

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, APRIL 26, 2012

7:05 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

(7:05 p.m.)

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

CONSTANTINE ALEXANDER: Excuse me, I'd like to call the meeting to order.

Good evening. I'm going to call the meeting to order of the Board of Zoning Appeals. I'm acting as chair, at least initially, and in my capacity as such I'm going to first call case No. 10229, 96 Griswold Street.

Anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The chair notes there's no one wishing to be heard.

There's an e-mail in our file from John Lodge who I will note is the architect for that project that's the subject of that petition. It's addressed to Maria Pacheco.

(Reading) Dear Maria: Thanks for your

help today. As discussed, we'd like to continue the Special Permit hearing for 96 Griswold to the June meeting of the BZA. I will try to come by later in the week to go over our plans with Sean this week, so let me know if you need something in writing and I'll bring it along.

So we have a request to continue this case as a case heard until the June meeting. What dates are available in June, Sean?

SEAN O'GRADY: Either the 14th or the 28th. I do have a request, though. Griswold was asking for the 28th.

CONSTANTINE ALEXANDER: The 28th, that's the second one in June. And it's a case heard and the members who have to be there is myself, Tom, Tom Scott. Are you available on the 28th? Brendan is not here. I assume he is. Tad.

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: And Tim.

TIMOTHY HUGHES: I'm okay with it.

CONSTANTINE ALEXANDER: The chair moves that this case be continued until seven p.m. on June 28th, on the condition that the Petitioner modify the sign to reflect the new date and time.

The chair would note for the record that currently the sign has not been updated. So even if these people didn't request a continuance, we would not have heard the case tonight. So they should be encouraged to take the sign and get it right this time or we'll not hear it on the 28th.

All those in favor of continuing this Ace until the June 28th say Aye.

(Aye).

SEAN O'GRADY: Is there a waiver?

TAD HEUER: Yes.

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

(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. 10158, 8 Coolidge Hill Road.

Anyone here wishing to be heard on that matter?

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. For the record, James Rafferty. This case has been continued at least once, and I think given its present posture, the Applicant is prepared to withdraw.

CONSTANTINE ALEXANDER: Okay. Any comments on this? By the way, anybody in the audience wishing to be heard on this case?

(No Response.)

CONSTANTINE ALEXANDER: The chair will move that this case, per the request of the Petitioner be withdrawn.

All those in favor say Aye.

(Aye).

CONSTANTINE ALEXANDER: Five in favor.

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

ATTORNEY JAMES RAFFERTY: Thank you very much.

(7:05 p.m.)

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

CONSTANTINE ALEXANDER: The chair will call case No. 10216, 10 Avon Place.

Anyone here on this matter? By the way, the members of the Board for this case are Tim, Slater, myself, Tad, and Doug.

ANDREW KEATING: Hello, everyone.

CONSTANTINE ALEXANDER: Hello.

ANDREW KEATING: Andrew Keating representing the Applicants Oliver and Kathryn Grantham who are the property owners. We have some revised documentation --

CONSTANTINE ALEXANDER: This is stuff in the file already or new documents?

ANDREW KEATING: No, no, it's in the file already but just for your use and presentation. I'm sorry, these are all separate. Andrew Kizlinski is the project architect, but he's stuck in traffic right now, but I think we're okay to move on without him and hopefully any questions about the calcs and so forth, if they come up, I can answer.

CONSTANTINE ALEXANDER: If need be, we can recess the case until later in the evening.

ANDREW KEATING: He may come dashing

in here. So, Kathryn Grantham is the homeowner to my right. This is Dash --

KATHRYN GRANTHAM: I apologize for the interruption for having a child here. My baby-sitter canceled an hour ago.

CONSTANTINE ALEXANDER: Not at all.

ANDREW KEATING: And you met Oliver last session, and he would be here tonight if he didn't have an unbreakable business engagement.

So the Board was kind enough to grant us a continuance at the last session that we attended. This, just a quick overview, this is -- we are seeking relief from a couple of Zoning criteria in order to build a small eight-foot-by-ten-foot addition at the rear of this property. And so that's shown on the site plan there. So what we --

TAD HEUER: I'm sorry. I see you have a removed the deck; is that right?

