

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, APRIL 12, 2012

7:00 p.m.

in

Senior Center
806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Brendan Sullivan, Chair
Constantine Alexander, Vice Chair
Timothy Hughes, Member
Tad Heuer, Member
Thomas Scott, Member
Slater Anderson, Member
Douglas Myers, Member

Sean O'Grady, Zoning Specialist

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PROCEEDINGS

(7:00 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Thomas Scott.)

BRENDAN SULLIVAN: If we could have it quiet, please.

Let me call the Board of Zoning Appeal meeting into session. The first case we will hear is 725 Concord Avenue. Is there anybody here on that matter?

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt from a Katherine Rafferty dated April 6, 2012. (Reading) To the Board: At this time the Mount Auburn Hospital has decided to withdraw its petition for a Variance to install two wall signs at 725 Concord Avenue. Thank you for your assistance in this matter. Your professionalism is greatly appreciated.

On the matter to accept the withdrawal at 725 Mass. Avenue.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(7:00 p.m.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Timothy Hughes, Tad

Heuer, Thomas Scott.)

BRENDAN SULLIVAN: The Board will hear case 10189, 168-172 Hampshire Street. Is there anybody here interested in that matter?

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt of correspondence dated April 12th. (Reading) To Whom It May Concern: We respectfully withdraw our application for a Variance and a Special Permit for above-referenced project after our hearing with the Planning Board on November 2011. We redesigned the project in a matter that no longer requires any Zoning relief. We have met with neighbors and the community and we have completed the large project review procedure with the Community Development Department and have received positive support for the project. Thank you, Edrick van Beuzekom for EVB Design.

All those to allow the withdrawal of the application 168-172 Hampshire.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

CONSTANTINE ALEXANDER: He better not want to change his plans. If there's any changes going on, he's going to be out of the box for two years.

SEAN O'GRADY: He's going to as-of-right plan.

CONSTANTINE ALEXANDER: I know. But if something comes up when he goes ahead and decides he needs relief, good luck to him.

BRENDAN SULLIVAN: He does it as at his peril.

(7:05 p.m.)

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

CONSTANTINE ALEXANDER: The acting
Chair will call case No. 10215, 38 Union

Street and 369 Windsor Street.

Is there anyone here wishing to be heard on the matter.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman.

CONSTANTINE ALEXANDER: Good evening.

ATTORNEY JAMES RAFFERTY: For the record, and members of the Board, my name is James Rafferty. I'm an attorney with the law firm of Adams and Rafferty. I'm representing the applicants this evening. Seated to my right, I'm going to have them spell their name because -- this is Jayakanth Srinivasan.

JAYAKANTH SRINIVASAN:
J-a-y-a-k-a-n-t-h. Last name
S-r-i-n-i-v-a-s-a-n. And Neira, N-e-i-r-a.
Last name T-e-i-c-u.

ATTORNEY JAMES RAFFERTY: Chairman and members of the Board, you may recall the

case. We are a case heard, and on the night we were last here, we were reviewing the both aspects of the relief. The applicant is seeking a Variance to allow for a subdivision of the lot that will return the lot of these two properties to their historical lot lines. I mentioned at that time that a merger has occurred concerning these lots, and the merger occurred as a result of a conveyance whereby the owner of the property on Windsor Street, which is a two-family house, her father, her parents owned the house on Union Street. I've since learned there was a fire in that house in the late sixties, and then the house was raised and the Building Permit -- the Building Department permits reflect a permit to raise the house in '69, I believe. The Historical Commission shows a house there up until that time.

Since that time it's been an empty lot, but in 1996 the owner of the Windsor Street

property husband and wife, and the wife inherited the Union Street property at some point upon the death of her parents in the nineties. And as part of legal advice she received, she included her husband in 1996 on the deed of the property on Union Street.

For Zoning purposes there's been a determination that a merger has occurred. So the first request for the Board is to ask for consideration to allow for that merger to be unwound.

The hardship really in this case is related to the shape of the lot. I would suggest this isn't a conventional merger case because the point of contiguity, if there is such a word, is rather narrow. These lots are not side-by-side lots. They're not directly behind one another. From the subdivision plans the Board might recall, but the geometric relationship between these lots is such that few residents and others

would appreciate the fact that the area, I would suggest, area of the Union Street lot is related to the area of the Windsor Street lot. The lot that we're talking about, which continues to receive a separate tax bill, is a lot that has an area of 2,697 square feet.

Questions were raised at the last hearing around the taxes themselves, and the assessment and how the Assessor's office was treating the lots. So since the hearing I had occasion to meet with Andrew Johnson, a City Assessor, to review the Assessor's records, and as was noted by one of your learned colleagues, there's a state code here called 132 which he explained to me is a designation for undeveloped land. And that the assessed value that has been on the property now from his records for nearly ten years reflects a determination by the Assessor's office that it was undeveloped.

CONSTANTINE ALEXANDER: Is it

underdeveloped or undevelopable?

ATTORNEY JAMES RAFFERTY: Well, this is what I asked the question of. Because I asked well, how is that determination made? And the Assessor explained to me that they do a review every ten years. There was a determination of the lot size. It was seen to be an empty lot, and therefore as a result of that, they said the minimum lot size, they recognize to be 5,000 square feet, and they saw this lot as having less.

The Assessor's office, with all due respect, I don't think is particularly focussed on some of the Zoning issues here. And as the Board knows from the language of the Ordinance, the lot itself, while it is below the minimum lot size, the lot was clearly established prior to the adoption of the Zoning. So the lot -- the mere fact that it's below 3,000 square feet does not make it

undeveloped.

CONSTANTINE ALEXANDER:

Undevelopable.

ATTORNEY JAMES RAFFERTY:

Undevelopable.

And even the fact that a merger has occurred doesn't mean it's undevelopable. Because when you do the math of when you combine the lot areas of the two lots, and you figure out the GFA of the structure on the Windsor Street lot, there's still a remaining developable GFA. My memory is that number is -- because we reviewed the GFA against the Assessor's records, and I filed an amended dimensional form to reflect that exercise, and that is roughly -- I think my memory is there's somewhere in the neighborhood of 700 or 800 square feet that could go on this lot today or maybe even a little more.

CONSTANTINE ALEXANDER: More I thought if I remember. Here's your

dimensional form.

ATTORNEY JAMES RAFFERTY: Yes, thank you.

So the amended dimensional form would suggest that the existing conditions today show a GFA of 2379. The Ordinance would allow 4146. So that's going to be 1500 square feet approximately.

I don't wish to speak against the position that the current owner is enjoying for assessment purposes, but I did happen to mention to the Assessor that I don't think it's accurate to say it's not a developable lot. The lot can have -- it's in a Res C District. It's over 5,000 square feet. It can accommodate three units, this merged lot. There's currently two units in an existing structure. So in theory, one could, could certainly add a second structure. It is not in a Zoning District where you can have one principal structure as was the case in the A

and B District. So you could have two principal residential structures. So a structure could be built on this lot but, the issue about the lot size is what's driving the subdivision, because that structure would have to be part of a single lot without the relief being sought here. So there are forms of ownership. I'm sure the Board's familiar between co-ops and condominiums that one could create separate ownership of structures where you would have shared ownership of land.

Frankly, that's rather cumbersome for the Petitioners. They've recently had their first child. They're hoping to build a house here and raise their family here. They lived in the neighborhood for several years now. Have been looking, had identified this parcel, have gotten to know the seller. They're long-time residents in that house and they have no interest in doing a condominium.

So they said well, they have a contract that would allow them to purchase the lot for more than \$30,000 admittedly. But they have to -- they have assumed the burden of obtaining the necessary relief.

In reviewing the case since we were last here and learning as much as I did about the assessment and the development potential, we took a closer look at the proposed structure, because as you know, there were two aspects of the application. One would have allowed the subdivision. The second -- if a subdivision were allowed, the proposed structure is conforming in terms of its proposed GFA. It's only about 1400 square feet. So it still would be below the permitted amount. But the side yard setbacks to achieve a 24-foot wide house only were about four, four and a half feet. That led to funny fenestration, and frankly the house feels sideways and not too comfortable

into the lot. So we engaged a Cambridge architect who has some specialty in smaller size houses, and have been looking in the past week or two at well, what if the house -- what if a substitute structure were designed? One that at 18 feet of width would provide for seven-and-a-half-foot setbacks, which would be the allowed setback on an undersized lot. But again in this case, the ISD tells me they take the view that those reduced side yard setbacks and narrow lots apply to lots that existed prior to the adoption of Zoning. And while this lot used to enjoy that status prior to the merger, since the merger, if it were to be subdivided, they would take the view that they're not -- they could not as of right avail themselves. But recognizing the precedent that may be relevant, we filed with the Board almost a footprint drawing of a 15-foot structure which actually would have compliant side yard setbacks.

CONSTANTINE ALEXANDER: Excuse me, in your letter you refer to this revised plans, but in the file it got separated. Nothing's been stamped. Would you just show me the plans.

ATTORNEY JAMES RAFFERTY: Yes, well, I suppose calling it a plan might give it a high level of description it deserves. That's just a footprint analysis that suggests that there are -- recognizing that there's 1500 square feet of approximately developable GFA on this lot, I asked the architect to kind of show -- to begin to think about what options are. What would an as-of-right -- what if we couldn't succeed here and we -- they still wanted to build something, it would be a condominium in that kind of a shape. Because when you do the H plus L over seven, you wind up with nine-foot setbacks in that particular scheme.

A very long way of saying that -- our

hope tonight was that the Board might consider whether there was sufficient merit to the underlying request for the subdivision given the unique nature of the lot, the interruption in the streetscape along Union Street that is the result of the absence of the house here. The fact that this space isn't benefitting the lot in which it's attached to. It's not easily accessible between the garage and the backyard. They function as they have historically as independent, separate properties. If there was a willingness to allow for one further continuance to have the Petitioners come up with a house that would be more compliant to setback and perhaps be at a scale in character more consistent with the streetscape, and we've begun to look very preliminary --

CONSTANTINE ALEXANDER: If I understand what you're saying is that you would like us to hear the de-merger case

tonight. And if we were to grant relief, give you a Variance to undo the merger, that you would then continue the case and come back to us with more definitive plans?

ATTORNEY JAMES RAFFERTY: Well, in a perfect world sure. But my suspicion was that the Board might not be comfortable bifurcating the relief that precisely. But a thinking that would suggest that a willingness to look -- yes, in a manner of speaking. That the Board would conclude that I could see a scenario here where this could be approved and, therefore, by continuing the case -- I guess what I'm saying and I'll be very candid, is this has been a costly exercise for this young couple. And if there isn't the underlying support around the subdivision, I think they would prefer not to spend dollars on design for a structure.

We did review the structure with ISD

staff and some others, and saw its shortcomings. And the suggestion was well, maybe if that structure were modified and brought more consistent with the streetscape and had a pitched roof and had a few other elements, but we simply didn't have time in the past ten days to do all this and make the Monday deadline. So, yes, we are asking that there be some discussion of the merits of the subdivision.

CONSTANTINE ALEXANDER: Let me rephrase -- sorry to interrupt you.

ATTORNEY JAMES RAFFERTY: That's okay.

CONSTANTINE ALEXANDER: Let me rephrase my question then. What you're looking for, then, is sort of an informal advisory opinion on the -- not binding because we're not going to take a vote, because we don't want to bifurcate the case, on whether we're amenable to granting what

I'm going to call the de-merger, the unmerging of lots. And if you got the positive signals that you're hoping to get, then you would ask to continue the case and come back, seeking relief both on the merger in question and on the relief for the lot.

ATTORNEY JAMES RAFFERTY: Right. And that's an accurate characterization. And I might go so far as to suggest that if a Board member felt they couldn't see themselves to approving at the end of the road, then the vote on the continuance could be a reflection of that. The reason to continue -- the request to continue would be based on at least a presumption that there might be an outcome here that would be acceptable to a particular Board member. And if that were the case, we would look to continue. If the support to continue the case -- if there weren't four votes to continue the case, I would advise my client

that there probably aren't four votes to continue on. So we're hoping to --

CONSTANTINE ALEXANDER: Got it.

ATTORNEY JAMES RAFFERTY: By limiting your time tonight, understanding that we're not looking to have three bites of the apple, but simply saying as time has gotten ahead of us and we've learned a little bit about this, and the -- they'd love to be able to tonight get a full answer, but I've advised my clients that if you want a full, affirmative answer, you probably couldn't get that tonight. You might get a different answer, but I don't think that's the answer they want. But like most applicants, and with the arrival of their young son they're eager to -- you did have a boy, right?

JAYAKANTH SRINIVASAN: Yes.

ATTORNEY JAMES RAFFERTY: They're hoping to move along. And yes, so that's the status of where we are.

CONSTANTINE ALEXANDER: I get it.

TAD HEUER: So I have a technical question. The lot that you want to build on is the Union Street lot?

ATTORNEY JAMES RAFFERTY: Yes, 2697.

TAD HEUER: Right.

So that lot pre-existed Zoning, so was a buildable lot at the time and all the way up to Zoning. And if the structure had been rebuilt immediately after the fire, it could have been done as of right, because it would be a rebuilding on an existing lot; right?

ATTORNEY JAMES RAFFERTY: Right. And I would stretch that. I don't think it would be immediately after the fire. I think a structure -- I think it was an independent buildable lot up until the day a deed got recorded in 1996.

TAD HEUER: Okay.

Granting that, then they merged in

1996.

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: I take it that ISD, by not wishing to extend the 7.5 setbacks, this lot presumes that they've merged and therefore it wouldn't be entitled if they were demerged to those setbacks; is that correct?

ATTORNEY JAMES RAFFERTY: Yes.

They take the view 5.211 which says that the lots which have been duly recorded by plan or deed at the Registry before the date of the first passage of the Ordinance referring to undersized lots are exempted from the minimum lot size and lot width regulations, but they are bound by FAR and lot area per dwelling unit. And, yes, I think -- it's been a preliminary discussion. We didn't go back and forth, but I'm accustomed to accepting the wisdom of ISD. So when I raised the notion of gee, this lot meets the first

portion of that test, I can see the logic. Their conclusion was that well, this is somewhat unique. I don't imagine there are many cases that present this issue. But they -- the Commissioner took a view with me that that provision would have stopped applying to this lot at the time as a result of the merger, and if the subdivision were approved, it would, the new lot would -- its new date would be the date of the subdivision and it wouldn't qualify under this.

TAD HEUER: Right. I guess my follow-up question is, if that's true, are we allowed to subdivide and create a new undersized lot? I mean, doesn't that create a non-buildable lot by definition under the Ordinance? I understand it comes at it through a strange way, but if we say as of 2012 this is a distinct lot, it's 2600 square feet, haven't we just created a non-buildable lot according to code?

ATTORNEY JAMES RAFFERTY: We haven't created a non-buildable lot. I mean that's why this is being done by Variance. I mean, if we can subdivide -- we can't subdivide it as of right because the remaining lot would be undersized.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: So it's currently undersized. And even as a -- it's a separate tax bill lot; right? So, yes, you need the Variance to do the subdivision on a number of levels, but the subdivision only gets you halfway there. If we only got a subdivision Variance, we then would -- correct, we would then have a lot that didn't qualify under 5.211 and, therefore, it would be a para victory. We'd now have a separate non-buildable lot. In fact, that would be a negative consequence because there are buildable rights on the lot when it's part of a larger lot.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: So I think what we're asking the Board to consider is the ultimate outcome, which is that there are developable opportunities on this lot as part of a 5500 square foot lot. I'm doing that by memory. But the ownership would be restricted to a condominium form of ownership. And we're proposing that if this -- the effect of the Variance, in practical terms, would be to undo the acts of 1996 and then the Petitioner would design a lot -- but I focussed on the 7-6 because the structure that's before you now in the application has setbacks at only four feet, four and a half. And I think the width of that structure, and I think the Petitioners have come to accept that from talking with ISD, is -- it's a little too wide for that lot. So they're trying to take their queues from the precedent established in 5.21.

TAD HEUER: So it's the structure that they would eventually build if they were able to go back and work with the architect, one that would be -- if this were 1969, are they looking to build what would have at that point been an as-of-right structure on that lot?

ATTORNEY JAMES RAFFERTY: 1996?

Whether it's '69 or '96 --

TAD HEUER: Yes, '69, '96, exactly.

ATTORNEY JAMES RAFFERTY: Exactly. They would meet the setbacks. It would meet the open space. The setbacks as modified, and it would be within the FAR as permitted under the law.

TAD HEUER: Okay.

Was parking an issue or no?

ATTORNEY JAMES RAFFERTY: No, we have room for a parking space.

CONSTANTINE ALEXANDER: You do?

TAD HEUER: Okay. And front yard

parking?

ATTORNEY JAMES RAFFERTY: No. We do have a Special Permit relief because to do the seven and a half feet, we would be looking for -- under the Special Permit provision to reduce the width from eight and a half to seven and a half.

CONSTANTINE ALEXANDER: You would need further relief for the Special Permit relief.

ATTORNEY JAMES RAFFERTY: Further relief for the parking, right.

CONSTANTINE ALEXANDER: Yes, right.

ATTORNEY JAMES RAFFERTY: Right. But it's not a Variance for no parking. It's a Special Permit to --

TAD HEUER: For placement of parking.

ATTORNEY JAMES RAFFERTY: For width of a parking space. It wouldn't be in the front setback, but the parking space itself

would be occurring on the side of the house would be seven and a half feet. Because the other scheme -- actually, the scheme that's before you now actually has a conforming parking space, but it really, it goes beyond the ten foot and then it turns right. And this was seen as more felicitous and a better urban design. And I wish I had a copy of one of the schemes that -- but it starts to really -- it has a -- it addresses the street. It has a front entry. It really has a nice scale, and at 18 feet wide, it really looks very good. I actually gave Mr. O'Grady a copy of that today. But I put on it not for filing, just to think about. So I'm sure it's not in the file. Right?

SEAN O'GRADY: It's right here.

CONSTANTINE ALEXANDER: I have the file.

ATTORNEY JAMES RAFFERTY: Well, it could be unofficially shown to a board member

I suppose.

SEAN O'GRADY: It's got notes on it, and I do have a question.

ATTORNEY JAMES RAFFERTY: Well, maybe.

SEAN O'GRADY: I'll give it to you first.

ATTORNEY JAMES RAFFERTY: All right.

I would only offer it as --

This is not what we're proposing to construct, but this is -- thank you. And this will need to get further review. I'm not suggesting this is completely as of right, but it starts to take on characteristics of this as opposed to if you recall the other design. So it starts to think -- I think urbanistically --

TAD HEUER: It's somewhat difficult to call that first one a design. Maybe it's a design technically.

SLATER ANDERSON: It's shelter.

ATTORNEY JAMES RAFFERTY: I've done my best to suggest that I think this might be a good direction. But, again, this will involve additional expenditures beyond tonight and we're trying to determine whether that is --

CONSTANTINE ALEXANDER:

Understood.

ATTORNEY JAMES

RAFFERTY: -- whether we should pursue. But, thank you. I think I'm done.

TAD HEUER: My last question goes to Mr. Anderson's question from last time about the tax treatment of the property. I'm not sure what we do about it, but if this lot has been buildable since 1996 but it has been taxed at a lower rate than a buildable lot, I'm somewhat concerned that the non-petitioner, but the owner of the property from whom the Petitioner's are purchasing

from, will have come out at a great advantage and the city would have been at a detriment. Is there --

CONSTANTINE ALEXANDER: Just before you respond to that, that's a correct point, but I think the real issue is was it affirmative action on the part of the owner of Windsor Street to suggest to the Building Department that this is not a buildable lot -- or the Assessing Department, not the Building Department. Or is it just a matter on the Assessor's on their own made a mistake in assumption about the buildable --

ATTORNEY JAMES RAFFERTY: I asked the question of Mr. Johnson how was this determination arrived at? And he reported back to me that it was part of a review --

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES

RAFFERTY: -- occurring every ten years, and a determination that the size of the

lot -- and I think he mentioned that they go out and look at the lot.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: Made it something that was not buildable.

CONSTANTINE ALEXANDER: The people that own Windsor Street, after two years or a year after the building burned down on Union Street, trotted into the Assessing Department, no longer a buildable lot, we're going to apply to lower our assessment. You see what I'm trying to get at?

ATTORNEY JAMES RAFFERTY: Right. I never heard that suggested, no. But I don't represent them and I don't know. I've come to understand that this -- what I learned from Mr. Johnson is that their determination was made seemingly independent of the merger. He said they analyzed the lot. And like I said, I don't represent those people, but I did say to him, well, you know, when you do

that, when -- because I don't think it's accurate. I mean, I know it's not accurate to say nothing could be built there. You could put an addition on the existing house. You could put -- so, but I can't speak to the question -- I know the question you're asking.

CONSTANTINE ALEXANDER: As I say, I think what's relevant to me is -- the question's relevant is what action -- if the city made a mistake and the city is not collecting all the taxes it might have been able to collect, that's one thing. If an active misleading of the city or active encouragement of the city to take the position, that's something else.

ATTORNEY JAMES RAFFERTY: I understand. I asked, and frankly I didn't get an answer.

CONSTANTINE ALEXANDER: I think you told me that.

ATTORNEY JAMES RAFFERTY: And I answered no. I asked a different question. I wondered why, either through the merger of why they continued, why does the city -- and we see it happen, they continue to issue separate tax bills. I have clients who come in a lot in this situation. They said oh, it's a separate lot because I get a separate tax bill. I think if the city wanted to optimize value and the merger did occur, I think the --

CONSTANTINE ALEXANDER: How would the city know? How would the city know that a merger occurred?

ATTORNEY JAMES RAFFERTY: Well, they do check -- I don't know. I guess that's --

CONSTANTINE ALEXANDER: That would be very unusual. They would have to find out. You're right. Theoretically you're right, but practically speaking it's not

going to happen. It can't happen.

TAD HEUER: Although in that situation if the merger occurs because the city could not or did not know, it would be seem to be incumbent upon the person from whom it had merged to have the burden to report that to the city, wouldn't it?

CONSTANTINE ALEXANDER: Yes, except that most of the cases the person doesn't know a merger occurred.

TIMOTHY HUGHES: They didn't know either.

TAD HEUER: The burden has to be on someone. And I think the burden rests on the taxpayer and not the on city.

ATTORNEY JAMES RAFFERTY: Well, the city has effective tax collection procedures and does well. And so I mean I don't know if this would prompt a change to examine what action prompted this determination, and he could only go back -- he looked on the

computer and said within the past ten years we did a re-val. And he says it comes up when we identify -- when we identify lots that are below -- I mean, he knew right away that's a five -- he said that's a C-1 and he knew that's a 5,000 square foot lot.

CONSTANTINE ALEXANDER: I'm sure they check the lot. They see it's a vacant lot. They know the size of the lot, it's undersized. Ergo they assume it's not a buildable lot.

TAD HEUER: And I'm not suggesting that anything come of it here, but I think as a policy matter, it is important because it's just not that the city isn't collecting taxes. It means that this lot has laid vacant since 1969 potentially on the erroneous assumption that nothing could be built there. So there's been a hole in the streetscape for 40 years because it's been presumed that this is a non-buildable lot.

