

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING

APRIL 8, 2010 7:00 P.M.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Brendan Sullivan, Member

Tad Heuer, Member

Christopher Chan, Member

Slater Anderson, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Slater Anderson, Christopher Chan.)

CONSTANTINE ALEXANDER: The Chair will call the meeting to order. And as is our practice, we're going to start with continued cases. And the first continued case I'm going to call is 15 Crescent Street, case No. 9793.

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

(No response).

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. No one is in attendance. The Chair would also state for the record that he has been advised that the sign posting which would be required for this case, does not exist and therefore we are not able to take this case up at this time.

We'll continue it to a new date and instruct the petitioner that we're going to hear it on that date, that they better have a sign posted.

Any date you want to suggest to us?

SEAN O'GRADY: Yes. I don't know the pleasure of the petitioners and that's why. This case was going to be withdrawn pending a building permit application which never came. And so I don't know what their plans are.

CONSTANTINE ALEXANDER: The fact that they're not here tonight suggests to me that they're not planning to proceed. Maybe they just haven't gotten around to withdrawing.

SEAN O'GRADY: Air on the long side?

CONSTANTINE ALEXANDER: Yes, I would say.

SEAN O'GRADY: Let's say June 24th. That's the first completely open night that

we have.

TIM HUGHES: Can we do the 10th instead? I don't know if I'm available on the 24th, but I'm available on the 10th.

CONSTANTINE ALEXANDER: We don't have Tad here. Let's assume he's okay.

The Chair moves that this case be continued to seven p.m. on June 10th. This is being a case heard and that there is a waiver of the time for decision in the file. But on the condition that at this time the petitioner post a sign at least 10 days or 14 days -- within the requisite period of time prior to the date of hearing. And if that is not done, then this case will be further continued.

SEAN O'GRADY: Okay.

CONSTANTINE ALEXANDER: All those in favor of continuing the case on that basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case is continued.

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

(7:05 p.m.)

(Sitting Members: Constantine Alexander
Tim Hughes, Brendan Sullivan, Slater
Anderson, Christopher Chan.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 9881, 387 Huron Avenue.
Is there anyone here wishing to be heard on
that matter?

Please come forward. For the record,
your name and address.

NICOLAI CAUCHY: Good evening.
Nicolai Cauchy, 387 Huron Avenue, Cambridge.

CONSTANTINE ALEXANDER: This case
was continued because you were here seeking
a Variance to increase the height of your
building.

NICOLAI CAUCHY: Yep.

CONSTANTINE ALEXANDER: Because you
have a flat roof to 44 feet but only 35 is
permitted in the district.

NICOLAI CAUCHY: Correct.

CONSTANTINE ALEXANDER: And further, that will increase the FAR from 1.54 to 1.62 in a 0.5 district.

You have two major things that you're seeking relief on. I think you heard from us at the last meeting that we weren't that thrilled with the idea. I think your problem was ice forming on the roof and that was causing leaking in your ceiling. And there are many other flat roof houses. So you're back before us and what do you want to report?

NICOLAI CAUCHY: Okay. If you -- I brought one of these.

CONSTANTINE ALEXANDER: These are new plans?

NICOLAI CAUCHY: I brought them in Monday. It's a PowerPoint presentation summarizing. But one of the things in there is a photo of another roof that there's no -- nobody was there to witness what happened to it, but it has a very strange

rupture all around the periphery. It's a new rubber roof, torn everywhere around the edges.

CONSTANTINE ALEXANDER: Where is the said roof?

NICOLAI CAUCHY: Marney Street.

CONSTANTINE ALEXANDER: I have no doubt there are some flat roof houses in Cambridge that have problems. The fact of the matter is you have strong neighborhood opposition as I recall.

NICOLAI CAUCHY: No.

CONSTANTINE ALEXANDER: No?

NICOLAI CAUCHY: No. There are letters in the file. There are --

CONSTANTINE ALEXANDER: Two letters --

NICOLAI CAUCHY: There is one letter of abutters, Cindy Sorensen and she's here tonight.

UNIDENTIFIED FEMALE: There are two

letters.

NICOLAI CAUCHY: I'm sorry. There is one letter of opposition from Cindy Sorensen. There is another letter to an abutter. And there is a letter not of opposition but that questions and that you're verifying who are not affected who are the neighbors upstairs of Ms. Sorenson. There are more than a dozen letters of support, including people who have come tonight and others with a last minute have asked that these letters be brought in to express their support.

My, and I don't know the legalities of how these things. But I've worked in climate physics for a number of years, is that it is possible that in circumstances such as the winter of 2008/2009 our houses are faced now with snow loads that they've never -- well, not just snow, ice loads that they have not had in the past. And the problem with the

flat roof as I illustrated just on Martin Luther King Day here is that it immediately sealed the central drain. I mean, this is six hours after it started snowing. The central drain is sealed shut. Anything that accumulates on top of it just builds up. It may melt during the day. Water percolates to the bottom. If it freezes at night or during the day it's frozen, it seals with ice and builds up. All I know in January a year ago when my ceiling started leaking and I went up, I broke this thick of ice under a foot of wet snow all over the roof. We estimated -- with a neighbor who helped, over 50,000 pounds. Whether it's happened in the past or not, whether it will happen again in the future or not, I don't know. I know I was happy to have a flat roof because I was hoping to be one of the residential grass roots in Cambridge at that point. At that point I said can the flat roof get rid of the snow? Furthermore

there's the issue that the central drain does dump water into the sewerage systems, not separate storm lines which we see in the past month that can lead to catastrophic damage beyond individual houses. My only alternative is to either sell the house, which I would be reluctant to given I've been working on it for two and a half years, or appeal to you gentlemen and to put a pitched roof, pitched roof of 40 plus degrees. I tried to stay under the old 45-foot high law which in my neighborhood by the way, we are only two flat roofs on all of Huron Avenue. And all the other roofs around me are between 38 and 40, 41 feet high. If I were to put 45-degree pitch on my roof, it would raise it to 46. In order to stay below 45, the old limit would put on -- I'm told it was previously the limited height.

CONSTANTINE ALEXANDER: All right.

NICOLAI CAUCHY: I've offered to put

the minimal slope, which I think will guarantee that all the water runs off, that snow doesn't build up in thick packs and then fall off on it all of a sudden on a shared walkway. And that will give me sometime to work on the house myself. Give me the height, actually pound in nails and stuff without having to crawl under joists and that sort of thing.

CONSTANTINE ALEXANDER: If we were to grant relief, one of the things that we're required to by law, a finding we're required to make is that you have a substantial hardship. And you've talked about that in terms of leaking ceiling.

NICOLAI CAUCHY: Yes.

CONSTANTINE ALEXANDER: And then we have to find that the hardship is owing -- I'm reading from the statute. The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land

or structure and especially affecting such land or structure, but not affecting generally the Zoning District to which it's located.

How do we make that finding under these circumstances?

NICOLAI CAUCHY: I believe you said owing to the shape of the structure?

CONSTANTINE ALEXANDER: Yes.

NICOLAI CAUCHY: Flat, concave shape.

CONSTANTINE ALEXANDER: But it's not --

CHRISTOPHER CHAN: Shape of the lot, not the structure.

CONSTANTINE ALEXANDER: It actually goes both. Shape of the structure or topography of such land or structures and especially affecting such structures but not affecting the Zoning District to which it's located. Again, I go back to the -- I'm not

trying to be difficult. I go back to the notion that your roof is not that unusual. And you seem to have this problem you have to rectify by deviating substantially from our Zoning By-Law when other people seem to be able to live with their flat roofs at 35 foot height limitation.

NICOLAI CAUCHY: As I've shown on the photo that I took of the other roof where I was alerted that there was some problem, which quite incidentally is an insulated roof as is mine. I propose that it is possible that you may face more conditions that may make flat roofs truly obsolete and unsafe for our area. I don't have any crystal ball to foretell the future.

CONSTANTINE ALEXANDER: Nor do we.

NICOLAI CAUCHY: I'm sorry I'm not very versed in legal jargon, so I don't fully understand exactly how this is worded. From what you say the only argument that I can make

is the fact that a concave roof is a liability for a homeowner because it's got a central drain that pours drain water through the floors, when the drain cracks, it leaks to disasters. It's a liability for the city in as much as the sewerage systems are concerned. And then it is potentially much more than it has ever been a structural liability simply because of possible dramatic increases in snow loads. That, you know -- and in terms of shape, it is clear that putting a pitched roof would remedy that.

I'll add another comment since there are several architects in the neighborhood -- well, two architects in the neighborhood stating their support from an architectural point of view having two flat roofs in the entire Huron Avenue neighborhood really doesn't seem to make much sense. But whether that carries any weight or not.

TIM HUGHES: The second roof that

you're talking about is next-door?

NICOLAI CAUCHY: Yes.

TIM HUGHES: Do they have a similar problem?

NICOLAI CAUCHY: Well, they just have the three-quarter inch panel rubber under the roof as insulation. When my roof was covered with Martin Luther King Day or even last year when I went to chisel the ice, their roof was bare. It was rubber. And I suppose one can say that indeed I could get a vacuum and suck out all the insulation that I put in or I could put heating elements on the roof, but that I think in this day and age wouldn't seem to make all that much sense. And would be a tremendous amount of effort to do that obviously.

CONSTANTINE ALEXANDER: Comments or questions from members of the Board?

CHRISTOPHER CHAN: You guys jumped in so fast that I haven't had a chance to read

the file and it looked like it was almost a continued case in terms of your initial discussion. You might just want him to say what he's actually going to do. Is that it, he's basically going to put that on top or is there more to it than that?

NICOLAI CAUCHY: No, that's it basically putting a roof on there that's going to reach 43, 44 feet in height and it will be a standard slope roof with four downspouts.

CHRISTOPHER CHAN: And is there living space in there?

NICOLAI CAUCHY: I understand it's called attic space.

CHRISTOPHER CHAN: But apparently it looks like there's windows.

NICOLAI CAUCHY: Well, the reason for putting the windows is our houses face due south. And if you look on that -- you can't really see it, but I opened two bay windows

on the side of the house which have turned out to give me seven degrees in mid-winter between sunrise and two hours after that. And I would think that not benefitting from the sun would be No. 1, a little wasteful. No. 2, all the other houses seem to have this kind of a layout which is best exhibited --

SLATER ANDERSON: I guess the question is, though, are those windows serving finished what would be fourth floor living area?

NICOLAI CAUCHY: No, not intended. I've got plenty of space on my third floor.

BRENDAN SULLIVAN: I think this is an attempt to gain tremendous amount of additional floor space, added space in the guise of a leaky roof.

CHRISTOPHER CHAN: Say it again?

BRENDAN SULLIVAN: I think this is an attempt to gain much more attic space, liveable space in the guise of a leaky roof.

CHRISTOPHER CHAN: Okay.

BRENDAN SULLIVAN: I have a three-family, I had a leaky roof. I put a new roof on.

CHRISTOPHER CHAN: Yes, I mean, I'm an architect, I deal with these kind of things everyday. There's 2,000 such houses in Cambridge. And, you know, if you're going to argue that, you know, you don't want to dump more water in the Cambridge system, put a drywall in and pitch it to the side instead of the middle which is a perfect example to do. You know? And if you are worried about so much snow on your roof, then design it so it's, you know -- go and reinforce it so it's not structurally the problem.

NICOLAI CAUCHY: The point is there's an economic aspect to this, no doubt. If I'm going to go through the expense of putting a new frame, whether flats slope to ones ide, both sides slope or whatever it is,

I No. 1, don't want to have to crawl on my belly to be nailing joists from underneath.

