

CONSTANTINE ALEXANDER: Thank you.

CAROL WEINHAUS: Thank you all.

BRENDAN SULLIVAN: Thank you.

Anybody else like to speak on the matter?
Yes.

CHARLOTTE MOORE: I'm Charlotte Moore. I live at Nine Rutland Street. My house -- I've been in it for 35 years. It backs on to the Montrose spot. So we've become pretty friendly with the owners of the Montrose Spa.

I did want to respond to your question about why there's no fast food in our particular neighborhood. And I think it's frankly because the whole trust of everything we've been trying to do in this neighborhood is first of all, careful planning as Ron

Axelrod pointed out, but also the buy local. Cambridge first -- Fred Kramer who started that, who started that is also in our neighborhood. And we've been thinking about this for a very long time for the planning for Neighborhood 9 which I sat in all those meetings, and when the neighborhood was surveyed, the neighborhood was insistent that we have local, very local and individual mom and pop shops rather than franchises of one sort or another.

I did want to respond. I walk my dog everyday and I end up in front of the High Rise everyday around the same time, four o'clock, five o'clock in the afternoon, and it isn't busy. It does serve food but it is not busy and I don't know why. Starbucks is. Starbucks is packed. Simon's is packed. Simon's is a wonderful place where you can sit and relax. Some of these places are empty. The New Bourbon is not -- has not caught on.

And that's actually in a university building. So, I just wonder why we have to have yet another -- add another Dunkin' Donuts. There's one in the subway station in Harvard Square. There's another one on the river in Harvard Square. There is the one in Porter Square. I don't know whether we need another one frankly.

BRENDAN SULLIVAN: Okay.

CHARLOTTE MOORE: The other thing I was curious about is how big you plan to make this patio? Because there's this little restaurant, the Lebanese restaurant. They only have two tables. So it's not where a lot of people can hang.

BRANDON WOOLKALIS: Yeah, unfortunately the sidewalk's not that wide -- I'm sorry, go ahead.

CHARLOTTE MOORE: The sidewalk is not that wide and your building is, your space is very narrow. So you're not going to have

much room. So it's not going to be like up the street, was it the Temple Bar or something like that.

CONSTANTINE ALEXANDER: Okay, thank you very much.

BRENDAN SULLIVAN: Anybody else?

BHUPESH PATEL: I'm Bhupesh Patel, and I'm representing approximately 18 neighbors. We just wrote a letter --

BRENDAN SULLIVAN: If you could just give your address for the record.

BHUPESH PATEL: The address is Three Bowdoin Street.

CONSTANTINE ALEXANDER: Mr. Patel, you're giving us this letter for the first time right now?

BHUPESH PATEL: It is, yeah.

CONSTANTINE ALEXANDER: You did this the same time with regard to the Greek pizza place and we weren't pleased with it then.

BHUPESH PATEL: To be honest with you --

CONSTANTINE ALEXANDER: Wait a minute. Let me finish. It's not fair to the Petitioner or to this Board to give us these long letters at the time of the hearing and asking us to react or asking the Petitioner to react. I'm not very happy with it. I'm not even going to read the letter. You can hand it out, but that's my view. I'm sorry.

BHUPESH PATEL: Yeah. Nobody actually knew it was, again, a Dunkin' Donuts. And that's mainly the reason why letter is here today rather than earlier. It's the exact same letter submitted in the past for the other business. There's no difference in the letter relatively speaking. So it's the same exact concerns basically.

I got a lot of e-mails today but they're basically saying all the same thing. We

didn't know this was a Dunkin' Donuts. We'd like to be able to speak to the owner about it. What I did was basically try to point to the fact that we've already addressed all these issues. If it's going to make it one letter and focus on what we've already addressed as an agreement between all the neighbors, so basically we tried to keep the letter to the six conditions that were with the other retailer that was proposing what is fast food on the street. And they all have to do with restrictions of the back door use. And basically the idea is not to use the back door for anything except for emergency egress. So the letter denotes that.

A lot of individuals wanted to write a separate letter concerning specifically the Dunkin' Donuts and how this restaurant would be used as a Dunkin' Donuts as opposed to another vendor in the space. I said we would submit this letter as the same letter as

before to be consistent, and that even though it's short notice, if the committee feels that there's not enough time for it, that they would continue it to be actually voice something beyond that. It's relative to something specifically Dunkin' Donuts. Everyone was strongly opposed mainly because they just assumed there was going to be a lot of impact relative to the back of the establishment as well as the front of the establishment. And this letter again is only focusing on the back of it.

Simply the six uses are very basic. Basically the most frequent thing to the least frequent thing. The most frequent thing, meaning employees loitering at the back of the building on an hourly basis going to truck deliveries to trash pick up to servicing of equipment in the back to changing of equipment which could be once every six months. That's the general sense

of what that letter basically says.

Everyone was more focussed on the fact that it was fast food and the fact that that impact would be more aggressive than what the restaurants are. I didn't get into all that in the letter basically because it was something new. But relatively speaking that letter basically just points out to the fact that the four restaurants that are there already which are the Rafiki West Side Lounge and Temple Bar and Wrapro which is all the way over next to Starbucks and the liquor store, basically don't abide by what the neighborhood has asked them to do. Meaning there's basically mostly truck deliveries in the back. Trash is still in the back. Rafiki had actually said they would put the trash in totes and taken out. They'd wheel it out so it could be picked up in the front. That's never happened. Now, granted all these conditions were based on them

submitting to the Licensing and it wasn't to a hearing relative to dealing with Variance issues. So the neighborhood has those concerns as issues that have never been met, but they weren't under the conditions of the Variance. So I clarified to them that that's not something that we're necessarily addressing as an apples to apples relationship without having the ability to regulate it relevant to the last time. Even with that in mind and the fact that it is a coffee shop, but everyone realizes they just have a right to be a coffee shop just as much as the other two vendors that are in the neighborhood as a coffee shop. They still feel like the impact would be hard to control relative to the amount of uses that would happen in the space.