Whereas, it turns out that indeed it is. It's not a tax issue that has been on revenue, but it also has been a detriment to the building environment of the city because there's been an unsightly lot laying vacant for decades that didn't need to be.

CONSTANTINE ALEXANDER: Which gets us back to why we're here tonight.

TAD HEUER: Indeed.

ATTORNEY JAMES RAFFERTY: Right. I guess the outcome is for someone at a policy level, it may be worthwhile for 5.211 to be shared with the Assessor's office, because I think some assumptions are made without an understanding that merely an undersized lot doesn't render it unbuildable. There are these exceptions. And my guess is, and I don't -- and my guess in my conversation with the Assessor, they weren't focussed on that. I won't say they weren't aware of it, but they didn't seem to be focussed.

CONSTANTINE ALEXANDER: So, coming back to where you started tonight. If we were to give you the right signals, you could correct the hole in the streetscape. We could increase the value of the tax base of the city. Because now it would be a buildable lot with a building on it.

ATTORNEY JAMES RAFFERTY: I wish I thought of these. These are very good ideas.

CONSTANTINE ALEXANDER: I'm sure you thought of them. But in any event, let's use that as a jumping off point. And I think we typically don't give advisory advice or I don't like giving advisory opinions, but I think the situation here is such that it would be a good idea to do. So I think we should hear -- should talk about do people want to continue this case knowing on the -- if we do continue the case, the idea would be that they're going to spend some money, come back with plans and come back to seek the de-merger

but having some belief that the de-merger is going to be acted on favorably. No guarantees.

ATTORNEY JAMES RAFFERTY:

Understood.

CONSTANTINE ALEXANDER: But some sense of that.

What are people's views on that?

DOUGLAS MYERS: Mr. Rafferty, do you think you'll come back with one plan or more? Or a choice for the Board?

ATTORNEY JAMES RAFFERTY: Well, typically one. I would assume the Board would expect us to put something forward. But I think the concepts, as it would be, is that it would be within the permitted FAR of the newly constructed lot. It would meet the setbacks at least as modified under 5.21. Yes, my history has been the Board prefers that the Petitioner submit one. Although I'm sure that they would be quite amendable,

the Petitioner to commentary as to design.

CONSTANTINE ALEXANDER: I have a question for you. The Special Permit -- I'm jumping around a bit, was basically to allow you to have parking in the setback. You could have in the alternative asked for a Special Permit to eliminate any, you know, we're not amenable to doing that. But the other alternative is a Special Permit to allow you not to have on-site parking.

ATTORNEY JAMES RAFFERTY: That's true.

CONSTANTINE ALEXANDER: We can do that. I notice the application didn't do that. It just rise and fall on the setback relief.

ATTORNEY JAMES RAFFERTY: Well, that's true. But the rationale behind that was to try to come up with a proposal that was as conforming to the Zoning Ordinance as possible, and our proposal does conform to

the requirement -- and this is the original proposal, does conform to the requirement of one parking space. It isn't in the setback. But it's in the size of that space for which we sought the Special Permit approval. The Article 6 provides for the reduction of the setbacks. Not the front setback as, you know, but the side setback. And the Ordinance does allow when you have more than five cars, to have half of them be compact which the width then is only seven and a half feet versus eight and a half feet. So that would be the rationale behind the relief associated with reducing the width, because it would allow the cars then to get entirely beyond the front setback.

TAD HEUER: Is there a curb cut there now?

ATTORNEY JAMES RAFFERTY: No, there is not.

JAYAKANTH SRINIVASAN: Yes, there

is.

ATTORNEY JAMES RAFFERTY: Oh, I take that back. That would make sense.

CONSTANTINE ALEXANDER: Anyway, views from members of the board at this point?

SLATER ANDERSON: I think it's probably the right outcome where we're going with this. I'm sort of reluctant on one level about, you know, this whole concept of the merger and I'm not a real estate attorney, but it's sort of well established for a reason in case law because it is one way non-conformities are addressed. You take these little lots that were chopped up over the, you know, the last century and they get conformed. This is a unique case and that's -- we always seem to get unique cases, that's our role. And the streetscape I think would benefit from a house. My understanding, and I didn't see anything in the file, we don't have an issue with the

neighbors. I think the neighbors seem to -- would like to see something.

ATTORNEY JAMES RAFFERTY: Both side yard neighbors are in support.

SLATER ANDERSON: Yes.

I do think there is a path to build on this lot as we've discussed without having to grant the relief because of the condominium potential, you know, detached single-families. In all appearances it would look the same as the outcome you're likely going for. But, you know the, the question we'd asked about the assessment issue, was there affirmative action by the landowner at some point in time? And I'm not sure we really got that answer from you. I think -- I totally appreciate your effort to go look into this, and it may have occurred back in -- who knows, 1997 or something. And, you know, you said the Assessor looked back ten years in the computer. So it's

probably in some file somewhere if it did happen. But it may not have, because the logic you gave for the Assessor looking at it as an undersized lot and assessing it as such, I have to take that, you know, at your word for sure. I don't know if there are other lots like this that are assessed at a higher value, but you know, I'm inclined to go along with this.

My only additional question was in the spirit of not continuing, are you proposing so much of a change or is there a technical issue with granting relief of a footprint and then maybe you build something different within that footprint or are we just better continuing it and have a clean set of plans?

CONSTANTINE ALEXANDER: Personally I think we're better off doing it that way. The way Mr. Rafferty wants to go.

DOUGLAS MYERS: I expressed myself last time on the merger doctrine. I think

this is an appropriate case for a Variance to relief a hardship with respect to merger. I think that there should be a building on that lot the way there has been historically but for the fire.

And as on the tax issue, I think as I weigh all of the facts and considerations known to me, I think it's just very unlikely the present landowner the taxpayer really initiated the process that caused a reduction in taxes. It seems the process was by the city Assessor. On all I'm comfortable in voting to grant the Variance.

CONSTANTINE ALEXANDER: Tim, I know what you're going to say, but you can say it now.

TIMOTHY HUGHES: I'm good with it.

CONSTANTINE ALEXANDER: Tad, do you want to say anything?

TAD HEUER: When you approached the current owner, was she surprised that you

were looking to build on this thing or did she always presume it was buildable?

JAYAKANTH SRINIVASAN: She's pretty old so she didn't, she was -- when we approached her, her response was if you can find out -- she didn't know one way or the other because she's 82, right? So her response was okay, we like you and she saw we were pregnant. She was like, okay, if it's a girl come see me. If it's a boy, don't come see me. That was before we had the baby.

ATTORNEY JAMES RAFFERTY: They're making plans for the second child.

TAD HEUER: Ignorance is bliss.

ATTORNEY JAMES RAFFERTY: You know, and I did -- I never talked her directly. I did speak to the attorneys. My understanding was this was some type of estate planning that this came to be. But why, whether there were prior attempts or other people contact them, the contract that

we arrived at was, well, if you can go figure out how to do something, go ahead. And we're under extensions now. And so they've been spending time and effort and money trying to get at an outcome, you know? And if it doesn't work, then of course there's no sale, but they're out their --

TAD HEUER: Right.

NEIREN TEICU: I talked to her. Like, I knocked on her door and asked do you want to sell? And she said she's never thought of selling it. And she said if you can figure out what to do with it.

TAD HEUER: All right.

I agree with Slater. I think where this is going to end up I think is fine. I still have some reservations. Yes, condo ownership isn't ideal, but all of this I think can be done as of right through a fairly straight-forward condominium scheme. But it may not look the way that people expect it

to look on two adjoining streets, legally, but visually it would look identical and there would be no issue whatsoever. We wouldn't need to be here. It would be two primary units on a single lot, built in conformity. You wouldn't need the Variance for the setbacks because ISD would be okay with it it sounds like. So, on a purely legal basis I don't see the --

ATTORNEY JAMES RAFFERTY: I would only offer as a practical matter the seller is totally -- I mean, lived in the house for 50 years. The idea that her house can become a condo -- I talked to her attorney, absolutely a nonstarter. Perhaps a next generation owner might see the economic wisdom of that, but we will be all done. We'll continue to have an empty lot on that --

TAD HEUER: To the extent that hardship is based on the state of the current owner of Union Street property, I'm sure the

Windsor Street property, I suppose I could go there. Legally I'm troubled by the fact that we're going through a Variance process that I don't think is entirely necessary, but I think the result is the right one. To the extent that this creates a hardship because the owner's in transience, I'm fine with that.

ATTORNEY JAMES RAFFERTY: But that geometry is unusual I think you'd have to agree.

TAD HEUER: Oh, sure.

ATTORNEY JAMES RAFFERTY: It's not a typical contiguous lot. If this was one lot over, we never would have had the merger. It just so happens her parents lived --

TAD HEUER: Sure.

CONSTANTINE ALEXANDER: All set?

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: I'm not going to waste people's time tonight. We've

got a long agenda. I would add nothing that everyone else hasn't said already. I'm good with it. I'm favorable to continue the case.

ATTORNEY JAMES RAFFERTY: Thank you.

CONSTANTINE ALEXANDER: The Chair will make a motion to continue this case as a case heard. So the five of us have to be here the next time again.

What's the next date?

SEAN O'GRADY: Your first slot is May 10th.

CONSTANTINE ALEXANDER: May 10th work for everybody?

TIMOTHY HUGHES: Yes, I'm okay.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued as a case heard until seven p.m. on May 10th on the condition that the Petitioner takes the sign, the signs and modifies them again to May 10th at seven p.m., and maintain it for the

requisite 14-day period.

JAYAKANTH SRINIVASAN: Yes, sir.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(7:45 p.m.)

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

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

Before you start your presentation, let me, with the Board's ascent and indulgence allow the reopening of public comment.

CONSTANTINE ALEXANDER: I support that.

THOMAS SCOTT: I support that.

MAHMOOD FIROUZBAKHT: Mr. Chair, just a preliminary question. Was the sign on the property amended to reflect that this petition involves a Fast Food Ordinance request for slash relief? It was?

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Yes.

MAHMOOD FIROUZBAKHT: Thank you. So I would support opening public comment.

BRENDAN SULLIVAN: Mr. Heuer?

TAD HEUER: Similar to Mahmood's question, was mail notice effectuated of the updated sign for the relief being requested to all applicable abutters should have received such mail notice in a timely manner.

BRENDAN SULLIVAN: I requested that the staff send notices to abutters to abutters and to the people speaking at the last meeting.

TAD HEUER: Just as long as it went to the abutters.

ATTORNEY JAMES RAFFERTY: My understanding of the record is that I've seen the notice --

UNIDENTIFIED FEMALE: We can't hear you.

ATTORNEY JAMES RAFFERTY: That I think the notice that was mailed concerning the hearing did identify fast food.

TAD HEUER: The original notice?

ATTORNEY JAMES RAFFERTY: The

notice, the original. My understanding it's only been one notice. The placard on the building for a period of time, I understand, did not contain the words fast food. Maybe just the Article four point -- whatever the Table of Use is. But since the hearing, or maybe even before the hearing, a new placard -- since the hearing? A new placard was generated by ISD, placed at the premises and I advised Mr. Woolkalis to put additional information up with his phone number and the words Dunkin' Donuts, and if you have questions, call me. Because one of the other questions was well, what type of fast food? So the notice placard had fast food on the new notice placard and Dunkin' Donuts is now on an additional notice that the Petitioner posted on the sign.

TAD HEUER: Okay.

BRENDAN SULLIVAN: Okay, so we will reopen public comment.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chairman. As you know, this is a continued case, and at the time of the original hearing, there was discussion about this application. It is a Variance seeking relief to allow for a fast food use in the Business A District along this section of Mass. Avenue. The Chair expressed the opinion that a continuance was necessary for elevations and to see how well the storefront could blend into the streetscape. So I know the applicant has submitted three elevations or a Photoshop variety of different elevations.

The case, you'll recall, involves a very narrow space. There had been -- the history of the space in recent time it was a -- most recently served as a bookstore for the Harvard Law School. And prior to that had been a credit union for the Harvard Credit

Union. The landlord was present at the prior hearing. He's present this evening as well. And he's testified about the difficulty he had in finding a tenant for the size of this space. It's very narrow and it's very deep. Mr. Woolkalis has a proven track record of operating successfully and enjoying harmonious relations with his neighbors. He's got stores both further on Mass. Avenue in North Cambridge and also one on Memorial Drive. Since the hearing Mr. Woolkalis has attended a meeting of the Aggassiz Neighborhood Council where he was able to have a conversation, discussion about his proposed use and some of the impact that might be associated with it. And I also know that Mr. Woolkalis has had conversation with other abutters who were present at the prior hearing on the Bowdoin Street side of the property, so there has been additional conversation. And I suspect that some of the

issues that were prevalent at the prior hearing about the adequacy of the notice of people not knowing what this is about, I think is very few people now that don't know what this is about. So it has had a widespread level of attention, far more than is typically associated with applications. But it's a, it's an active neighborhood. It's a highly desirable neighborhood. Residential mixes nicely with commercial. Mr. Woolkalis is looking to become a part of the neighborhood and the improving streetscape. He sees this use as being highly compatible with other similar uses in the area. I'm sure most everyone is familiar with Dunkin' Donuts. Mr. Woolkalis has gone out of his way to indicate that he brings a particular level of attention to his operation as an owner, a franchisee, as opposed to a corporate-owned store, and his hope here is that the conclusion of the Board

will be that there is an adequate hardship to support the granting of the relief.

BRENDAN SULLIVAN: Okay. What I requested at the last hearing was to get a visual as to the front, and what was submitted is what you're proposing.

BRANDON WOOLKALIS: There's a new --

ATTORNEY JAMES RAFFERTY: Use the microphone and identify yourself.

BRANDON WOOLKALIS: I'm sorry. Brandon Woolkalis. Hello. Hi, Brandon Woolkalis. After we met with the Aggassiz Neighborhood Council, a few members of the council had suggested to tone down the building. I think you guys have the original one with the orange and pink on it, and this one here is gold-leaf lettering. So I think --

ATTORNEY JAMES RAFFERTY: Has this been filed?

BRANDON WOOLKALIS: No, I just got that today. I wanted to get something in because I had the architect working on that. So that's much, you know, a more toned down version.

CONSTANTINE ALEXANDER: Excuse me, sir, that is what you want -- you're putting forth?

BRANDON WOOLKALIS: Yes, sir.

CONSTANTINE ALEXANDER: And it's not in our file the Monday before?

BRANDON WOOLKALIS: Yes, sir. When I was meeting with the neighborhood, you know, they suggested, you know, to get something a little bit more toned down.

MAHMOOD FIROUZBAKHT: When did you meet with the neighborhood?

ATTORNEY JAMES RAFFERTY: Tuesday night.

BRANDON WOOLKALIS: On the 10th, Tuesday night.

ATTORNEY JAMES RAFFERTY: There were elevations put in.

CONSTANTINE ALEXANDER: I understand, but the proposal that you're putting before us tonight, the one you want us to approve as part of -- if we grant you the you Variance, doesn't comply with our rules. Now, we've got so many people here tonight, I would suggest to the Chair that we go ahead anyway, but I'm not pleased.

BRANDON WOOLKALIS: I'm sorry about that, sir. I just, you know, got them as soon as we could.

CONSTANTINE ALEXANDER: We were very clear at the last hearing. I'm sorry. We were very clear about it.

ATTORNEY JAMES RAFFERTY: But Mr. Vice Chair, he did comply and then he got feedback on Tuesday night. So this -- I mean, we don't need to submit -- this is merely an attempt to be responsive to

comments that were heard on Tuesday night. The Monday filing requirement was met weeks -- in fact, it wasn't even a Monday. It was a week ago Friday. It was there. But you go to a -- this was a regularly scheduled meeting. They were able to accommodate Mr. Woolkalis. This is merely an attempt to say this is an enhancement of something that's already been submitted. No attempt to disregard or disrespect the rules of the Board.

MAHMOOD FIROUZBAKHT: Are there multiple copies of that?

BRANDON WOOLKALIS: That's the only one I have. I just printed that up today. Sorry.

THOMAS SCOTT: There were three schemes in the file. Why does that one only reflect one of the schemes?

BRANDON WOOLKALIS: Because everyone when I met with, people out in the

street and meetings, everyone focussed on this one the best. They liked the goosenecks. I like it, too. I think it looks a lot prettier than the just the plain sign. The awnings add to it, the goosenecks. So that's what, you know, everyone seemed to like, so that's why I went with that one. And by getting rid of the orange and pink, we did the gold-leaf. It doesn't look too gold because it's a computer rendering -- rendition of it.

BRENDAN SULLIVAN: Any questions at this time? Gus?

CONSTANTINE ALEXANDER: No questions. Comments but no questions.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: I don't know, I like one of the other schemes better than this one. So I don't know -- so since you haven't kind of addressed this solution on that scheme, it's hard for me to comment on it, but I don't

like -- I'll tell you what I don't like. I don't like this element right here.

BRANDON WOOLKALIS: The wedge?

THOMAS SCOTT: This wedge, yes. I like this scheme maybe and with the goosenecks added to it, you know, as a solution. And maybe the toned down sign, but this is --

BRANDON WOOLKALIS: The gold.

THOMAS SCOTT: With the gold sign and maybe the goosenecks added. And the sign.

Is the intent that the sign is illuminated or not illuminated?

BRANDON WOOLKALIS: That, the old sign would have been a cloud sign, so it's internally illuminated. The gold is the external with goosenecks. Or you can do that, too, with external.

THOMAS SCOTT: Yes, I would prefer that the externally illuminated rather than

internally illuminated.

BRANDON WOOLKALIS: Okay.

BRENDAN SULLIVAN: Mahmood, any questions at this point?

MAHMOOD FIROUZBAKHT: And what was the response that you got from the neighborhood organization that you met with?

BRANDON WOOLKALIS: I don't want to speak for them themselves. I know a lot of people were upset in the beginning. I did meet with a group of people Tuesday night, 20 or so people, explained who I was, you know, that I was born and raised in Cambridge. That my store is the Mass. Ave. store north. It's non-traditional. It's a good community meeting place. I think -- I felt a lot better coming out of the meeting. I think a lot of people there did as well. I know there's still some fears. I'm sure we will address those.

I also met with some immediate

neighbors of mine and tried to help them with some of their concerns with trash and truck deliveries, which I promised I would do. And I told them, you know, I would put it in writing to help, you know, some of their fears. So over and all, it went pretty well. Those are the people that I met with in the neighborhood meetings. I also canvassed the neighborhood immediately. The immediate neighbors, I got over 25 signatures from people on Bowdoin Street around the corner that were in support of me. I also got I think 600 signatures from other Cambridge citizens in the area all over Cambridge. I got a lot of support for the store because they know me, you know, from being a good operator. You know, I'm in my stores all the time. I'm part of the community. I sponsor Little League teams. I sponsor, you know, any events at schools. If a school needs coffee and doughnuts and they're having a

function, they always call me. I have no problem with that. When I used to have the ice cream, I did the ice cream socials and stuff like that, but I don't have the ice cream anymore unfortunately.

MAHMOOD FIROUZBAKHT: Thank you.

BRENDAN SULLIVAN: Tad, any questions at this point?

TAD HEUER: Not on the issue of the signage, but I may want to say something before we go to public comment as to the larger issues involved, scope of what we can and cannot consider as a Zoning Board.

BRENDAN SULLIVAN: Okay, and I may have some of that, too.

I'm at somewhat of a disadvantage with my allergies here tonight.

I think the issue that I have to -- the hurdle I have to cross is, and last year on the Ash Street case I cited Mendosa versus Licensing Board of Fall River. And the

Court's specific language in that is although all Variances are unusual forms of relief from Zoning requirements, Use Variances -- and this is what this is -- is a Use Variance, should be particularly extraordinary because they inherently undermine the local Zoning Ordinance division of uses. So that's one hurdle that I really have to get over is how we can insert the Use Variance.

CONSTANTINE ALEXANDER: Can I speak on that now as well?

BRENDAN SULLIVAN: Yes. And also the other issue obviously is the hardship. And I'm having trouble finding an adequate hardship by both parties, applicant and also the present property owner. So those are two things that -- two hurdles that I really have to get over.

Your comment?

CONSTANTINE ALEXANDER: Comments.

Let me make two comments. First, take your comment, your second comment first, there is no hardship here from a Zoning point of view. To have a hardship to justify a Use Variance, you'd have to demonstrate to us that the only likely use of these premises is a fast order food establishment. That, you haven't done that. And, in fact, the history of the property tells us that's not true. The fact of the matter is the hardship here is you see it as a Zoning hardship. You see an attractive retail opportunity. And the landlord sees commercial attractive opportunity, he's going to get more rent than he might get from another tenant. That's not a Zoning hardship. I don't think you in any way get close to meeting a Zoning hardship.

As to the point that Brendan started with this Use Variance, Use Variances are forever. We can't -- you're obviously a remarkable, good operator and you have the

respect of the community, but we can't grant a Variance to you. We grant a Variance to the property. And so if we grant the Use Variance, it's forever. Now Mr. Rafferty's going to point out very quickly, if not my fellow board members, we can put a time frame on it, and that's true. But you will now say next, because we've had this before, not you, but with other petitioners, well, I need the time frame to be pretty long because I'm going to be signing a lease and I can't run the risk that I'm going to lose the property in the midst of my lease. So we're going to be asked to grant a Use Variance for three years, maybe five years. During that period of time, be it three or five years, you could sell this property, you are a very good operator, to another Dunkin' Donuts franchisee owner. Maybe apparently towards the dreaded Porter Square franchisee owner. You could do that, you don't have to come back before our Board.

You don't have to send notice to the neighborhood. You can do it as a matter of right. And the only recourse we would have would be when the time frame came up is not to renew it for this person.

Along that point about a Use Variance is forever, that's why Use Variances are -- the Court described it there.

And I want to point out one other thing out, too. In this city where we allow fast order food establishments, like in Harvard Square, it's done by Special Permit. A Special Permit is personal to the owner of the property. And every time the property turns over, the new owners have to come back before us. It gives us an element of control. We won't have that element of control here if we were to grant a Use Variance. And I have to ask myself, and I asked myself the last time, I said, again, why did the City Council, when drawing up the Zoning Ordinance, allow fast

order food establishments with Special Permit in other parts of the city and here said no? Not even with a Special Permit can you have one. And it must be a policy behind that. And I think the policy is this area of Mass. Ave. from Harvard Square to Porter Square is a sensitive area, and the City Council has decided there are only certain kind of commercial establishments they want in this property. And the one they don't want there, because they didn't allow it, is a fast order food establishment. I think we have to grant the relief, we have to make a third finding by not derogating from the intent and purpose of our Zoning Ordinance. If we grant a Use Variance here, in a case of no hardship, would be derogating from the intent and purpose of our Ordinance. So you don't satisfy the second requirement for a Variance.

The third requirement is special

characteristics of the property, shape of the structure. And there is, I'll grant you that, but it's not so special that you can't have any retail uses there. Again, this property's been used for retail forever. So I respect what you want to do. I commend you in terms of how you operate your business, but we have to follow the Zoning Ordinance. We have to follow the law. We have to understand and apply the structure of the City Council. And all this says to me, no relief tonight. So I'm not going to be in favor of a Variance for those reasons.

BRENDAN SULLIVAN: For everybody's edification, I have read the file, every single correspondence that's been coming in hourly if not daily, and was there up until five o'clock tonight actually even going through them two or three times. And I've read through all of the correspondence about this master plan for this section of Mass.