ANDREW KEATING: We did. So we had

opposition from the neighbors to the deck, and generally -- we have letters of support from the neighbors in regard to the --

CONSTANTINE ALEXANDER: I see there's one neighbor in the audience.

ANDREW KEATING: We have a few of the neighbors here. We have letters of support from four of the neighbors, so I don't know if these need to be --

CONSTANTINE ALEXANDER: Yes. We'll read them into the record at the appropriate time.

ANDREW KEATING: Okay. So essentially we've struck the roof deck from the project.

Additionally we've gone back and taken another look at the FAR calcs in relation to the -- in relation to the interior courtyard ordinance, and this was something that was called to our attention by Sean at the last -- called to the attention at the session

at the last session. And what we've essentially found is that in addition to seeking relief from the rear yard setback, we do need to seek relief for the FAR as well. And so what we, what we have is technically an increase in FAR of something like 60 square feet.

CONSTANTINE ALEXANDER: It's 52 square feet.

ANDREW KEATING: 52 square feet.

TAD HEUER: You actually have an increase of 52 square feet; right, not just technically?

ANDREW KEATING: When I say technically, I'm trying to give due concern that there's a swap with the attic space.

CONSTANTINE ALEXANDER: The form shows that you're going to increase -- your dimensional form.

ANDREW KEATING: Correct.

CONSTANTINE ALEXANDER: 52 square

feet of additional FAR.

ANDREW KEATING: That's correct. We are actually -- in terms of gross square footage, we are actually adding -- the additional square footage is around 80, 80 square feet plus or minus. So, I just want to sort of call attention to, you know, what's actually being submitted is it's 52 square feet. We do acknowledge that in reality we are adding 80 some odd square feet to this building.

In terms of hardship, in terms of why we're seeking relief, we're essentially are just trying to meet the needs of this family and this client.

TAD HEUER: When did they buy the house?

KATHRYN GRANTHAM: August 5th of last year, 2011.

TAD HEUER: Were you aware of the size of the house when you bought it?

KATHRYN GRANTHAM: Yes, I was definitely aware of the size of the house.

CONSTANTINE ALEXANDER: Hopefully.

TAD HEUER: Right. So you purchased the house that --

SLATER ANDERSON: Can you turn the mic on there, I think these folks are having trouble hearing.

TAD HEUER: You're on.

I'm going to reiterate the concern that I had at the last meeting, which is that here we're here on a setback violation, now we're here on a FAR violation.

ANDREW KEATING: Right.

TAD HEUER: In my mind the setback and the FAR violation, now the FAR violation, are issues pertaining to massing on this site. Now you note in your application that it's a 2600 square foot lot in I presume a 5,000 square foot required district?

ANDREW KEATING: Correct.

TAD HEUER: Right? So it's essentially half the size?

ANDREW KEATING: That's correct. Sorry.

TAD HEUER: So you note that current side yard setbacks or current yard setbacks are designed for lots 2600 square foot larger than the subject property and therefore should not be applied to this lot without consideration.

My view of a setback is that a setback is designed to protect the neighbors to the property, not necessarily the owner of the property.

ANDREW KEATING: Sure.

TAD HEUER: And that setbacks, unlike for instance GFA, if we're talking about gross floor area, and you said, I have a lot that's 2400 square feet and I only have an 800 square foot house and I'm in a 0.3 district for instance. I need to go over my

FAR because the ratio doesn't work. My denominator is so small that I can't make my numerator a usable house size. I understand that.

Here you have something in the usable house size range, eight to nine-hundred square feet, and you're looking at setbacks and FAR, it seems to be an issue of massing, and the setback in my mind isn't something that is designed to meet a 5,000 square foot lot size. And the setback is there to avoid people from going right up to the lot lines and impeding their neighbor's property, and it's also a safety issue, you know, designed to prevent fires from spreading between houses. In my mind it has absolutely nothing to do with the lot size but everything to do with around the lot.

ANDREW KEATING: Sure.