So we actually focussed on the fast food word today basically because they wanted to define what fast food was. We've pulled it

down to the fact that basically fast food to them has to do with the fact that there's quick pick up. And if it's quick pick up, it's basically people that want to stop for five or 15 minutes and get in on out of their car. That's the issue that a lot of them have. And that's what we have with Starbucks, people coming in in the morning and basically occupying the loading zones so they can't get used correctly, and that's why people end up coming in in the back. Because after a while they realize the loading zones aren't accessible because people are parking there to do quick pick up so the truck deliveries happening in the back. That's their biggest issue. This is basically something that's going to be categorized as fast food and there will be a lot of quick pick up. And then relatively speaking if that was licensed in this space, they would basically be adding on to the nightmare that we're

dealing with when it comes to parking. So that's what I got them to focus on, but to put that in a letter and get everybody to agree upon it today would be impossible to do and that's why we wrote the same letter that we had before.

I would actually ask that it get continued to allow this person Brandon to meet with the neighborhood and walk through what he's going to do with the space and resolve how he's gonna help resolve an issue that we haven't been able to resolve. I mean, the city themselves have tried to do it by adding a loading zone, but that's from dealing with the fact that the Starbucks has a lot of people, approximately 45 to 55 cars in an hour and a half in the peak period they're basically calling roughly 7:45 to 8:45. Only that hour that they have excessive cars that it's backed up on in corner and people are parking all over.

BRENDAN SULLIVAN: Well, I think even the dry cleaners has that same problem where people, you know, drop off and there's all that double parking. I mean, the whole neighborhood is inundated because it abuts that commercial district. And the very nature of that commercial district and abutting it, you get the repercussions of it which is the -- and again, noticing the cleaners, it's the same thing constantly all day long. If this was the Brandon Coffee --

TAD HEUER: Brandon's Beans Coffee Shop.

BRENDAN SULLIVAN: Right. Would it be any different?

BHUPESH PATEL: What do you mean, as far as pick up and drop --

BRENDAN SULLIVAN: Well, somehow I get the sense that this is being tainted by the Dunkin' Donuts marker.

BHUPESH PATEL: No. I think it's

being tainted more by the fact that they figured it was going to be a lot of pick up and drop off. It is known as cafe coffee shops. They thought it was mostly cafe.

TAD HEUER: Well, let's say it were true. Let's say it was a cafe. They need to get food into the building so people can purchase it and eat it; right?

BHUPESH PATEL: Sure.

DAVID SURFACES: I mean, if it were a cafe allowed by right, someone would have to drive a truck up and bring stuff into the front door for sale; right? Like, what -- I'm trying to -- I kind of see where you're going, but I also am have difficulty because my sense is that Dunkin' Donuts, and I guess I'll direct this to the petitioner as -- since we've been discussing loading zones, can you describe how frequently things are delivered and at what times they're delivered so that we're all on the same page?

And then I'll continue.

BRANDON WOOLKALIS: Myself and Mr. Patel were talking earlier about the concerns you guys had about his neighbors, all the concerns about the back door. And I have no problem making that a no zone. You know, I don't allow my employees to smoke anyways. So, we can use that as a fire exit only. There will be no deliveries by the back door. And how we get our deliveries, we generally have one truck a week that brings in all of our coffee beans, our paper wares, our cups. And that comes, you know, we can schedule that -- it's a very flexible system. That was a big concern at my Mass. Ave. store, and we haven't any complaints about it. It comes at like five o'clock in the morning. It pulls right in front and everything's wheeled everything through the front door. And, you know, do they damage things in my store? Yeah, I have to re-wallpaper the

walls, but you know what, my neighbors are happy. And that's the same thing I'll do for you guys. Is I'll pull right in front, have them unload that once a week.

And then the doughnuts -- the only thing we get everyday is we get a delivery of doughnuts. And that usually happens the half hour before the store opens, and that's just a little van and it's in one cart of doughnuts. It's literally three minutes. He'll open the front door, he'll put it inside, lock the door, and leave. And he'll be right in front and we won't use the back door at all. I'll promise that he can put it in writing and whatever.

TAD HEUER: And so you've got once a week you've got a delivery of dry goods.

BRANDON WOOLKALIS: The delivery truck, yeah, with beans and paper goods.

TAD HEUER: Right. And how long does he take or she take to --

BRANDON WOOLKALIS: There's usually two people that work the truck. And they're usually in and out in 20 minutes.

TAD HEUER: Okay. And then you have the doughnut truck that shows up every morning before opening; right?

BRANDON WOOLKALIS: That's just a little van though, yeah, that's every morning.

TAD HEUER: What about the, you know, the egg whites for your egg white flat bread sandwiches?

BRANDON WOOLKALIS: That comes in the big truck.

TAD HEUER: That comes in the big truck?

BRANDON WOOLKALIS: Yeah.

TAD HEUER: So you've got eight deliveries a week?

BRANDON WOOLKALIS: Correct.

TAD HEUER: A daily and then a once

a week?

BRANDON WOOLKALIS: Yeah.

MAHMOOD FIROUZBAKHT: What about trash?

BRANDON WOOLKALIS: Trash, we don't have a spot for a dumpster in the back, so we wouldn't be having it in the back. My goal is to -- everyone's -- my initial thoughts were to put it outside every -- we're going to have like a wheelie, like the recycle bins we have in Cambridge.

BHUPESH PATEL: (Inaudible).

BRANDON WOOLKALIS: Yeah, exactly. I was going to put that in back. But I've heard some of the neighbors here, they didn't want it outside. And I understand that, because, you know, they get to look at it from their house. So we'll put it out in front by Mass. Ave. and they can pick it up from there. And you can write that as a condition of the Variance as well. And what I'd like to do is

maybe find someone in the neighborhood who has a dumpster and share their dumpster, help them pay for their dumpster. And a lot of times it works out for both of us. It's a little bit cheaper for everybody. I actually share a dumpster with the Mobil Station on Memorial Drive. It works out great for us. If that doesn't work, I'll put the tote in front. Because I'd rather not have a tote on Mass. Ave. at all. You know, they're kind of unsightly. But I'd like to get, you know, share a dumpster with somebody. And I was even thinking maybe the Evergood Market if they had -- I saw they had two dumpsters in the back, and if they have room, I'd love to share the cost with them. Help them out and help me out and it's clean. They seem nice clean.

MAHMOOD FIROUZBAKHT: So that would be on a daily basis, the trash pick up?

BRANDON WOOLKALIS: If it was a tote

in front, it would be on daily basis, yeah, or every other day probably.

MAHMOOD FIROUZBAKHT: When would that happen?