Avenue. So I got the Planning Board report, which actually was submitted to the City Council a of couple weeks ago. And, in fact, the proposal is really for the North Massachusetts Ave. Rezoning Petition. And what it does is it basically divides or segregates Mass. Avenue into three areas. And I know this is going to be brought up. It's going to be Overlay District 1, which is the Aggassiz Neighborhood 9 area. And then there was an Overlay Sub-district 2, which goes at Porter Square. And then there was Overlay District 3 at North Cambridge. So -- and it's amazing that in Overlay District 3 they actually even propose a fast food section in there to allow it. But there is nothing in here, other than delineated as Overlay District 1, that touches the present Zoning for this section of Mass. Avenue.

So what does that say? It says that they had the opportunity to touch it and that

they could have inserted or changed that classification, allowed this particular use, but they didn't. And so that I think that also speaks at the intent and purpose of the Ordinance. That they left the present Zoning and the uses, the Table of Uses, for this area from, say, Waterhouse up to Arlington. Actually, I think it's listed as intact. So anyhow.

The other issue that I have is the aesthetics, and there is correspondence that I have in here from the Attorney General's office, actually, to the City Clerk in Chatham where she basically reiterates the fact that aesthetics is a viable part and a viable consideration of any Zoning relief and whether or not it blends in with the neighborhood. So there's a few hurdles that I really have to get across, and I'm not there just yet.

You had thoughts?

TAD HEUER: So I have similar thoughts, and I can cite similar things about the disfavored nature of Use Variances. My thoughts on the other side, however, having read all of the correspondence, is that there are two other things that I think we can't consider:

The first is the impact of this establishment on other neighboring establishments of similar type. The SJC has been very clear that while you can look at aesthetic qualities, it is not a proper object of Zoning to consider the impact of the proposal on surrounding businesses. And that goes back over 50 years. That's an axiomatic proposition in Zoning that simply because it may have an impact on a related business in close proximity, is in no way something that the Zoning Code is intended to address, and it is quite frankly prohibited from considering it in that respect.

I understand that that could be conceived of as going against the need provision of the Special Permit provisions of the Fast Food Ordinance. To the extent that they're contrary, I believe the SJC's interpretation of common law and the state statutes would control and render that provision null. I don't think we need to get to that point here, but I think that the SJC is much more persuasive than that and is much more long established than the code is.

The second provision is that the SJC has held on numerous occasions that Zoning currently may not be used to regulate ownership without regard to differences in the use. Which means in my interpretation, that simply because a property is being used for something that the city or anyone else doesn't like the owner, that's an improper use of Zoning to discriminate against the owner. The cases are traditionally

about -- the leading case concerns an apartment building that was being converted into condominiums. And the city prohibited condominiums even though the building itself was going to be used for residential and had always been used for residential. The Supreme Judicial Court said that the building doesn't change, the use of housing doesn't change, therefore, you cannot discriminate against it simply because it's a different type of ownership. And I believe that that rationale applies equally here.

While I certainly concur with the notions of Use Variances being highly disfavored. And certainly just several doors down from this property I voted against a Use Variance about a year ago for exactly those reasons. I would also point out that any discussion that we have needs to be tempered by the fact that we cannot take into account the impact of this fast food

establishment on other similar establishments in the neighborhood, nor can we take into account the fact that it is a Dunkin' Donuts fast food establishment as opposed to any other type of fast food establishment that's being proposed. Those things, while they may have a visceral reaction from people, are simply outside of our jurisdiction, in my opinion, and are not things that I would ever base my opinion on when taking a vote here.

BRENDAN SULLIVAN: Okay.

Let me open it public comments.

Mr. Rafferty, I'll give you a chance to rebut.

Let me preface public comments with just a few brief comments. We all respect your right to speak. All I would ask is that you be kind to us. We're going to be here until after midnight, and we really don't need to hear the same thing over and over and

over again. Again, if you want to speak, that's fine. A simple "I agree with the previous speaker" or something like that, believe me, we get it and we get it pretty quickly.

Let me go back to -- just so there's no misunderstanding of the rules and procedures of the Board which goes back to February of 1983. There shall be no cross-examination of Petitioner. Any and all questions directed to the Petitioner shall be directed through the Chairperson. Upon completion of all testimony in opposition, the Petitioner shall at the discretion of the Chairperson, be given an opportunity to rebut any testimony given in opposition. After such rebuttal if there are no other persons desiring to be heard, either in favor or in opposition to the Petition, the Chairperson shall declare the hearing closed and the matter taken under advisement.

The Chairperson shall have the power and discretion to rule any person appearing at the hearing out of order and to exclude or limit any testimony which in his opinion is redundant, repetitive, improper, or immaterial.

So, with that said, who would like to speak first?

MAHMOOD FIROUZBAKHT: Mr. Chair.

BRENDAN SULLIVAN: Please, again, just give your name and address.

MAHMOOD FIROUZBAKHT: Mr. Chair, before we start public comment can we sort of set some guidelines as to what we think is, you know, an appropriate duration of people's comments? Are we talking about a minute or so for people to talk?

BRENDAN SULLIVAN: Well, the City Council has a three minute limit. I would just ask people to be kind, please. Okay? I'll be honest with you it gets

counter-productive if it goes on and on and on and we hear the same things. I mean, we're human. I tune out. Anyhow.

ROSEANNE GILMER: God bless you for doing this. My name is Roseanne Gilmer. I live in North Cambridge. I have a business, a barber shop, on Mass. Ave. and Brandon opened the Dunkin' Donuts up a couple doors, a couple blocks from us. Okay.

I have a couple of things to say that he, you know, he is a really wonderful business owner and a charismatic, caring person. He takes care of his neighborhood. The only thing that I haven't heard him discuss here is that this man is a Cambridge policeman. Okay, I haven't heard that discussed yet. Okay? Be that whatever you think, it's bad or good. But I'm sorry, I'm a business owner myself and I think that's a wonderful thing, okay? It's only going to help your neighborhood. All right?

The Dunkin' Donuts, I understand about the Zoning and the fast food in that area, but I'd like to discuss your -- okay, I have a barber shop, okay. You can't -- the reason that those rules are there are about you not picking and choosing the businesses that are allowed in there, because you can't do that. Okay? You could have a barber shop -- a hairdressing salon right beside me, five doors down from me. They are -- they're everywhere. You can't do that. That's why there are rules that say that you can't do that. Because for the sake of business and this is America, guess what, you can't do that. So that's why.

But he has always conformed with whatever property restrictions that they have. And if you could give him rights, like this man was talking about earlier, on his personality and his character, he deserves to do whatever he wants because he's only -- not

only is his business going to help the area, but he takes care of everything. And as a business owner, you don't want an empty spot. Is this spot empty? This spot is empty. Okay, I'm a business owner. It's bad for business when there are empty spots. And you have to understand times are really hard. Okay? People do not have money to just go open shops. I know you know the rate at which they're closing down. Okay? Nobody has money to just open up a shop. Okay, I'm understanding. I just want to talk to the people. Because I know they all know I don't live there. I know you understand these things. Okay?

BRENDAN SULLIVAN: And in conclusion.

ROSEANNE GILMER: And my conclusion I think that you should absolutely bring this -- it's a meeting place. And in our neighborhood that's where everybody goes.

Everybody goes, whether -- I also live in the neighborhood, and that's what we do. And it's an area where there are -- I mean, nobody's gonna go to this Dunkin' Donuts to drive down there. Don't think there's going to be extra cars. There aren't. People aren't going to be driving down there. It's gonna be a foot thing, it's gonna be a community thing and it's only going to add to your neighborhood. So I just vote for Mr. Woolkalis to open his business in your neighborhood. It will only do good for you. I can guarantee it.

BRENDAN SULLIVAN: Thank you.
Anybody else wishes to speak?

RON AXELROD: Hi, my name is Ron Axelrod. I live at 26 Shepard Street, Cambridge. I'd like to make two quick comments relative to the Variance that mostly focus on traffic and transportation.

First, I'd like to speak to the

requirements in Section 11.31 to the Zoning Ordinance relative to fast food establishments. The Ordinance says, and I quote: That the operation of the establishment shall not create traffic problems;

Two, reduce available parking;

Three, threaten the public safety on the streets or sidewalks or;

Four, encourage or produce double parking on adjacent streets.

I received traffic data from David Black Transportation Engineers from VHB Transportation Engineers who have been consultants to the City of Cambridge and Harvard on this stretch of Mass. Ave. Just to give you an idea of the magnitude of the traffic problem that fast food would create, there are approximately 1200 to 1300 cars going southbound, and 600 cars going northbound in the peak hour in the morning and

Mass. Ave. The institute of transportation engineer's data for a typical Dunkin' Donuts without drive-through generally generates about 100 customers per hour in the morning based on 1500 square feet of store space; 80 percent of these trips are car trips. The result of this flow is impact on traffic safety and flow. Double parking in front and across the street and in a bicycle lane where opening doors into the bicycle lane is a dangerous condition for bicyclists.

Three, double parking on streets, like Bowdoin Street which would be could be most impacted.

Four, no adequate on-street parking is available.

And the fifth, cars would be circling through the neighborhood streets looking for parking.

The second item is the Variance on a fast food restaurant is incompatible with the

sponsored section -- sponsored master plan for this section of Mass. Ave. between Waterhouse Street and Upland Road. The Community Development Department, DPW, and Traffic and Parking are finalizing a streetscape master plan for improvements to Mass. Ave. between Waterhouse Street and Upland Road. And I am the Neighborhood 9 representative on the City Steering Committee that establishes guidelines for the development along the avenue as we call it, based on improving pedestrian safety, improving the local business environment, and three, reinforcing the avenue as a gathering and shopping and focal part of our neighborhoods.

A fast food establishment goes against the effort due to traffic and safety problems that I've just talked about, including double parking and traffic circulation into the neighborhoods. There are too many coffee

houses already, and a national chain like Dunkin' Donuts with its nationwide advertising overwhelms locally owned and operator coffee establishments along our stretch of the avenue. We have 14 places to get coffee on our current count, and we don't seem to need any more. Seven of them sit-down operations.

And lastly, a fast food establishment could push other property owners to held off for larger rents at the expense of the neighborhood as this has happened at other locations and would further erode the work we are doing to improve the avenue for our two neighbors hoods.

Thank you for considering our comments. I ask you to vote against the Variance.

BRENDAN SULLIVAN: Thank you.

Is there anybody who would like to speak?

WILLY BLOOMSTEIN: Hi. I'm Willy

Bloomstein. I'm at 16 Crescent Street and I'm part of the Aggassiz Neighborhood Council. I just want to say a couple quick things.

One is it was great that Brandon came by and met with us. We really appreciated the time that he and Mr. Rafferty took. They were very articulate. I think it was a really productive exchange. I think speaking on behalf of the vast majority of people in our neighborhood, I don't think it swayed anyone's opinion. I certainly have not personally heard from anyone in the neighborhood saying that they were now convinced that this was an appropriate thing. I think it's important because just as I think you pointed out, we can't make a call based on the nature of the store, the impact of the -- on other establishments. You also can't make a decision based on the quality of the guy who's gonna run the operation.

Obviously he runs a great business. I don't deny that. As I was telling Brandon, I go up there all the time. I go up to the French Club and listen to music up there in North Cambridge. So I respect him as a businessman. It's not about that. We all know that. He runs a good business, but that's not relevant to this conversation.

I think the only thing that's really relevant besides the traffic and operational issues is the strategic issue which is around hardship. There is no hardship here. You guys know that. We know that. He knows that. Mr. Rafferty knows that. And well, okay, I shouldn't speak for you. I apologize. That's my opinion.

When we were at the meeting with these gentlemen, you know, we talked about that and it was pretty clear there is no hardship, and that's fine. It's not -- he has every right to try this. I totally get that. And you

guys have every right to take a hard look at it. I just think when you cut away all of the debris, the reality is that there is no hardship. And how can you possibly take a Zoning that everyone in the neighborhood loves, that the master plan is demonstrating to you in hard, quantifiable evidence that we don't want to change it, and if you think the turnout here is large, can you imagine if the City Council and the Planning Board decide that they want to introduce fast food in this stretch of Mass. Ave.? I mean, there's going to be thousands of people up in arms. So I think that's the reality of it.

The last thing I just want to say is that as a representative of the ANC, we did vote to write a letter which you guys got and thank you for reading it which was unanimously on behalf of the neighborhood, you know, just reaffirming that. I just wanted to go on record that, you know, you got that letter.

There's a lot of people that feel very passionately that were unable to make it tonight for a thousand reasons, and I don't have to tell you that, you know that.

There's always like a small slice. It's like the iceberg that hit the Titanic, underneath the surface there's a huge ground swell. If we had to, we could, you know, we could go nuts on this thing, but I don't think that's gonna be necessary.

BRENDAN SULLIVAN: Thank you.

Anybody else wishes to speak?

DENNIS CARLONE: Thank you. My name is Dennis Carlone, C-a-r-l-o-n-e. I live at 16 Martin Street which is the same block that the applicant is hoping to get the Variance. I'm an architect urban designer. I was a consultant to the city for 30 years and the Planning Board, and dealt quite a bit with Zoning and Variances. And I agree that there's very little that this Variance can be

based on that's strong. I want to thank you for opening up the discussion again. We would hope that the city would begin to review the placards to make sure that they're consistent with the city's own wording of what should be on the placard. But thank you, again, for reasoning with us on that.

I'm not gonna go over the issues just like you asked us, that have been mentioned, but we are -- I'm part a group, a Mass. Avenue neighborhood committee which struck me as being an acronym for MANIC, but nevertheless we are looking at upgrading Mass. Avenue. And part of my work working with cities, towns, and neighborhoods is looking at making retail districts stronger. And one of the first things we recommend is not to be like any other neighborhood retail district fast foods. But to be much more specific on the kinds of retail that you want; a new store is coming into our neighborhood, Clothware.

They're moving from Harvard Square. That's exactly the kind of retail we want.

The two neighborhoods, three neighborhoods that come together on Mass. Avenue are publicly defined by Mass. Avenue. That is the common ground. This is where we all meet each other and we've all met each other. And the character of that street is absolutely critical to the value and the character of our neighborhood. And the reason I say that is that once you get a certain number, it might only be two of fast food, it becomes that much harder to prevent it from happening again. That's why it's a Variance process for this neighborhood. And I just hope that you agree with that logic and that you will find that many, many people are against any fast food, not just this specific one.

Brandon is a nice person. He's a wonderful person. I'm a wonderful person.

If that's all that mattered, I would be a millionaire now. But that isn't the issue as you've all said. And as far as aesthetics go, none of the submission -- we want a group of buildings that work together, not screaming for attention even in a reduced format. I don't -- none of us even think if it became an Eliot Street cafe where Dunkin' Donuts wasn't even mentioned, it still would be right. We just don't want fast food. There's no reason why one -- this neighborhood cannot have fast food, cannot want to have fast food. There's no reason why we have to be the same as every other retail neighborhood. That's why we live where we live and that's why the Variance is required.

BRENDAN SULLIVAN: Thank you.

DENNIS CARLONE: Thank you.

BRENDAN SULLIVAN: Anybody else wishes to speak?

Yes.

ELLEN GROSSMAN: My name is Ellen Grossman. My husband and I, for over 42 years, have owned the corner of Mass. Ave. and Linnaean Street which is 1736 to 1740. At one time we had our own business there occupying a great deal of the space, but we've had a number of dear and long running tenants there, including the tiny, tiny space that I think must have less than half the frontage of this property under question. It has never been unleased for a day in 42 years. There have been all kinds of different people, not many, really only three or four tenants over 42 years. But there certainly was to the point of hardship never a minute where we as landlords had any problem renting that space to many other different kinds of retail endeavors. For the last -- I'm sorry, I don't have it exactly, but certainly for the last almost 20 years, it has been a very fine

coffee house. And for the last eight or ten it has been owned by Simon Hugh, a wonderful young guy who actually was on the front page of the article in The Globe on the precious commodity of hand roasted and hand cared for coffee in this last Sunday's issue. And Simon was thankfully on the very first front piece of one of the old timers who have been championing this kind of thing. So we're not only speaking to you as landlords in our 42-year experience that there's never been a hardship issue for renting the size even half the size of the one that's being discussed. And it's also a long, skinny space. But more like eight feet wide and not 20 feet wide.

And the only other thing is that, I understand that you are not going to -- even if you personally felt, boy, I sure hope a big one wouldn't hurt all these other little guys, but you can't consider that in your decision, that's fine. But I have had many

people from the neighborhood comment because before it was Simon's Coffee House, it was Hollywood Express because our tenant George Lewis and Hollywood Express downstairs which is the only remaining video rental store in the greater metro area has been our tenant for 25 years. And he's the one who first put the coffee shop upstairs in the small space and ultimately sold it to Simon who very happily tried to grow it for the last eight or ten years.

So many, many people have commented that they are so incredibly thankful when they know we're the landlords that we have been able to maintain the solely owned individual -- they're not even multiple units, much less owner owned and operated, they are single units that each of these fellows have put their life into. And, again, I don't know this gentleman, and I believe everything that's been said about him

being a fine businessman, but if one of the main issues has to do with hardship for the landlord, I felt it was relevant for you to hear.

BRENDAN SULLIVAN: Okay, thank you. Anybody else wishes to speak?

Yes.

JOHN SERWECINSKI: Good evening. Can you hear me fine? My name is John Serwecinski, S-e-r-w-e-c-i-n-s-k-i, and I live at 175 Harvey Street in North Cambridge. I wanted to say that about seven years ago when Mr. Woolkalis was planning the Dunkin' Donuts up in North Cambridge, I had the opportunity, I took an interest in it. At that time it was a rundown gas station, but -- and so we went around the neighborhood and knocked on doors. And on the second day I said, I said to myself, not saying anything to Mr. Woolkalis, I said, I want this guy in the neighborhood. And everything about him,

I liked. And this is the sort of thing you build a neighborhood on. His manner, his grooming, the way he dealt with objections, polite, and he's listed a number of things that he intended to do up in North Cambridge. Has come through on each and every one of them. The place today is a great meeting place for the neighborhood. Huge improvement obviously over what it was. Cost him a lot of money to remediate the land, I know up there was an enormous undertaking actually, but it's been proven successful. So I'm here in very stride and support of Mr. Woolkalis. The decor is nice. It's clean. Again, he did what he said he would. And as far as I'm concerned, he is the business. He's there often on-site. Very receptive to constructive criticism. It's a huge, huge asset to North Cambridge. So I just feel that it's not just -- it's not the business, it's the person behind the

business, that the business reflects that person. And I just wanted to speak loudly and clearly about Mr. Woolkalis's honesty, integrity and forthrightness. There was no baiting and switching, no breaking of promises I couldn't do this or something. Just outstanding individual.

BRENDAN SULLIVAN: Thank you.

JOHN SERWECINSKI: You're welcome.

BRENDAN SULLIVAN: Anybody else?

MARNEY CLIPPINGER: My name is Marney Clippinger and I live at No. 9 Avon Street which is right around the corner from the location that we're discussing, and I have to say if we ever did have a Dunkin' Donuts in our neighborhood, I hope it would be yours. Because you sound like a wonderful man, but I am strongly opposed to having a Dunkin' Donuts in our neighborhood. The stretch of Mass. Ave. where I understand your other -- the North Cambridge location, there

aren't any other coffee shops. We have more coffee shops than we know what to do with. We have lots of coffee, and we really just simply don't need any more. We also have laws. We have Ordinances in the city, and I'm really pleased that they exist. I wasn't aware of them until this came up. And by the way, I didn't know about any of this. I don't know what mechanisms you've used to inform the neighbors about this. The only reason I heard about it is because of the ground swell of neighborhood opposition which I'm delighted has happened. We don't need coffee shops. There clearly is no hardship from what any of you are saying. There's no justification for this, and there are lots of reasons why it shouldn't happen in the neighborhood. And I really hope that you all choose to uphold the law. I also hate to think that the group that has been doing a very wonderful job with on a master plan for

our neighborhood is not -- it sounds like there's a possibility that their work could be in vain. From what I understand, the neighbors have made it very -- the residents have made it very clear that we don't want task food establishments. Nothing has changed, and it would be too bad if all of that went right out the window. So I -- I am imploring you to uphold the laws as they have been written.

Thank you.

BRENDAN SULLIVAN: Thank you.

FRANK REESE: Hello, my name is Frank Reese. I live at 45 Garden Street. My wife and I have been Cantabrigians for about 45 years, and I'm the first person to drive miles and miles for a chocolate honey dipped cruller. And I have a great admiration for the Cambridge police. So you, sir, must be a good guy.

On the other hand I would like to clear

up a couple facts that are in the record tonight, and that was the over 600 names in favor on the petition. I did an audit earlier this morning, and in fact, I just like to read off a few numbers from my notes.

There are actually 15 people or two percent who were on the petition in favor who are from our neighborhood. There were nine people who were from Harvard Law School and Lesley University. There were 34 signatures from Harvard Square. That was the address given. There were 253 names from the Memorial Drive location of Dunkin' Donuts, and there are 202 from the North Mass. Ave. location. There are 130 signatures from outside of Cambridge: Maine, Rhode Island, Abington, Peabody, Somerville. So in fact there are 95 percent of the signatures were not from the neighborhood on the petition. And I have a colleague who would like to address the Board and speak toward the

letters that you've received in opposition from the neighborhood.

BRENDAN SULLIVAN: Okay. If that's going to add something new. Again, we're trying to get it down to a precious few here, but, come forward.

RUTH RYALS: My name is Ruth Ryals, R-y-a-l-s and I live at 115 Upland Road. And I'm also a member of the Mass. Avenue Committee. We don't have a legitimate name.

BRENDAN SULLIVAN: What was the acronym again?

RUTH RYALS: MANIC.

BRENDAN SULLIVAN: MANIC. The word that came to my mind was hysteria, but that's all right.

RUTH RYALS: Not quite. Not by a long shot.

I also am a member of the Porter Square -- Vice President of the Porter Square Neighborhood Association and I tend and

frequently work with the Aggassiz Neighborhood. I know you met with the Aggassiz neighborhood, but you never met with anybody from Neighborhood 9 because that's what I represent, and none of us have really had an opportunity to talk with you. But let me go back and say that I am here to say that we don't want fast food in the neighborhood. We're in favor of and want to keep our precious Zoning Laws the way they are, and we love having our neighborhood the way it is. We love being able to walk into Abodeon and we know the owners. We can walk into Simons and we know the owner. We can walk into High Rise and we know the owner. And they're all wonderful people, and I'm sure he is, too, as we've heard a lot about, but my real purpose for being here is to present to you 210 signatures from neighbors, real neighbors in our neighborhood all signing to this petition. The petition of Aggassiz and

Neighborhood 9 residents. (Reading) We, the residents of Aggassiz and Neighborhood 9 request that the Board of Zoning Appeals of the City of Cambridge honor the Zoning which prohibits fast food restaurants on our portion of Massachusetts Avenue.

Specifically we request that the BZA does not approve the Variance request for Dunkin' Donuts to operate a fast food franchise at 1678 Mass. Avenue. We the neighbors of this part of the avenue believe that the volume of traffic and the potential for double and illegal parking will be a nuisance and a hazard to our community. We do not need another coffee vendor in the neighborhood. We have quite a few already. Please uphold the current Zoning and deny this Variance.