CHRISTOPHER CHAN: Okay. Well --

NICOLAI CAUCHY: It seems logical that if I can gain some attic space, it makes a lot more sense to me to actually engage in that kind of a crazy -- the -- I don't believe, you know, again, I don't know the statistics, but I don't believe that the kind of additional living space that you're referring to that would be gained would ever in any way, shape or form offset the cost of doing this kind of thing. So I -- if it's a tremendous amount of just doing that strictly, then it would mean that I have a bunch of money to waste. Anyway.

BRENDAN SULLIVAN: Anyway that's fine.

NICOLAI CAUCHY: I respect your comment obviously.

SLATER ANDERSON: I tend to feel

that there are alternative solutions. I sympathize with your situation, but I think that there are alternative solutions to this. It's a big, big addition to solve the problem you're describing.

NICOLAI CAUCHY: Sure. It's also I think from both an architectural and an engineering perspective, interesting. There are only --

SLATER ANDERSON: I'm not a fan of the aesthetic. It's a classic three decker and will have a particular look to them. And I think -- that's my personal opinion. But the architectural is not really, you know, germane at this.

NICOLAI CAUCHY: There are at least two other three deckers that have pitched roofs.

SLATER ANDERSON: There are lots of things out there.

NICOLAI CAUCHY: Well, given that,

wouldn't one argue that possibly these would be precedence that would justify the....

CONSTANTINE ALEXANDER: I don't want to get into the argument of aesthetics of it.

NICOLAI CAUCHY: Fair enough.

CONSTANTINE ALEXANDER: If we take it into account, we'll dismiss it. That's not the primary issue.

NICOLAI CAUCHY: Agreed.

CONSTANTINE ALEXANDER: The primary issue as you've heard -- well, let me just stop there. Let's take public commentary because some people have taken the time to come. And other people have taken the time to write, and I want to get that into the record as well. And then we can return to talking about the merits again.

Anyone here wishing to be heard on this matter? Come forward and give your name and address for the stenographer.

STEWART CLEMENTS: Sure. I'm Stewart Clements and my wife and I own the two-family house that's across the street and one house east and I'm speaking in support of his petition.

We feel that he's really improved the house since he's bought it. I guess I should say we've owned that house for 28 years, so we've been there a long time. And he's done a dramatic improvement on the house already in terms of the exterior and we were happy about that. I'm not a big fan of flat roofs. And the neighborhood really has a lot of -- mostly peaked roofs. So I think that would be an improvement to the neighborhood. But, plus we're supporting and he's -- we feel he's a fine -- the short time he's been in the neighborhood, he's really improved kind of the community spirit of the neighborhood. So that's why we want to speak on his behalf.

CONSTANTINE ALEXANDER: Thank you.

We appreciate you taking the time to come down.

CONSTANTINE ALEXANDER: I think I saw someone else's hand go up or not.

UNIDENTIFIED FEMALE: I'll speak.

CONSTANTINE ALEXANDER: If you want to. You don't have to.

UNIDENTIFIED FEMALE: There's a letter there with my name on it.

CONSTANTINE ALEXANDER: I won't get in the letter. If you're happy to stand by the letter, that's fine. You don't have to speak.

UNIDENTIFIED FEMALE: I will stand by the letter.

CONSTANTINE ALEXANDER: Anyone else? Please.

CINDY SORENSEN: I'm here as --

CONSTANTINE ALEXANDER: You have to give your name and address for the stenographer.

CINDY SORENSEN: My name is Cindy Sorensen, S-o-r-e-n-s-e-n. And I live right next-door at 395. And I really do admire all the creativity Nicolai has done, mainly wonderful things inside the house. He's very creative with the three units he has. I'm also representing the people who own the top two floors. I own the first floor Unit 1. That's my address, 395 Unit 1. And the other people own Unit 2, M-o-o-c-k. And we were concerned about a number of things but we want -- and we've mainly wanted to know what your input would be, one, would be aesthetics. Our opinion was that it was hard to have this even larger structure that kind of sticks out a lot like a big green thumb. But as I said, the inside is wonderfully creative.

As a background, Nicolai has been here for two and a half years and it's been a constant construction site. I do have my

worries about how long this will take and how messy it will be and whether there are any toxic effects. I'm not a huge alarmist about that kind of thing, but it's been -- the health department's already been called to remove some things that were left there. So that's one ongoing thing that I am concerned about.

And initially I didn't know about the hardship. I remember signing something at the very beginning that said -- and I saw this wonderful creativity inside, and I think I signed something that said okay, that's all right, do more because I had a lot of faith in the creativity. But then when it sank in, in addition to the aesthetics there's taking away the sun. I think Nicolai's done research on that. It doesn't affect me that much, but it might affect upstairs and the value of the units as a whole that as things get higher, the nine feet higher, it impacts

on our sun.

I was worried about the safety issues of the stove pipe chimney that goes from the second floor. They have a standard fireplace, but it has a stove pipe exit, stove pipe going up. It probably shows up on there if you look to the left. And I didn't know if whether that had to be raised if his roof raises, does the stove pipe have to get raised so there's not a fire happening in either direction. I don't know the answer to that, but I was concerned about that. And if something does have to be adjusted, he should pay for it. It's not my stove pipe, it's the upstairs people's.

And I thought of -- this may be minor -- snow falling off our roof. The roof is high, but it has breaks in it, so when the snow falls, it's not just one huge fall, although it's very dangerous, his would be one long fall and I don't know what affect

that would have on such a close building. But I really think he's been very creative, but I think it's kind of overdoing it. And I thought it would be wonderful to have your input to have other options to solve the problem.

CONSTANTINE ALEXANDER: Yes, and we've been trying to work toward it as well. But it's really the responsibility of the petitioner to come up with other options if he finds that the option he wants is not to our liking.

CINDY SORENSEN: Okay. Thank you very much.

CONSTANTINE ALEXANDER: Thank you for coming down.

Anyone else wishing to be heard?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes that no one else wishes to be heard. There are a number of letters in the file.

I'm not sure I'm going to read every one of them. I'll summarize them. But all of the letters will be deemed to be into the record in their entirety even if they're read.

NICOLAI CAUCHY: May I ask a couple of questions?

CONSTANTINE ALEXANDER: Yes.

NICOLAI CAUCHY: At some point can I address point by point?

CONSTANTINE ALEXANDER: Yes.

NICOLAI CAUCHY: And secondly, a few last minute letters that were sent for --

CONSTANTINE ALEXANDER: Why don't you give them to me? Okay, a few?

NICOLAI CAUCHY: The letters are in front. Then at the back are the exchanges of e-mail with Cindy's neighbors on the second and third floor.

CONSTANTINE ALEXANDER: In particular now that the number has increased, I'm not going to go through every one but I'm

going to try to summarize them. And I'll read them if they're short. These are in no particular order.

We have a letter from Dianne which is spelled D-i-a-n-n-e and Philip Rauh, R-a-u-h who reside at 171 Lakeview Avenue. And it says: Though they're unable to be present, this letter is being submitted as evidence of their support for you, being direct neighbors and a recent addition to the Huron community, we come to find, praise of the petitioner. Mostly he's been a good neighbor. It doesn't very much address the specifics of this project. Anyway, that he's been a good neighbor and they'd like to see him get further relief.

A letter from a Patricia Loring, L-o-r-i-n-g. Patricia S. Loring who resides at 173 Lakeview Avenue. Our backyard abuts the backyard of the petitioner's house. When we were about to put our house on the

market for sale, we asked him to pick up the construction materials in the backyard, he was quite cooperative and promptly did a thorough cleaning job.

Again, does not address the merits at all.

NICOLAI CAUCHY: Her other letter does. She sent it in January.

CONSTANTINE ALEXANDER: There's a second letter, thank you. January 28th from the same person. It says: What you propose to do would not affect our yard or house in any major way. We agreed to his adding a peaked roof of any appropriate height which does not have a negative impact on his neighbors either visually or by creating a safety hazard. A carefully couched letter.

We have a letter from Andrew Harkness, architect. Who apparently resides at 429 Huron Avenue. It's a letter in support. Most of the letter talks about what a good

neighbor you are. And it goes on to say architecturally the choice to erect a pitched roof is in sync with other structures in the neighborhood. "I have not seen the architectural drawings for this project, but the act of modifying the triple decker is a logical one that has been realized in various ways in Cambridge."

We have a letter from City Councillor Sam Seidel, S-e-i-d-e-l. He offers his support. I'll read the letter in part. "The petitioner has indicated that increased insulation at the top of the building has created an unintended negative consequence. Snow and ice are much slower to melt on the building roof. This increased weight has led to structural damage on the roof. His solution is to pitch the roof. The pitched roof that Mr. Cauchy could achieve the level of insulation he speaks by significantly lowering the risk of damage. The

environmental goal here is a good one and in particular high levels of insulation through relieve heating requirements during the cold months is very much in line with the city's efforts to reduce greenhouse gas emissions from our housing stock. In addition, Mr. Cauchy points out to me a fact I had not known. That triple deckers drain their roof surfaces directly into the city sewer pipes. Given the city's efforts to separate storm water from sewerage, the pitched roof would lead to lower loads on the sewers during a storm event and great infiltration. I recognize that your Board must consider many additional factors as you discuss and debate these proposals and I fully respect your decision-making process. I would like to offer my support for the proposal before you tonight on the grounds I mentioned above. The net environmental benefits that would be derived from such a change."

And a letter from a Lois Lampson,
L-a-m-p-s-o-n. Resides at 180 Lakeview.
The letter is dated April 1st. "I have owned
my home at 180 Lakeview since 1987. It is
very near the house in question." This is
not a favorable letter. "This is a lovely
residential neighborhood. If the house in
question is made taller, it will dominate its
surroundings even more than it does already.
That is why I'm writing in opposition. There
is some confusion about the reason for the
request to raise the roof. The sign posted
in front of the house says the purpose is to
create 'attic space'. At the original
hearing on January 28th the reason given
concerned ice on the roof. I did attend the
original hearing in this matter. I saw --"
well, this applause for us. We could do
without that though we like to hear it anyway.

We have a letter from Margaret Dejarden
Weyerhauser, W-e-y-e-r-h-a-u-s-e-r at 261

Lakeview. It's a letter in support. It raises basically the same issues that other people who supported have talked about it; a pitched roof would look nicer than a flat roof. Environmentally more appropriate. Protects the -- avoids too much snow and ice melting into the sewerage system. And that's essentially it.

We have a letter from Cynthia Sorensen. Do you feel you covered everything in your letter or do you want me to read this?

CINDY SORENSEN: I think so. The Mooms wrote another one but it's probably close to it there.

CONSTANTINE ALEXANDER: We have a handwritten letter here from the resident at 381B Huron Avenue. "I'm writing to express my" -- it's signed by -- I can't read the handwriting. It says the name of the person. Dorothea. And do you know what the last name is? It begins with a W. Anyway, beginning

with a W:

"I'm writing to express my opposition to the proposal to raise the roof on the property at 387 Huron Avenue. As an abutter, I feel that the project will provision -- will significantly reduce the light that will fall on my property. The 387 property is very tall, and an expanded roof line will cause the property of the -- will effect the property of the adjacent buildings." That's essentially it. And then the rest of the letter is concerns about the construction process itself.

There's a letter from a Peter R. Moock, M-o-o-c-k and Joyce Moock who reside at 395 Huron, Unit No. 2. Basically they ask questions. Some of these questions have already been asked about the chimney on the building next-door. The aesthetics. This person questions the aesthetics of a pitched roof, but it doesn't really come down one way

or another.

NICOLAI CAUCHY: No, they -- I've got a number of e-mail exchanging Peter only asked these specific questions, yes.

CONSTANTINE ALEXANDER: A letter from the resident at 271 Concord Avenue, Eugene, I'm just going to spell the last name.