BRANDON WOOLKALIS: I would have them pick it up in the morning before people get out there. Probably like a five a.m. pick up. That way no one's bothered by it. You know, there's no truck in the way and stuff like that. Plus we want to bring the barrel in before we open so it's not this gross thing sitting outside the store in the morning, you know.

TAD HEUER: So I guess my question having heard that, if this were Brandon's Beans local purveyor of fine durapica (sic), he would need stuff showing up once a week to bring in his plates. And he was a cafe coffee shop, local proprietor, he'd need someone showing up once a week to give him his cups and plates. He would need someone to show up

once a day to bring him his food. Isn't that essentially -- I mean, when we say, you know, when we heard it was a cafe copy shop we were okay, and then we found out it was fast food, so we weren't. Isn't that putting form before substance to some extent?

BHUPESH PATEL: Well, that would be easy to say. I work in the retail market, and you know, you take on -- well, here's a good example, the Zoning for Assembly Square. I was part of that Zoning for almost 15 years. They zoned what is basically kind of a mixed use back there. Staples wanted to come in, they pretty much got permitted for a space that wasn't even existing yet within a year. But it took the whole 15 years. Now they're both vendors and they both can't really be discriminated against, but they knew -- the people knew the general uses of Ikea. Well, you know, Jack's Coffee Shop compared to Dunkin' Donuts have the same relationship.

People have a sense of use of what they're pick up with traffic and parking but we lay out something new relative to the Dunkin' Donuts in Union Square. Maybe you redesign the Union Square because of the amount of 15 minute pick up at Dunkin' Donuts. Granted it's not a big space, it's a big -- it's the Ikea, not the Staples. So that's what people are reacting to. And it was upon talking to everybody that it was clear, it wasn't the fact that it was Dunkin' Donuts. It was the fact that it was a fast food and the impact that it had on a situation that we're already dealing with, and we've been dealing with this for almost ten years, and the city has yet to resolve this. We have to share the spaces between two our parking spots, one hour parking spots. 30 minute parking spots. We're not going to have any less than that. And on top of that we have bus loading zones. And I helped lobby the MBTA to get

more bus areas on Mass. Ave. So we were on the other side of the fence with that. At the same token as a neighbor, I wanted to have 15 minute parking spots. But we don't have that. It creates too much of a degradation with the parking. We don't have that much real estate. So the city is also more -- as far as traffic and parking is concerned, I think they're more concerned about the fast food being something that restricts the kind of parking that happens on Mass. Ave. because it's so limited on what you can and cannot do relative to parking up and down the street with the retail that's existing already. And less to do with the fact that saying fast food is not allowed, allows it to be a restrictive process to case by case, a lot of people review what's being proposed.

BRENDAN SULLIVAN: Here's an observation. On the corner of Norris Street and Mass. Avenue, everybody loves Verna's

Doughnuts, and the entire neighborhood turned out against that conversion to a Dunkin' Donuts. Same operation.

BHUPESH PATEL: Right. And granted, I frequent his Dunkin' Donuts all the time.

BRANDON WOOLKALIS: Thank you.

BHUPESH PATEL: The dance symposium space in the back that all the kids use. All the parents go there and we all walk to Dunkin' Donuts and get our coffee from that Dunkin' Donuts. It is a bit of a neighborhood Dunkin' Donuts. Relative to that I think he's basically, you know, a very good proprietor. If you're going to have a proprietor, you're going to want somebody like him. But we're dealing with a situation where you already have a lot of neighbors who have basically when it boils down to are quite upset about what's going on with the parking that's there, and the city hasn't been unable

to resolve it.

BRENDAN SULLIVAN: Okay.

BHUPESH PATEL: And if anything, he should be able to make his case with the neighbors and have the time to do that. And if it boils down to well, it's just common delivery, let it boil down to. But I'm telling you right now that's exactly not what that issue is.

BRENDAN SULLIVAN: You might want continue. But anyway we'll continue. Let me -- are you all set for this?

BHUPESH PATEL: Yes.

BRENDAN SULLIVAN: Okay.

Anybody else? People who have been waiting to speak. Yes.

ANNA MARIA CARDENAS: Lynn and I are at 10 Bowdoin Street.

BRENDAN SULLIVAN: If you just give your name.

ANNA MARIA CARDENAS: Anna Maria

Cardenas.

LYNN MEYER-GAY: Lynn Meyer-Gay.

ANNA MARIA CARDENAS: We're both at 10 Bowdoin Street. It's a six-unit condo unit essentially on the other side of the driveway, on the back side of the property in question. We voice all the concerns that the rest of the neighborhood. This is our building. This is proposed space. This is a driveway, and this is the area that's Variance in the back side and this is the front space with the cafe shop. We voice the same concerns that everybody else has. The parking issues, the volume of trucks and deliveries. Parking that we have to deal with that when people get hip to it, they come drive down our street and create a lot parking issues for our street. The master -- I mean, everybody has already kind of voiced it. I want to point it out we are essentially your first residential neighbors on the Bowdoin

side. And I think we just feel that we have enough coffee shops in the neighborhood already. It's stated that the Starbucks is there, the High Rise is there. There's three restaurants right there. Rafiki does coffee as well. Simon's and Rosie's are down the street. There's a Dunkin' Donuts in Porter. There's a Dunkin' Donuts in Harvard. We're sort of serviced by the cafe, coffee shop. We would really appreciate a little diversity in the neighborhood. A bookstore would be nice. We've already had the -- I forget what the other bookstore was that left and it went to Porter Square. Now the Coop has gone out. You know, we're kind of getting to the point where it's -- we're just a coffee shop corner. A little diversity would be greatly appreciated.

BRENDAN SULLIVAN: All right, thank you.

Does anybody else wish to speak?

FRED FANTINI: Mr. Chairman, members of the Board, my name is Fred Fantini. I live at Four Canal Park. I'm a lifelong resident of Cambridge and I'm serving my 29th and 30th years in the Cambridge School Committee. I'm Brandon's cousin. This testimony will obviously be prejudiced, but I have to tell you I think of him more as a nephew. I've watched the two shops that he has that he is owner/proprietor of. He does -- he does an excellent job at those. He's a good businessman. He loves neighborhoods. He's embraced the neighborhoods. He's run many, many activities in different neighborhoods. He sponsored, except for the West Cambridge, he sponsored the North Cambridge Little League. He is a fantastic negotiator with the neighborhoods. He values neighborhoods. He knows neighborhoods. He mitigates issues in a way that I've never seen anybody else do

it. And as every year continues that he's in business, neighborhoods get to love his place more and more and they consider it almost like a mom and pop shop.