And I have all the e-mails to back them up should you want them.

BRENDAN SULLIVAN: Great. Thank you.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: Anybody else?

Down to -- a simple show of hands will maybe do, too, but go ahead.

CHARLOTTE MOORE: My name is Charlotte Moore and I live at 9 Rutland Street, and 18 years ago I actually asked that a Variance be granted to the Starbucks on the corner of Mass. Ave. and Shepard. And at that time we were concerned there was we needed an anchor for the neighborhood. There was a new subway station. We were concerned that the foot traffic would be compromised because people would get off at either Porter Square or Harvard Square and not shop along the neighborhood. I was actually then horrified to find out that Starbucks was going to put in six or wanted to put in six coffee shops in Harvard Square. And clearly the need here has been fulfilled. I'm not going to talk about everything I

wanted to other than to point out this, which was handed to me yesterday by somebody. This is a documentary about what happens -- what happens to a community. It's Twilight Becomes Night is part of a quotation where there is no defined cut off point where twilight and suddenly night happens. And what I'm seeing here is a sort of a gradual, a gradual compromise or derogation of the Ordinance. So more and more of the same come into our neighborhood and we're losing -- we haven't yet lost, but we stand to lose if we -- the small businesses and the small amenities that I, for example, as an older person, chose to stay in our house simply because we could in old age hobble around the corner and do our errands just as the younger people who want to be more efficient, the ones who have children -- one woman said to me, we don't need another coffee house, but boy would I love a place where I could buy socks

and underwear for my kids so I wouldn't have to go to Target all the time.

I just want to conclude with this, the proposal as it stands will derogate the intent of the Ordinance at a time when there is a city funded study of Massachusetts Avenue, and Mass. Ave. Zoning is going to be undertaken by the City Council. And I ask you not to interrupt this process. And each time one allows a Variance of this sort, each time you allow a Special Permit having to do with use or with need, each time the cafe is embedded in a larger project like High Rise, and it is -- I'm not saying anything against High Rise, but it kind of slipped in. It didn't need the Variance because of the Lesley dorm, the negotiations that took place. We further destroyed the intent of the Ordinance to keep the neighborhood viable for its residents now and for the residents in the future, and I ask you please do not vote

in favor of this proposal.

Thank you.

BRENDAN SULLIVAN: Thank you.

CONSTANTINE ALEXANDER: Thank you.

JOEL BARD: Thank you. My name is Joel Bard. I live at 51 Wendell Street. Mr. Chairman, I won't repeat what other folks in the audience have said for better or for worse, and I'm not going to repeat what a couple of members have said because my main reason for being here tonight was to specifically talk about Use Variances. Like several of you, I practice land use law. I happen to practice it all over the Commonwealth, and as you probably know, most Zoning Ordinances and by-laws do not even allow for Use Variances. Cambridge, like more cities, does allow for it, but nonetheless it's a very, very high standard. Variances have high standards across the board. But it's a very big deal when you

grant a Use Variance. And it particularly interferes in the area of policy more than a Dimensional Variance. And as you've heard discussed tonight, there is a process underway looking at that very issue. But we've been looking at Mass. Ave. Zoning intensively really since the early eighties. And we had a major down zoning of Mass. Ave. in the early eighties, dimensional as well as use. And of course coincidentally the fast food ordinance came in around that time, and it was a conscious policy decision not to allow fast food in this particular stretch as well as many other areas of the city. And the kinds of concerns you're hearing about tonight and some of the issues that were raised earlier about competing businesses, those are policy concerns really more than distinctions you can make in Zoning. Now if you have a Special Permit before you, you can get into some of those kinds of

considerations. But really when a Use Variance is being considered, it's obviously -- and I certainly heard it in the comments made earlier by members of the board that it's something taken very seriously. You're hearing a lot of very serious reasons why this particular stretch really should not have a fast food business there.

Now, I was very pleased that -- to meet Brandon, and Jim is a frequent flyer in our neighborhood meetings, but was very kind to talk to us and we were all extremely impressed with the kind of business that Mr. Woolkalis seems to run. But it's obviously got nothing to do with the individuals here. It has everything to do with the kind of business that's being proposed here. And it would be a significant, a major derogation and a huge policy breach to grant a Use Variance in this location.

Thank you very much.

BRENDAN SULLIVAN: Thank you.

TOM REESE: My name is Tom Reese. I've lived in Cambridge all of my 30 years. I wanted to speak against everything granting the Variance, particularly the words of Mr. Alexander. I didn't want to take up anyone's times.

BRENDAN SULLIVAN: I appreciate your succinctness.

Is there anybody else who needs to speak on the matter? One, two, three. If we can limit it to maybe three? All right.

FRANK KRAMER: My name is Frank Kramer and I live at Seven Avon Street which is right around the corner of the proposed location. I agree with everything that's been said about traffic and double parking and all of the issues that are -- that will be caused by this use. But I wanted to just make one comment about the hardship issue, and that is that the landlord says that it's

been difficult to rent the space. Now, Mrs. Grossman spoke to the issue about it being -- having a bunch more narrow space that is very easy to rent. I've spoken with several people who have been interested in the space, but they found that the rent was extremely high. And my point about this use is that the reason that they need to violate the Zoning is because this is such a high use an inappropriate use by Zoning Ordinance to this space. If a Dunkin' Donuts or a very high volume tenant like this comes in where there's a lot of people coming by who are not from the neighborhood necessarily, who are double parking, then you can do a lot more volume. You can get a lot more rents. And I believe that the very reason that the landlord wants this tenant is because he will be able to pay a much higher rent than the landlord wants for the neighborhood. So the issue is we enforce the Ordinance, the rent

won't be so high because you can't get this kind of high volume, high traffic tenant in there, but that's what the Ordinance says. It doesn't belong there. And that's the issue. I'm sure you're a wonderful man. I have no doubt that he is. And the fact that he's a Cambridge police officer, I highly respect that.

BRENDAN SULLIVAN: Thank you.

BHUPESH PATEL: My name is Bhupesh Patel, B-h-u-p-e-s-h P-a-t-e-l. I live at Three Bowdoin Street and basically we just wanted to -- I wanted to present a graphic that clarifies the letter that was already submitted. Basically three things.

One is that we all obviously agree that there is no hardship relative to the space and to graphically represent it. We wanted to clarify that that 22-foot wide space as being proposed is the same width as the space where Westside Lounge and Rafiki is. It's a very

common dimension for the retail on that street.

There was one of the comments that the neighbors made, if the ATM was maintained there, it would be narrower. That would basically make the space around 16 feet and the entire retail group, we would have the Stonehearth Italian Restaurant plus the Titray T-Shop (phonetic), and a couple other vendors are all 16 feet wide. That was the other clarification that we wanted to make.

The second thing was the issue of the loading zones and the parking. Basically we have Evergood here that has over 30 deliveries a week from silly things like one simple biscuit vendor to fish vendors to meat vendors to soda vendors to general grocery vendors and so forth, that deliver and try to use this loading zone while we have one, two, three restaurants, plus Temple Bar sometimes that have over 20 deliveries a week but that

also use these loading zones. Out of these two loading zones, this is the loading zone that's very hard to use because basically a lot of these loading zones are used by people visiting Starbucks. So during that peak time when the loading zone wants to be used, a lot of the trucks are using what is basically Bowdoin Street.

What we feel is this is going to exacerbate the one loading zone that we've been able to lobby a lot of the trucks to basically convince them to go back and use that loading zone rather than coming back on the back street. And having another business that's directly in front of that loading zone, it will have customers that would use the loading zone similar to having the customers use this loading zone for Starbucks. But basically it means we have very little to bank on when we talk to the truck drivers to get them to use the loading

zone on the back street.

Our issue back here is generally we already have five trash trucks a day that pick up back here for the three businesses that are here. And then we have another vendor, Rat Brother picks up here has different trash trucks. This guy is going to change over his leasing to correspond with this leasing so we'll have less trash trucks, but not for another two years. Now, that's a constant battle we deal with the retailers, making sure that they actually coordinate who the trash is getting picked up by and coordinate the pick ups so the pick up is the same day for everybody. The bottle pick up is the same day for everybody. But even with those five trash pick ups, they have to play musical chairs between basically trucks trying to come back here and not use the loading zone because it's easier and residents who are basically trying to beat the light at

Linnaean Street. So you can come up Linnaean Street and get on Mass. Ave. and come down this way, but a lot of the people will actually go down Bowdoin Street to beat that light at Linnaean to get to Harvard Square.

So there's three obvious traffic issues in the back of this street which constantly create what we basically have been dealing with. One is the water caps and the gas caps constantly get break. Over the last four years we've had both the utility departments come and replace them. They're all broken again. So in another year we'll have to do did again. The city would like to redo the sidewalk, but it's been ripped up twice. They've replaced these corners for us twice, but they're ripped up again.

They've replaced -- generally we plow this side of the street. It's all curb and we put them in piles between each property, but every year we get a round of tickets

because generally the trucks that come back here don't park in front of the restaurants because they don't plow. They park on our side basically and pretty much take out the piles that are made by the residents. We come in late at night, pick the ice and make those piles again. But generally we'll get a ticket because it will happen during the daytime. So we go two rounds of that every winter where something like will happen. So generally we have a pretty big nuisance that's already existing that we pretty much lobby for on a daily basis. So we feel like exacerbating this loading zone is a clear indication of what would happen if you had another business like Dunkin' Donuts in fast food in that location.

TAD HEUER: Is retail allowed in that district?

BHUPESH PATEL: Yes, retail is allowed in that district.

TAD HEUER: Has it been allowed since the introduction of Zoning?

BHUPESH PATEL: Yes.

TAD HEUER: So if you -- somewhat sympathetic, but you're saying you moved into a district that's residential that abuts a retail zoned district on a major thoroughfare?

BHUPESH PATEL: Yeah.

TAD HEUER: You did know what you were getting into; right?

BHUPESH PATEL: But the comment isn't about retail. The comment is about the fact that we're living on an arterial road that has loading zones, and if you have a business that comes in and predominant traffic is going to be like taking business to go. Then they have a good chance of abusing the loading zone. Meaning that there will be patrons using the loading zone not trucks using the loading zone.

Now we've already determined with the city that the loading zones don't suffice for what is basically nine restaurants in this corridor here.

TAD HEUER: Could another restaurant go in there by right?

BHUPESH PATEL: Another restaurant could go in there by right, that's correct.

TAD HEUER: Okay.

BHUPESH PATEL: The issue is more of the fact that we already know that 80 percent of the traffic that would be attributed to a Dunkin' Donuts on an arterial road which like the one on Union Square is contributed by people coming in cars. Now, you can say that there is a percentage of people that love Dunkin' Donuts coffee and they'll always go to Dunkin' Donuts rather than Starbucks. A portion of those people are going to walk, a portion of those people are going to drive. The portion of the people who are gonna drive,

I'm not gonna contest what the percentage is, but they're gonna drive. And that percentage of people exist on arterial roads. So they're going to visit this coffee shop because this is the road they use to get through town. If that's a given, we know that this loading zone will be abused by them.

Now if you're saying that this nuisance is something that we were born with and we have to deal with it, legally they're not even supposed to be back here. They're supposed to be using the loading zone, but it's very hard to enforce that. It's also very hard to enforce not having the patrons use these loading zones rather than trucks. So it's something the city's tried to address. We've tried to extend these loading zones, but we have restaurants that want two hour parking to remain because they need the two hour parking. So it's basically a give and take between what's there.

It's an ecosystem that we're dealing with. It's not something that we moved in and the system was there. I'm saying we are part of the ecosystem. So generally you could claim, okay, this is your problem as residents back here, but it's not -- legally they're not supposed to be back there. Legally they're supposed to be using the loading zone.

ATTORNEY JAMES RAFFERTY: Not true. I represent people that own private property there and the trucks can go on their private property and unload. I apologize for interrupting, but we heard this last time and highly irrelevant and simply inaccurate.

CONSTANTINE ALEXANDER: I conquer as to the relevance.

BHUPESH PATEL: Yeah, the ones that park on the street is the ones we're concerned with, not the ones that pull into this driveway. Generally it's the ones that park

on the street because they're the ones who are ripping up the sidewalk. We've actually established a pretty good relationship with about 30 percent of them. They either go around the front or they have smaller trucks that deliver, and they pull right in here. They don't rip up anything. They don't rip up the corners because they're in smaller trucks.

BRENDAN SULLIVAN: Okay. Get it.

BHUPESH PATEL: And that's it.

BRENDAN SULLIVAN: That's it, good. You wanted to speak, did you? Something that hasn't been said.

SHEFFIELD VAN BUREN: Yes, Sheffield van Buren. I was brought up in Cambridge, born in Cambridge. I have a studio at the corner of Bowdoin and Hudson. I would just add that there is a fair amount of improper truck usage in the back and if it can be diminished that would be great.

BRENDAN SULLIVAN: Great, thank you.

ANNA MARIA CARDENAS: Anna Maria Cardenas, C-a-r-d-e-n-a-s. Ten Bowdoin Street. Unit two. On behalf of myself, Lynn Meyer Gaye (phonetic), Carol Pilgrim (phonetic), John Paxman (phonetic), Kirsten Davenport Gaye (phonetic), all resident owners of the building, the property that is behind on the back side of Mass. Ave., we're neighbors to 1678 separated by the driveway with the two restaurants that separate our properties. We oppose -- nothing against Mr. Woolkalis, but we oppose it on the issue -- on the grounds that we don't believe in another coffee shop is adding a service to the neighborhood. For the record.

BRENDAN SULLIVAN: Thank you.

CONSTANTINE ALEXANDER:

Mr. Brandon, you're only going to say something that hasn't been said before?

MICHAEL BRANDON: I'll try my best, Mr. Alexander. Michael Brandon, 27 Seven Pines Avenue in North Cambridge. I think I would agree with you, sir, that a lot of what's been said tonight at the previous hearing which I had a chance to scan the transcript of, is irrelevant to the decisions and the criteria that this Board needs to apply. Urban planning and aesthetic issues, land use policy, all of those matters are -- lie within the Planning Board. Questions of public need. Are there too many restaurants there? Perhaps that's the License Commission. And even the Petitioner, you know, whether there's a need or not. Show of hands. So it's really not what you folks need to get into, especially since this isn't a zone where you're examining a Special Permit. The use is not allowed even by Special Permit. So a lot of these operational issues, traffic, and so

forth, perfectly legitimate, a great concern, they're really not before you. The question are -- is there a substantial hardship that is -- makes this property, this and that doesn't create negative impacts, severe on the neighborhood and doesn't derogate or nullify the Ordinance? And as others have eloquently spoken about Use Variances, that's exactly what this would do -- would do. I know some city councillors have contacted you on this issue, and I know the Board in previous cases when excessive requests to waive the Zoning have been before you, you said no, that's not our job, that's the City Council's job to -- it's their prerogative to establish districts where various uses and various dimensions are required. So I would just urge you to apply those. And I think most of the Board members that will ultimately determine your decision, in the transcript that I read there

were some of the Board members did say because Mr. Woolkalis is homegrown and he's a good guy and he, you know, operates a clean operation, you know, we're leaning towards trying to find a hardship that quite frankly the evidence before you, there's nothing that I've seen so far. And Mr. Rafferty will probably elaborate, but, you know, the narrowness of a storefront is not it.

On the issue of the sign since, Mr. Chairman, I know you raised them last time, I think the Board needs to understand that in the North Cambridge location there was a lot of interaction with the community. I'm clerk of the North Cambridge Stabilization Committee, and we've locked horns, Brandon, and I over some of these issues in the past. I would absolutely say he's run a very clean operation. The concerns that folks had about double parking and so forth, did not develop because it's a

very different section of the avenue than one where this one is proposed.

What the Board did do -- there was also negotiations with the immediate abutters there. And so some Board members at the last meeting suggested that well, perhaps, you know, the conditions that we would impose, you know, would satisfy. In my view, and I think based on what I've heard tonight, be impossible to mitigate this, and certainly if that were the thought it should be done in conjunction with the close abutters and the neighborhood organization to try to address these issues, I don't think it can be done, but that would be there.

On the signs, that was a specific concern that we had about that in North Cambridge location. And this Board actually imposed conditions regarding the signs. And I know Mr. Sullivan raised the question of -- on the side of the building advertising

pounds of coffee and now you're hearing about a gold-leaf sign. Well, the same promise was made to us, to the neighborhood, it was part of the plans, specifically attached as a condition. And what has happened now, business has changed. The ice cream has gone away, ATM has come in, and the gold-leaf signs which were handsome compared to the standard corporate logo --

CONSTANTINE ALEXANDER: Excuse me, Mr. Brandon, this case is not about the North Cambridge location --

MICHAEL BRANDON: Well --

CONSTANTINE ALEXANDER: And it's not about the Petitioner's personal qualities or non-qualities. It's about a Use Variance.

MICHAEL BRANDON: Okay.

CONSTANTINE ALEXANDER: So let's -- we have a long evening before us. Let's not go there.

MICHAEL BRANDON: Okay. I only raise it because it was stated that the track record and it was argued by the proponent --

CONSTANTINE ALEXANDER: I made it clear that the track record is not relevant to us tonight.

MICHAEL BRANDON: Okay. I would agree except to say that on the issue of the sign, which is why this was continued, the mention of the gold-leaf sign, that's a real sticking point, and I'll wind up because the gold-leaf sign that's supposed to be there, which is there as a condition and it's now covered up and there's more of a traditional orange colored sign.

BRENDAN SULLIVAN: All right.

MICHAEL BRANDON: I will end it there. Thank you very much for listening.

BRENDAN SULLIVAN: Thank you. Last guy. Last guy.

ALLEN SAYEGH: My name is Allen

Sayegh, S-a-y-e-g-h. I'm not going to add anything to what's been said. The only difference is I'm a business owner on Mass. Ave. and I, I oppose this. I don't like the idea of the fast food establishment.

BRENDAN SULLIVAN: Right.

ALLEN SAYEGH: And I don't see the hardship because I have a same width space that's been empty for a while and I always get requests for rental. So that's it.

BRENDAN SULLIVAN: Thank you. Last speaker if you will.

THOMAS FLYNN: My name is Thomas Flynn, lifetime resident of Cambridge. I'm here in support of this Dunkin' Donuts.

One, that I supported the Petitioner back when he went for the one in North Cambridge. He did everything he said he was going to do and he followed through and the store is as you heard tonight, it's fantastically run. He supports local sports

in the city. He supports the elderly. And really when you come down to it, the money from Dunkin' Donuts is a Massachusetts corporation, the money is still coming back to Massachusetts. The question I ask is, you talk about hardship and use. Can you explain to me the hardship and the use that was allowed Starbucks?

BRENDAN SULLIVAN: That was a case many, many years ago and --

THOMAS FLYNN: Well, this is like locking the door after the cow got out. It's already allowed there. That's all I have to say.

BRENDAN SULLIVAN: Thank you. Okay.

Have we concluded public comment?

(No Response.)

BRENDAN SULLIVAN: Thank you. Let me call public comment closed and --

BRANDON WOOLKALIS: I just wanted to

address most importantly was the concerns that some had, especially for my immediate neighbors who will be looking at the back of my property. I met with some of those neighbors even today, and one concern was truck deliveries, and that was a board put out by Mr. Bhupesh. And I can tell you that my business has a tractor trailer truck that delivers all my goods. It generally comes once a week and it would be early in the morning, probably five a.m., in front of the store on Mass. Ave. There's is plenty of parking at that time for deliveries. And also every individual day I have one van that comes with the doughnuts because we want to cook them off site, so there's no smells going in the neighborhood. I know speaking with the neighbors, a lot of them weren't happy with the smells in the neighborhood, the trash in the back, and then certainly the truck deliveries. Well, with this business

I'm not going to -- you're not going to have the problems with deliveries that you would have with a restaurant going in here that has multiple deliveries. Sometimes 20, 30 deliveries. A friend of mine owns, you know, a burger restaurant, he has deliveries -- he has stacks of deliveries. I have one. It comes once a week. And I have the doughnuts that come in the morning. They wouldn't bother anyone. They're no problem by Mass. Ave. So that was a big concern, was deliveries. I only have that one.

Trash. I had agreed to go through the front door with the trash or maybe possibly make an arrangement with the Evergood Market if they're amenable to that. I said, I'd leave that up to talking with the residents on Bowdoin Street to see what best fit their needs. When I addressed -- and so that would end the problem with the loading zone.

When I addressed the problem of double

parking, that was a big concern with North Cambridge. It never came to fruition. And I say it's not going to here either because the Starbucks doesn't have anyone double parking there. And there's the Eliot Street Dunkin' Donuts, which is an extremely busy intersection, no one double parks there. And Bow Street there's another Dunkin' Donuts that has a Baskin Robbins as well and I've never seen double parkers there as well. It's just, the roadways are too busy, people would be honking at you. I don't see it happening. If it does, I'll address it. I'll make sure my employees will not serve someone who is double parked. So hopefully that clears up a lot of the problems, you know, in the back with trucks and the etcetera and traffic and deliveries. Certainly if a restaurant went here, there would be a lot more problems in the back.

Another thing was raised at one of the

meetings was neighborhood people didn't want my employees outside in the back smoking. And, you know, outside hanging out. And at first I thought well, that shouldn't be a big issue. And I was walking the neighborhood, and sure enough I saw a bunch of employees, it was two o'clock, maybe three o'clock on a Saturday and they're outside smoking cigarettes and throwing their butts on the sidewalk, and, you know, making noise on the cellphones up on the fire escapes and stuff. And I said gees, I see their point now, you know. So I promised that I would use that as an emergency exit only, and no employees would come or leave by that. I don't like my employees smoking anyway. But that would be another concern that was met. And I'm always open to speaking with the neighbors.

My neighbors in North Cambridge know they can come and talk to me any time if they want if they have any problems. Usually it's

only good things. Sometimes, you know, they got the wrong sugar or the wrong cream and they weren't happy about that, that does happen.

I just wanted to address the traffic and the double parking. It's just not going to happen, and if it does, I will address it. And I'm always open for anyone to call me if they have any problems.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: Mr. Rafferty, anything?

ATTORNEY JAMES RAFFERTY: Well, I'd only conclude by acknowledging the challenge for the Applicant is certainly related to the hardship as been noted by many members of the Board and speakers. I do think, however, that hardship can be related to the shape or topography of a structure. And in this case it is a doglegged lot containing a structure

built to the lot lines with only a 20-foot -- 22-foot frontage on the avenue, which is exceptionally deep. So it's challenging. I don't think the standard is that it has to be fast food, but I think the standard is of the permitted uses here, could any of them go here. And admittedly I suppose there would be a case that there have been uses here, but at the end of the day, the hardship merely needs to be related to the structure. And I think for the Board to conclude here that the depth and narrowness of this structure is sufficiently unique, then I think you can make a conclusion that a hardship is present and grant the relief.

The other issues I think can be dealt with by way of conditions. Limitations upon the use of the back door is a pretty straight forward and simple one. Limitations upon deliveries occurring on Massachusetts Avenue can be there.