NICOLAI CAUCHY: Eugene Szafaski who is the one who helped me chisel off the ice.

CONSTANTINE ALEXANDER: Eugene S-z-a-f-a-s-k-i, a former tenant of yours. "I was renting an apartment from Nicolai Cauchy at 387 Huron Avenue in Cambridge, and during the winter the snow accumulation was so significant on the roof that he had to physically remove the snow several times. I assisted one Saturday afternoon." And just explains the process. "That day there were several inches of ice under the blanket of heavy snow. Needless to say, it took a lot

of effort to clear the snow and a lot of care had to be done to not damage the roof. There was also the issue of safety of passersby as we pushed the snow and ice off the roof. Safety for passersby also meant going to the edge of the roof repeatedly. Not the safest thing to do on an ice covered roof."

A letter from a Lucille Wilhelm, W-i-l-h-e-l-m that resides at 188 Vassal Lane. She writes a letter in support. Mostly it talks about the history of the structure and what a good job you have done in terms of improving the appearances of it. And, again, raises the same issues that there are those including yourself who argue in favor of granting relief.

And then a letter from a John Altobello, A-l-t-o-b-e-l-l-o who resides apparently at 78 Reservoir Street. He writes in support. As a neighbor he knows the petitioner well. He's aware of the damage that was inflicted

upon his house due to the extreme snow loads due to the 2008/2009 winter combining with his insulating the third floor ceilings. It's a long time practicing architect in Cambridge. I've had the chance to appreciate the thoughtfulness of his engineering, your engineering background and ensuring the structural integrity of his home. He goes on to praise you. And then he says that -- in this person's opinion, flat roofs have a liability that the city should at least consider from a design perspective raising a flat roof by 12 feet would render the house much more coherent with the surrounding ones. And again further praise for you as a good neighbor.

And then there's a petition in support signed by 1, 2, 3, 4, 5, 6, 7, 8 persons. It's very short. Basically it's in support. Again, for the reasons you've already expressed to us.

And another letter from the Stewart and Nancy Clements and you've already spoken.

STEWART CLEMENTS: Yes.

CONSTANTINE ALEXANDER: And there's one more from Ann Safran, S-a-f-r-a-n, 87 Alpine Street. "I'm not an abutter to Nicolai Cauchy the petitioner's house on Huron Avenue, but I can testify to the ice on his roof last year and the damage it caused." And then she praises you as an excellent planner and designer. "Therefore, I write in support of this project to tilt the roof of his house to provide a good solution to the ice problem." Keep going. I think we'll come to the end. This is the end.

A letter from Thomas C. Putnam who resides at 397 Huron Avenue. He's writing in support. The support is based upon, again, the fact that you're a good neighbor. It does not really deal much with the merits of the petition. But clearly you have the

support of your neighborhood. You are a good neighbor I would judge from this.

Unless anyone else wishes to be heard. Anyone else want to give public testimony? The public testimony will be closed. Now you have a chance to rebut or provide further information.

NICOLAI CAUCHY: Okay. Just, I mean, let's try to keep it short for everybody. But the some of the points that were made. Dorothea who is on there is actually not an abutter. And her house is in no way, shape or form anywhere close to being affected by anything I do. She says that the house will dominate more than it already does, which clearly it doesn't since I'm the smallest roof with my neighbor immediately next-door.

One comment I wanted to make is that I had spoken to all neighbors as you saw in here prior to filing with the very same drawing

that you see on the front page of this, although gambrel rather than gable, but when the sign came up announcing the hearing, several people came to me asking but you're putting a pitched roof or you're creating attic space? And the whole concept of attic space, for whatever reason, but seems to have stirred quite a few questions and misunderstandings. I mean, I answered as best I could saying that thus far as I'd understood your intent, attic space was the term defining any space that's under any void space that's above liveable space under the roof. But I just wanted to make the point that maybe the wording in some cases can maybe cause some confusion.

Six points that were brought up by Cindy and I think that are worth addressing. The construction process and in fact that somebody else mentions in the letter complaining about things in my back --

CONSTANTINE ALEXANDER: Don't address that. I mean, any time that relief's going to be granted, there's going to be construction and hopefully a temporary dislocation of the neighborhood. That's something -- that doesn't weigh any our decision one way or the other.

NICOLAI CAUCHY: I wanted to make a comment that rather than having a dumpster at the front of my house, I gutted the whole thing and redid the back porches and so on. I chose to throw debris in the backyard and when it was big enough, rent a truck and haul it out. Just a comment to that.

Safety and health issues, as far as raising a roof that were brought up, I'm not sure how the safety or health of anybody could be affected. In fact, getting rid of an old roof anyway involves some health problems from dust and any construction project once again does so.

Stove pipe and the light concerns that are expressed by Peter and Joyce, I actually went very carefully over, measured, e-mailed them the drawings. Peter said that he fully understood the drawings, that he just wanted, as he had asked, some sort of security as opinion of the Board of Zoning. And I did take the time to bring -- to ask two of the Zoning inspectors to come over and verify that what I was presenting to them in terms of drawings was not a misrepresentation which they did, but they also stated that they can't take part in any written way.

One last thing I would put against flat roofs in particular is the solar accumulation that they get on during the summer days. And I think that's a tremendous environmental degradation, because the flat roof surface is normal to the sun's rays during almost all the day whereas a pitched roof especially since the house is facing due south, one side would

get the morning, the other side in the evening. The energy balance would be tempered. That being said, I understand fully that several of you anyway do not see any reason to grant the Variance that I'm appealing for. And I don't want to drag your time or anyone else's endlessly on this. So if it can't be granted, well --

CONSTANTINE ALEXANDER: Do you have any new points to bring up? This is the time to do it. It doesn't help to repeat old things. But, you know, this is your time in court if you will. Anything you want to make sure or you want to bring to our attention that you haven't brought to our attention, speak now.

NICOLAI CAUCHY: I think now, to me it makes design sense. I'm willing to put my money into doing this project because I believe that it will not only solve my problems, but also maybe set a precedent that

if indeed there are future such events in Cambridge, then there will be one existing project from which the city can draw. And I certainly do not want in any way, shape or form to be intrusive on any neighbors. And indeed it will not, it will not be visible from my immediate abutters' houses from any of the windows. Another reason for having kept a slope low. And lastly, the environmental factors. That's it.

CONSTANTINE ALEXANDER: Thank you. I think we're ready to consider the case. Many members have already expressed their views already. But further comments or people want to go to a vote?

SLATER ANDERSON: You live here, correct? You live in this house?

NICOLAI CAUCHY: Yep.

SLATER ANDERSON: On the third floor?

NICOLAI CAUCHY: Yep.

SLATER ANDERSON: Thank you.

NICOLAI CAUCHY: One last -- I had offered as sort of a compromise. I don't think it will address any of the points that you're bringing up, but given all of the houses are gambrel, it would be a lot more difficult for me to build, but if it makes any sense.

CONSTANTINE ALEXANDER: That's all right. We're not going to design the house. You've come before us with the design and this is the one that will go up and down unless you want to continue it further.

People wish to comment or do you want to go to a vote?

The Chair will move that we make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship for the petitioner. Such hardship being the accumulation of snow

and ice on his flat roof. Which in turn has led to leakage problems in the third floor as well as perhaps excess drainage of snow and ice into the sewer system.

That the hardship is owing to circumstances lending to the shape of the structure and especially affecting such shape that structure but not affecting generally the Zoning District in which it was located. The shape being a flat roof, which in turn creates the problems that the petitioner has cited to us.

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

That the proposed pitched roof would be consistent with many structures in the general neighborhood. And in the views of a number of neighbors would have improved the coherence, architectural coherence, of the

immediate vicinity.

On the basis of these findings the Chair would move that a Variance be granted to the petitioner on the condition that the work would proceed in accordance with the plans submitted by the petitioner. There are two pages in length, both of which have been initialed by the Chair.

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

(No response.)

CONSTANTINE ALEXANDER: No one is favor. The Variance is not granted.

The Chair would move that in view of this we make further findings. The findings would be that in the opinion of the Board that there would not be a substantial hardship -- the petitioner doesn't qualify for the hardship required by law.

That a flat roof structure is not unique to Cambridge. That other flat roof

structures have dealt with snow and ice problems.

That the petitioner is not able to apparently deal with, and that there would be detriment to the public good. Issues that have been raised by abutters, not all abutters, but some abutters. There are issues regarding light and perhaps safety.

And on the basis of all of those -- these are the findings we would make and would support our decision not to grant the variance.

All those in favor of making those findings, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor and one opposed.

(Hughes opposed.)

(7:45 p.m.)

(Sitting Members: Constantine Alexander,

Tim Hughes, Brendan Sullivan, Slater Anderson, Christopher Chan.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9915, 325 Vassar Street. Is there anyone here wishing to be heard on that matter?

For the record, this is one of two cases we're going to be hearing both seeking Special Permits for the premises. And what we're going to consider right now is a Special Permit to add a mechanical penthouse to the roof of the structure. Subsequently we'll hear a Special Permit, a separate case regarding the installation of windows.

(Whereupon, a discussion was held off the record.)

CONSTANTINE ALEXANDER: Go ahead.

DAN WINNY: First of all, I wanted to apologize on the brief discussion on the floor that disturbed the Board. That was Carol Adler who is a neighbor of this project

who was expressing disappointment and frustration that she couldn't find a parking space.

BRENDAN SULLIVAN: Introduce yourself for the record.

DAN WINNY: Dan Winny, W-i-n-n-y. I'm the architect working with BioMed Realty who are the owners of this building at 325 Vassar Street. Bill Gardner and Sal Zinner are here from BioMed tonight.

Good evening. As you mentioned, there are two Special Permit cases before the Board. They are separate cases. All of the materials that you have are strictly separated into the two cases. But in order to save a tree or two the material you'll see tonight actually shows material from both the windows and the penthouse portions. So we'll start with the penthouse.

The reason for the Special Permit is under the non-conforming 8.22 section of the

Code where the addition proposed is allowed by Special Permit, because within the area and volume specified in 8.222. So that the proposal is to create an addition to the existing mechanical penthouse on this building.

CONSTANTINE ALEXANDER: To enclose new mechanicals or just enclose existing mechanicals?

DAN WINNY: A bit of both. Let me explain that further.

We are aware that the penthouse, if it's as of right as this one is, aren't necessarily regulated by this Board. The reason that we're here is because the building underneath the penthouse is non-conforming in terms of setbacks. We're also aware that mechanical equipment exposed on a roof is generally not regulated by Zoning. Is certainly regulated by the noise ordinance as is any equipment that's inside a penthouse. So that the

situation of this buildings at the moment is that the current tenant's lease is coming to an end. There's an opportunity to do some miscellaneous improvements to the building, both cosmetic and mechanical, and make it more suitable and modern for the tenant's use. And so the penthouse would be a part of that. There are other improvements shown on the drawings which involve landscaping and paint and improvements to the exterior walls and so forth. But the process in this case is that first the owner would like to know whether the Board will approve the addition of the penthouse. Having known that the next step is to design appropriately the mechanical equipment which will be associated with the penthouse because different type of equipment whether it's inside or out. And what the needs of the future tenant will be.

So the step is first to know whether the

Board will approve the enclosure of this equipment and then to design that equipment in concert with a tenant and to make sure that as we work with an acoustical engineer that there been full compliance with the License Commission.

CONSTANTINE ALEXANDER: You're right. Obviously the noise ordinance is the statute that controls issues about noise, but it does have impact enough from a Zoning point of view. And as you'll see and you probably know we have letters in the file from neighbors who are upset about noise or are concerned about increased noise. So I think you have to address that, and you've been telling us we don't know exactly what mechanical they're going to go with the penthouse if we approve it. I suppose you can't give us any cold comfort or iron-clad comfort that the noise levels won't be increased from what they are right now or can

you?