You see his mother behind me. She's the one that arrives at the stores during the holidays and she decorates them and she cleans them. You know, we're just a family that believes strongly in neighborhoods. And so you've got a tough decision before you. I think when you're dealing with somebody with quality, proven quality, I just don't think you can go wrong with that philosophy.

BRENDAN SULLIVAN: Thank you. Anybody else who wishes to speak on the matter?

BHUPESH PATEL: Just one thing there are two lawyers in our neighborhood that pointed out the fact that the hundred feet for that zoning area takes up sort of two-thirds of the building and the kink is what's in the

Residential B Zone. So there's a question earlier about it. So it's 100 feet off of that. 100 feet just falls where this blue line is essentially. This red line, that's the thing. That again, it's not all in the letter, but I basically everyone felt that there would be a chance to speak to the owner about these issues relative to that. And I have to clarify, I know you're upset we sent this letter. You have to understand that most of the neighbors are quite upset that there's nothing in the literature.

CONSTANTINE ALEXANDER: I have to respond to that. Okay, we -- it's against the law if we were to say to people you can't build a Dunkin' Donuts because you're a chain and you can have a mom and pop shop.

BHUPESH PATEL: In the neighborhood --

CONSTANTINE ALEXANDER: Let me finish. Let me finish. I've had a lot of

problems with the dialogue tonight because most of it has been irrelevant. What is going on here is a lot of objection to a Dunkin' Donuts. That's irrelevant from the Zoning point of view. And I -- let's dismiss the notion of a Dunkin' Donuts. What you're telling me is that people had no problem with this until they found out it was a Dunkin' Donuts. Hey, that's not the way the Zoning works. And if we did try to make the Zoning work that way, we would get ourselves in violation of the law. So let's drop the Dunkin' Donuts surprise issue. I don't want to hear it any more because it's not relevant.

BRENDAN SULLIVAN: All right.

There is correspondence in the file from Craig Kelley. (Reading) Dear BZA Members: I write in opposition to the Variance requested at 1678 Mass. Avenue. This Variance is a first step into turning this store into a fast food Dunkin' Donuts

franchise similar to the one within which the applicant is associated with on North Mass. Avenue. Going on about some issues on that.

Granting this Variance would, I feel, alter the basic character of this stretch of Mass. Ave. in a problematic way working against ongoing planning studies and pushing the area toward becoming a generic strip of road rather than the unique environment -- rather than the unique and vibrant neighborhood-based retail district we now enjoy. It is not unreasonable to expect other fast food franchises such as Wendy's, Burger King, or any of a number of similar featureless uses to want to follow suit should the Variance now before you be granted. The cause of a lack of hardship, the lack of any meaningful benefit, and the problematic precedence -- well, I respect that you deny this application.

The Board is in correspondence from

Councillor Tim Toomey. (Reading) I'm writing in support of case No. 10222 regarding 1678 Mass. Avenue. A change of use at this location will allow the applicant the opportunity to establish a Dunkin' Donuts cafe which will encourage a lively atmosphere along this stretch of Mass. Avenue and serve the many pedestrians already in the area. Thank you for your attention to this matter.

The Board is in receipt of a correspondence from the Planning Board. (Reading) The Planning Board reviewed the Variance application for this type of active use along Mass. Avenue. The Planning Board would suggest that if the Board of Zoning Appeal grants this Variance, all signage should comply with the sign regulation in Article 7, and that the overall character of the sign be in keeping with the abutting business uses.

I will close public comment.

Obviously acknowledge the receipt of correspondence from the Bowdoin Hudson Street Community comments dated March 7th.

Okay, close public comment.

Mr. Rafferty, do you want to add anything?

ATTORNEY JAMES RAFFERTY: Well, thank you just briefly. I think the issues have been vetted. It has been noted the Ordinance does not distinguish between single operators or chains, and I think some of the concerns expressed around food uses actually involve as-of-right food uses; the restaurants that were referred to by one speaker did not come before the Board, Rafiki. Temple Bar and other restaurants, they're as-of-right uses, and it's important for those uses to manage their operations in a way that did not create conflict with the residential abutters. The License Commission has a process that's set up for that as well. So I think there is ample

testimony to suggest that this operator has a track record that will allow him to deal with that effectively. And that while it does stand as a franchise, this -- there is a track record here of active direct involvement. I think the size of the space, the narrowness of it, the unique configurations, the challenges of making it serve as a successful, active space is noted by the Chair. Some of the prior uses required Variances. And the cafe concept does, is consistent with the overall planning goals of the Mass. Ave. Overlay District to have active streetscapes. We all love banking but another bank or another credit union along Mass. Avenue or a cellphone store which is a permitted use I don't think provides the type of vibrant, vibrancy or street activity that's envisioned in the planning for the overlay district. So I think it would not be incongruous with the

intent of the Ordinance for the Board to grant the relief requested.

Thank you.

BRENDAN SULLIVAN: Okay.

Do you find that there would be any benefit to continuing this matter to another day and have the Petitioner meet with concerned people in the immediate area of the Bowden Street?

BRANDON WOOLKALIS: Absolutely.

BRENDAN SULLIVAN: You can huddle if you want for a couple minutes.

BRANDON WOOLKALIS: Is there anyone that wants to speak to me?

CONSTANTINE ALEXANDER: That's not what you meant. I think he meant you and Mr. Rafferty might want to huddle.

BRENDAN SULLIVAN: I guess what I'm offering is a suggestion, if it would be helpful, to meet with the Bowdoin Street Hudson Street community who have voiced some

concerns, that's all.

ATTORNEY JAMES RAFFERTY: Well, I would say that's always the case. But even in the short time that Mr. Woolkalis has had to review the request, he's prepared to accept all of the restrictions set forth in the correspondence. I think the use is known. And I do think there are economic issues here that a continuance would create a further hardship. I mean, a determination here is necessary. I think people of good faith can agree or disagree, but I think Mr. Woolkalis, I know him, he'll be reaching out to these people tomorrow if this Board were to grant the relief. But he's also prepared to accept conditions which -- and Mr. Patel has done an effective job in characterizing them. It essentially involves restrictions on the use of the rear of the premises. And I think that's an appropriate way to create a buffer,

particularly since the rear of premises would appear to not even be in the business district but actually to be in a residential district. So for that reason I think we could willingly accept the conditions and agree to them without any further meetings.