And I would say is this a derogation or an intent from the Ordinance? I think a narrow view would suggest perhaps fast food is, but I think the broader appeal of these establishments -- I just was on Broadway the other day across from the Longfellow School and a new coffee shop has opened. It's called Dwell Time. There were people of every demographic sitting in there, and they are community-based and they create an active street front. So, I respect the work of Mr. Axelrod and Carlone and the time they put in into making Mass. Ave. a better place, and I would suggest that this use, a coffee shop, a cafe, a place where people can gather isn't at all inconsistent with what they're trying to achieve. So I don't think it's necessarily the case where this derogates from that. So I know it's a challenging case for the Board, but I think there is an adequate basis given the size, and the shape

of the building for the Board to reach the conclusion that a hardship exists.

Thank you.

BRENDAN SULLIVAN: Thank you. Let me conclude the testimony part and let the Board discuss among themselves.

Mahmood?

MAHMOOD FIROUZBAKHT: I haven't been brushing up on my SJC cases because I'm merely a transactional real estate attorney. So what's the legal limitation in restricting a Use Variance to a particular operator?

CONSTANTINE ALEXANDER: Can't do it.

MAHMOOD FIROUZBAKHT: And what's the basis in that? Because I know there's ownership. We can't limit a Variance to ownership. So what's restricting the condition on the operator?

CONSTANTINE ALEXANDER: Well, I think short answer -- but Tad will give you

a more learned answer, is that the Variances run with the land and not with the person. And that's why you can't tie it to an individual. I think that's --

BRENDAN SULLIVAN: And a Special Permit we can. This is a Variance.

CONSTANTINE ALEXANDER: Yes.

Particularly fast food establishment, Special Permit.

BRENDAN SULLIVAN: Right.

CONSTANTINE ALEXANDER: It's right in the statute. It's personal to the people we grant the Special Permit to, and to the extent that person is not there any longer, than the new owner has got to come back before us. But you can't do that for a Variance as a matter of law. I don't think so.

TAD HEUER: So we're discussing Section 10.34. For the benefit of those who don't have their pocket ordinances with them, I'll read it for you.

(Reading) In granting a Variance, the Board may attach such conditions, safeguards, and limitations of time, use, and other development features such as those listed in 10.44, as are determined necessary to protect the surrounding neighborhood, including the continued existence of any particular structure but excluding any conditions, safeguards or limitations based upon the continued ownership of the land or structures to which the Variance pertains by the Applicant, Petitioner, or any owner.

And I read that to exclude a condition related to an applicant or owner, but allowing one pertaining to time. So to the extent that I would slightly disagree with -- qualify, in my opinion, what Mr. Alexander suggested is that the Variance can be time limited. I think his larger point is well taken, that the time limited variance exists for the full duration of it's

as time granted and can be passed from owner to owner within a permitted use classification.

MAHMOOD FIROUZBAKHT: Thank you.

Yes, I mean that's a little troubling to me because I think, I was supportive, you know. I think the record will indicate that, and this is a very tough, very tough case for me to decide on because I see the merits, you know, in this proposal. And I think what's challenging particularly is that if this were a Simon's or if this were Grass Roots Cafe, I don't think this amount of opposition would be had. And I don't think that's fair because -- and I don't think we're supposed to consider the fact that this is a Dunkin' Donuts. So I don't think it's fair to the Applicant, and I think that's why my initial reaction was to be supportive of this application because I can see the merits of a nice cafe in this space, and I think there

can be benefits to it. But I think the down sides, and there are down sides, and I'm glad that the Chair raised the issue of signage, because that's a critical factor in some of the traffic issues that can be generated by, you know, this kind of use, this kind of fast food use. And frankly I think that the later proposal -- I understand the timing of the meeting with the neighborhood, but I don't think we can consider that. Our rules are the rules. What's in the file, I think that's not appropriate for this neighborhood. I think the signage that you propose just doesn't work. And I think that's unfortunate because perhaps, you know, if you had proposed the gold-leaf signage, something much more understated, and I think that's what, that's what I would have expected given some of the advice that you got from the Board the first time you were here, and that's not what's in the file. And

so for me that actually makes it easier for me to rule on this because that signage, I think, would generate traffic and some of the concerns that, you know, we've heard from the neighborhood. And I live in that neighborhood. So it's not -- and I would be -- and, you know, I have my son in that neighborhood as well. And, you know, the idea of the increased traffic, I think is a valid concern. And I think that kind of signage would be a traffic -- and I understand what you're saying about trying to mitigate that, but I don't think you can. I don't think as an owner, as an operator, you can mitigate my behavior and the behavior of other people who want to go to the Dunkin' Donuts and get their coffee and get it quick. And that signage is going to invite people who are driving up and down Mass. Ave. to double park. That's my take on it. And that's what we're ruling on. That's the signage that's

in the file, and so this is a difficult one for me and I hope you understand that, but that's sort of my take on it at this point.

BRENDAN SULLIVAN: Okay.

Tom, what is your feeling?

THOMAS SCOTT: Well, I think I'm struggling with the Use Variance. I'm not seeing the hardship in this case. I'm looking at the fast order use. I'm looking at the definition for fast order food establishment, you know, to provide non-disposable plates, cups, and utensils, menus, printed menus. Provision that 75 percent of the seating on the premises have freestanding tables rather than at counters. And the last one is that at least 80 percent of the revenues from food sales is attributed to food consumed on the premises, which I don't think we can say you can meet that. I think your business is defined by volume, and I think that's what really makes your

business different from some of the other coffee shops in the neighborhood. So I'm struggling with the whole Use Variance issue, the hardship, and just kind of the definition of the fast order food establishment and the fact that you kind of really fall into that category and that it's not allowed. So that's my take on it.

BRENDAN SULLIVAN: Okay.

Mr. Heuer.

TAD HEUER: So I'll make two preliminary comments while we've still got everyone here. The first one is on notice and what constitutes notice. This is more informational than anything else, but I think it's important.

A lot of people were concerned that they might not have had notice of what was going on. I certainly think that the signage could -- this is my opinion, the signage could have been better and could have included the

words fast food. I don't personally think that identifying the name of the establishment is necessary. You know, there's a balance that we need to strike between going down and, you know, having the staff in Inspectional Services put everything anyone might want to know on the sign. And the basic service that that sign provides which is putting people on notice. That if you walk by and say, as I do all the time, I walk by and read signs. I read building permits that are posted in windows. I'm kind of weird that way but I do it. Because I'm a litigating land use attorney and I like to know what's going on. It's mostly to put you on notice so you can go look at the file, go and see things. So to the extent that it does that and it accurately identifies generally what's going on, I think it's sufficient. I think that additionally the words fast food make it easier to do, but

I wouldn't necessarily go further than that.

The other element is the mail notice, and this what I think many people were concerned about that they said I feel like I live in the neighborhood and I didn't know this was going on. And I can certainly understand. I live in Neighborhood 9. The statute, the state statute sets out provisions as to who gets notice, and the city has adopted those requirements. The legal requirement is abutters to abutters within 300 feet of the locus. If you're not an abutter to an abutter within 300 feet of the property, you won't get a letter from the city letting you know. Certainly in situations like this there are many people who want to know, but it will be difficult for the city to have to guess as to how popular something's going to be, and that's the reason a sign is there, to let people who aren't an immediate abutter who don't get a letter who are walking

by to know. So, you know yes, there may be issues about maybe more people should get notice, maybe the city should provide a larger wave for mailings, but to those who were concerned that they didn't get a letter, I just wanted to let you know why that would be the case. And, you know, to the extent you think it should be more, across the street on Monday evenings is a great place to go.

The second issue is as to what the Board can and can't do. I think someone had mentioned, you know, several people are saying uphold the Zoning Ordinance. Certainly we're here to uphold the Zoning Ordinance, but by definition being a Board of Zoning Appeals granting Variances, everything that comes to us as someone who says if you upheld the Zoning Ordinance, I couldn't do what I'm looking to do and I have a really good reason to do what I'd like to do. If not, if we're really just here to

uphold the Ordinance in all situations, we wouldn't need to be here. You can just read the Ordinance and say at this point there's no need for a Variance because Variances don't exist. We have a Variance procedure that says even though the Ordinance says X, there may be a good reason to do Y and let's have that discussion and conversation. So, really what we're here to determine is whether a Variance from the Ordinance is reasonable under the circumstances and according to the law that's been set out by the statute and by the SJC and the appellate courts. So that's the scope.

As to the merits, I think this is a Use Variance case. And if this were a restaurant, many people have suggested, you know, traffic and other types of issues, first if this were a restaurant, it would be allowed by right. I know people in the immediate neighborhood don't like the

restaurants and have difficulties with them, I sympathize with that, I really do. I know you're calling Inspectional Services and other people to get the trucks off the street and get the trash trucks doing from what they're doing and waking you up at all hours. I get it. That being said, a restaurant is allowed by right, a cafe is allowed by right. Just not a fast order food establishment.

Second, if this were a Special Permit case, I would vote for the Special Permit. I don't give credence or significant credence to the concerns about traffic for deliveries. And given what the Petitioner has said about the infrequency of deliveries compared to the other establishments on the street, in my opinion, having seen many cases like this in the past, this is one of the least frequent delivery schedules of any retail establishment food or non-food that I've seen. I think that many of the conditions

that were proposed by Bone Street neighbors are ones that Mr. Woolkalis will agree to impose upon himself, and I think those would go a long way towards mitigating a lot of the concerns, a lot of problems that arisen with some of the other restaurants on that stretch. So if this were a Special Permit, I think I would be in favor of granting it.

That being said, this is a Use Variance. And the definition in the statute is hardship is really in two parts. The first thing you need is, you know, soil, shape, or topography of the lot of the structures. I think the hardship is met in terms of the structure. It's an unusually shaped structure on an unusually narrow lot. That the size of that lot is not common to the Zoning District. There are formally there are legitimately sized lots in this Zoning District. Not just on this block, but in this Zoning District, the BA District, BA-2. And I think that the

fact that it sits half in the business zone and half in a residential zone is a further hardship. That someone who wants to buy or use this property, has to take as part the deal the fact that the back end of it is in a residential district that may create further complications.

The other element -- so once you've gotten that far -- once you say I've got one of those things, then your next step is, you know, what is the hardship? So you've started with is it unique shaped, soil, topography of the lot or structure? And then you go to the hardship. Here I think the argument is financial. It's difficult to lease out. I'm not quite as certain that I can go there. I think, you know, certainly it's a difficult parcel to lease, but I'm not sure it's an impossible parcel to lease. I'm not sure it's not just merely a difficult parcel to lease I think is my point.

And on the point of a Use Variance as been said before, they're highly disfavored. And I would agree with the Chairman's notion that the master plan that's been submitted, and I presume that this is now an Ordinance form so it creates a Zoning freeze as to things that were proposed underneath it?

BRENDAN SULLIVAN: Before the City Council for their consideration.

TAD HEUER: Right. So under the state statutes it's been submitted and the zoning freeze would apply to anything underneath it. Am I saying that correctly?

ATTORNEY JAMES RAFFERTY: I haven't seen it. Is it in the form of an amendment to the Ordinance?

TAD HEUER: Yes.

ATTORNEY JAMES RAFFERTY: Yes. Well, then, I would say that, yes, once the notice of the public hearing of the Ordinance Committee, I don't know if that notice has

occurred yet.

TAD HEUER: Right.

Yes, so I mean to the extent that the public notice has been given for the Ordinance Committee to consider it, I think the Zoning freeze by law does apply under the statute. Even without that I think the point that the existing Ordinance, as it is, unchanged as it would be by the Zoning petitioner has had a chance to consider it, does create a situation in which there could be a presumption that the city looked at this and presumed that the existing Ordinance should remain as to fast food. And because of that, I do think that it would derogate from the intent and purpose of the Ordinance. And that's the last step.

So I wouldn't go as far to say there's no hardship based on the size of the structure. I wouldn't necessarily go as far as to say there's no hardship based on the

rentability, although I think it's a closer call, but I do think that given that this is a Use Variance being requested and not a Dimensional Variance, that it would substantial derogate from the intent and purpose of the Ordinance given the nature of the Ordinance as it stands and as being proposed and revised by the Planning Board. So for those reasons, I think would vote against granting the Use Variance here and I think that's my piece.

BRENDAN SULLIVAN: Okay. And you've spoken?

CONSTANTINE ALEXANDER: I've spoken.

BRENDAN SULLIVAN: Okay. Let me make a motion --

ATTORNEY JAMES RAFFERTY:
Mr. Chairman, before -- the Petitioner had a request of the Board.

BRANDON WOOLKALIS: I just thought

maybe if I continued it at that new elevation with the gold leaf on there that would be --

BRENDAN SULLIVAN: We're down the road. We're at the end of the road.

BRANDON WOOLKALIS: Oh, okay.
How about applying any of those limitations --

BRENDAN SULLIVAN: That's why I had asked that it get in, and I believe it was sufficient time to get it in. And when I reviewed the other ones, it was totally contrary to what I thought I had indicated, what I had said at the first meeting.

CONSTANTINE ALEXANDER: Plus, Mr. Woolkalis, I'll point out to you that at least two members of the Board are opposed to this for reasons unrelated to the signage. So any sign you put up is not going to make us happy. And two is all it needs to defeat the motion. Save you time and money.

BRENDAN SULLIVAN: Let me make a

motion to grant the Variance 1678 Mass. Avenue to convert the existing store into a cafe/coffee shop fast food establishment as per the application contained therein.

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

The Board finds that the hardship is owing to the circumstances relating to the shape of the structure, and especially affects this particular structure and the land, but does not generally affect the Zoning District in which it's located.

The Board finds that desirable relief may be granted without substantial detriment to the public good, and would not nullify or substantially derogate from the intent and purpose of the Ordinance.

Anything else to add to the motion?

TAD HEUER: No.

BRENDAN SULLIVAN: All those in favor of granting the Variance as per the application?

(No Response.)

BRENDAN SULLIVAN: All those opposed?

(Show of hands.)

BRENDAN SULLIVAN: The Board finds that a literal enforcement of the provisions of the Ordinance would not involve a substantial hardship or has been established by the Petitioner.

The Board finds that there cannot be any hardship owing to the particular shape of this lot. And that it's uniqueness that would only allow this particular use.

And the Board finds that desirable relief could not be granted without substantial detriment to the public good or nullify or substantially derogate from the intent and purpose of the Ordinance.

[Anything] else to add?

(No Response.)

BRENDAN SULLIVAN: Okay, motion is denied.

I would just -- everybody else has had something to say. I would just like to say that I really did not appreciate the comments that I have heard about, and also the way that the Inspectional Services -- the staff has been taken over with calls, and also a very bad way that the Board has been besmerged (sic) by this entire process. That I will rise to the defense of the staff of Inspectional Services, and also to the integrity of the other members of this Board. And that's my last word. And the motion is denied.

ATTORNEY JAMES RAFFERTY: Thank you.

BRANDON WOOLKALIS: Thank you for your time, board members, I appreciate it.

TAD HEUER: Good luck.

(All members voting in opposition.)

(9:30 p.m.)

(Sitting Members: Brendan Sullivan,

Constantine Alexander, Tad Heuer, Thomas Scott, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10232 which is One Matignon Road.

Is there anybody here on that matter?

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt of correspondence dated April 11th. (Reading) As a follow-up to our recent conversation, I'm writing to request a continuance of the hearing on the captioned matter until mid-September. For your information, my client has sent letters to its neighbors informing them of its plans to request such continuance. So very truly yours, Ryan D. Pace, P-a-c-e. On the letterhead of Anderson and Kreiger, K-r-e-i-g-e-r, LLP.

On the motion to continue this matter until September 13, 2012, on the condition

that the Petitioner change the posting signs -- are there more than one? Should be.

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: To reflect the new date of September 13, 2012, and the time of seven p.m. And that any new submissions different from what's in the file, be in the file by five p.m. of the Monday prior to the September 13th hearing.

All those in favor of the continuance.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor of this continuance.

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

(9:35 p.m.)

(Sitting Members: Brendan Sullivan,

Constantine Alexander, Tad Heuer, Thomas Scott, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10235, 498 Franklin Street.

Is there anybody here on that matter?

MAGGIE BOOZ: I'm here Franklin Street.

BRENDAN SULLIVAN: You're here for Franklin Street? Oh.

MAGGIE BOOZ: I'm here on Franklin Street, Maggie Booz, B-o-o-z. I'm the architect for the case. My clients got a telephone call from the Zoning Specialist today, and they -- sorry. This isn't even working, is it? And they -- sorry, it's a long day. They got a call from the Zoning Specialist today informing them that they had not put up their sign on the exterior of the building. They misunderstood the instructions in the letter that they were given and thought they had to post the letter

in the window of the building and so we need to continue the case.

BRENDAN SULLIVAN: Okay. So a continuance is in order. And we can continue this until May 10th or 24th.

SEAN O'GRADY: 24th.

BRENDAN SULLIVAN: May 24th.

On a motion to continue this matter until May 24, 2012, at seven p.m. on the condition that the Petitioner, first of all, obtain the sign, then maintain it as per the Ordinance. Change the date to reflect the new date and time of May 24th at seven p.m. And that any changes from the submission be in the file by five p.m. on the Monday prior to the May hearing.

CONSTANTINE ALEXANDER: Brendan, do we have a waiver for a time for decision?

BRENDAN SULLIVAN: We do not. But maybe Maggie can represent the owner.

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: And that the waiver be signed and in the file.

All those in favor of continuing the matter.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.
Thank you.

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

(9:35 p.m.)

(Sitting Members: Brendan Sullivan,

Constantine Alexander, Tad Heuer, Thomas Scott, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear 10238, 69 Thorndike Street.

Is there anybody here on that matter?

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt of correspondence from Paul Kroner, K-r-o-n-e-r. (Reading) To Whom It May Concern: It has come to my attention that the sign we posted was displayed improperly. It was an honest mistake. We thought it was that this was a better place for passersby to read and it was within 20 feet of the house. It has since been moved to an acceptable location. We would like to request a continuation to the first available date.

And we have the 24th also?

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: On the motion that we continue this matter until May 24th

at seven p.m. on the condition that the Petitioner change the posting sign to reflect the new date, May 24th, and the time of seven p.m. And that it be posted as per the requirements of the Ordinance. And that any submissions different from what's in the file be in the file by the five p.m. on the Monday prior to the May 24th hearing.

All those in favor --

CONSTANTINE ALEXANDER: The waiver time for a decision.

BRENDAN SULLIVAN: And that the Petitioner sign a waiver to the statutory requirement for a hearing and the decision to be rendered thereof in order to continue this matter.

TAD HEUER: The 24th?

BRENDAN SULLIVAN: Yes.

All those in favor of continuing.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(9:40 p.m.)

(Sitting Members: Brendan Sullivan,

Constantine Alexander, Tad Heuer, Thomas Scott, Douglas Myers.)

BRENDAN SULLIVAN: The Board will now hear case No. 10233, 14 Hurlbut Street.

Introduce yourself.

CAMPBELL ELLSWORTH: Good evening. My name is Campbell Ellsworth. I'm an architect. My address is 267 Norfolk Street in Cambridge. I'm here with my client Sandra Best owner of the single-family home at 14 Hurlbut Street in Cambridge. We are here --

BRENDAN SULLIVAN: Before you start there are just two issues that I have.

One is that the dimensional form was not on the form that we have.

CAMPBELL ELLSWORTH: Yes, I was informed of that. That copy is for you.

BRENDAN SULLIVAN: And, okay, so this one here reflects the certified plot plan.

CAMPBELL ELLSWORTH: Yes, it does.

BRENDAN SULLIVAN: Okay. Because the original one did not.

CAMPBELL ELLSWORTH: Yes, sir.

BRENDAN SULLIVAN: Okay.

CAMPBELL ELLSWORTH: Was there another?

BRENDAN SULLIVAN: On a motion to accept the revised.

CONSTANTINE ALEXANDER: I'd be happy to.

BRENDAN SULLIVAN: Okay.

TAD HEUER: Can I see it?

THOMAS SCOTT: Copies?

BRENDAN SULLIVAN: Proceed. Go ahead.

CAMPBELL ELLSWORTH: Very good. Sandy Best has lived in on Hurlbut Street, 14 Hurlbut for about 25 years. She has developed a great number of friends and acquaintances in the neighborhood. Some of whom will speak on her behalf also tonight as

well. I hope that you've got at least a few letters of support from them as well -- for her as well.

We're here to request a Variance, side yard setback and rear yard setback, for an addition, a small addition to Sandy's home. Let me just point out, her home is the smallest home on Hurlbut Street. It's also on the smallest lot on Hurlbut Street at 3,000 and -- the city says 58 square feet. The surveyor says 3,052 square feet.

The configuration of the existing home, it's a lovely little two-story Cape, and there is approximately a 70-year-old, kind of pre-fab metal garage that's been on the back of the lot for a long time.

SANDY BEST: 100 years.

CAMPBELL ELLSWORTH: 100 years.

Someone said 70 years, but who's counting. And it's -- and Sandy came to me to design an addition to her home so that she could have

a sort of a unified first floor living experience, living space. This is an extremely modest home. There's a kitchen, small dining room, and a small living room. Her bedrooms, two bedrooms, small bedrooms, are up on the second floor. And the last couple of years Sandy has developed some health issues that require her, as she's planning ahead, to really have a single-story living experience.

This Cape is also very interesting and unique I find for Cambridge. The level of the first floor is only about eight inches higher than grade outside. Very, very unusual and unique anywhere in Cambridge I think. Most people are building quite a bit further out of the ground. Which interestingly in the future if she were to need it, would allow some sort of easy modification for wheelchair accessibility. So you can see that what we have proposed is

that this addition to the back of the house would in fact replace the footprint of the existing garage.

So what we've done is we've sort of locked into that back corner as the sort of the starting point, and built a room and a space that is appropriate for her. It -- we would break through with a little, a little passageway. I should say that this is a one-story -- proposed one-story structure. It is approximately the same length as the existing garage. The existing garage comes out 17 feet, two inches. This structure is 17 feet, nine. So almost the same footprint of the garage, and then it extends into her garden area to allow --

BRENDAN SULLIVAN: Well, I would agree it's in the same location but it's not the same footprint.

CAMPBELL ELLSWORTH: Well, it takes over the same footprint and then it moves

further into the backyard, right.

BRENDAN SULLIVAN: So it's a much bigger foot?

CAMPBELL ELLSWORTH: It is a bigger footprint, yes. It is a bigger footprint, absolutely.

BRENDAN SULLIVAN: Okay.

CAMPBELL ELLSWORTH: We, you know, that's basically the project. I mean, we feel that the hardship is due to the small size of the lot. As Mr. Heuer said in the last big case, that this lot size is not common for this Zoning District. There are other small lots, but predominantly of course the required lot size is 5,000 square feet, and this is considerably under that. And also the configuration, because it's this kind of pentagonal shape, were we to try to build a conforming structure, it would sort of push, push it into and sort of eat up a considerable amount of the garden space. It

would create that, you know, minimum seven-and-a-half foot setback on the right-hand side that effectively becomes a dead zone. The adjacent property, and the owners of that property are here today, and have also sent in a letter of support. They have a driveway just over that property line, and they're not in opposition to it.

BRENDAN SULLIVAN: But couldn't that be said of any setback, that the requirement could be at that Zone. I mean, what is the purpose of setbacks?