TAD HEUER: So I mean as a matter of principle but also of law, I'm not quite sure

of the assertion that the lot setbacks are inapplicable because they're on a smaller size lot. I think the lot setbacks apply to any size lot. The fact that they make the building area in this lot smaller, I think it's just a feature of this lot that you have to live with. Not necessarily something that you should be able to overcome because you wish you could build a normal size building on this lot. The size of this means you can't build a normal size building on this lot -- or something that -- at least something that will be a lot under a 5,000 square foot lot.

ANDREW KEATING: Sure, sure.

TAD HEUER: And the general term I mentioned last time is really these are designed to create an issue of -- a limit of massing on a lot that whereas under the previous application, you went by four net square feet of FAR.

ANDREW KEATING: Yeah.

TAD HEUER: But the problem you had you needed to go into the rear setback. The reason that was occurring is because you were cathedraling the main house, so it didn't necessarily have to count all that square footage, but you're getting back to the same issue; right? That the Zoning Ordinance says don't go over above a certain FAR. You were able to meet that, but you were only able to meet that by exceeding a rear setback. In my mind essentially you were meeting one but getting caught by the other, all of which are there and exist in order to prevent massing on the lot. And what you're doing is you're creating massing, you're saying it's only a setback violation, in my mind it's a FAR. It actually is an FAR and a setback violation. It seems to me that this small lot, it supports a smaller house. This house in my mind isn't necessarily not an unlivable

house. It's not something that's so tiny that no one couldn't say no one could possibly live there.

ANDREW KEATING: Sure.

TAD HEUER: Essentially you purchased a very nice, small house that is oversized for this lot as it goes. It's difficult for me to find a hardship where you knew what you were buying into and you're looking to exceed something that is essentially creating more massing on the property than the city has deemed appropriate. So talk to me about why -- how I can get over that.

ANDREW KEATING: Sure anecdotally speaking in terms of usability of the house, what you essentially end up with on this property if we do not carry out this project, is a home in which you need to have your dining room table in your living room and that's essentially what this -- there is no place for

the family to gather around a dining room table effectively unless it's literally placed into the living room of the house. So that's just anecdotally from a usability standpoint. That's the real program problem.

In terms of why we put forward the size of the lot versus the rest of the lots in the area, it's just that generally this lot or this building is more limited in terms of how it can be used and developed, improved, etcetera than the surrounding properties. And I understand your point that it's a feature of the lot and that that's the -- that that is the size of the lot and therefore just to explain why we're calling attention to that, it's just that the district is, the Ordinances are written around what larger lots generally. And so our clients here are more limited than their neighbors, for example, or then maybe the intent would

be -- so that's just to explain why we've, why we've put that forward.

CONSTANTINE ALEXANDER: Let me put some number for everybody's benefit, put some numbers to talk about the context we're talking about here.

The FAR right now is 0.55.

ANDREW KEATING: Correct.

CONSTANTINE ALEXANDER: The district allows, 0.5 and the reason you're over is I think because of relief we granted to the prior owner some years ago. I sat on that case.

ANDREW KEATING: That's what I understand.

CONSTANTINE ALEXANDER: So you want to go to 0.56.

ANDREW KEATING: Correct.

CONSTANTINE ALEXANDER: So it's a very slight 0.55 to 0.56.

ANDREW KEATING: Correct.

CONSTANTINE ALEXANDER: On the setback, the rear yard setback is what we're talking about, right now you're -- the district requires 25-foot setback in the rear yard. I'm taking this from your dimensional form by the way.

ANDREW KEATING: Yes.

CONSTANTINE ALEXANDER: I haven't gone out and measured the property.

ANDREW KEATING: Sure.

CONSTANTINE ALEXANDER: It's now 24 feet six inches. So you're very slightly non-conforming now. And if you build the addition, if we allow you to build the addition and you build it, you'll be 16 feet, six inches from the rear lot line.

ANDREW KEATING: That's correct.

CONSTANTINE ALEXANDER: Just for the record, you're not on the lot line. There is still a good bit of a buffer. Not as much as the city requires by the Zoning

Ordinance to be sure, but there is a bit of buffer and we have a slight FAR problem. So I think that's the contents that everybody should understand, in my mind, should understand the case.