DAN WINNY: Well, I think what we can say, as every building owner in the city must say, is that there will be compliance with the noise ordinance. Exactly what the equipment will be, we cannot say yet. I completely agree with what you said. I just wanted to point out that the reason that we're talking primarily about the closure and less about the equipment is that the equipment is essentially unknown at this point.

CONSTANTINE ALEXANDER: Let me push this a little bit further maybe irrelevantly. If you were to put no other equipment and we allowed this enclosure would that in your judgment reduce the noise impact of the neighborhood?

DAN WINNY: I can't say in this specific case without studying it.

CONSTANTINE ALEXANDER: Okay.

DAN WINNY: But the reason why the

penthouse is generally works best for everybody is because it keeps the equipment in the dry and adds to the noise integrity.

CONSTANTINE ALEXANDER: In your supporting statement you do say that one of the benefits of the project is to reduce noise.

DAN WINNY: Well, any equipment that's inside a penthouse as opposed to exposed on the roof will by nature be less quiet.

CONSTANTINE ALEXANDER: That was the question I was asking, maybe not very articulately. When you're asking the question are you saying to us, are you not that it should or could reduce the noise level for the neighborhood?

DAN WINNY: It would. All other things being equal. But the way the noise ordinance works is to set the seal which has to be met. With penthouse or without it.

That maximum noise level has to be met.

CHRISTOPHER CHAN: And, Gus, I think this line of questioning probably not going to get you anywhere. They're probably going to make more noise when all is said and done with more equipment up there when they're finished, they just don't know what that is. All they're saying at this point is they're going to comply with the noise ordinance. I don't think you're going to be able to tell whether there's more noise or less noise after this project until they figure out what the equipment is going to be on there.

CONSTANTINE ALEXANDER: The only reason I pushed on this they put in their application that it's going to reduce the noise levels and now we're hearing something slightly different. That's why I asked.

BRENDAN SULLIVAN: It's to muffle any kind of noise inside a structure than not.

DAN WINNY: Exactly. That's the

point I was trying to make in the application form.

So, as part of this process I have discussed this project with two of the nearest residential neighbors who presented themselves with acoustic consultants, with Andrea at the License Commission who administers the noise ordinance, and with Les Barber and with Sean and Ranjit at ISD to make sure the penthouse itself is conforming to the Zoning and it complies with the requirements of 8.22.

Just to talk a little bit about the status of the building. The building is in a Special District 11 where the uses in the building now and proposed are allowed. It's a two-story building of about 50,000 square feet in all. It has this existing penthouse here, and this portion of it is the addition. I can also show you elevations. The shaded portion shows the new addition to the

penthouse and that's the existing penthouse.

The building, including the penthouse is about 50 feet high. The height allowed in the district is 85 feet. So even with the penthouse, it's substantially lower than the district allows. And in other aspects the building does not exceed the allowed currently allowed FAR. So the only respect which is non-conforming setbacks.

The context of the building in the neighborhood is from here, here is 325 Vassar Street, the surrounding buildings are as follows. Here is Vassar Street and Memorial Drive and the river. Across the street is the parking for the Hyatt Hotel. On this side is a similar building owned by MIT Investment Management Company which is very similar structure. But only one story also used for lab.

On the other side is a utility substation owned by the utility. And in the

back is the railroad tracks. Across the railroad tracks are the old California Paint structures also belonging to MIT. And here is Cambridgeport Commons which is closest residential use. Closest department in approximately 225 feet from the closest point of the proposed penthouse.

CONSTANTINE ALEXANDER: Where is Chestnut Street?

DAN WINNY: That's right here. You have a letter from Carol Adler who was here before.

CONSTANTINE ALEXANDER: We have a letter before.

DAN WINNY: She is having a lot of trouble with the parking space. She lives at No. 2 Chestnut Street which is right here. So I think that describes the general context unless you have any questions.

BRENDAN SULLIVAN: So the height does not exceed what's allowed. The FAR is

not exceeded. The only reason you're really here is an existing non-conforming building and hence any alteration to that building requires a Special Permit.

DAN WINNY: Exactly correct.

BRENDAN SULLIVAN: Well, a Special Permit in this context. The Variance is something else.

DAN WINNY: It's not a Variance.

BRENDAN SULLIVAN: It's a Special Permit.

DAN WINNY: It's within the requirements for a Special Permit.

BRENDAN SULLIVAN: Right.

CONSTANTINE ALEXANDER: Questions from --

BRENDAN SULLIVAN: The only hesitation I have on it is that the existing penthouse which is --

DAN WINNY: I can show you this elevation here. The addition to the

penthouse is approximately the same size of the existing.

BRENDAN SULLIVAN: And that penthouse, what portion of the interior of that has equipment in it?

DAN WINNY: All of it.

BRENDAN SULLIVAN: All of it. So it's 100 percent equipment?

DAN WINNY: That's right.

BRENDAN SULLIVAN: And what's proposed, we don't know if it's 100 percent equipment?

DAN WINNY: It will be 100 percent mechanical. There's no, there's no proposal to increase any of the gross floor area of the building.

BRENDAN SULLIVAN: And the reason to increase beyond what may be necessary for mechanical is the ease of just coming straight up if there was a tenant or a use on the first floor or the second level just to

go straight up with the equipment or straight up with the mechanical to the equipment or going straight down as opposed to meandering around into the existing penthouse.

DAN WINNY: That's part of the reason. The -- I've been involved in lab buildings and primarily in Kendall Square area in Cambridge for about 25 years. And the general norm for a lab buildings of mechanical equipment is that it takes up about 25 percent of the building's first floor area. If you have a building of 100,000 square feet, for example, the penthouse to encapture all that equipment is suitable for being indoors, not all of it is -- is generally another 25,000 square feet or so. So this would bring the, this building which is an older building, a converted industrial building, a little more into alignment with the general required standards.

BRENDAN SULLIVAN: And also going forward this building ideally would have one tenant, but it may not just have one tenant. In other words, so you may have to separate mechanical for one half of the building, propose a new mechanical space for possibly a second or a third tenant?

DAN WINNY: Exactly right.

CHRISTOPHER CHAN: Who are the tenants now?

DAN WINNY: The current tenant is Monsanto.

CHRISTOPHER CHAN: Just one for the whole building?

DAN WINNY: Yes, I believe that's still correct.

CHRISTOPHER CHAN: How long does their lease go? Are you in discussions for renewal?

UNIDENTIFIED MALE: They are leaving the building and going down to First

Street I believe.

CHRISTOPHER CHAN: So essentially you're gearing up to make this a rentable space for a future lab owner?

UNIDENTIFIED MALE: Yes.

CONSTANTINE ALEXANDER: Further questions from members of the Board?

Anyone here wishing to be heard on this matter?

(No response).

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

We do have letters in the file that I'll read. There's a letter from Henrietta Davis, Vice Mayor, addressed to us dated April 7th. "I urge the Board of Zoning Appeals to shield the neighbors at 2 Chestnut Street directly across the street from the visual and noise impact of the AC mechanicals on the roof at 325 Vassar Street. Please consider other means to avoid mechanicals on

the roof."

There's letter from Carol R. Adler, 2 Chestnut Street, No. 13, addressed to us. It's dated March 31st. "As a resident of Cambridgeport Commons at 2 Chestnut Street, I am greatly concerned about the proposed Special Permit by petitioner Dan Winny, architect. He is applying to place a mechanical penthouse, presumably for air conditioning, atop 325 Vassar Street which directly faces and impacts our building which is on Chestnut and Waverly Streets. I went to the Zoning Department the morning of March 30th to discuss further what would actually be built. A call was placed on my behalf to Mr. Winny who so far, so far being March 31st, has not returned it. Since there was already an air conditioner at 325 and adjoining buildings, an increase in noise is considered. The current air conditioning unit is very noisy and can be heard by all

residents facing the buildings on Vassar Street. We're not looking forward to more noise and wonder if this increase conforms to noise zoning in Cambridge."

And then there is lastly an e-mail from Andrea Boyer, B-o-y-e-r dated April 2 from -- wait a minute. Yes, it's from Andrea M. Boyer, Chief Licensing Investigator from the Cambridge Licensing Commission. It was actually addressed to Mr. Singanayagam.

"Thank you very much for clarifying the 325 Vassar Street application this morning. As I've explained there's been a noise issue specifically in that Cambridgeport area since 1995. The last case closed in 2001. Two residents have contacted me who live on Chestnut Street, directly behind 325 Vassar Street, with concerns of any additional mechanical equipment being added onto the roof of 325 Vassar Street. I spoke with the architect Dan Winny and he did confirm that

no new mechanical equipment was being added at this time. But based on tenants in the building and future equipment there is a possibility for future changes. I am writing this e-mail for you to be aware of the concerns with the neighbors pertaining to any additional mechanics added to the rooftops in that area." That's essentially it.

And that's the sum and substance of what's in the file.

You said Ms. Adler was planning to be here?

DAN WINNY: She was trying.

CONSTANTINE ALEXANDER: I think we're going to have to close public testimony at this point. Unfortunately she's not here. We have her letter so she's been heard. I will close public testimony.

Discussion? Questions? Views from members of the Board?

BRENDAN SULLIVAN: Well, to me I

think that the noise ordinance is the one that needs to be complied with and probably will be complied with. It would have to be complied with. I think that would address their concerns.

CONSTANTINE ALEXANDER: I agree with that. I mean, noise is something that we do take into consideration. I think we're going from derogating or intent of the by-law. But it's not a primary concern of ours. It's a secondary concern. The primary enforcer of that is the licensing commission on the noise level.

BRENDAN SULLIVAN: I think too high to shield going back to Councillor Davis's comments is probably a good thing. Probably if it's done tastefully.

CONSTANTINE ALEXANDER: How do you shield the penthouse?

BRENDAN SULLIVAN: No, no, I mean the equipment.

CONSTANTINE ALEXANDER: Oh.

BRENDAN SULLIVAN: In other words, Dan, do you have that before and after?

DAN WINNY: Yes.

BRENDAN SULLIVAN: Beauty is in the eye of the beholder, but it is what it is.

CHRISTOPHER CHAN: What's it going to be made out of?

DAN WINNY: Stucco material on a steel frame is what it will be made out of.

BRENDAN SULLIVAN: It's just going to be a continuation on the inside of it?

DAN WINNY: Yes, partly insulation on the walls.

CONSTANTINE ALEXANDER: I agree with those comments, and I think noise is an irrelevant issue from a Zoning point to me. And if you take out the noise issue and there is ways to enforce the noise, excessive noise, then I think the relief is modest in keeping with what we want to do with that part

of Cambridge. To improve the nature of the buildings there and to enhance the rentability of structures to desirable tenants. Other members?

SLATER ANDERSON: No, I agree. And these older buildings need to be adapted over time to what the light industrial, temporary commercialism uses are. And if we were to deny it, you could still put mechanicals on the roof, they just would have to comply with the noise ordinance. I'd rather see something up there that was an investment in the commercial base of the community, which I think is an advantage to the broader Cambridge community. So I'm in support.

CONSTANTINE ALEXANDER: Further comments or do you want to go to a vote?

TIM HUGHES: I'm good with it.

CHRISTOPHER CHAN: I guess the troubling aspect to me is the way in which we're doing these things in that they're

basically asking us if it's okay and then they're going to design it. So, you know, obviously it's a penthouse and there's not much to see from our perspective. We don't have control over what's inside because it's inside. But still it troubles me a little bit in doing that. I mean, he couldn't even tell us what material it was until I asked.

DAN WINNY: It's in the application.