CAMPBELL ELLSWORTH: Well, it's to give -- it's to give space between neighbors.

BRENDAN SULLIVAN: Right.

CAMPBELL ELLSWORTH: In this case, that's already an existing driveway. And the, you know, there's a question as to sort of what the merit that is. There has been a structure there with approximately the same wall height. You can see on our proposed

drawings in the package, there's an elevation showing from -- shown from the front, it's this elevation on A3.1 that the -- you can -- what I've done is dotted in the size of the garage behind. And granted this is a slightly taller building, but where the eave comes down is only modestly taller. Maybe a foot.

CONSTANTINE ALEXANDER: Well, the addition, if you will, the same plane as the existing part of the house or is it going to be where the garage is which is closer to the street?

CAMPBELL ELLSWORTH: It's way back.

CONSTANTINE ALEXANDER: It's back?

CAMPBELL ELLSWORTH: It's way back, yeah, absolutely. Let me just show you.

Here's the -- that's just the existing conditions. This is, this is -- that's the existing house. This is Hurlbut Street here. This is the existing garage -- the

existing driveway. And the garage basically occupies a little more than half of what we're proposing. So we are holding that back corner there where the existing garage is, and then moving out just nine inches more than that one does this way, but then obviously going far enough so that we can break through from the house and have a reasonable access way through.

CONSTANTINE ALEXANDER: And Hurlbut Street again is on the bottom here?

CAMPBELL ELLSWORTH: Hurlbut Street is on the bottom, yes.

BRENDAN SULLIVAN: I mean have you done an as-of-right scheme and sort of say to us this is the as of right, but it just doesn't work?

CAMPBELL ELLSWORTH: Well --

BRENDAN SULLIVAN: Because it would appear to me that there is an as-of-right solution. It may not be the most desirable.

You know, there is an existing window in the living room that could be the breakthrough point. I don't buy the argument that that setback becomes dead space. I mean, that's true of any setback. Setbacks are the size and especially in the back.

CAMPBELL ELLSWORTH: Well, the -- I mean if you can imagine what we are proposing is holding that -- the survey and my dimensional form calls out the requested new side yard setback here, which is the same as the existing garage at the 2.8 feet. So if you can imagine that's this whole thing moving in approximately five feet, that would then really start to destroy the light. This is -- that large window that's shown here in the living room is a very large kind of big window with all sorts of shelves and things. It's a big view out to the garden, and that would be -- start to really be compromised. I think that light and the view from that

living space into that garden would be seriously compromised.

TAD HEUER: Is the current garage the same far corner setback?

CAMPBELL ELLSWORTH: Yes. That's exactly right. What we did was hold that.

TAD HEUER: So I guess one question is if you wanted to do this scheme -- I don't know how Inspectional would view this, but if you wanted to do this scheme, would it possibly keep the garage where it is, break through the side of the garage, build out the side of the garage in towards that buildable portion of your lot, build your passageway back down, and you could be fine, it's just that that would be kind of excessive to get the same result.

CAMPBELL ELLSWORTH: Yeah, that's -- I've seen it happen. I mean, they used to call them facadectomies, right, where you hold them and move it -- and I've seen it

happen a lot in the suburbs where you keep one wall, and you haven't, quote, demolished the building.

TAD HEUER: Right.

CAMPBELL ELLSWORTH: We would run into -- so, you know, as a strategic matter, you might -- it's really a long shot. I mean, I work with Inspectional and the inspectors all the time. The problem -- one of the issues is that no real foundation under that garage. It's a slab of some sort.

TAD HEUER: Right.

CAMPBELL ELLSWORTH: The wall itself is literally, it's pressed metal. It was some sort of Sears Roebuck kit. It's a beautiful little structure, but it's not -- it has absolutely no depth. I'm not, you know, I don't play that way. And but just also to point out, that that garage really, as I said, takes up a little bit more than half of what we're proposing. I would

immediately run into rear yard setback issues. And there's a 25-foot rear yard setback.

TAD HEUER: Oh, okay.

CAMPBELL ELLSWORTH: Which is just about -- you can look on the site plan from the existing house, if you take the back point of the existing house and take it perpendicular to that line, that's a little bit more than I think I have it -- it's 26.2.

TAD HEUER: So if you were to -- so when we -- when the Chairman was discussing an as-of-right solution in that back window, you would still run into a rear yard setback problem after a foot and a half.

CAMPBELL ELLSWORTH: Yes, I missed pointing that out. Yes, I could make it -- I could satisfy seven-and-a-half foot setback on the side, but I would never satisfy 25-foot setback in the B Zone.

TAD HEUER: Right.

CAMPBELL ELLSWORTH: Sandy, do you want to say anything?

SANDY BEST: No, not unless there are any questions for me.

My reason for doing this is I have a beautiful Cape and I want to keep the integrity of it because it's a very unusual house. But my stairs go straight up like a ship's because they were built like ships in the early hundreds. The classic Cape, you know it has the bow structure and everything. And I intend to live there until I go out in a pine box as Sierra King would say. My problem has been that I have developed cancer in the last two years, so I'm feeling the need to be on the first floor for whatever might be eventual. I don't know if it's going to be my illness or old age. I hope it's the latter, but I'm more comfortable on the first floor. I'm finding the stairs harder and harder. Even though I had them carpeted, I'm

having it harder and harder to maneuver. And I really need a walk-in shower and I don't have that. My plumbing is from the 1920's, very classic, but not very functional for today and for my situation. So, that's why I wish to do this.

TAD HEUER: The passageway between them, is that clapboard or how is that --

CAMPBELL ELLSWORTH: It would be clapboard, you know, this is -- I think I've got -- looking at it from the garden elevation, that's that, you know, it's not like a glass bridge or anything like that.

TAD HEUER: Right.

CAMPBELL ELLSWORTH: This is, this is -- there's no more dander in this.

TAD HEUER: That's unusual for you, Campbell.

CAMPBELL ELLSWORTH: Well, you know, we do this too. Thank you.

No. So this is really -- it's trying

to work with this. This is actually an extraordinary house. It's an extraordinary house. Just the scale of it. The compact -- what I do like to do, I do like -- I try to design -- I call them compact sort of urban town homes. And this is just, you know, an exemplum of efficiency, this Cape. So we're really trying to stay with it and respect it.

TAD HEUER: And essentially we're trying to -- if I'm looking at this correctly, is that you're essentially creating a modern version of an L that's just kind of offset because you're taking advantage of where the existing structure is on the lot.

CAMPBELL ELLSWORTH: That's what we're requesting. And I would, you know, the garden back here, again, the dimensions are snug. There are a lot of several large trees here. There's some large trees beyond. And

this actually little sort of whatever they call that, sort of stone pattern, that's actually there. Sandy's got that in place. We're trying to maintain that as a real sort of little haven. And this design seems to work with that.

TAD HEUER: All right.

BRENDAN SULLIVAN: Doug, any questions?

DOUGLAS MYERS: Well, just -- not a question, just a comment. There's one factor that seems significant to me, when I took a look at the property, the rear line and the rear setback abuts almost entirely a property, commercial property, on Massachusetts Avenue; is that correct? Aren't they the abutter that would primarily be affected in the rear?

CAMPBELL ELLSWORTH: You know, I don't -- Sandy, you would know better.

SANDY BEST: There are this Colossa

(phonetic).

DOUGLAS MYERS: The chiropractor.

SANDY BEST: The chiropractor. And there's a house on Potter Park. They would be -- they look down on my house. But they haven't objected. I've told them what I was doing, and they didn't even know I had a garage.

DOUGLAS MYERS: My point was that in fact the chiropractic clinic seems to be the predominant rear abutter, your predominant rear abutter.

SANDY BEST: There are a lot of trees.

DOUGLAS MYERS: It's a commercial property?

SANDY BEST: Yes.

DOUGLAS MYERS: Seems to have a 20-by-40 backyard of its own.

SANDY BEST: Right.

DOUGLAS MYERS: It's entirely open

space.

SANDY BEST: Yes.

DOUGLAS MYERS: And, therefore, it just seems -- I want to see what you thought. But it seems to me that this -- any tendency toward infringement, crowding, loss of privacy, would seem to me to be much reduced by the nature of your rear abutter. It is commercial property it fronts on and it's oriented towards Massachusetts Avenue, and also has its own very considerable backyard with some trees to some respect.

CAMPBELL ELLSWORTH: Uh-huh.

Well, it's also interesting, because of, I think it's Massachusetts State Building Code, we would not be building any -- putting any windows. I mean, you can't put any windows within three feet of the property line. And this -- we would also hold off from putting any windows on this as well. So, you know, to try to, you know, try

to -- well, one, we would not be allowed to or would need a Special Permit at some point to put windows in here, but also sort of to keep any sort of privacy issues, you know. Really sort of envelop this backyard area as not to infringe on.

BRENDAN SULLIVAN: Gus, any questions at this point?

CONSTANTINE ALEXANDER: Just one. Is Winnie-the-Pooh across the street in favor of this?

SANDY BEST: Yes, still there.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: The abutter who is closest to this setback, is there any issue to that abutter?

CAMPBELL ELLSWORTH: Those two abutters are here tonight and they may be able to speak to that.

THOMAS SCOTT: Oh, okay.

BRENDAN SULLIVAN: All right. Let

me open it to public comment.

Is there anybody here who would like to speak on the petition at 14 Hurlbut Street.

If you would give your name and your address, please.

DOMINICK JONES: My name is Dominick Jones and I live at No. 6 and 8 Hurlbut street which I own with Rosalyn McHalis (phonetic). And Sandy's been in close contact with us about this project.

CAMPBELL ELLSWORTH: He's the guy.

DOMINICK JONES: We have no objection. There will be no windows on our side. As far as I can see from the elevations, although the proposed unit would be a little higher than the garage, it's roof peak will be set back. So that if you stand in our driveway, I think our horizon would be much the same elevation as it is at the moment. The present structure, the garage, is not attractive and I feel sure it's

something you build with clapboard will be considerably more attractive.

There's not very much more I can say about this. We have no objections. I think a balance we will benefit from it and that's about it.

BRENDAN SULLIVAN: Great, thank you.

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

(No Response.)

BRENDAN SULLIVAN: There is correspondence in the file from Richard and Susan Winickoff, W-i-n-i-c-k-o-f-f, Nine Hurlbut Street who write regarding the addition at 14 Hurlbut. (Reading) To Whom It May Concern: We have reviewed the plans for the addition at 14 Hurlbut Street. We have no objection to the proposed changes to the property. We believe it is an improvement to the property and the neighborhood.

Sincerely, Richard and Susan. And they live at No. 9.

The Board is in receipt of correspondence from William King.

(Reading) Dear members of the Board: As across the street neighbors, we enthusiastically support the application for Sandra Best for a Variance by allowing her to replace an existing garage with a single-story addition containing a ground floor bedroom and bath at her house at 14 Hurlbut. Her house is the smallest house and occupies the smallest lot on this residential street, and like most, if not all, other buildings on the street fails more than one dimensional requirements of the Zoning Ordinance. The proposed replacement on substantially the same footprint and with almost the same setback from the street as the existing garage has a simple design that will compliment the design of the simple Cape Cod

style house. The increase in liveable floor area will not increase the number of dwelling units, and the loss of garage space will not reduce the effective off street parking space on Hurlbut Street.

Basically they are in full support of the proposal.

The Board is in receipt of another letter from Mr. King. He speaks twice. That's the sum and substance of the correspondence.

Anybody else? Yes.

DENNIS CARLONE: Very quickly. My name is Dennis Carlone. I live at 16 Martin Street. Martin's -- Hurlbut Street ends on Martin Street, and my house overlooks Hurlbut Street. I'm an architect urban designer and as was said by others, this is the tiniest house probably in the neighborhood, but definitely on Hurlbut and Martin Street. And the addition as proposed, frankly makes

it still a tiny house, and the houses next-door -- Dominick's house is three stories high. And then on the other side, as you noted, is an apartment building that's now condominiums. It's a brick building that's three stories plus. Three and a half stories. So this addition will not change that balance at all. And I support it. My wife supports it 100 percent.

BRENDAN SULLIVAN: Thank you.

Anybody else wishes to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see none. I will close public comment.

Mr. Ellsworth, anything else to add?

CAMPBELL ELLSWORTH: Nothing more.

BRENDAN SULLIVAN: I'll close the presentation part and let the Board discuss it among themselves.

CONSTANTINE ALEXANDER: I have no problems with the project.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: I have no problems with it either. Since the neighbors are in support, it's a very modest addition. It doesn't exceed the FAR. So I think I'm in favor of it.

BRENDAN SULLIVAN: Okay. Doug?

DOUGLAS MYERS: I concur with what Tom said.

BRENDAN SULLIVAN: Mr. Heuer.

TAD HEUER: I agree. I think it's a classic shape of the lot situation where the hardship is created by the shape of the lot. I think it's important for me, even though this is an undersized lot, they're not asking to go over the FAR. That's usually what we see in a situation like this. Someone says I have a small lot and I need more FAR because my square footage is -- I have the need, not necessarily the percentage. And here they've stayed a 0.5 in a 0.5 district which

at least for things that come before this Board is unusual and admirable.

My only comment is that we did have a case about six months ago where we had a demolition of a garage that we denied. I think the distinction there is that that was a larger space, it was not going to be attached to the main structure, but it was going to be essentially an accessory office structure. Here I think the distinction is that it's being created as an addition. It's going to be used by the Petitioner as an integral part of the home. And I think in that way it's distinguishable in terms of the replacement of the ugly corrugated metal garage classification of cases that we hear. Because it is going to be an accessory use, it's going to be a primary use for the residence that exists so I would be in support.

BRENDAN SULLIVAN: Let me make a

motion to grant the relief requested as per the application and the drawings submitted to add the addition to the house in approximate location of an existing garage.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude Petitioner from replacing a very old, delapidated, unusable garage with a more aesthetically pleasing structure and far more usable for this particular Petitioner.

And one that is in keeping with the design of the house.

The Board finds that the hardship is owing to the unusual odd shape of this particular lot, the reduced size of the lot, and that it has inherent requirements which are hard to meet in order for a code compliant structure of any use to homeowner.

The Board finds that substantial relief

may be granted without substantial detriment to the public good .

The Board notes the letters of support and the abutting neighbor coming in support.

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

Further, the Ordinance by replacing a delapidated structure with a far more aesthetically pleasing one, and allows the Petitioner to remain in her home, which the Board finds is a fair and reasonable request.

Anything else to add?

CONSTANTINE ALEXANDER: No. You have to tie it to the plans.

BRENDAN SULLIVAN: And that the work be in conformance with the plans and the dimensional form as submitted and initialed by the Chair.

Anything else?

SANDY BEST: He won't be serving

coffee.

BRENDAN SULLIVAN: It's not the coffee. It's the doughnuts I think.

All those in favor of granting the relief.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor. Good luck.

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

(10:10 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10231, 98 Columbia Street, apartment 3.

CAMPBELL ELLSWORTH: Good evening. My name is Campbell Ellsworth. I'm an architect and I live at -- my office is at 267 Norfolk Street in Cambridge. I'm here with my clients Alice and Philippe Luedi Gugelmann.

Let's see, just a little background. Alice and Philippe have lived on Columbia Street for -- since the end of 2006. Alice works for a non-profit that teaches gardening in public schools and Philippe works with the MIT startup. They moved into this house at 98 Columbia first as renters, and then it's

a three-unit building, and then they were able to purchase one of the three units. The unit that they bought was completely rundown. They've invested a lot of time, money, and also sweat equity to fix it up. And let me just show you sort of the photograph of that. So this is a shot from Columbia Street. It is Columbia between Broadway and --

ALICE GUGELMANN: Harvard.

CAMPBELL ELLSWORTH: Just south of Harvard. It's a wonderfully majestic Greek revival structure. Quite a presence on the street. There is one unit that occupies the whole first floor, and Alice and Philippe own and occupy the second and third floor but on one side. Just so you know sort of the configuration.

What we're here tonight to discuss is that their request for a side yard setback Variance for a dormer that they want to put at the very back of this house, in the back

to increase what is currently their bedroom. There are two bedrooms up on that, up on that third floor. One in the front where their son sleeps, young son. And they're on the same floor in the back. They have -- this is the configuration in that room. They're down under the eaves, and they could really use that extra space.

DOUGLAS MYERS: I take it the person on the picture on the upper right is standing on the floor and not on the bed?

ALICE GUGELMANN: I was standing on the floor. And we couldn't get him in the picture.

PHILIPPE LUEDI: I have to walk, stand like this.

CAMPBELL ELLSWORTH: Their son is going to be a big guy eventually. They may be back here in 12 years for another dormer.

So, that's the configuration. I would like to -- you've got the drawings. This is

a -- really we're here because the hardship we find, we see is that this sort of majestic, very large house is, as you can see in the photograph, sort of jammed up against a left-side setback. You can see that there's a convenience store right on the lot line, and so what they're looking to do, they've worked with Ranjit, and then we've gone over those calculations if you were to do an average height, single plain setback there would be a requirement 12 feet on any set, you know, the thing is non-conforming and it would be a 12-foot setback. What they're requesting is to be able to come to the 10-foot mark. The house, I should point out, that the dormer that they are proposing is actually still built completely within the Cambridge dormer guidelines, meaning it is setback in -- the front face of the dormer is setback from the main plane of the house and it does not go to the ridge.

DOUGLAS MYERS: What about the rear wall of the house? The dimension is going to be put towards the back part of the house, is the dormer compliant with respect to the rear side wall of the house?

CAMPBELL ELLSWORTH: Right. The guidelines, I don't think so. I'm sorry, yes.

DOUGLAS MYERS: 3.6 feet from the rear.

CAMPBELL ELLSWORTH: Yeah, absolutely not. The -- my apologies for missing that point, but thank you. No, it's close. It will be set probably within six or eight inches of that back wall. That's because their -- that's where their bedroom is. If you look at the plans, the dormer really is -- opens, opens that room. And it's only, the dormer is slightly less than 15 feet. I believe it's 14 feet, nine inches. And that is the depth -- that is the

overall length of their room. So that it would not -- it is not set back according to those the three-foot, six inches, no.

THOMAS SCOTT: Could it be?

CAMPBELL ELLSWORTH: Well, that would, that would again compromise a bunch of space in that room. I mean, it would still -- if their bed is in the current configuration where the head of the bed is here and the foot of the bed is there, getting out of the that right-hand side of the bed would still knock into that. I believe --

BRENDAN SULLIVAN: The existing room here, if this is to be believed from the outside wall of the house to the stairwell wall is 13-foot, eight. And the dormer proposed is 14-foot, nine.

CAMPBELL ELLSWORTH: Maybe you guys can address this.

ALICE GUGELMANN: What did you do?

CAMPBELL ELLSWORTH: Well, it's

going to the outside of that interior wall here, and it would be stepped in, I guess, just minimally from the back -- the back face.

ALICE GUGELMANN: I think it's actually on this face, I think it's right on the wall.

CAMPBELL ELLSWORTH: It's flush.

ALICE GUGELMANN: It's flush as I understand.

CAMPBELL ELLSWORTH: But there would be -- there's still an overhang -- there's an overhang of the eaves forward. So there would still be a triangular articulation.

THOMAS SCOTT: That's stair's an existing stair?

CAMPBELL ELLSWORTH: That is.

THOMAS SCOTT: That's kind of an immovable object, right?

CAMPBELL ELLSWORTH: That's right.

BRENDAN SULLIVAN: What is this?

CAMPBELL ELLSWORTH: That's actually -- right now because all of the roof line comes down and there are knee walls as you can see, I mean, effectively that's the knee wall, there's a knee wall. That's, accessible storage space that's very low down in the eave.

ALICE GUGELMANN: That is proposed. It's an open space over the stairs right now that we would just close off that section.

CAMPBELL ELLSWORTH: Right now the stair hole actually cuts open all the way, but they see an option to actually grab a few more square feet and still have the required head height coming up the stair. This doesn't -- so the dormer ends there, but there's simply accessible sort of bound in that crawl space.

BRENDAN SULLIVAN: Okay, but going back to your statement saying that it's the same dimension as the room. The room is

13-foot, eight, and the dormer's 14-foot, nine.

CAMPBELL ELLSWORTH: Well, the interior of the room is 13, eight and the exterior of the dormer would be 14, nine.

BRENDAN SULLIVAN: Is 14, nine.

CAMPBELL ELLSWORTH: That would add this wall and add that wall, that exterior wall is much thicker. It certainly doesn't go -- the outside plane of the dormer certainly does not go beyond the plane of the --

THOMAS SCOTT: This is another tenant here?

CAMPBELL ELLSWORTH: That is correct.

BRENDAN SULLIVAN: So --

TAD HEUER: What's that?

CAMPBELL ELLSWORTH: Chimney.

BRENDAN SULLIVAN: You live on the second floor or part of the second floor?

CAMPBELL ELLSWORTH: Part of the second and part of the third. So it's this and this.

BRENDAN SULLIVAN: So one person lives on the entire first floor?

CAMPBELL ELLSWORTH: That is correct.

BRENDAN SULLIVAN: And then we have a split second floor and it's split third floor.

CAMPBELL ELLSWORTH: Correct. And a party wall right up the middle.

BRENDAN SULLIVAN: Okay.

And the proposal that is before us is minimal I would assume in size and scope and all of that?

CAMPBELL ELLSWORTH: Yes.

ALICE GUGELMANN: Yes.

CAMPBELL ELLSWORTH: Yes, yes, yes.

BRENDAN SULLIVAN: Any questions by the Board?

CONSTANTINE ALEXANDER: No questions.

BRENDAN SULLIVAN: Tom, do you have any?

THOMAS SCOTT: No. I mean it's unfortunate that it has to extend, but I understand why it does. You know, to make that a really truly usable room, you know, it needs to go to that wall. It just -- it makes the exterior elevation a little funny looking. You know, this requirement in the dormer guideline just gives some breathing room to either end, and I think that was the intent to kind of make this thing float on the roof and not go to the edge of the roof. So....

TAD HEUER: So this is a closet? Sorry.

CAMPBELL ELLSWORTH: Yes.

TAD HEUER: I mean, is there not a reason that that closet goes here or

somewhere, and the bed gets flipped around this way and this space that you're gaining becomes usable space, this goes, you know, this three feet whatever it is, stays at knee wall height, so be it, and there's a small cubby or a vanity table or a nightstand or something there, and then you have the space you need. Right now your bed is being pushed in here because you're insisting the closet be there. I mean, is it not possible, for instance, for the bed to be there and the closet to be there in that corner? That gives you this space, this corner here on the far back is a lost corner from the interior space but allows the dormer to be placed there. You get headroom there by moving around. I guess my question is is the placement of the exterior dormer being driven by movable interior features as to this room? Because if that's true, I'm less thrilled about making it convenient to put the dormer

where it is because then that makes the interior fine. I prefer to see a bit of tweak on the interior to make the dormer look -- I don't know. I mean, or I could be entirely wrong.

ALICE GUGELMANN: I think we were just trying to maximize space and be able to walk around.

PHILIPPE LUEDI: One reason we're trying to maximize space is we do have a young child. We're expecting a second child. We would like to live there as a family and make Cambridge our home rather than move the suburbs.

TAD HEUER: You don't know this, but that argument never works with me. Works with other people on the Board, but not with me.