ANDREW KEATING: And additionally the existing rear yard setback, 25 feet, 24 foot, six inches is, you know, give or take six inches, there's a very small margin of area there. So essentially we're not intensifying a non-conforming condition at the rear yard, we are seeking relief to create what would be a non-conforming.

CONSTANTINE ALEXANDER: You are intensifying it.

TAD HEUER: Isn't that worse? You're going from essentially within margin of error of compliance to noncompliance?

CONSTANTINE ALEXANDER: You are.

ANDREW KEATING: I think that's I guess a matter of -- sure. A matter of

opinion.

But so in terms of how much we encroach on the rear yard. It's true, we are not smack on the property line. Our hope is that with the support of the neighbors, as you said, it's a, you know, an issue of protecting the neighbors, not -- and that with the neighbors being comfortable with the scenario, that that is something that helps the case.

CONSTANTINE ALEXANDER: Sorry, we're just passing the file around.

ANDREW KEATING: Just generally, as this gentleman was saying that the issue of the setbacks is to protect the neighbors, and our hope is that with the support of the neighbors here as part of this Petition that that should help to alleviate that aspect.

CONSTANTINE ALEXANDER: At the last hearing we discovered that you had not spoken to the neighbors about this project in a meaningful way and that brought some

opposition. People were here, and some of those people are here again tonight. Tell me about your efforts to reach out to the neighbors with regard to the new plans since the last hearing.

ANDREW KEATING: Sure.

KATHRYN GRANTHAM: Can I do this?

ANDREW KEATING: Sure.

KATHRYN GRANTHAM: I wasn't the one. I originally before the first hearing went to every neighbor and gave them a letter, to let them know what was happening, and gave my phone number and all the contractor's information. I said, you know, please contact us if you have any questions if you want to discuss anything. So they all got a written letter and a little box of cookies. And so, that happened first.

And then we had the hearing and people were upset because we hadn't actually shown them the plans. So we learned our lesson.

And my husband went and spoke with the neighbors that were here, so who are here tonight. I don't know if all of them is here tonight. Paul is here. Okay. Anyway, some of them are here tonight and they're the ones that signed the letter of support. And we wanted to show that, you know, we absolutely want this to be a collaborative process with them because certainly it does affect them. And we did not originally, you know, had even tried for a second floor on the back because we knew that could impede light and air and just the general space back there. And so we removed the deck with absolutely no, no problem. And then reviewed -- we wanted to show them exactly what we sent to you, before we sent it in. So we printed out copies of the plans and went around and sat down with them and talked with them.

CONSTANTINE ALEXANDER: I just wanted to get it on record. You have

listened to us and have reached out. We'll hear the results of your efforts in a moment.

POZZI ESCOT: Sir, is there a possibility to say two words? I need to go home because my husband is not well. But I've never seen --

CONSTANTINE ALEXANDER: You have to identify your name and address.

POZZI ESCOT: Yes, indeed. I own the 24 Avon Hill. And the door we use, it's right next. It's on the same street. My name Pozzi Escot. I'm a professor. I'm teaching mathematics and I'm appalled, very appalled, because she's never come to our house. Never given us anything. This lady lives right next-door to her. It's just really frightening what you're saying because it's not true. I've never seen you. You've never given me any paper.

KATHRYN GRANTHAM: We have actually met. I actually do have your business card

and we did talk.

POZZI ESCOT: When you bought the house --

CONSTANTINE ALEXANDER: I don't want to get into a he said, she said. Your point is that you were not contacted. They said they contacted you.

POZZI ESCOT: Absolutely, no. I'm not the only one.

CONSTANTINE ALEXANDER: Okay, they can speak for themselves.

POZZI ESCOT: But I am appalled at whatever is going on. Really frightened. My granddaughter hasn't been in our house for two months because of this smell and --

CONSTANTINE ALEXANDER: You're appalled with the process. Are you opposed to the relief being sought?

POZZI ESCOT: Absolutely, absolutely. Thank you for giving me this chance.