CHRISTOPHER CHAN: Okay. And I didn't ask you and I didn't ask you until you presented it. But it's pretty basic and maybe it's very basic to begin with. But it's just a routine that we don't want to be doing too often in terms of, you know, approaching something before we really have an idea of what's going on.

CONSTANTINE ALEXANDER: We don't have an idea of what's going on inside. And that's not necessarily a Zoning issue.

CHRISTOPHER CHAN: I know. But

also the idea -- it's not just that. It's also the idea we won't do anything until we you know what we can get what we can get essentially.

BRENDAN SULLIVAN: You're right. It goes a little bit against the grain.

CHRISTOPHER CHAN: Absolutely.

BRENDAN SULLIVAN: But from a property owner perspective, which comes first, you know? We need to know whether or not we can do this before we can sell or rent or market or design for tenants and -- but, again, we're approving a box. What goes inside that box and what comes out of that box is going to be controlled.

SLATER ANDERSON: And we're not increasing a non-conforming. We're within -- non-conformity is the construction -- I think that's a big factor.

CHRISTOPHER CHAN: It's only a Special Permit.

SLATER ANDERSON: Exactly.

CHRISTOPHER CHAN: That's what it comes down to.

CONSTANTINE ALEXANDER: Ready for a vote?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: The Chair moves that the Board make the following findings:

That being a non-conforming structure currently, that the requirements of the Ordinance cannot be met if you wish to put a penthouse or any other structure on the roof.

That allowing this penthouse will not affect traffic in the neighborhood or cause congestion, hazard or substantial change in established neighborhood character. In fact, there is a penthouse on a portion of the roof as it is. And the neighborhood, at least the immediate neighborhood, is industrial or at least non-residential in

nature.

That the continued operation of or development of adjacent uses would not be adversely affected by the nature of the proposed use. In making that finding, the Board would note that there may be issues of sound, but those issues to an extent will be and can be monitored by the other bodies in the City of Cambridge, and subject to a separate statute of our Zoning Ordinance.

That no nuisance or hazard will be created to the detriment of the health, safety or welfare of the occupants or the citizens of the city.

That again assumes that the penthouse will be used for purposes that will comply with our noise ordinance and not violate it.

And that the this proposed penthouse would not impair the integrity of the district or otherwise derogate from the intent and purse of this Ordinance. In fact,

the purpose of this penthouse is to facilitate the use of this structure in a desirable way in a neighborhood that doesn't, again, assuming some noise issues are dealt with, will not impact the nearby residential character of the general area.

On the basis of that, the Board would grant a Special Permit to the petitioner to proceed in accordance with the addition of a mechanical penthouse, but on the condition that the work proceed in accordance with plans submitted by the petitioner dated February 25, 2010. They are 1, 2, 3, 4, 5, 6, 7, 8 pages of plans and photographs. And the first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

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

(8:15 p.m.)

(Sitting Members: Constantine Alexander,

Tim Hughes, Brendan Sullivan, Slater Anderson, Christopher Chan.)

CONSTANTINE ALEXANDER: Let's move to the other Special Permit. Case No. 9916, 325 Vassar Street. And, again, we've got to start all over again, Mr. Winny. So for the record, give your name and address for the stenographer.

DAN WINNY: I'm Dan Winny, W-i-n-n-y architect working for BioMed Realty Trust.

CONSTANTINE ALEXANDER: This time you're seeking a Special Permit to reinstall windows that were originally existing on the rear and side of the building at the second floor. Is that it?

DAN WINNY: That's correct. I'm going to use the same illustrated materials, but the elevations here are the same as the ones in the application packet.

SLATER ANDERSON: I appreciate that you assumed you'd get the penthouse.

DAN WINNY: We like to keep things clean.

This is a photograph of the existing rear elevation of the building showing the original windows having been blocked up with masonry block sometime ago. The last tenant of the building primarily was involved with growing plants inside the building and relatively needed short light and didn't have a need for windows. So our proposal is to reopen those windows. As you can see here in this view, it's again the existing view, we're also going to make the openings wider than they originally were.

CONSTANTINE ALEXANDER: Where would those opening face towards to the back of the Hyatt Regency or the other side?

DAN WINNY: These windows --

SLATER ANDERSON: Are they train tracks?

DAN WINNY: They're going to face

the train tracks.

SLATER ANDERSON: Okay.

DAN WINNY: The building is 90 feet wide, but it has windows only on its front elevation on the back. Which you can see here. So the proposed windows that we would now put back into the building which match the ones on the Vassar Street side, these particular ones are looking out over the railroad tracks. They're wider than the original windows I just showed you so that they match the windows on the first floor.

CONSTANTINE ALEXANDER: The reason I ask the question, and just to get it on the record, is there any impact on the privacy of the people who those windows will face? In other words, could it be intrusive to them?

DAN WINNY: Well, I'll use this plan to illustrate that here you see the extent of the facade facing the railroad tracks.

CONSTANTINE ALEXANDER: Right.

DAN WINNY: The California Paint building is industrial and currently not used. This is Cambridgeport Commons. You see it comes to a point. There are probably a couple apartments that, you know, people can see back and forth. But this distance is about, it's 200 feet plus across the railroad tracks. We think that in terms of certainly energy use, and more daylight is a good thing in terms of quality of work space and more daylight is a good thing. And since the activities that go on in these lab buildings is generally about making life better and people healthier, it seems to fall within those. And the second floor windows on the back and the two short sides of the building is what's proposed here. And the reason for the Special Permit is because two of the yards don't comply. So the facades are technically non-conforming, otherwise it would be an as of right construction.

CONSTANTINE ALEXANDER: Questions from members of the Board?

TIM HUGHES: Will you be able to see the circus train from these windows?

UNIDENTIFIED MALE: I think the circus train might be able to peek through our second floor issues.

TIM HUGHES: There might be an issue with the circus people once a year.

DAN WINNY: The elephants are very modest.

TIM HUGHES: I heard that.

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

(No response.)

CONSTANTINE ALEXANDER: No one indicates that he or she wishes to be heard. I can see no letters in the file. So I'll close -- unless you have anything further, we'll close public testimony.

DAN WINNY: I think I've said -- I've

explained everything to you. I'll be happy to answer any questions.

CONSTANTINE ALEXANDER: Questions, comments from members of the Board? Ready for a vote? We'll take a vote.

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

That the requirements of the Ordinance cannot be met without a Special Permit in as much as we have a non-conforming structure here due to setbacks.

That granting relief being sought regarding the windows will not impact traffic or patterns of access or egress or would cause congestion, hazard or substantial change in established neighborhood character.

That the continued operation of adjacent uses will not be adversely affected by the nature of the proposed use. Noted that the windows will face, to the extent they

face at all on residential areas, will be over 200 feet distance, not exactly close quarters as we often are faced with in zoning cases here.

That no nuisance or hazard will be created to the detriment of the health safety or welfare of the citizens of the city. Again, the windows will be looking out over railroad tracks and to some extent an industrial buildings and have no impact on health, safety or welfare of the citizens of the city.

And the proposed use would not impair the integrity of the district or otherwise derogate from the intents and purposes of this Ordinance.

What the petitioner is planning to do is to reopen windows that were once in that building. It would make the building a more attractive building and a more suitable building to be inhabited by commercial uses.

On the basis of these findings, the Special Permit will be granted the petitioner on the condition that the work proceed in accordance with plans submitted by the petitioner. They're eight pages in length. There are eight plans, and the first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

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

(8:25 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Slater Anderson, Christopher Chan.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9917, 154 Mount Auburn Street. Is there anyone here wishing to be heard?

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. For the record, James Rafferty on behalf of the applicants Richard and Paulette Crowley seated to my right.

CONSTANTINE ALEXANDER: And you want us to create 1364 lot in a 5,000 square foot district?

ATTORNEY JAMES RAFFERTY: Subtlety's not your strong suit.

CHRISTOPHER CHAN: Why don't you let him comment?

ATTORNEY JAMES RAFFERTY: That's one way to look at it. Another way is we want

to be spared the need to create -- a condominium would negatively impact the value of the residential house and we believe we have little benefit to anyone in the neighborhood. So, but it is admittedly a small lot but the history of the property is somewhat interesting. Mr. Crowley's family, his aunt owned the property since the twenties. They operated a dressmaking shop in the small store. And Mr. Crowley grew up on Fayerweather and he was -- he's known the property his whole life. And it's a very fine property, particularly the main house itself, but it has, it has some demands associated with maintaining it. The current tenant in the store is a furniture manufacturer. He has a manufacturing facility up in Gardner and he sells his handmade furniture. He's been there for about 15 years. But Mr. Crowley and Mrs. Crowley would like to do some

improvements to the main house, the house that their aunt lived in. They currently live in Littleton and with downsizing approaching, would welcome the opportunity to return to Cambridge. One of the ways to achieve that would be to separate the lots. And the properties really have separate identities. There is no relationship with what's going on in the store.

One of the advantages when one looks for advantages knowing how important that might be, is that there is a preservation opportunity here, because one would think that in the future no one would be taking that house down because you'd be left with an unbuildable lot. So that house is an older mercantile structure that contributes to the vibrancy to that street. And the subdivision one in one form would ensure that would state there. It would ensure that perhaps an owner of that property, a retailer

may choose to own his business or the current occupant may consider acquiring it. So, I discussed all these possibilities with Mr. Crowley and he has a strong relationship with his neighbors. And he went out and visited with nearly all of them, and they all expressed strong support.

CONSTANTINE ALEXANDER: We have petitions here in the file. Unless you have new ones.

RICHARD CROWLEY: Two more signatures.

ATTORNEY JAMES RAFFERTY: Can we substitute the originals? They have a couple additional names and a new letter.

So we recognize that the lot, the proposed retail lot would be small. In fact, in attempting to identify what would be the appropriate lot line, we did it in a way that would reduce setback violations in trying to keep the larger home as conforming as

possible, recognizing that many aspects of Lot A are non-conforming. It's right to the street. The garage, it has no physical connection to it, but it abuts it, so it's rear lot is --

CONSTANTINE ALEXANDER: Is there an alleyway on the other side of that?

PAULETTE CROWLEY: Yes.

CONSTANTINE ALEXANDER: There is?

RICHARD CROWLEY: Yes.

CONSTANTINE ALEXANDER: The alley would be part of the new lot you would create?

ATTORNEY JAMES RAFFERTY: Yes, this would be the new lot line is right here. That goes on Lot A that side of Lot A.

BRENDAN SULLIVAN: Lot A is the house and Lot B?

ATTORNEY JAMES RAFFERTY: No, the opposite.

BRENDAN SULLIVAN: Where is the lot line between A and B?

ATTORNEY JAMES RAFFERTY: It's within inches of the structure on Lot A.

BRENDAN SULLIVAN: The only concern I have with that is that the front corners retail of the store hangs out two feet which by creating that lot line right along the existing building, now you have part of the structure hanging over somebody else's lot by two feet.

ATTORNEY JAMES RAFFERTY: Two feet?

PAULETTE CROWLEY: The side with the sidewalk?

BRENDAN SULLIVAN: No /as you face the building to the immediate right side.

ATTORNEY JAMES RAFFERTY: Here's a picture. This detail right here.

PAULETTE CROWLEY: The corner on the exit of the house.

ATTORNEY JAMES RAFFERTY: That turns a corner for a short distance, does it run the length of the property?

BRENDAN SULLIVAN: I went by there this afternoon.

RICHARD CROWLEY: It sticks out about four feet. I don't think it sticks out two feet. It sticks out maybe a foot.

BRENDAN SULLIVAN: Two feet.

RICHARD CROWLEY: Two feet?

BRENDAN SULLIVAN: As of three o'clock this afternoon.

RICHARD CROWLEY: I'll be darned. I never looked at it that close.