ALICE GUGELMANN: Well, so I mean, no, if we were to decrease the size of the dormer, we would have less space around in

there to move around. So I think
that's --

BRENDAN SULLIVAN: I think what
you're saying --

ALICE GUGELMANN: The location of
the --

BRENDAN SULLIVAN: -- it doesn't
work. I think that the bed here, the
closet's here. This here is very
constrictive for any usable, and then it
comes into the room as you're going to put a
closet there. Obviously you've got the
swing of the door here. And in order to get
some usable light and fenestration,
obviously the windows along here and there's
a window here, but I think that the placement
of the bed probably works there. Other than
that to move it around to move this around --

TAD HEUER: So you couldn't put a
closet in that corner, you'd lose the bottom
of it and that's where you hang your shoe tree

in the corner? You don't need six feet -- eight feet of space to put your shoes. Put it there, the closet's there, the bed's spun this way into where your closet is now. The room works. The dormer is placed where it is, and you get all your light. I mean, again, I'm not an architect. I'm not a designer. Just an attorney. But, you know. I move things around in my daily life.

BRENDAN SULLIVAN: Conceptually.

TAD HEUER: Conceptually.

PHILIPPE LUEDI: Sir, one reason to have the closet there we would like to use the crawl space for storage.

ALICE GUGELMANN: That's storage.

PHILIPPE LUEDI: And the house is extremely short on closets.

BRENDAN SULLIVAN: And this is the other bedroom here.

CAMPBELL ELLSWORTH: That's the child's bedroom.

BRENDAN SULLIVAN: Child's bedroom.

THOMAS SCOTT: From this closet you were going to leave this open and have access to this space?

ALICE GUGELMANN: Yeah.

THOMAS SCOTT: So to like throw winter boots and things like that.

BRENDAN SULLIVAN: Shoes.

TAD HEUER: It can be done in my scenario and in that one.

ALICE GUGELMANN: And because it's -- the dormer is at the very back of the house, it's very -- I mean, this is the view from the street. And from down the street you have about maybe a 20-foot section of the street where you would see the full dorm. So we're not -- we're thinking aesthetically from the outside that we're minimizing the effect on the neighborhood, what it's gonna look like, how it's gonna affect the house.

BRENDAN SULLIVAN: I'm not thrilled

with locating the dormer right on the outside wall there.

TAD HEUER: Right.

BRENDAN SULLIVAN: What creates somewhat of an awkward situation is the existing bathroom and the stairway, which is the stairway that's very difficult to work around. And to come in with a dormer guideline, three-foot, six and what have you, then you really -- it doesn't work at all. So I --

TAD HEUER: Three-foot, six what? In from the --

BRENDAN SULLIVAN: From the outside wall is what the dormer guidelines called for.

TAD HEUER: Right.

BRENDAN SULLIVAN: I think that's a perfect world where you don't have the staircase and you don't have that. You know, if the staircase came up in the front or

something like that, then, you know, you can push it this way.

TAD HEUER: What if the closet were already there, would we be having this discussion?

BRENDAN SULLIVAN: Not as involved.

TAD HEUER: Because there wouldn't be an issue at all?

BRENDAN SULLIVAN: Well....

TAD HEUER: All right. I'll let it go. I'm just not thrilled. I'll let it go but not happy.

DOUGLAS MYERS: I would prefer to see a dormer that's guideline compliant, but I think, I think the case is strong enough to warrant your doing it, and you are compliant in other respects. And I -- I am confident based on the plans that it would be artistically done and will enhance the house and will certainly be a favorable contrast to the rather unprepossessing commercial

establishment that is your rear neighbor.

CAMPBELL ELLSWORTH: I'll just point out there are a number of signatures of support from neighbors, abutters, abutters of abutters, and sort of in that general vicinity.

ALICE GUGELMANN: Ten.

CAMPBELL ELLSWORTH: Ten.

BRENDAN SULLIVAN: And also in the file there's a memorandum of understanding with the other two condo owners?

ALICE GUGELMANN: Uh-huh.

BRENDAN SULLIVAN: Is that correct? To basically they're assenting to -- agreeing to the plans that were in the file before us.

DOUGLAS MYERS: May I say one other thing, Mr. Chairman?

BRENDAN SULLIVAN: Sure.

DOUGLAS MYERS: Very briefly. I mean, I brought up the subject because it was of concern to me. But if you have to have

non-compliance in terms of the front wall, the ridge pole, a dormer that's too close to the street or one is too close to the back, you certainly have the least objectionable type of non-compliance.

CAMPBELL ELLSWORTH: Right.

BRENDAN SULLIVAN: Okay. Anything to add?

CONSTANTINE ALEXANDER: No, not much more to add. I think with the relief being sought is modest and certainly necessary to the occupation of the premises. I'm not one for trying to redesign, second guess you as the architect to how to reconfigure the interior of the space. Like everyone else, I'm troubled by non-compliance of the dormer guidelines, but there's good reason for it. And as Doug pointed out, this is the best way of non-complying near the back not as visible. So all in all I have no problem.

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here to wishes to speak on the matter, 98 Columbia Street?

(No Response.)

BRENDAN SULLIVAN: I see nobody in attendance.

The Board is in receipt of correspondence in the form of a petition. (Reading) Dear Cambridge Zoning Board: We have no objection to the Luedi/Gugelmann dormer addition and support the construction of the attached plans. And it is signed by nine people.

ALICE GUGELMANN: Ten. One more downstairs neighbor.

BRENDAN SULLIVAN: Okay.

We also note in the file the other two owners of the structure, building who have assented to the plan as presented and their memorandum of understanding is in the folder.

Okay, anything else to add or delete? Let me make the motion to grant the relief necessary to build, add a dormer, and to increase the usable space in the master bedroom as per the plans submitted in the dimensional plan contained therein.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner as it would severely limit the amount of usable space in this third floor attic area which would render an as-of-right solution not of any benefit to the homeowner.

The Board finds that the hardship is owing to the size and shape of the structure on this particular lot dating back to 1840 which was built prior to the enactment of the Zoning Ordinance. And any work of this nature would require some relief from the Ordinance.

The Board finds that the amount that they request is a fair and reasonable one.

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

The Board notes the letters of support from the neighbors, and also from the other condo owners.

This Board finds that relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance as it would allow the homeowner a functional and usable space for the benefit of their family.

Anything else to add?

CONSTANTINE ALEXANDER: Tie it to the plans.

BRENDAN SULLIVAN: And that the work conform to the drawings as initialed by the Chair and containing the dimensional form also.

Anything else to add?

All those in favor of granting the relief.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Alexander, Scott, Myers.)

BRENDAN SULLIVAN: And opposed.

(Heuer.)

BRENDAN SULLIVAN: Any dissenting?

TAD HEUER: No. Reiterating that I believe that not opposed to the relief being sought per se, but that I believe that a former compliant -- a former guideline compliant solution was available and could have been achieved.

BRENDAN SULLIVAN: Okay.

TAD HEUER: While still providing the relief provided by the Petitioner.

BRENDAN SULLIVAN: It's granted.

CAMPBELL ELLSWORTH: Thank you very

much.

(10:35 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10234, 43 Gibson Street.

KYLE SHEFFIELD: Good evening. My name is Kyle Sheffield, and I'm an architect with LDR Architects on Third Street in Cambridge. I'm also a resident at 13 Ellsworth Avenue in Cambridge. Thanks very much for taking the time. I know it's late. We're here for a Special Permit to modify an existing window locations on the south elevation, the first floor that's currently within the side yard setback. And we're also here for a Variance to create a new second floor addition over an existing one-story structure. And this addition would conform

to current setback requirements.

TAD HEUER: Is that a deck now?

KYLE SHEFFIELD: It's a parapet. It's a non-occupiable deck. They're just windows and it was built actually in 1954 by the architect's collaborative, which if you ever heard of them, it's Walter Gropius (phonetic) an architect that's modern --

TAD HEUER: It's more thematic than practical.

KYLE SHEFFIELD: Yes, it's practical.

BRENDAN SULLIVAN: Underneath the cover, though, there was a deck there; is that correct?

KYLE SHEFFIELD: Underneath the -- I'm sorry?

BRENDAN SULLIVAN: There's a tarp there now. Underneath that there is --

KYLE SHEFFIELD: There is the deck that's existing.

BRENDAN SULLIVAN: Yes.

DOUGLAS MYERS: While we're discussing decks, the second floor deck, the five-by-thirteen-and-a-half deck is referred to as a new deck. Is that, that's actually presently existing now?

KYLE SHEFFIELD: The five-by-thirteen is located -- it's existing. It was built in 1969. It's at the back of the house.

DOUGLAS MYERS: Okay. It's referred to as new but, you must be replacing.

KYLE SHEFFIELD: I apologize.

DOUGLAS MYERS: No, no.

KYLE SHEFFIELD: We're leaving it as is. What we're doing there's a rubber roof. There are no finished deck boards. So we're merely putting in a finished surface for them to be able to put patio furniture.

I guess to speak to the Special Permit first if --

BRENDAN SULLIVAN: Speak to the Variance.

KYLE SHEFFIELD: Absolutely.

We've already received in terms of the Variance approval from the Half Crown Marsh Neighborhood Conservation District Commission, and I also have a letter that most recently came in from the next-door neighbor, the abutter Barbara Ackerman, who lives at 41 Gibson Street. She just submitted this two days ago, so I apologize since it wasn't in the document, but I'd love to hand it to you if you're willing to accept it.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Yes.

KYLE SHEFFIELD: Here you are.

The Variance that we're seeking is a 100 percentage point of relief for FAR. Currently our lot size is 4500 square feet, and in Residence B the minimum lot size is 5,000. Our current FAR is 0.51. And our

proposed FAR will yield us with a 0.52 in terms of an FAR.

There are a couple of hardships. One actually, I've actually noted on drawings here today. One, as you can see on the existing second floor, we actually have a code hardship. And it actually -- currently we have a two-foot, nine width corridor as you get to the top of the main stair. And also to access the landing which is where some closet storage is currently located, there's only one-foot, nine inches of space to be able to get by. So the lack of adequate closet space on top of that we would actually be renovating this area which would further exacerbate the lack of closet space that we have. What we are -- the new proposed addition is also encompassing is programmatic reasons which is part of the reason why we're, excuse me, seeking a hardship. What it does is it creates more adequate closet storage,

and it also moves a laundry that is currently in the basement which we are dealing with water penetration issues through the foundation, and have some fair amounts of mold which we're doing our best to remediate.

And the posed stackable laundry on the second floor actually takes into some of the account some of the bedroom space.

The net result of that is that the bedrooms that are existing are 169 square feet and 158 square feet. The new bedrooms with the addition would yield the same totals. So, in order to gain a code compliant hallway as you get to the top with the landing, which we've done to modify in this proposed scheme as well as regain some adequate storage for closet space, and to move the laundry to the second floor, the goal this couple just recently purchased the house, and their hope is to create a family that they will be able to stay and live in

Cambridge for the foreseeable future. And right now the bedrooms as designed will be able to accommodate bunk beds in each of the bedrooms.

Apparently the husband's sister has three kids and he wants to beat that. So the goal is for a larger family, but still have the wonderful benefits of living in Cambridge and close to the city.

As I said, the result with the bedrooms will still be the same size. There is no precedent really for this condition primarily because we're dealing with a code hardship, and we're doing our best to reconfigure that, but a lot of that has affect on the closet space. So we're trying to reallocate that closet space on the second floor and keep the bedrooms the same size which is why the addition that's proposed is only 80 square feet, relatively modest.

TAD HEUER: Where are your closets

going to go in the new?

KYLE SHEFFIELD: In the new essentially the closets are here and here.

TAD HEUER: Okay.

KYLE SHEFFIELD: The stackable laundry goes right into a closet that overlooks onto the hall. And a lot of that closet space is really sort of captured in the new addition as well as some additional bedroom space that's being taken up by reconfiguring the landing area here and reallocating some of the square footage that was taken up by closet space into the addition.

TAD HEUER: And what's the lost -- is that lost space?

KYLE SHEFFIELD: Here?

TAD HEUER: Yes.

KYLE SHEFFIELD: It's desk space for homework.

THOMAS SCOTT: So the addition is

just that four feet?

KYLE SHEFFIELD: Just this, yeah. It's four feet by seven, nine and a half, eleven, ten and a half. It's essentially by 20 feet.

THOMAS SCOTT: 20.

KYLE SHEFFIELD: Uh-huh.

We as you would notice on the certified survey, we conform to the existing front yard setback which is the one that's most urgent to us. The side yard setback we don't have any requirements well within the -- well out of that. The design was approved by the Historic Commission because in part the parapet as you spoke of, was really something that some of the neighbors thought was a relative eyesore. The proposed elevations, I believe you have seen.

DOUGLAS MYERS: Do I understand you correctly that there's no change in the setback on the north side of the house?

KYLE SHEFFIELD: Correct. There's no change. The existing house is pre-existing non-conforming within the front yard setback. However, the distance from our second floor addition to the front yard setback is, I believe, on the survey that we submitted and it's 15.3 feet. In fact, so as shown here, we have 15.3 feet from the front yard setback to the second floor addition.

BRENDAN SULLIVAN: Any other questions at this time? Tom?

THOMAS SCOTT: No.

DOUGLAS MYERS: No.

BRENDAN SULLIVAN: Questions, Tad?

TAD HEUER: No.

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who could like to speak on the matter of at 43 Gibson Street?

(No Response.)

BRENDAN SULLIVAN: I see nobody in

attendance.

The Board is in receipt from Barbara Ackerman who lives at 41 Gibson Street. (Reading) To the Board of Zoning Appeal: Regarding my opinion of the changes proposed for 43 Gibson Street, my name is Barbara Ackerman. I'm the owner of 41 Gibson Street which is right next-door to 43. I have seen the plans and discussed them with the new owners, and I have no problem at all with the plans. They will in all likelihood improve the looks of the place. So please learn that I accept these proposed plans. Signed Barbara Ackerman.

The Board is in receipt of correspondence from the Cambridge Historical Committee regarding case No. 10234, 43 Gibson. (Reading) The property is located in the Half Crown Marsh Conservation District where exterior alterations are subject to review and approval. After a public hearing

by the Commission, a Certificate of Appropriateness was issued for the project.

And the Certificate of Appropriateness second floor addition and alterations to select doors and windows per the plans. All work is to be carried out in accordance with the application materials submitted from you dated -- received January 4, 2012. Final selection of door and window models and placement of exterior mechanicals are to be submitted for approval by the staff.

And we incorporate their Certificate of Appropriateness as any condition for relief.

Okay. Anything else to add at all?

KYLE SHEFFIELD: Not on the Variance, no sir.

BRENDAN SULLIVAN: You want to just go over now -- should we handle that part of it or do you want to go --

CONSTANTINE ALEXANDER: Either way.

TAD HEUER: Tell us about the

windows.

KYLE SHEFFIELD: All right.

The Special Permit that we're seeking is basically to modify the window locations in the kitchen. Currently the window locations that we have that are in question are in -- outline dotted in red are the existing door, the existing kitchen window, and existing powder room window. The proposed is to eliminate the door, this additional window, and the window in the powder room. All of this space is to become part of the kitchen and we're replacing it with three windows.

BRENDAN SULLIVAN: And that basically is up against Ackerman's house?

KYLE SHEFFIELD: It is up against Barbara Ackerman's place.

The issue here is we're actually reducing the amount of apperature's (sic) square footage by 18 square feet. We're

going from 45 square feet, which is currently existing, down to 27.

In addition what we're doing is, we're removing -- there's an existing set of stairs that is within the setback, and we're currently removing those stairs to provide better fire safety access and overall access to the side yard and the rear yard if possible.

TAD HEUER: Are those stairs built the same time as the parapet?

KYLE SHEFFIELD: Possibly. The current framing on the interior shows that the windows were pretty relatively new. We have the existing drawings and they were done -- this kitchen addition was started in the fifties, and has since gone through. So the parapet is going, the door is going, and in addition what we thought would be a concern for Barbara was this exterior light that was over the door. So that we're eliminating

more light that casts onto her property. And we've also gotten her approval as well as the Historic Commission approval.

BRENDAN SULLIVAN: Okay. Anything else to add, Doug?

DOUGLAS MYERS: No.

BRENDAN SULLIVAN: Questions?

CONSTANTINE ALEXANDER: I'm good.

BRENDAN SULLIVAN: Let me make a motion to grant the relief. This is for the Variance to allow the 80 square foot addition?

KYLE SHEFFIELD: Yes.

BRENDAN SULLIVAN: At the second floor level over the existing one-story structure.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude them from adding some much needed

bedroom and closet space to the interior of the house, and that this particular location which conforms to the setback requirements is the most logical.

The Board finds that the hardship is owing to the non-conforming nature of the house which -- and the siting of the -- well, the undersized lot and the siting of the house on the lot. And that any slight addition of this nature would require some relief from the Board.

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

The Board notes the letter of support from the most effected neighbor, and also a letter of appropriateness from the Cambridge Historical Commission.

Relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

All those in favor of granting the relief on the basis that the work conform in accordance to the drawings submitted.

All those in favor.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor of the Variance.

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

BRENDAN SULLIVAN: And now for the Special Permit of windows on sheet A --

KYLE SHEFFIELD: 2.04.

BRENDAN SULLIVAN: -- 2.04.

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

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

The Board finds that continued

operation of and development an adjacent uses as permitted in the Zoning Ordinance would not be adversely affected by the nature of the proposed use.

The Board notes the letter from the immediate abutter in support of the changes, and there would not be any nuisance or hazard created to the detriment of the health, safety, and the welfare of the occupant of the proposed use or to the citizens of the city.

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

And the Board notes the letter of appropriateness from the Cambridge Historic Commission specifically the Half Crown.

CONSTANTINE ALEXANDER: Brandon, we have to make one other finding, too. Under 8.22.2 we have to make a specific finding, and that should be added to your motion. That

what is being proposed with regard to the changing of windows and the like, will not be substantially more detrimental to the neighborhood than the existing non-conforming use.

BRENDAN SULLIVAN: So said.

All those in favor of granting the Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

(10:55 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10236, 90 Aberdeen Avenue.

MAGGIE BOOZ: I'm Maggie Booz, B-o-o-z. I'm the architect for Edward and Lisa Kuh who live at 90 Aberdeen Avenue. We've designed a third floor renovation at the house. And Ed and Lisa and their two children live on the second floor and have bedrooms on the third floor.

The front of the house is sort of the primary bedroom that we're leaving intact in our proposal, and on the -- at the rear of the house there's another bedroom and a bathroom and a laundry. You have to walk through the rear bedroom to get to the laundry. And that laundry, the bathroom on that floor and that bedroom all have what I would describe as inadequate headroom. And so our proposal is

to increase the size of one dormer that is on the north side of the house and increase the size of another dormer that's on the south side of the house.

This diagram might help you understand everything that we're proposing. I'll rotate it. But these lower drawings are the existing south and north elevations. And the upper drawings are the proposed south and north elevations. These diagrams at the bottom show the existing dormers. And then the dotted and proposed dormers to just show relative size. And the plans are existing and proposed over on that side of the board.

So on the south side of the building is where there is this dormer, which if you look in this photograph, is right in here. So it's, it kind of shows you the relative scale of that photograph, of that dormer. Excuse me.

Ed has some pictures. We've asked him

to take pictures with a scale model so we have some pictures of the dormer. So this is the interior of that dormer. And then the bathroom. These are all very nice pictures of Ed in the various rooms.

EDWARD KUH: And then this is walking through the laundry room to the bedroom and the stairwell head.

MAGGIE BOOZ: There's into the green bedroom into the laundry room, and then the stairwell height which is also exhibited in this diagram here which is the section through the stair.

This is the dormer wall on the north side. And as you get up to the top, as you can see, there's inadequate headroom. And so just to illustrate what we're trying to solve. So, let's see --

BRENDAN SULLIVAN: The new dormer is incorporating the existing stair?

MAGGIE BOOZ: It is the existing

stair. We're not changing the stair.

BRENDAN SULLIVAN: Right. So that stays. And you've got a small dormer here now?

MAGGIE BOOZ: That's exactly right.

BRENDAN SULLIVAN: So you're expanding it for a shower?

MAGGIE BOOZ: We're expanding it for the bathroom so that we can get headroom in the bathroom that is all of normal height. And we're expanding it for the stair itself so that right now you're, you know, you're arriving at the -- you're arriving at about this point in the dormer. So you can see the dormer is over this -- the center of the dormer is not on the center of this upper level stair. And so we're expanding it in order to get -- so that by the time you're at the center of the stair, that upper runner stair you're at the highest point of the expanded dormer. And then the shower's over

to the side of that.

And then on the south side where that bedroom is there is -- there's actually is not legal egress out of that bedroom. I mean, the window and the dormer is miniscule, and the skylight that's in the bedroom has a sill height that's over 44 inches. It's up around 60 inches. So skylights do count for egress out of a third floor, but the sill has to be within 44 inches of the floor by code. So it actually isn't. It doesn't meet code. And that's our proposal.

Our -- the Variance request is for floor area ratio. Both of the dormers are set back from the existing line of the building. So we've got a five-foot, seven-inch setback on that side from the house to the property line. We need seven-and-a-half in relief, so we've set that back two feet which is where that small dormer is. The tiny dormer is now. And this one's also set back a foot from the

building, giving us the proper side yard setback which is -- you know, this is the exterior wall of the lower part of the buildings and then the dormer is set in from that wall.

CONSTANTINE ALEXANDER: Now, I take it you need -- let's go by the numbers. The FAR relief. You're now substantially non-conforming.

MAGGIE BOOZ: We are.

CONSTANTINE ALEXANDER: But as I understand it from your application, most of that is as a result of having to count the basement.

MAGGIE BOOZ: There is some portion of that, a third of it approximately is.

CONSTANTINE ALEXANDER: A third of what?

MAGGIE BOOZ: Well, a little less than a third of the total floor area of the house is in the basement.

CONSTANTINE ALEXANDER: It's not usable right now?

MAGGIE BOOZ: It's seven feet high.

CONSTANTINE ALEXANDER: Seven feet, right.

MAGGIE BOOZ: This building was divided into two condominiums and that was designated as storage and mechanical space. It's just a raw basement. It's not -- you know, it's public. It's owned by both units, commonly owned.

CONSTANTINE ALEXANDER: And the usual problem with too much FAR is too much density in the neighborhood, but here that's not as true because that density is down below ground and --

MAGGIE BOOZ: That's right. And, you know, I'd also put forth that what we're proposing to correct or better rooms that right now have real --

CONSTANTINE ALEXANDER: Oh,

absolutely.

MAGGIE BOOZ: -- quantifiable irregularities and deficiencies.

CONSTANTINE ALEXANDER: The current dormer -- I'm sorry, I didn't mean to interrupt you.

MAGGIE BOOZ: We're not trying to make a, you know, a gigantic master bedroom suite or something that is -- you know, I think we're trying to do something reasonable to the house.

CONSTANTINE ALEXANDER: The current dormer situation makes no sense to me. I'm not an architect. They're sort of unattractive from the exterior.

MAGGIE BOOZ: They're very unusual. I also wanted to just put out the photographs of some of the dormers that are on Aberdeen Ave. And Aberdeen's a dense street. You know, there's a lot of -- there are a lot of families living in those houses, and they've

increased the third floors.