BRENDAN SULLIVAN: Okay, all right.

CONSTANTINE ALEXANDER: You want me to go first?

BRENDAN SULLIVAN: Sure. Set the tone.

CONSTANTINE ALEXANDER: There's been a lot of talk tonight, but we have a very narrow and legal issue before us should we grant a Use Variance? I.e. should we allow a fast order food establishment in a Zoning District where a City Councillor said no, you should not have one. You can have other kinds of business use, but you can't have a fast food order establishment. Use Variances legally are a high bar to satisfy.

The premise are unusual. But it can be used for a lot of retail uses of a different kind. Maybe people think they're not favorable, but they're permitted as a matter of right. And in fact over the years that property has been mostly occupied by various businesses. Given all that, I don't see how you meet the requirements to get a Use Variance. You don't have the hardship. All the conditions in the world are not going to address the basic complaint in which I think is reflected in the Zoning is that for this area, this Zoning District we don't want to have fast food enterprises. Restaurants, fine. Bookstore, fine. Telephone cell stores, fine. But not fast food enterprises. I don't know why the City Council did that, but they did. And I think we have to work with what the City Council gives us. And, again, I don't think you satisfy the requirements, therefore, I would vote against granting of

the Variance.

BRENDAN SULLIVAN: Tom, what's your thoughts?

THOMAS SCOTT: I'm still thinking. I'll pass.

MAHMOOD FIROUZBAKHT: Well, you know, this is a difficult one because I certainly think it's a tough standard to meet, but I think there is some legitimate needs here in the neighborhood. I think, you know, I think there's a track record and there's a precedent here that this Board has set by approving other establishments similar to the one that's before us. And so, you know, obviously there's a recognition that, you know, that in those instances, that those standards were met, those requirements, those statutory requirements were met. And frankly I don't see what the big difference is between a Starbucks on the corner and this location. Not to say that

just because we did it in the past we should do it again, but I think that, you know, there is some value in having this kind of a different establishment in this location. Personally High Rise Bakery is frankly just way too expensive.

BRANDON WOOLKALIS: They are expensive.

MAHMOOD FIROUZBAKHT: It is. And I, you know, this would serve a different kind of clientele and serve a need in that neighborhood. And I think that if this were a mom and pop applicant in front of us, I think it would be a different tenor and I don't necessarily think that that should negatively impact our approach and decision tonight. So, I think the hardship standard is difficult, but this has been a difficult space to rent. It's oddly shaped, located, sized. I think this does meet certain needs of the neighborhood so I would be in support

of it.

BRENDAN SULLIVAN: Mr. Heuer.

TAD HEUER: So, I agree with Mr. Alexander on a number of points. I'm not quite sure where I'm going to come out actually. I agree that this is a -- that it is irrelevant whether it's a Dunkin' Donuts or Brandon's Beans. This is an issue about the fast food ordinance to the extent that it was passed by the City in an attempt to guise to attempt to avoid McDonald's and Wendy's and Burger Kings, so be it. I'm not sure if it would hold up if challenged in the courts today, but that's what we've got. I think that the -- to the extent that this is a chain which is a non-chain issue, I think that's a non-issue. That's not something legally that we can, or I'm comfortable in adjudicating one way or the other. I think that it's a fast food entity regardless who owns it, and what corporation stands behind

it.

As to the traffic issues that have been raised. I think the loading issues to me are a non-issue because of the equivalent if not more intense uses that for loading purposes that would be required for something that was allowed as of right. If this were a something that, you know, you had table cloths and menus and the other things that are required to make you a cafe as opposed to a fast food entity, and you didn't have the doughnuts there but you were doing more flat bread sandwiches, you'd have the same number of deliveries, same times of day, and you would be an as-of-right uses. So in my mind, the concerns about loading zone uses are just not applicable here because you would be allowed to do them as of right with many other types of uses perhaps with even more intensity.

In looking at the Use Variance, I very

much hear what both Mr. Alexander and others on the Board have said, which is a Use Variance is a very high standard. That we don't know why the City decided that some districts you get to do some things and some districts you don't. But that's the perks of the Zoning. The City Council is plenary in determining what it puts where and then we're the enforcement authority that generally says yep, you got it right unless there's some real reason why this should be, you know, treated differently. And in looking at the Zoning map, and I guess just briefly, it appears that Business A-1 is essentially upper Garden Street. There's the Business A-2 which is essentially all of Mass. Ave., Harvard Square, and Business A-3 is River Street. So, and Business A, which is in many more places is non-restrictive but it's a Special Permit situation. So, to the extent that the City was looking to do something on

those three thoroughfares into the extent that that was something that could be reasonably viewed to be dealing with parking, that they're concerned about the ability to park in those areas, I could see it. As Mahmood has pointed out though, Cambridge Street is a one way versus a one lane, and it's a Business A. You can get a fast food permit with a Special Permit there. So, it's not quite clear to me exactly what the rationale behind the Business A-1, 2 and 3, and Business A is seeing as you can get what would seem to be more congested traffic area, but not in these areas. One thing that's suggested to me is that traffic wasn't necessarily a concern there. That, again, this more of an issue about drive-throughs and other types of situations, not in and out per se. But I would, what is somewhat troubling me is that, you know, this is a Use Variance and also that it's a two-month time period to me isn't a

huge one. One of the things that I would be concerned about, and where we granted other Use Variances, is where people say that this site is unrentable as it is in the district I'm in. For instance, it was a residential district but it was a pre-existing commercial building that fell out of use for a couple years. People would come in and say, and we had one of these a couple months ago, I think it was a hair salon. And people come in and say this building can never be used for residential use. It's a commercial structure, it's commercial space. In that situation we granted a Use Variance because it was clear that it was a commercial space. There was no possibility anyone would want a plate glass window to be their living room.

Here we have a situation which two months have gone by and it's an unusually shaped space which works in its favor. But I'm still on the fence as to whether that's

sufficient for me to say that it's a space that is essentially very difficult to rent and, therefore, a Use Variance would be merited because it's not getting the uses that the City Council intended to go in there or that it couldn't.