ATTORNEY JAMES RAFFERTY: That's relevant --

BRENDAN SULLIVAN: I guess my proposal would be to come off the building three feet which is aligned with the walkway which is somewhat serpentine, but that if you came up the building three feet and into a straight line, there is a row of fieldstone or bluestone that sort of is a barrier between the walkway and a little landscape area.

CONSTANTINE ALEXANDER: Would that result in the lot for the residents to be non-conforming? I think you have enough room to -- if we do what Mr. Sullivan suggests, would you have a conforming lot? You have a 5,700 square foot lot as I recall from the application.

RICHARD CROWLEY: That's part of the garden. I've been maintaining the garden since I was 12. One of the reasons I wanted to keep the lot so that I could still keep that garden.

BRENDAN SULLIVAN: It still could be maintained. Should anybody buy the -- again, I'll just say store for lack of a better word, is that they then can with a three-foot buffer, they can maintain the side of that building also. Right now --

ATTORNEY JAMES RAFFERTY: Well, we had contemplated an easement or a construction access agreement. But to be

candid we had not caught a very cogent point. Thank you for bringing it to our attention. And I think, I think curing that by easement is possible, but since it's not a structural element of the building, but I can see the merits of adjusting the lot line to avoid an encroachment because one wouldn't typically create an encroachment at the time you create a lot line. So, I think we could arrange a mechanism where you could have access to the garden notwithstanding the fact that the feet in the garden would be in the other lot. We could maintain an exclusive use easement over the area of the garden.

RICHARD CROWLEY: If it goes back only four feet, wouldn't we just put a jog in that lot line?

BRENDAN SULLIVAN: Well, I would not be in favor of that. I would just say run a straight line. And then the side of that building can also be maintained without

somebody stepping on somebody else's property.

RICHARD CROWLEY: It's more of an emotional thing for me since the house has been with me since I was 12.

BRENDAN SULLIVAN: We're going to be here forever from this day forward.

ATTORNEY JAMES RAFFERTY: The three feet is --

BRENDAN SULLIVAN: From the building up to the edge of the gate. And now it sort of [align]s with a border of flagstone which separates the walkway along that green area.

ATTORNEY JAMES RAFFERTY: So, the only thing I would note, then, is that the left setbacks as proposed in Lot B get reduced by three feet. So I should amend the dimensional form.

CONSTANTINE ALEXANDER:
Amend -- we've got to tie -- if we grant

relief --

ATTORNEY JAMES RAFFERTY: I'll
initial it.

RICHARD CROWLEY: I think it's one
foot now. So one foot from the face of the
building to three feet off the face of the
building.

ATTORNEY JAMES RAFFERTY: I don't
want to put words in the Mr. Sullivan's
mouth.

BRENDAN SULLIVAN: You don't want to
take them out. You definitely don't want to
put them in.

ATTORNEY JAMES RAFFERTY:
Mr. Crowley is on the Planning Board in his
town by the way in Littleton and he tells
me --

BRENDAN SULLIVAN: There's a spot
here.

ATTORNEY JAMES RAFFERTY: He tells
me he has to run for election. I'd be happy

to campaign for people around here. Imagine if you get voted. I mean, I says what happens to the people they don't get the relief they're seeking? I imagine they don't put a sign up for you.

BRENDAN SULLIVAN: It would be interesting what sign would go on which corner.

RICHARD CROWLEY: I have to applaud you guys for doing what you've done. This is what I've done for four years. And to go out after dinner on your own time X amount, twice or three times a month or whatever you guys do, is really public service. That's harder public service.

BRENDAN SULLIVAN: How long were you in for?

RICHARD CROWLEY: Four or five years. Building Committee and School Building Committee and the Planning Board.

ATTORNEY JAMES RAFFERTY: And they

deal with barns. And do you have any commercial buildings? These men deal with life science, life and science issues.

PAULETTE CROWLEY: We have cart paths.

BRENDAN SULLIVAN: How about chickens and ducks?

CONSTANTINE ALEXANDER: That would be typical.

SLATER ANDERSON: You have the biggest Sysco campus out there. It's like three towns.

RICHARD CROWLEY: Actually one of the Sysco sites is very difficult. They are -- they've decide to consolidate.

SLATER ANDERSON: I don't envy that project.

RICHARD CROWLEY: They're looking at putting a lifestyle center in.

BRENDAN SULLIVAN: Anyway, that would be my proposal. It's up to

the -- that's what I throw up for consideration by the Board anyhow.

CONSTANTINE ALEXANDER: I think Mr. Rafferty is taking your proposal to heart I gather, and the petitioners. The only question is now how do you want to proceed in terms of modifying your proposal to us?

ATTORNEY JAMES RAFFERTY: I would ask if the Board were inclined to support it, that the condition be based on a revised dimensional form reflecting a modification to the plan and a corresponding modification to the dimensional form.

CONSTANTINE ALEXANDER: The dimensional form is less of a concern to me. We need a plan -- the primary is the plan with a lot line drawn. We'll approve that. Do you want to draw it on our plan in the file or on that?

ATTORNEY JAMES RAFFERTY: I could.

CONSTANTINE ALEXANDER: It might

not work but you could.

ATTORNEY JAMES RAFFERTY: I could in a sense, then the requirement would be that we get you a scaled stamped plan that would be consistent showing that.

CONSTANTINE ALEXANDER: Yes. Yes. I'm looking at Mr. O'Grady.

SEAN O'GRADY: That would be fine with me. Give us deed language and I think that's part of it. I don't know if that's our requirement.

ATTORNEY JAMES RAFFERTY: The deed language just refers to --

BRENDAN SULLIVAN: Well, the windows going to have to go in the plane.

SEAN O'GRADY: I'm okay with it if everybody else is okay with it.

ATTORNEY JAMES RAFFERTY: The deed language refers to portion of Lot A and portion of Lot B.

BRENDAN SULLIVAN: You get the new

plan reflective of the relief that we grant.

CONSTANTINE ALEXANDER: Yes. But I want to --

ATTORNEY JAMES RAFFERTY: Just one of those proposed deeds, I think the deeds wouldn't have to change as they're drafted.

SEAN O'GRADY: Yes, I know on the -- I think it's on the application, it says that they have to be -- and I wasn't sure whether that was municipal law or state law. I want to make sure we don't trip that up. I think it would be square footage would be adjusted. We can do that in the same manner. I don't want that to fall through the cracks.

ATTORNEY JAMES RAFFERTY: Good point. Proposed deeds reflect lot area. So according to the plan, and I want it verified by Mr. Mason of course, it looks for a distance of 57.5 feet. We'd be adding two feet. So 114 square feet would shift from one lot to the other.

CONSTANTINE ALEXANDER: I understand that. But I just again, I want to make sure we're sufficiently precise in granting the relief tonight so there's no question thereafter as to what exactly we granted relief for. And, you know, to say 114 feet, that's exactly right. I would prefer to have before us a new plan that has drawn to scale exactly where the lot line is going now, now going to be rather than, you know, a little bit loosey-goosey I think if we take a vote tonight. As a case heard, we can do it quickly.

ATTORNEY JAMES RAFFERTY: You can imagine we're eager, but I understand the need for precision. So I would think we could do it quickly and be back.

RICHARD CROWLEY: 23rd to --

BRENDAN SULLIVAN: There are two documents that need to be changed. One by Mason and one by the dimensional form.

CONSTANTINE ALEXANDER: Yes.

CHRISTOPHER CHAN: And the deeds as well.

ATTORNEY JAMES RAFFERTY: I was telling Mr. Crowley he probably wouldn't have to appear at that point if we submit the documents in the advance of the meeting.

CONSTANTINE ALEXANDER: I don't see why. You've made your case tonight. We're going to read the letters into the file of support. And I think what you've heard from us, we're amendable to the relief, we need more precision because of the point Mr. Sullivan's raised. Again, you've got to make your own call, but I don't see a need for you to come back.

RICHARD CROWLEY: If I don't that would be great, because tonight I'd be missing the Planning Board meeting and I'll be missing the next one.

CONSTANTINE ALEXANDER: You can

have Mr. Rafferty represent your -- it's a matter of what's before us, the plans.

RICHARD CROWLEY: There is some neighbors that came in support of us.

CONSTANTINE ALEXANDER: We're going to finish that up tonight so when we do continue the case, all you have to do is come back with new plans and I would think it would be a very, very quick decision. We'll get all the brush work done tonight.

RICHARD CROWLEY: Great. Thank you.

ATTORNEY JAMES RAFFERTY: Thank you. Then we're concluded. I know there are some neighbors that did take the time.

CONSTANTINE ALEXANDER: Is there anyone wishing to be heard on this matter? If you wish to speak, you can speak. If you have written a letter, I'll read the letter into the record. If you're going to say the same thing that's in the letter, you don't

have to say it.

Come forward, sir.

DON MCGUINNES: I didn't write a letter so I'll say something. My name is Don McGuinnes. I live at 38 Hawthorn Street and I'd like to say two things.

I think Mr. Crowley is a very good neighbor and I hope you approve this proposal. He maintains the property and the building in immaculate condition. The buildings and the landscaping both. And secondly, it seems to me that his proposal, if it's approved, is a benefit to the neighborhood because I think it gives him more flexibility. He can convey the store if he wants to or not, and it's easier to get financing. Those are benefits to the neighborhood. So it seems to me there is a public benefit to this proposal.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishing to be heard?

(No response).

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. I have a letter from A. Curtiss C-u-r-t-i-s-s Pollari P-o-l-l-a-r-i who resides at 24 Ash Street. The letter is dated April 5. "I have reviewed your notice of this case and have discussed it with the petitioner. I as owner of 151 Mount Auburn Street also known at 24 Ash Street, find no reason you should not grant the variance."

There's a letter dated March 31 from William Henry -- actually, it's just a letterhead of William Henry. The signatories are Alex and Jodi J-o-d-i Robbins R-o-b-b-i-n-s. As co-owners of William Henry Furniture Design the current occupants of the retail space at 152 Mount Auburn Street, Cambridge. We are writing in support of the effort to separate the

commercial portion from the residential portion of the property at 152-154 Mount Auburn Street. We have know objections.

There's a letter from Carl Rollins R-o-l-l-i-n-s. 154-A Mount Auburn Street. It's dated March 31. "I'm writing this letter as an endorsement of Richard Crowley in support of his application for subdivision. I have been a tenant at 154-A Mount Auburn Street in Cambridge for almost 22 years. Richard has maintained the property for the entire time of my tenure, but did not become the owner until the passing of the previous owner, Ms. Kimball. His tenure as property manager and now owner has been excellent. I support fully his application."

And then there is petitions -- one more letter that I'll read, dated March 31, 2010, from Sarah Stillman at 154-B Mount Auburn Street. "I Sarah L. Stillman as a tenant at

154-B Mount Auburn Street, Cambridge, Mass. 02138, support my landlord, Richard Crowley toward subdivision of his two properties."

And then there is a petition signed by 25 or 30 persons, various addresses, and they are -- the petition simply says: We support the application of Richard and Paulette Crowley to subdivide their properties to separate the store from the house."

RICHARD CROWLEY: 37.

CONSTANTINE ALEXANDER: 37? Thank you. The record stands corrected. 37.

ATTORNEY JAMES RAFFERTY: Including David Durkin.

CONSTANTINE ALEXANDER: Really?

PAULETTE CROWLEY: He's our neighbor down the street.

ATTORNEY JAMES RAFFERTY: He talks to top people in the country. He thinks it's a great idea.

CONSTANTINE ALEXANDER: Further

comments? I think we're ready to continue this case as a case heard. Now we have to get a date going forward. Make sure the five of us are going to be here. First of all, what date would you like?