EDWARD KUH: Some of those are --

TAD HEUER: We're not going to hear the argument of awful dormers, are you, Maggie?

EDWARD KUH: And some of them are from the houses that have dual dormers.

MAGGIE BOOZ: Yeah, this is the same house and different side.

TAD HEUER: So your proposal is not that your dormer will fit in because there are others that looks like these dormers; right?

MAGGIE BOOZ: No. No. We just want to have some dormers.

TAD HEUER: Indeed. It's simply to indicate that other houses on the street have dormers.

MAGGIE BOOZ: There are dormers on Aberdeen Ave.

CONSTANTINE ALEXANDER: We've granted relief in the past for dormers on

Aberdeen Avenue.

MAGGIE BOOZ: Okay. We also just wanted to --

EDWARD KUH: We have signatures of and No. 88 is our downstairs neighbor.

MAGGIE BOOZ: So those are signatures of neighbors who have not objected.

CONSTANTINE ALEXANDER: You have no opposition from your neighbors?

EDWARD KUH: Those are the neighbors across the street.

CONSTANTINE ALEXANDER: Some years ago we did grant a dormer, and litigation -- some Ed and Joe signed.

MAGGIE BOOZ: He's on the list. He's on the list.

CONSTANTINE ALEXANDER: Good.

EDWARD KUH: He told me all about it. I learned all about the neighborhood going around getting signatures.

DOUGLAS MYERS: In ink?

BRENDAN SULLIVAN: So you're adding how many square foot, Maggie?

MAGGIE BOOZ: We're adding about 96 square feet.

CONSTANTINE ALEXANDER: You're going from a 0.98 to a 1.0 in a district -- that's FAR, that's supposedly no more than 0.5. So they're going to be roughly -- well, not roughly, twice as much as permitted by our Zoning Ordinance. But I think the explanation and the justification for doing that is the basement area.

MAGGIE BOOZ: That's how we saw it.

BRENDAN SULLIVAN: Okay. Are there any other questions at this time?

Let me open it to public comment? Is there anybody here who would like to speak of the matter of 90 Aberdeen Avenue?

LAURA RICE: My name is Laura Rice, and I live at 81 Aberdeen Avenue, across the

street from Ed and Lisa, and I also own the property that abuts them 92-94 and I'm completely in favor of this.

CONSTANTINE ALEXANDER: Good.

LAURA RICE: And I told them to get Joe's signature before they got here.

THOMAS SCOTT: Good advice.

LAURA RICE: That's it.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: The Board is also in receipt of a petition Edward and Lisa Kuh of 90 Aberdeen Avenue wish to renovate the third floor of their condo, which would entail adding two dormers. Doing so would allow proper egress to one bedroom and make the third floor bathroom and laundry room more functional. The following people have reviewed the proposed plans and as neighbors support this renovation. Signed by 18 people in the neighborhood ranging from 88 Aberdeen, 80, 78, 79, 85, 89, 91, 99, 84, 93,

81, 107, and 83. Surrounded by people who support the proposal.

Okay, anything to add? No?

MAGGIE BOOZ: We should also say that we spoke to the -- Ed and Lisa spoke to the people who are the head of the condominium association at the rear of Aberdeen Ave. and they didn't object. And also said that they would bring it up at the condominium meeting, and if there were any objections, that they would be relayed to Ed and Lisa and there were none.

BRENDAN SULLIVAN: Okay.

All right.

Anything to add, Tom?

THOMAS SCOTT: No. I mean I think the dormers are reasonably scaled especially for the size of the house. The house is so big, these dormers look perfectly scaled for what the existing size of the house is. The requested relief, it seems fairly modest even

though it's well over the FAR, but that's just a result of the predate Zoning. So I'm in favor of this.

BRENDAN SULLIVAN: Okay. Doug?

DOUGLAS MYERS: I'm in favor.

BRENDAN SULLIVAN: Mr. Heuer.

TAD HEUER: I'm in favor. It seems like it's modest relief that's appropriately scaled. It is in a 0.98 to a 1.0 in a 0.5 district, but, you know, it's not a situation in which they're looking to add, say, 700 square feet. You know, which they were already over and looking to add a huge amount of space, you know, hundreds of square feet I would be opposed to it, but that's not the situation we have here.

BRENDAN SULLIVAN: I'll make a motion that we grant the relief requested for the construction of two dormers; is that correct?

MAGGIE BOOZ: That's correct.

BRENDAN SULLIVAN: As per the plans submitted and the dimensional form contained therein.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude the Petitioner from expanding some of the interior space within the third floor of the building to make a far more usable and viable living space.

Also, the Board finds that it would enhance, in fact, provide code compliant egress out of these bedrooms with code compliant windows.

The Board finds that the hardship is owing to the size of the lot and the size of the structure which predates the existing Ordinance so that any addition of this nature this Board finds that it's modest at 96 square feet, would require some relief from this

Board.

Also that the hardship is owing to the design of the roof and how it intrudes on the living space headroom quite severely so that it makes for a viable and liveable interior space very difficult. And the additions of these dormers will alleviate that problem.

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

And on the condition that the work be done in compliance with the drawings as submitted by Smart Architecture, and initialed by the Chair, and also as per the dimensional form.

Anything else?

All those in favor of granting the relief.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

MAGGIE BOOZ: Thank you very much.

EDWARD KUH: Thank you.

(11:10 p.m.)

(Sitting Members: Brendan Sullivan,

Constantine Alexander, Tad Heuer, Thomas Scott, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10237, 14 Walker Street.

DON FOOT: Good evening.

DOUGLAS MYERS: Good to see you.

DON FOOT: Make sure you're all still here. Nothing to do with coffee. My name is Don Foot. I'm a builder. I've been working in Cambridge for the last 25 years or so. I'm here on behalf of my clients Bret Sampson and Judy Singer who live at 14 Walker Street. They're in academics and had a conference in Vancouver this week and couldn't make it.

What we are trying to do, they have the 1900's I think -- it's half of a I would call it a Philly-style town house, so it's a long, narrow home. A little sitting room in the front, a living room in the middle, and a kitchen in the back. And it had been

rehabbed in the mid-80's like a lot of property in Cambridge, and so they stuck a half bathroom basically right in between the living room and the kitchen. So there's really no place to eat in the house.

What we would like to do is enclose an existing side porch about 80 square feet, add a little -- about 15-square foot coat closet on the back of that, and a new entry on the side of the house. We still maintain all setbacks. We're not violating any of the setbacks. The house is already in violation under the FAR and we are increasing that by about 105 square feet. That's what we'd like to do.

BRENDAN SULLIVAN: Basically it's just an existing footprint that you're enclosing, but I guess you're expanding it out.

CONSTANTINE ALEXANDER: Expanding it out a little bit.

DON FOOT: Yes.

BRENDAN SULLIVAN: Toward the rear.

DON FOOT: Yes.

BRENDAN SULLIVAN: So you would access stairs from the front driveway side and also from the rear.

DON FOOT: That's the main entry for the homeowner. So he parks right there and walk right in.

BRENDAN SULLIVAN: Yes. And the idea is to get some covered.

DON FOOT: Yeah. This, yeah, this is covered right there. So that's about 15 square feet that's included in 105.

BRENDAN SULLIVAN: Yes.

DON FOOT: This area right here is an existing porch and we want to enclose. And this little section we want to put a coat closet because the current coat closet is here, and because we're removing that we're sticking that over here. And this is the

main entry.

BRENDAN SULLIVAN: So the coat closet is far removed from the entry of the house?

DON FOOT: Yes.

BRENDAN SULLIVAN: Right now.

DON FOOT: Yes, the front entry, yes. As I said, they park right here essentially. Their driveway is right on this side of the plot plan. This is the main usable entry. Guests come to the front door and no one else. Many homes --

BRENDAN SULLIVAN: Okay. There is no change in the front setback. There is a slight reduction to the rear, but still within the Ordinance. On the left side there is no change. On the right side you've gone from 12, 4 to 7, 7 in a seven-foot, five requirement. So you're still compliant there and you're not changing the height at all.

DON FOOT: And that's based on the fact that this is a covered.

BRENDAN SULLIVAN: Right. And as far as the open space, it's a slight reduction of that but still in compliant with the Ordinance requirements.

CONSTANTINE ALEXANDER: The only issue is FAR I believe?

DON FOOT: Right. That's the only issue as I understand it.

DOUGLAS MYERS: The increase in FAR is infinitesimal.

CONSTANTINE ALEXANDER: Yes, other than they're pretty substantially over now but it's a very light increase.

DON FOOT: 0.902 I think.

CONSTANTINE ALEXANDER: In a 0.5 district.

DON FOOT: Exactly. There's letters from virtually every abutter in support of it that we included. E-mails from

people.

TAD HEUER: The Harvard faculty
greatest hits lineup.

DON FOOT: Is it really?

TAD HEUER: The letters.

BRENDAN SULLIVAN: Oh, professor's
Row.

CONSTANTINE ALEXANDER: We've had a
lot of cases over the years that I've been on
the Board for Walker Street.

DON FOOT: And they ask them where
they let a whole bunch of them go in the
seventies I think.

BRENDAN SULLIVAN: A lot of them
used to be fraternity houses.

CONSTANTINE ALEXANDER: Really?

BRENDAN SULLIVAN: Yes. We
actually worked on a lot of them, tried to
keep them together literally because they
were --

CONSTANTINE ALEXANDER: I didn't

know that.

BRENDAN SULLIVAN: Yes, most of them were -- people had left them, professors and whatever, and they -- a lot of times they just became fraternity houses.

DON FOOT: Very convenient spot to live if you work at Harvard.

CONSTANTINE ALEXANDER: Oh, yes.

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who would like to speak in the matter 14 Walker Street?

(No Response.)

BRENDAN SULLIVAN: I see none.

And there is some letters in the file of Three Walker Street. (Reading) Dear Bret and Judy: Thanks for sending a detailed report on your renovation plan for 14 Walker. It looks as if the renovations will make the living space in the house a lot nicer for both of you. We do not see any adverse effect on

any of your neighbors, including us, except for the transitory affect of having builders in the driveway. All in all we think it's good for you and good for Cambridge. Signed by Jane Mansbridge, M-a-n-s-b-r-i-d-g-e and Christopher Jencks, J-e-n-c-k-s.

There is a letter from Gail Pool, P-o-o-l. From the description, they don't see anything in the plans that they would object to. I'm not sure where they live. Anyhow, they are in support of the proposal.

And a letter from Anna Bensted, B-e-n-s-t-e-d and Lino Pertile. L-i-n-o P-e-r-t-i-l-e. We are the owners of 18 Walker Street. The house next to it, No. 14, belonging to Bret James and Judy Singer. We have seen the plans for changes to the site No. 14, including the enclosure of the porch, and the new stairs. And we have no objections to the proposed changes.

A letter from Lisa Berkman,

B-e-r-k-m-a-n, One Walker Street.

(Reading) The plans and renovation of the kitchen and small addition outside are terrific. It will make the house more beautiful and add to its value. I support your efforts.

There's a letter -- more letters that say the same.

Okay, that's the sum and substance.

DON FOOT: 18 Walker is the direct abutter. They would be looking right at us.

BRENDAN SULLIVAN: Correct, yes.
Okay.

Close the public comment.

CONSTANTINE ALEXANDER: I'm good.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: I'm good.

BRENDAN SULLIVAN: Doug?

DOUGLAS MYERS: I'm in favor.

BRENDAN SULLIVAN: Mr. Heuer?

TAD HEUER: I'm fine.

BRENDAN SULLIVAN: Let me make a motion to grant the relief requested to perform the work to enlarge and enclose and existing side porch toward the rear of the house and construct new covered landing and steps as per the plans submitted on the dimensional form contained therein.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude the Petitioner from redesigning this side porch providing some much needed covered space and realignment of the interior space which is desirable.

The Board finds that the hardship is owing to the fact that the existing non-conforming nature of the house, that at some point the subdivision of the lot has severely limited the amount of interior space for this particular side of the house, and has

caused some unfavorable and inefficient use of the interior space. This proposal will alleviate that situation.

The Board finds that desirable relief may be granted without substantial detriment to the public good. We also note the letters of support from the abutters and people in the immediate neighborhood.

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

The Board finds that the addition of
105 --

DON FOOT: Yes.

BRENDAN SULLIVAN: -- square feet is a fair and reasonable request.

All those in favor of granting the relief on the condition that it comply with the drawings submitted and initialed by the Chair.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

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

DON FOOT: Thank you.

(11:20 p.m.)

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

BRENDAN SULLIVAN: Water Street. The Board will discuss the matter of 22 Water Street which is a request.

TAD HEUER: Mr. Chairman, I believe that we cannot discuss the matter of 22 Water Street because it would be violation of the Open Meeting Law Chapter 30A of the Massachusetts General Laws.

BRENDAN SULLIVAN: Okay. I guess what I was going to say it's a request for approval for plan modifications. And the issue that's before us is whether or not we can consider it at this moment without some prior public notice --

CONSTANTINE ALEXANDER: Have we received any legal advice from the Law Department on this?

BRENDAN SULLIVAN: -- to comply with the open meeting requirement.

I asked the Law Department whether or not we -- I think the position of the -- your position is that we probably don't need to review it because the changes in the drawing do not affect the relief that was granted by this Board. Okay.

DOUGLAS MYERS: Mr. Chairman, could you explain the basic fact of why this case is before us when it's not on a list and it wasn't --

BRENDAN SULLIVAN: Let me answer that question first.

CONSTANTINE ALEXANDER: He'll get there.

BRENDAN SULLIVAN: What I asked of the Law Department is whether or not they felt that we should review it even though -- and the answer that came back was, yes, that we should review it and sign off on it.

And a little bit of background is that there has been some changes to the drawings that went back to the Planning Board. The Planning Board, with some shuffling of the deck chairs and what have you, approved and amended their initial original permit to you. And so then it was a question of us whether to review it or not.

CONSTANTINE ALEXANDER: Brendan, unless we get something in writing from the Legal Department, I concur with Tad's comments. I don't think we can consider this.

BRENDAN SULLIVAN: So anyhow, I guess the issue that's before us is whether or not we can discuss it without it being prior noticed vis-a-vis the Open Meeting Law.

The feeling of the Board is -- well, No. 1 step is that the Law Department has determined that, yes, we should review it. Now, when is the issue that's before us, and

we're saying that we -- the public can review it, but there should be some prior public notice to that so that we can comply with the Open Meeting Law.

Is that it in a nutshell?

TAD HEUER: Indeed. If the Legal Department has determined that we must make an adjudication on this petition, review the petition modification, then I would suggest the Chapter 30A of the General Laws requires prior notification of the public 48 hours in advance of the meeting, not including holidays, Saturdays, and Sundays. And that the emergency provision as required is allowed only in situations that are literally unforeseen. And seeing as this situation was foreseen and would not qualify for the emergency exception and, therefore, given the requirements of Chapter 30A requiring that all subjects reasonably expected to be discussed by the Board be subjected to the

48-hour prior to the meeting posting and this case was not so listed, I believe we are without jurisdiction here or we would be in the violation of the Open Meeting Law if we did.

BRENDAN SULLIVAN: I would concur with that.

CONSTANTINE ALEXANDER: Yes, I said unless I saw a legal opinion from written in writing from the Law Department saying we could hear the case tonight without public notice, I'm not prepared to hear the case tonight.

BRENDAN SULLIVAN: Okay. So that our opinion should go back to the Law Department.

CONSTANTINE ALEXANDER: Yes. They want to give an opinion, give it to us in writing so we have something to rely on and not just have someone say I didn't really say that down the road.

BRENDAN SULLIVAN: Okay. Do you wish to comment?

MALE: I would have to go back and review the open the public meeting laws. I guess we were -- our position, our feeling is.

BRENDAN SULLIVAN: Identify yourself.

ATTORNEY LOUIS MILLER: Louis Miller, L-o-u-i-s Miller.

TAD HEUER: And you're with the law firm of.

ATTORNEY LOUIS MILLER: I'm with the law firm of Rackemann and Sawyer in Boston. Sorry.

The Variance was granted. The condition that said it had -- the project had to be built in accordance with plans that -- and what exactly it means to be in accordance with the plans. We've had a couple of minor modifications approved by the Planning Board none of which affect the

Variance, which is the 150-foot height Variance. And we've been proceeding in good faith, assuming that we were ready to go and closing on May 1st and all that. And what does it mean to be in accordance with the preliminary drawings that you do for a Variance two years ago and without any changes to what the substance of the Variance was. So that's it.

We were wondering -- we were told by the Law Department and by ISD to come tonight and to address the Board. We're here in good faith. I don't know if there's any administrative. Any -- you can act in an administrative role, an advisory role that would -- to determine what needs to be in accordance with the plans that does require the public notice.

CONSTANTINE ALEXANDER: My view would basically -- first of all, I apologize to have you sit here all night to tell you to

get out of here.

ATTORNEY LOUIS MILLER: It's not your fault. We appreciate your spending the time, we really do.

CONSTANTINE ALEXANDER: If someone has decided that you need to get relief from us, that says that what you want to do is not in accordance with the plans that were submitted, otherwise you wouldn't be here tonight. So there is a threshold issue. And the fact that you're not looking to modify the height, which was the subject of the Variance, to me, to me, that's not conclusive. We look at the whole project. We look at the whole building. And we may say okay on the height because you're doing this, x, y and z and other respects. And we don't -- so I've got to look at the whole project and we can't do that tonight. Again, without giving the public -- it seems to me give the public the right to participate in

that process unless legal tells us we can do that.

ATTORNEY LOUIS MILLER: And can we ask what kind of notice? Is it two-week notice, is it 48-hour notice? What, for example, if we were in a position to come back two weeks from now with 48 hour notice.

BRENDAN SULLIVAN: It's 48 hours.

ATTORNEY LOUIS MILLER: Our concern is a practical matter. Again, we're supposed to close May 1st. It's a \$135 million project that's scheduled to close May 1st. We really have been acting in good -- we're not asking anybody to do anything that they shouldn't do. By all means, we've tried to do everything as upfront and all the rest of it as we possibly could. We've last went before the Planning Board in November, and we've been proceeding ever since to develop drawings and all the rest. So I guess the question is I

understand you're busy, and if we have to, we'd like to make you guys wait around until 11:30, but we'll wait until whatever it is that we have to wait. Can we do this on a 48-hour notice and have this matter considered two weeks from now?

BRENDAN SULLIVAN: Our next hearing is on May --

TAD HEUER: No, April 26th.

BRENDAN SULLIVAN: April 26th. I would say yes, I think under the circumstances.

TAD HEUER: Yes, I mean, my sense is you're not asking for a new petition that would require posting and notice to abutters and everything else.

ATTORNEY LOUIS MILLER: No.

TAD HEUER: If you're coming for, you know, clarification of is this okay within the structures of the Variance that we did and it's in accordance with the said

plans. I think for me that 48-hour notice of an open meeting on an issue known, which would be Water Street. And that that -- my main concern is not the signoff issue. It's the open meeting notice.

ATTORNEY LOUIS MILLER: Okay.

TAD HEUER: And that's the 48-hour notice, the two week and associated notice to other people.

BRENDAN SULLIVAN: I mean, somebody could put both of us in jeopardy in a sense.

ATTORNEY LOUIS MILLER: I appreciate that.

BRENDAN SULLIVAN: And that wouldn't behoove any of us.

CONSTANTINE ALEXANDER: So I'm clear, because I don't know the answer. What would the notice requirement be? Would it something in the agenda for the April 26th meeting?

TAD HEUER: I believe so.

CONSTANTINE ALEXANDER: I want to make sure you get it right is the reason I ask the question.

TAD HEUER: Yes.

ATTORNEY LOUIS MILLER: Yes.

BRENDAN SULLIVAN: It has to be posted on the website. It has to be posted at the Clerk's office basically. Is really what it amounts to.

CONSTANTINE ALEXANDER: Yes, yes.

BRENDAN SULLIVAN: It doesn't have to be a mass mailing and so on and so forth.

ATTORNEY LOUIS MILLER: Okay.

CONSTANTINE ALEXANDER: What about the published agenda though, will be -- it will be on there, wouldn't it?

BRENDAN SULLIVAN: Well, it's an administrative thing and I'm not sure about that.

CONSTANTINE ALEXANDER: I'm not sure either, but we've got to get that

correct.

BRENDAN SULLIVAN: But we'll get that squared away.

CONSTANTINE ALEXANDER: I would think it should be, too.

TAD HEUER: I would suggest it would be in a similar way that we announce on the agenda that we're going to have either Executive Session or when we announce on the agenda that we're going to have an election for the Chair. It's an administrative proceeding that is listed on the agenda as something that the Board will take action on. It is, you know, a known event that is identifiable previous to the publication of the agenda and does not constitute an emergency.

BRENDAN SULLIVAN: Yes, and I think they cover themselves by putting it on the website and also at the Clerk's office.

CONSTANTINE ALEXANDER: That's

fine. And I think that sounds right to me.

ATTORNEY LOUIS MILLER: Okay.

And in order to make sure that that happens, is that -- we'll be glad to take it upon ourselves? How should we make sure that that happens?

DOUGLAS MYERS: Sean, should schedule it right now, shouldn't he?

BRENDAN SULLIVAN: I will make a motion that we hear this matter on April 26th probably at seven p.m.

ATTORNEY LOUIS MILLER: A lot better than 11:30. I like the motion so far.

THOMAS SCOTT: Does it require further posting?

BRENDAN SULLIVAN: I don't think so. I'll double check on this first thing in the morning.

DOUGLAS MYERS: Case not heard?

BRENDAN SULLIVAN: It is a case not heard.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: But anyway I make the motion that we hear this matter on April 26th provided that the Open Meeting Law requirement has been complied with.

CONSTANTINE ALEXANDER: At seven p.m.

BRENDAN SULLIVAN: At seven p.m.

TAD HEUER: I would caution you that in the event that we look at the plans and we say that is certainly not in accordance with the plans and a change needs to be made, there would potentially need to be a Variance which goes -- an amendment to the Variance which goes through all the normal Variance procedures. I understand where you're coming from, with your May 1st closing date. I sincerely hope that's not the case and you're representing to us you don't believe it will be an --

ATTORNEY LOUIS MILLER: We

understand you have to do whatever you feel is appropriate. We appreciate the opportunity to address you.

BRENDAN SULLIVAN: This will be at the Building Department for our preview and for anybody in the general public who wants to preview it, review it.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Okay, so on that motion to hear this on April 26th.

(Show of hands.)

BRENDAN SULLIVAN: At seven p.m. Five in favor.

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

BRENDAN SULLIVAN: We'll see you then.

ATTORNEY LOUIS MILLER: See you then.

BRENDAN SULLIVAN: I will make inquiries tomorrow morning to make sure this

is along the right lines.

ATTORNEY LOUIS MILLER: I appreciate that very much. Thank you very much.

CONSTANTINE ALEXANDER: Sorry we made you stay longer.

(Whereupon, at 11:30 p.m., the Board of Zoning Appeal Adjourned.)

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original of the Errata Sheet has been delivered to the Inspectional Services Department.

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C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
 BRISTOL, SS.**

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

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

this matter.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of April 2012.

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

My Commission Expires:
April 23, 2015

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