So I'm having a bit of trouble. I think the Board did grant a Variance down the street to the 1776 Mass. Avenue pizza folks, Corporate House of Pizza, to move down to Jack's Stereo. I voted against it because I thought it was a Use Variance that didn't meet the standard. I thought that it was moving as a restaurant use that did have many of the problems that quite frankly I'm not seeing here on the substantive level. Whereas there were concerns about significant in and out late night traffic. That there were concerns about being literally in the front of a residential building and acting as the frontage of a residential building and an

office space as opposed to something that was fronting onto Mass. Ave. and the residential was in the rear. And there are also concerns about venting, about odors, about trash removal, that simply in my mind were not anywhere near addressed to the extent that the thoroughness that have been addressed here. So in my mind voting against the Corporate House of Pizza, I think I was the only one who voted against it, it was an easy case. Here I think I'm with Mahmood that it would be a closer case because of the efforts put in by the Petitioner.

BRANDON WOOLKALIS: Sorry to interrupt. The landlord has tried that since May 1st. He had hired a broker and was not -- had no luck with it. And that's when he started trying to solicit people on his own. And that's how I got --

ATTORNEY JAMES RAFFERTY: The landlord's present at the hearing. And I

asked Mr. Woolkalis because I didn't have -- I know there were some reliance on an assertion about the two months. And our understanding, and perhaps the landlord can correct this, is that the departure of the prior tenant was six months in advance and there was an active attempt to market it since May and it was unsuccessful until Mr. Woolkalis.

TAD HEUER: So it was known that the tenant was leaving, but there was no vacancy until January 1st?

BRANDON WOOLKALIS: January 1st it was vacant, but he was marketing it May 1st. Brokers and --

TAD HEUER: Would you mind putting that on the record?

ATTORNEY JAMES RAFFERTY: Can you come forward?

BRENDAN SULLIVAN: Just identify yourself for the record.

ATTORNEY JAMES RAFFERTY: Give your name and address for the record.

PETER GIVERTZMAN: Sure. Peter Givertzman, 55 Academy Street, Arlington.

ATTORNEY JAMES RAFFERTY: You may need to spell that.

PETER GIVERTZMAN: Oh. G-i-v-e-r-t-z-m-a-n. There was no sign on the street.

TAD HEUER: So I take it you're the landlord for the premises here; is that right?

PETER GIVERTZMAN: Yeah.

TAD HEUER: Could you just explain for the record the who the former tenant was, when you knew they were going to be vacating the property, and the efforts that you put in to seeking a tenant for this property before Mr. Woolkalis approached you and you engaged in negotiations.

PETER GIVERTZMAN: Sure. Harvard

University Coop Law School Bookstore was the tenant at the time. And they had been, they wanted to stay, it just wasn't working for them. And so, they gave me their final decision sometime in April or May.

TAD HEUER: Of last year?

PETER GIVERTZMAN: Yeah, last year.

TAD HEUER: 2011.

PETER GIVERTZMAN: And I put it on the market no later than June 1st, but I knew a month before that approximately.

TAD HEUER: Did you get inquiries? What was the extent of the inquiries for the space? Walk through --

PETER GIVERTZMAN: It was extremely light, and I was surprised actually. It was extremely light. There was one tenant that was a -- would have been a superstar tenant that had an interest, and then suddenly walked away. And I don't -- it didn't get to you guys, I'm not sure why.

TAD HEUER: Right.

PETER GIVERTZMAN: And that was it. I hate to admit that, but that is the reality.

CONSTANTINE ALEXANDER: Who was the on the premises before of Harvard?

PETER GIVERTZMAN: The Harvard Coop took over for the Harvard University Credit Union.

CONSTANTINE ALEXANDER: Before the Coop.

PETER GIVERTZMAN: The credit union.

CONSTANTINE ALEXANDER: Sorry.

PETER GIVERTZMAN: Carol's Hairdresser. It was a barber shop for women.

TAD HEUER: And then Mr. Woolkalis saw the sign in the window and approached you and that was you said January, February?

BRANDON WOOLKALIS: We started working on it, yeah.

PETER GIVERTZMAN: Recently. Not

too long ago.

BRANDON WOOLKALIS: One or two months ago.

TAD HEUER: And could you just, just roughly describe the marketing efforts that you go through when you put up property? When you get a notice from a tenant and you make that property available.

PETER GIVERTZMAN: Personally I normally do it myself. I was nervous I couldn't pull it off so I did hire a broker and so I put it in their hands. And he had six months and it didn't --

ATTORNEY JAMES RAFFERTY: Maybe you could explain for the Board what you told us about the size of this premises and how it was determined as tenants looked at it.

PETER GIVERTZMAN: Well, everybody wants a wider space. And it's long. And it's a tough use. And I don't -- what can I say? I mean, I'm in the retail business

personally and it's tight. You know, it's long and deep and it's not that wide. And it had a bank machine in the front window which made the front appear even smaller, so it was a visually very tough. They just recently took out the bank machine.

TAD HEUER: And, of course, saying this knowing the answer, there's no way to subdivide this space and allow back use, front use predominantly because the rear is a Res. B District?

PETER GIVERTZMAN: I have no idea.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: I would note that the frontage on Mass. Ave. is only 22 feet. And I think the average storefront is probably closer to 30, 40 feet.

BRANDON WOOLKALIS: If you measure the interior, it's 18 feet inside. It's very, very narrow.

BRENDAN SULLIVAN: Okay. Anything

else to add?

TAD HEUER: No, but I would say that pushes me slightly more towards voting in favor. I understand the desire for an eclectic mix of stores in the neighborhood. But I think one of the other things the Board and the City Council has asked us to look at is, you know, stability and not having gap-toothed retail districts. And there's always an issue of the really nice cute, boutique store that everyone loves to browse but nobody likes to buy from. And having something that does provide life and, you know, consistency in retail in those areas that are -- that prove difficult to fill and I think that's one of the things that the Board needs to look at.

MAHMOOD FIROUZBAKHT: Mr. Chair, can I just add to my comments?

BRENDAN SULLIVAN: Yes.