ATTORNEY JAMES RAFFERTY: We'd like to return as soon as possible and we can come back with three given how easily this is now proceeding, but I understand. I did check with Mr. O'Grady and he suggested there might be an opportunity at your next hearing. And if that's the case, I'm sure I can get a hold of Mr. Mason tomorrow, and I don't anticipate making any of those changes and get that in the Monday before the hearing.

CONSTANTINE ALEXANDER: Yes, sir.

ATTORNEY JAMES RAFFERTY: I understand how important that is, painfully so. So I would request if the Board's schedule accommodated, that we return --

CONSTANTINE ALEXANDER: Can we have

at least four on the 29th?

CHRISTOPHER CHAN: Say that again?

CONSTANTINE ALEXANDER: April 29th. Slater? We can take the first continued case of the night. We can get people out of here very quickly. We'll have at least four.

CHRISTOPHER CHAN: I may not be here but you'll be okay without me.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued as a case heard until seven p.m. on April 29th on the condition that the petitioner sign a waiver for the time of rendering a decision. And on the further condition that the sign that you have posted on your property, modify it with a magic marker. Cross out tonight's date and put seven p.m. on the new date.

All those in favor of continuing the case on that basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in

favor. Case continued.

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

(8:45 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Slater Anderson, Christopher Chan.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9918, 53 Webster Avenue. Is there anyone here wishing to be heard in this matter?

ATTORNEY JAMES RAFFERTY: That's mine. Let me get my clients.

(Whereupon, a discussion was held off the record.)

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. James Rafferty on behalf of the applicants 53 Webster, LLC. Seated to my right is Scott Schuster, he's the manager of the LLC. And as a result, the principal owner of the property.

This is an application to allow for an

addition to a property, a two-family house at 53 Webster Ave. The house is located within a Residence C-1 District. What's proposed here is some additional GFA that is within the allowed FAR for the property, but it is within -- it would represent a further -- the property has a non-conforming rear setback. It is a somewhat unique shaped lot. It is very narrow and then it has this dog leg to it. But I notice the Chair is aware that in conversations with Mr. Schuster's neighbors, his rear neighbor expressed a concern about the design that's originally proposed. And in response to that, Mr. Schuster and his architect made modifications to that, and provided plans, because I told them it was necessary to have those plans to me the Monday before the hearing. And Mr. Schuster did in fact do that. I delivered plans on Monday, but I mistakenly delivered the wrong plans and I

received a telephone call from Mr. O'Grady on Wednesday saying that after reviewing them, he was having trouble discerning the difference as I had described it in the transmittal. And I went with Mr. Schuster in the office and discovered my error. And I'm well aware of the Board's policy. But the nature of the change is scaling back of what was proposed and we would -- if the Board were inclined, we would like to be able to present the case. The architect is here. The rear abutter who asked for the change is present and is going to be leaving, I'm told, for an extended period of time after this evening. So, I don't know if the Board is comfortable in allowing the case to proceed given the error I made or whether added time is needed to understand it. I did explain the consequences of my error to Mr. Schuster. I also told him that in some cases, you know, when a response is being made, I've been here

some nights when you recess a case and you make a certain change and you return. I think that this type of change to the plan might fit within that type of description, but obviously I have complete faith in the Board's fairness and desire to be consistent with the application of their policies. I come before you tonight and obviously let the Board decide.

CONSTANTINE ALEXANDER: If we were to continue the case, we would prepare to continue it to April 29th. So we would hear the case quickly. Is that a problem for anyone if we were to continue it?

ATTORNEY JAMES RAFFERTY: I think only for one gentleman I'm told.

MAHESH VISWANATHAN: I'll be leaving next week. I'll be out of the country for two and a half, three months.

CONSTANTINE ALEXANDER: You would have the benefit of the correct plans to

comment on them in writing to the Board before you left.

MAHESH VISWANATHAN: I think I've already been shown.

ATTORNEY JAMES RAFFERTY: He has them now. I made the mistake.

CONSTANTINE ALEXANDER: I understand that. I convey your views to the Board. This is not about Mr. Rafferty's error which I believe was made in good faith. I think it's important to follow the rules of this Board. And, you know, if we don't have correct plans in the files by the Monday before, we don't hear the case. In my case just personally, I looked at the plans cold for the first time. I was concerned when I reviewed the file on Tuesday and the elevations were missing that I wanted to see. And that led to concerns about the plans weren't the relief that was being granted. So I'll defer to other members, the wishes of

other members of the Board, but I would like to continue this case until April 29th and it would be a case heard. But other members may feel differently.

BRENDAN SULLIVAN: I think you're correct.

CONSTANTINE ALEXANDER: Everyone else okay?

TIM HUGHES: I'm okay with that.

CONSTANTINE ALEXANDER: We'll continue the case to April 29th.

ATTORNEY JAMES RAFFERTY: Would it be possible -- and I think this -- and I apologize --

MAHESH VISWANATHAN: Manesh Viswanathan.

ATTORNEY JAMES RAFFERTY: Mahesh wanted to express his support since he was here.

BRENDAN SULLIVAN: That opens up the case.

CONSTANTINE ALEXANDER: I'm going to make it a case heard.

ATTORNEY JAMES RAFFERTY: It becomes a case heard, then the same five people --

CONSTANTINE ALEXANDER: I was opening to --

ATTORNEY JAMES RAFFERTY: I think written testimony can be as compelling.

SCOTT SCHUSTER: We have the letter.

TIM HUGHES: I think you should leave it at that.

CONSTANTINE ALEXANDER: Give it to us in writing. I think that's as effective.

MAHESH VISWANATHAN: That's what I was going to do. These guys are developly (sic) done well.

TIM HUGHES: If we start hearing the case, we have to seat the panel of these five people.

ATTORNEY JAMES RAFFERTY: Mr. Chan

isn't going to be available and then we have to go with four and all that. So it -- we will -- it's all my fault -- it is absolutely my fault.

TIM HUGHES: I don't mean to be rude don't say anything.

SLATER ANDERSON: It's to your advantage.

TAD HEUER: I was thinking --

CHRISTOPHER CHAN: Don't bother. Let's just leave it. Let's just leave it.

CONSTANTINE ALEXANDER: Leave it at this. April 9th give us a written.

CHRISTOPHER CHAN: Give us a letter and people will remember that you were here last time.

ATTORNEY JAMES RAFFERTY: And he's smiling and he's happy.

SLATER ANDERSON: You're sending him on a two-month vacation.

TIM HUGHES: Someplace nice no

doubt.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued as a case not heard until seven p.m. on April 29th on the condition that the petitioner sign a waiver of the time for reaching a decision. And on the further condition that the sign on the property be modified to reflect the new hearing date.

All those in favor of continuing this case on that basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(8:55 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call a continued case, case No. 9815, 100 Cambridgeside Place.

KEVIN DUGGAN: Hi. You guys remember?

CONSTANTINE ALEXANDER: We remember you.

KEVIN DUGGAN: I'm Kevin Duggan, Metro Sign and Awning. We've talked to the national sign company that's building the sign and the client and they would like to have some sort of blade sign, projecting sign. I mean, projecting sign on that wall. I talked to them about what this Board

inferred as a recommendation, and they've come up with the plans for a nine-foot by 18-inch sign. And I hope that the Board will accept that.

CONSTANTINE ALEXANDER: Nine foot by 18 inches? Why? I mean, I'm just curious. It's a small sign now.

KEVIN DUGGAN: They want some kind of representation. They want some kind of signage on that side of the building so people will know that they're there.

CONSTANTINE ALEXANDER: They see the sign right at the front door.

KEVIN DUGGAN: You won't see it coming down the street.

CONSTANTINE ALEXANDER: I'm not trying to make life difficult for you. You have reduced the sign for what you've proposed before. It's now nine feet, 18 inches?

KEVIN DUGGAN: That's correct.

CONSTANTINE ALEXANDER: That's right here. And the reason you need relief, you're still too high. You've got a problem with height more than 20 feet and the illumination.

KEVIN DUGGAN: It's a fluorescent light.

CONSTANTINE ALEXANDER:
Fluorescent?

KEVIN DUGGAN: Yes, it would only be the lettering at night. The sign itself would not be lighted. Just the letters, the PF Chang.

CONSTANTINE ALEXANDER: Speaking only for myself certainly, I appreciate your efforts to try to deal with our concerns, but there's still the fundamental concern as to why should there be any blade signs on this side of the building and are we going down a very slippery slope? Because if we were to grant relief to PF Chang, why wouldn't other

tenants of the shopping center want signs? And how do we deal with that? But that's -- that's just a rhetorical question, no need for you to answer it.

Anyway, those are my thoughts.

Comments or questions from -- anything else you want to add?

KEVIN DUGGAN: Well, the only thing I was going to say, the original -- if I remember correctly reading all the minutes, the original problem was the size, not the fact that there would be signage. At one point there was, because we're going to use the same, the same brackets that are still there. So I mean, that was not an original concern I don't believe of the Board. But if you want to read back in your minutes I think you'll find it wasn't.

SLATER ANDERSON: I know we did talk about that issue. And I think the --

KEVIN DUGGAN: We had 12 meetings.

SLATER ANDERSON: And that original bracketing, I think the intent of that was to have some sort of maybe uniformity of flagging or something on that side, not individual tenants having illuminated signs. Because I remember at one point we had an architect from the firm that was involved with the original design of Cambridgeside. So it's the slippery slope issue that concerns me. I think, you know, you brought it down in size, but it's, you know, what are we going to have now, ten illuminated signs down that side of the building?

KEVIN DUGGAN: Well, it's a corner restaurant. It's on the corner. And it's -- something tells you when you come down that long road, they'll know that the restaurant -- and this does not have access from inside the mall. The only access is the exterior access. So that's an important factor to know that it's there. You're not

going to get the access from inside the mall. And you have to have some sort of signage to let them know they're there coming that way. This would be ideal in this situation. Ideally would be the larger sign.

CONSTANTINE ALEXANDER: I'm sure.

KEVIN DUGGAN: Ideally. I guess ideally is not the right word, but that's what we propose.

CONSTANTINE ALEXANDER: Let me just check for the record. Anybody wishing to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: No one wishes to be heard the record should so note.

I don't believe there's anything new in the file in terms of correspondence. Sean, anything come in in the last couple of days that I'm not aware of?

SEAN O'GRADY: I'm not aware of anything coming in recently on that.

CONSTANTINE ALEXANDER: I don't think there was -- I think before, I mean, there was no letters of support or opposition as I recall.

KEVIN DUGGAN: There was a letter from Les Barber I believe. He did -- didn't he write a letter?

CONSTANTINE ALEXANDER: He wouldn't write a letter.

SEAN O'GRADY: No, he wrote the -- where he says the part of it's okay and part of it isn't okay.

CONSTANTINE ALEXANDER: Okay. I'll throw it open for -- we'll close public testimony.

Anyone open for comment? Anybody want to comment? You want to go for a vote? Again, this is a Variance to put a sign, a blade sign on the side of this building. A Variance for both the height and illumination requirements of our Zoning By-Law for a sign

of this nature. No, no comment or no?

BRENDAN SULLIVAN: No, I could not support the change from the Ordinance.

CONSTANTINE ALEXANDER: Anyone else wishing to comment? Or do we want to go for a vote?

TIM HUGHES: I appreciated the difficulty of a corner location. You know, I --

SLATER ANDERSON: We're granting this to a tenant. This is a benefit to this tenant.

CONSTANTINE ALEXANDER: Right.

SLATER ANDERSON: It's not to the property owner per se, is it? Is it going to run --

CONSTANTINE ALEXANDER: It's going to run with the property. The chain moves out --

SLATER ANDERSON: That sign would come down.

CONSTANTINE ALEXANDER: Or maybe a new sign would come up. I can't support it either, sir. It's a slippery slope problem. And I just don't see the need for the sign. Yes, it's a corner location as Tim points out. But if you're coming out from one side, there's no question you'll know where PF Chang's is. If you're coming down the other side, the side that's closest to Charlestown, I don't see where the sign makes a big difference of the location of this restaurant. Most of the people are going to this restaurant. Most of the people are using this shopping center. It may not be access through the shopping center. You know it's there. You don't need the sign on the street to tell you to have dinner there.

KEVIN DUGGAN: You may not know it's there unless when you're driving in, you see the sign coming down and you know that the restaurant is there. It doesn't have any

signage inside. I don't think it's an exuberant sign. It's a small sign.

CONSTANTINE ALEXANDER: We have to find usual conditions.

KEVIN DUGGAN: Excuse me, I'm sorry. It would be in a corner lot and there is no signage at all to show it's there. Like you say, it is for PF Chang. I'm sure that if another tenant went in there later, they'd have to go get their special ordinance or whatever, a special variance.

CONSTANTINE ALEXANDER: Actually, I think if we support the Variance as long as the successor would put up a sign the same dimensions as this one, the Variance runs with the property. I'll check with Mr. O'Grady, but I think if someone put a bigger sign in, then what you have.

KEVIN DUGGAN: Yes, I'm sure whoever went in next would want a bigger sign.

BRENDAN SULLIVAN: There are a

number of establishments inside the mall that have no exposure inside the plethora. And that whether they be at an advantage or disadvantage because, you know, CVS doesn't have any. I mean, there's a big food court. All of those establishments go all up and down that mall. There's got to be 25, 30 that have absolutely no recognition that they're inside the mall from the outside. And I just don't want to junk up the building by putting up signs for business establishments that are outside of the Ordinance.

The Ordinance is in there for a reason. And obviously to a sign person, the bigger the better. To a merchant, the bigger the better and the sign, and more advertising and neon lights and blinking and you name it, they want it. It's sort of like Eat at Joe's type of thing. But are they at an unfair advantage? No more so than any other establishment that's inside that mall.

KEVIN DUGGAN: Well, I think they are because they're not in the food court per se. When you know that these are established all in the food court, this one isn't in the food court. There is a major disadvantage.

BRENDAN SULLIVAN: But they have exposure to the outside that others do not.

KEVIN DUGGAN: We want the outside so they can see it from 50 percent.

BRENDAN SULLIVAN: We will agree to disagree.

KEVIN DUGGAN: 50 percent of our exposure will come from outside.

CONSTANTINE ALEXANDER: Let's not debate. You've made your position and Mr. Sullivan's expressing as one member of the Board as to how he's going to vote. It's not a matter to debate about. I'm ready for a vote but if people want further discussion.

The Chair moves that the Board make the following findings:

That a literal enforcement of the provisions of our Ordinance would involve a substantial hardship to the restaurant PF Chang's and that there would be insubstantial signage to advertise or to notify the public of their presence in the building. That the hardship is owing to circumstances relating to the shape of the structure and especially affecting such structure, but not in the zoning district in which it is located. The structure being a very large shopping mall or that's unique to the area.

And that desirable relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this Ordinance. The intent of this Ordinance is to allow signage on buildings. And that the signage would be modest in terms of its impact to the structure and the neighborhood.

On the basis of these findings the Board

would move to grant a Variance to the petitioner to erect a sign that conforms to the plans and photo simulations, three pages in length, submitted by the petitioner, bearing a date stamp of January 22, 2010 on the first page. The first page which has been also initialed by the Chair.

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

(No response.)

CONSTANTINE ALEXANDER: No votes in favor of the Variance is not granted.

KEVIN DUGGAN: Thank you, gentlemen.

(9:05 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Slater Anderson, Christopher Chan.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9919, 34 Sherman Street. Is there anyone here wishing to be heard on that matter?

(No response).

CONSTANTINE ALEXANDER: The Chair would note for the record there is a letter in the file, a letter from Kelly Speakman, S-p-e-a-k-m-a-n from the firm of Boyes-Watson Architects dated April 8th. "We're requesting a continuation for the zoning appeal hearing for 34 Sherman Street so that the Board has ample time to review the

amended BZA application."

And I would just note for the record that the problem here is that the complete plans were not submitted by the five p.m. Monday before hearing time, and as a result, the Chair requested to the petitioner that this case be continued to give us ample time to study the plans. This will be a case not heard. When would be the magic date you would recommend?

SEAN O'GRADY: Okay. On April 29th the count is now six regulars, the three continues, two of which are going to go away. So one continued. Then we have the half case at Auburn and one at Webster. So you're at six, seven, eight and a half cases where we --

CONSTANTINE ALEXANDER: This case may take a little bit of time as opposed to some of the others.

SEAN O'GRADY: It's up to you. If

we don't do that --

CONSTANTINE ALEXANDER: Board members, do you want to try to fit it on April 29th? What's the next alternative date, Sean?

SEAN O'GRADY: June 10th is the next available.

CONSTANTINE ALEXANDER: I'm sure the petitioner would like to know before June 10th. Well, not that we have to accommodate that.

TIM HUGHES: Unless we say no. And they just as soon have plenty of time to mull it over.

CONSTANTINE ALEXANDER: Well, what's your pleasure, June 10th or April 29th?

BRENDAN SULLIVAN: I would go for April.

CONSTANTINE ALEXANDER: I would, too, frankly.

BRENDAN SULLIVAN: So we have to stay here a little bit longer.

SLATER ANDERSON: It's not heard.

TIM HUGHES: I'm going to be here anyway.

CONSTANTINE ALEXANDER: Do you want April 29th?

TIM HUGHES: Let's try and get it on the 29th.

SEAN O'GRADY: We're closed with April.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued as a case not heard. Do we have a waiver by them by the way?

SEAN O'GRADY: We don't. I will get one.

CONSTANTINE ALEXANDER: On the condition that the petitioner sign a waiver for the time to reach the decision, and on the further condition that the petitioner modify

the sign to the premises to advertise a new hearing date.

All those in favor of continuing the case on this basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

BRENDAN SULLIVAN: The reason that's important, the five o'clock time, the office is open on Monday nights.

CONSTANTINE ALEXANDER: Yes, until eight o'clock.

BRENDAN SULLIVAN: It's very important. Because people find it very inconvenient, almost impossible to come down during the day. They have the opportunity to come down Monday night. I think that's crucial to make the time available and the

file be complete. Now one thing about us, but it's really the general public has that opportunity on that Monday evening. There's a dual purpose there and it's just as important for the public on Monday night for us Tuesday morning, etcetera.

(9:10 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Slater Anderson, Christopher Chan.)

CONSTANTINE ALEXANDER: Ready for the next case? The Chair will call case 9920, 30 Spinelli Place. The Chair will note for the record that there is a letter in the file from James J. Rafferty, Counsel for the petitioner. "Please accept this correspondence as a request on behalf of the petitioner to withdraw the above-captioned case.

All those in favor of accepting this request for withdrawal which has the effect

of a denial, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case withdrawn.

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

(9:10 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Slater Anderson, Christopher Chan.)

CONSTANTINE ALEXANDER: And last but not least, we're going to call case 9921, 7 Herbert street. Anyone here wishing to be heard on this matter?

SCOTT GRADY: Yes.

CONSTANTINE ALEXANDER: Again, for the record your name and address for the stenographer.

SCOTT GRADY: Good evening, my name is Scott Grady, I'm the architect for the

proposed renovation at 7 Herbert Street, and with me is Bill Barnert the owner of the property.

And the project at hand is pretty straightforward. Existing frame, two-story dwelling that has a rear porch, two-story porch, covered. It extends four foot nine now. The owner would like to extend it another four feet, make it more functional. We have a pre-existing non-conforming.

CONSTANTINE ALEXANDER: The extension will not cause any setback problems? The issue you have here, you have setback issues on other side of the properties. But you will still comply with the rear yard setback even though you're extending it?

SCOTT GRADY: Right. The only place of non-compliance is the side yard setbacks in extending the porch would be two foot by four foot approximate area on the

first and second floor. And that really is it. I'll leave it to questions or comments.

SLATER ANDERSON: The porch does extend into a setback?

CHRISTOPHER CHAN: It's in a setback.

SLATER ANDERSON: It's in the setback, it's on the side.

CONSTANTINE ALEXANDER: That's on the side, not part of the rear.

SCOTT GRADY: And we could get into the jogging it, but we'd like to leave the existing geometry that exists now.

CONSTANTINE ALEXANDER: There's nothing in the file from the neighbors. Have you spoken with the neighbors? Have you heard anything from the neighbors about this?

BILL BARNERT: I have not.

CONSTANTINE ALEXANDER: You have neither good or bad, you've heard nothing?

BILL BARNERT: Correct.

CONSTANTINE ALEXANDER: And we've heard nothing at least in terms of what's in the file?

SLATER ANDERSON: This is your residence?

BILL BARNERT: It's a two-family. I own the building so I'm the resident and landlord.

CONSTANTINE ALEXANDER: Anyone wishing to be heard?

(No response).

CONSTANTINE ALEXANDER: No one wishes to be heard. As I mentioned, there are no letters in the file. You do need a demolition permit from Historical. But that's just a requirement.

Comments from members of the Board?
Questions?

BRENDAN SULLIVAN: Motion.

CONSTANTINE ALEXANDER: I heard a request for a motion. By the way, the plans,

if we do grant relief, you've got to do it exactly in accordance with these plans. These are not preliminaries. These are the finals.

SCOTT GRADY: That's understood.

CHRISTOPHER CHAN: So, what's the side setback supposed to be, 10? Or where you actually have the issue?

CONSTANTINE ALEXANDER: Where's the dimensional form?

The side is supposed to be 11.1 and they're at 7.6, right side.

SCOTT GRADY: The porch is 8.5.

CHRISTOPHER CHAN: So they're off by about three feet. You said eleven feet?

CONSTANTINE ALEXANDER: The Ordinance requirement is 11.1. I'm just reading what's in the file. There will be conformance with their FAR. They increase the FAR, but they're still within what's in the requirements of the Ordinance. So just

a technical setback issue.

CHRISTOPHER CHAN: Technical setback. Okay, I'm all set.

CONSTANTINE ALEXANDER: Comments? Further comments? Questions?

The Chair moves that the Board make the following findings:

That the literal enforcement of the provisions of our Ordinance would involve a substantial hardship to the petitioner as a non-conforming structure.

Further modifications to that porch cannot be accomplished. And the habitability of the structure is thereby affected.

That the hardship is owing to the special circumstances relating to the fact that the structure already is a non-conforming structure. And then again no modification can be done without relief from our Board.

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

The relief being sought is modest in nature. It only raised technical zoning issues. And the Chair further notes there appears to be no neighborhood opposition. And what the petitioner proposes to do is consistent with one of the goals of our Zoning Ordinance to have a more rationale and liveable city, more rationale use of land planning and a more liveable city, and this will enhance the ability of the petitioner and whoever owns this building to enjoy the benefits of living in this building.

On the basis of these findings, the Variance will be granted on the condition that the work proceed in accordance with two pages of plans submitted by the petitioner's architect Scott William Grady, both of which

have been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted. Good luck.

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

(Whereupon, at 9:20 p.m., the meeting adjourned.)

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a
Certified Shorthand Reporter, the
undersigned Notary Public, certify that:

I am not related to any of the parties
in this matter by blood or marriage and that
I am in no way interested in the outcome of
this matter.

I further certify that the testimony
hereinbefore set forth is a true and accurate
transcription of my stenographic notes to the
best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set
my hand this 26th day of April 2010.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 23, 2015

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