MAHMOOD FIROUZBAKHT: I certainly

understand some of the concerns that were raised in the crowd, and not that I want to at all come off as being dismissive, but given the testimony and given I think the conditions that we perhaps were put on an approval, in terms of some of the traffic concerns, I feel like, you know, scheduling deliveries and pick up prior to those peak hours that were commented on would mitigate the concerns raised about sort of pick up, drop off and the use of the loading zones. And so in that regard I feel comfortable that some of the concerns that were raised can be addressed by scheduling pick up and drop off. And I think that given the testimony that we've heard, this operator in particular sounds -- and from the evidence is pretty clear, is very responsible given the track record with the other stores, that, you know, that he's going to be mindful and responsive to neighbor's concerns. And I think it would

be very appropriate to condition any approval on this particular operator, and any change in the operator of this particular location would require approval from this Board and I think that would certainly, you know, give a little bit more protection.

BRENDAN SULLIVAN: Okay. Tom.

THOMAS SCOTT: So I guess the way that the store is going to be operated has a big impact on how I feel about it. And given all the things that you've talked about that you're going to introduce here, kind of operating it like an internet cafe almost, there's no difference than the Starbucks right down the street. Introducing the new food items, I think it's really, you know, that commitment is important I think for the neighborhood as well. I think the small storefront, it's going to have a really minimal impact on the neighborhood or on that stretch especially your signage is going to

be limited, and the storefront itself is going to be so limited that it's not going to appear to have the stigma of a fast food restaurant of some kind. So, I'm definitely kind of getting there. I think -- I guess that's pretty much most of the things that I think -- you know, your track record I think is another thing that's critical here knowing that you're operating two very successful locations now, and that there's, you know, little to no complaints. They're clean operations. You seem to be doing a great job there. I don't see any reason why you wouldn't do the same here.

BRANDON WOOLKALIS: Thank you.

BRENDAN SULLIVAN: I'm not necessarily prepared to vote in the affirmative for this tonight. I'm not adverse to the petition before us, however, my main concern is that one of the -- under the Fast Food Ordinance, 11.31B, the physical

design including color and use of materials of the establishment shall be compatible with, and sensitive to the visual and physical characteristics of the other buildings, public spaces, and uses in the public location. And I think that was sort of alluded to in the Planning Board report. And I know you're going to do it well, but beauty is in the eye of the beholder. And I sat on the one up at Mass. Avenue and I'll be honest with you, I probably would not have approved all of this.

BRANDON WOOLKALIS: The striping on the awnings? We're not going to do that this time.

BRENDAN SULLIVAN: All right. And, you know, the \$21.99 for coffee and all that other stuff. I would not have.

What I'm looking for is something that goes from North Mass. Avenue, Memorial Drive to something more akin to across from the K

School.

BRANDON WOOLKALIS: The K School?

BRENDAN SULLIVAN: Downtown, yes.

MAHMOOD FIROUZBAKHT: Harvard Square, the Kennedy School.

ATTORNEY JAMES RAFFERTY: The Eliot Street Cafe.

BRENDAN SULLIVAN: The Eliot Street Cafe. But in the absence of having something before us that I could actually look at and hang my hat on and be comfortable with, I'm not prepared to vote in the affirmative for this tonight.

BRANDON WOOLKALIS: Could we condition it upon your approval of --

BRENDAN SULLIVAN: Well, no, I would want the entire Board to look at it. Basically what I'm saying is that I really would push for some graphics of exactly what you're doing to the -- well, to identify yourself again. And Dunkin' Donuts, as I

said earlier, wants to be prominent and you can see it from the space shuttle. I don't want to see it from the space shuttle. I really want it to blend in with the rest of the adjoining stores. I'm not adverse to you going in there, but I don't absolutely trust that it's going to be comparable to what's going in there until I see it.

CONSTANTINE ALEXANDER:

Mr. Chairman, I think also, I think your thoughts are wise, and it also would give you and the Board an opportunity to craft some more care of other conditions assuming relief is going to be granted.

BRENDAN SULLIVAN: There's too much a little bit in front of us that I really need to also step back. It's two-fold I'll be honest with you. It's really my main thing is what the front of the store is going to look like because I'm very sensitive to that. The other thing is that there's a lot of

information that needs to be digested and I want to do the thing properly. For your sake, for our sake, for everybody's sake.

So with that in mind --

SEAN O'GRADY: Can I go on the record on the conditions? Same speech as always.

BRENDAN SULLIVAN: Right.

SEAN O'GRADY: Just so the neighborhood understands: Behavior, transient behavior and the like, people smoking, just can't do that.

BRENDAN SULLIVAN: Can't do good behavior.

SEAN O'GRADY: D, E, and F.

BRENDAN SULLIVAN: I would like to do this in April. Even if it -- I think we can move somewhat quickly. Is that correct?

SEAN O'GRADY: Yes. I'm trying to think which is going to the sure --

ATTORNEY JAMES RAFFERTY: Fair to say that public testimony has concluded and

this would be deliberation and review of the design?

BRENDAN SULLIVAN: That's what my next statement is going to be, right. I don't want to open it up to -- I'm sorry. April?

SEAN O'GRADY: Okay, so we have Hampshire Street, Concord, and Union on one night. Coolidge Hill, Avon Place and Sciarappa on the other. Coolidge Hill I'm fairly certain is going to die on the vine. And nothing else is --

ATTORNEY JAMES RAFFERTY: Already been buried.

SEAN O'GRADY: April 26th.

BRENDAN SULLIVAN: That's the earliest?

SEAN O'GRADY: Well, you have an April 12th.

BRENDAN SULLIVAN: Let's do April 12th.

Let me make a motion, then, to continue this matter until April 12, 2012, on the condition that the Petitioner sign a waiver to the statutory planning of the hearing and a decision be rendered thereof.

Also to change the posting sign to reflect the new date of April 12, 2012, at seven p.m. and the sign be maintained as per the requirement of the Ordinance.

Further, that I have concluded public testimony regarding the material before us. Should anybody -- I will accept written correspondence from any concerned citizen. The only other further testimony will be to the signage on the front of the store.

ATTORNEY JAMES RAFFERTY: The applicant would submit a facade elevation showing proposed conditions.

BRENDAN SULLIVAN: Correct.

RON AXELROD: Excuse me, because of the nature of the sign that said a coffee shop

was not part of the Ordinance and was sort of deceptive I must say, could you still allow public comments because a lot of us did not know what the situation was?

BRENDAN SULLIVAN: I will accept written communication.

RON AXELROD: Okay.

CONSTANTINE ALEXANDER: And I want to make it clear, I think the written communications have to be in our files by five p.m. on the Monday before.

BRENDAN SULLIVAN: Right.

The further conditions that any submittals from the Petitioner be in the file by five p.m. on the Monday prior to the hearing in April. And that any communication from any concerned citizen, entity, party, be in the file on the Monday prior to the April hearing also to allow the Board to review it and also to allow the Petitioner time to review any

correspondence.

Is there anything else?

TAD HEUER: Can I just make a technical point? That if we have a deadline for the Petitioner to submit something by that Monday, it will be impossible for anyone to comment on that submitted petition at the same time. That they would need to --

CONSTANTINE ALEXANDER: I would make the same comment, yes.

ATTORNEY JAMES RAFFERTY: We'd accept a week earlier than that.

CONSTANTINE ALEXANDER: For your submission?

ATTORNEY JAMES RAFFERTY: For our submission.

RON AXELROD: What would that date be?

BRENDAN SULLIVAN: I realize it's somewhat contradictory. Okay, so your submittals will be in by --

SEAN O'GRADY: Two Mondays before the hearing.

BRENDAN SULLIVAN: Which is 14 days prior to the April 12th, which is March whatever.

ATTORNEY JAMES RAFFERTY: Well, 14 days. We've got it.

CONSTANTINE ALEXANDER: That's enough time?

ATTORNEY JAMES RAFFERTY: Yes, I think so.

BRENDAN SULLIVAN: Which will be available for the public to review.

BRANDON WOOLKALIS: Is there any way to meet -- if I get it done quicker, just to bring it before the Board. If you don't like it, you'll tell me.

BRENDAN SULLIVAN: You can submit it. I mean, I will look at it.

BRANDON WOOLKALIS: Okay.

BRENDAN SULLIVAN: I review these

cases two weeks before they happen and a week before they happen and three days before they happen and in the afternoon of.

TAD HEUER: That's April 2; is that right?

CONSTANTINE ALEXANDER: I want to be clear, he's not saying he's going to give you on behalf of the Board, response or reaction to what you submit. I just want to make sure he understood that.

ATTORNEY JAMES RAFFERTY: Monday, April 2nd is two Mondays prior to Monday, April 12th; am I correct?

TAD HEUER: Anyone else want to correct me?

BRENDAN SULLIVAN: Is there anything else to add.

MAHMOOD FIROUZBAKHT: Correct.

CONSTANTINE ALEXANDER: Did you understand what we just said?

On Monday, April 2nd, by five p.m. on

that day, they have to submit their signage. You will go to the Inspectional Services, you'll be able to see it, to the extent they're going to distribute it anyway.

ATTORNEY JAMES RAFFERTY: I'm going.

CONSTANTINE ALEXANDER: You will have a week later to give any comments in writing. You have a week to study it. You can't come in like tonight with a written letter for the first time.

RON AXELROD: We understand that.

CAROL WEINHAUS: Can I ask something because what I don't understand is normally, like, when the gas station, you know, because I've been active in Porter Square neighbors, they came in, they presented to the neighborhood about what the signage was going to look like. Given that looking at all the dates, there's no way the neighborhood association could look at the signage and say

yes, we like it or we don't like it. I mean, part of the reason I came is just that the neighborhood doesn't know about it, you know? The -- I'm just wondering how the, how it's -- you know what I mean? With the short time frame the neighborhood meets every month.

CONSTANTINE ALEXANDER: You'll have to change your schedule for the neighborhood group. Our rules and procedures are such that people, plans, and stuff have to be in our files by the -- usually by the five o'clock, five p.m. on the Monday before. And then neighbors have between that five p.m. on Monday, the office is open until eight, until the Thursday hearing to review them and put their comments together. You'll have an extra week per Mr. Rafferty's generous offer.

CAROL WEINHAUS: What is the day?

BRENDAN SULLIVAN: I guess in a

perfect world.

CAROL WEINHAUS: I'm trying to understand.

BRENDAN SULLIVAN: Yes, right. In a perfect world, the notifications were sent out to abutters, to abutters within 300 feet. That's the standard. That's what we're required to do.

The posting sign on the establishment was clear notice to the general public anybody beyond that 300 feet, to look at it. Now, if it wasn't exactly totally clear, that may be another issue, but I think that it also behooves the general public if they have inquiry about oh, exactly what is going in here, then they can inquire at Inspectional Services. But the notice, sometimes it's somewhat short, maybe somewhat deficient, but it's basically, you know, all they really have to do is to notice what the relief being requested is for. The fact that, again, that

it's a Dunkin' Donuts and what have you, doesn't have to be -- nor does any establishment have to be named in the notice. So it gets sent out as per the law, a butter to a butter within 300 feet, and the posting sign, which is a relatively new idea within the last few years, notifies the general public, and it's really up to the general public, people in the Aggassiz neighborhood if they were concerned about it, then inquiries could have been made.

CONSTANTINE ALEXANDER: Let me just point out one of the things, the notice that went out, and I believe also the sign that's posted does say fast order food establishment. So this is not something that just all was sprung at the last minute. This was in the notice. And people may not have realized it, and maybe you didn't realize it was Dunkin' Donuts and you got upset.

RON AXELROD: It said coffee shop.

CONSTANTINE ALEXANDER: You've got to read the rest of the notice. It cites the sections they're seeking relief. And in Section 11.30, (fast order food establishment). It's right in the notice.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, I would conclude by saying --

RON AXELROD: As the sign is --

ATTORNEY JAMES RAFFERTY: Mr.

Chairman, there's a month between now and the hearing and we will look for opportunities to meet individually and collectively with neighbors, organized neighborhood associations. Mr. Woolkalis is very committed to that process. We will spend the next 30 days in communication. So no one will be able to claim that they're unaware of this next month.

BRENDAN SULLIVAN: Okay.

On the motion, then, to continue this

as per those applicable conditions.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(Whereupon, at 11:30 p.m., the
Board of Zoning Appeals
Adjourned.)

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original of the Errata Sheet has been delivered to City of Cambridge Inspectional Services Department.

When the Errata Sheet has been completed and signed, a copy thereof should be delivered to the City of Cambridge Inspectional Services Department, to whom the original transcript was delivered.

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ATTACH TO BOARD OF ZONING APPEAL

DATE: 03/08/12

REP: CAZ

ERRATA SHEET

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I have read the foregoing transcript of the Board of Zoning Appeals, March 8, 2012, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made.

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 19th day of March 2012.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 23, 2015

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