CONSTANTINE ALEXANDER: Ma'am, can you spell your name for the stenographer?

POZZI ESCOT: Escot, Pozzi,
E-s-c-o-t, P-o-z-z-i.

And the card I gave you was a -- when you bought the house and that was all. That was to welcome you there and I thought it would be okay.

KATHRYN GRANTHAM: So sorry.

POZZI ESCOT: Thank you, sirs, for all the work that you and the attention you give to this.

Thank you.

CONSTANTINE ALEXANDER: Thank you. I'm sorry, go ahead.

ANDREW KEATING: I was just going to, in terms of the -- I know the neighbors will have an opportunity to speak for themselves. I become a little weary of saying that all the neighbors have been contacted because it seems to be a little bit

of a moving target, but the -- my understanding --

TAD HEUER: It's not a very big street, is it? I mean, you're a dead end.

ANDREW KEATING: Yeah, yeah. I guess my point is just from where I, where I sit it seems more neighbors keep appearing. But the from neighbors who I've spoken to, those who have written letters of support, those who are here in attendance, and including this individual who just spoke, my understanding is the only opposition that I've heard or complaint of any kind is to some construction nuisance type issues related to the ongoing renovation project that is on --

CONSTANTINE ALEXANDER: That was the issue prior time around. What your prior owner did, there was a lot if issues about that.

I want to make one thing clear. Zoning is not a Democratic process. We don't just

add up all the yeas and the nays of the neighborhood and grant relief accordingly. We apply the law, and we do. However, we take a lot stock with what the neighbors tell us because they provide us with information we don't otherwise have the ability to obtain. I don't want to go too long about the neighbors. I mean, it's important to us, the Board, that you reach anybody, reaches out to the neighbors before coming before us just because we like to promote neighborhood harmony if nothing else. You've done that and let's not go into any more. The neighbors will speak for themselves.

ANDREW KEATING: Sure.

CONSTANTINE ALEXANDER: Anything more on the merits you want to bring to our attention? The hardship. You've talked about the hardship. The house needs to be liveable, that's a little too strong as Tad points out. You would prefer to have

additional living space in terms of a dining area.

ANDREW KEATING: Correct. And to some of the things that Tad is noting as sort of given that our intrinsic limitations of this properties are also can be construed as hardship on the owners, and that the same way it's sort of well, that's the way the lot is and they have to live with it, I would say that is -- can also be looked at as a hardship in and of itself. A feature of this lot that is particular to this lot that is different from the surrounding lots and that creates this condition here under which we're seeking relief.

TAD HEUER: Are the surrounding lots -- can I see the file?

SLATER ANDERSON: Yes, you may. I'm going to hold on to the transcript.

TAD HEUER: Well, that too.

Are all the surrounding lots on Avon

Place with those abutting you legally sized?

ANDREW KEATING: I can't speak to that.

TAD HEUER: Right.

UNIDENTIFIED MALE: One of the issues is --

CONSTANTINE ALEXANDER: Excuse me, sir. We have to do this in an orderly fashion.

UNIDENTIFIED MALE: I just wanted to describe a lot.

TAD HEUER: We'll get there.

CONSTANTINE ALEXANDER: You'll have a chance.

Anything else you want to add at this point?

ANDREW KEATING: I think that's -- I think that's really it.

CONSTANTINE ALEXANDER: You'll have an opportunity to conclude later.

ANDREW KEATING: Thank you.

CONSTANTINE ALEXANDER: Questions from members of the Board besides Tad?

DOUGLAS MYERS: Yes, I wanted to ask is there any access of the roof of the addition as of now?

ANDREW KEATING: No, sir. There is not. Is it feasible to open -- there are double hung windows that serve this roof. Now there are also, you have to take into consideration, there are some egress window requirements for this room which is a bedroom. So those windows meet egress requirements, therefore, technically one can pass through the window.

DOUGLAS MYERS: Could climb out a window?

ANDREW KEATING: Could, but there is no intent to do so, and obviously a screen would need to be removed and so --

CONSTANTINE ALEXANDER: Is there -- I forget, is there a railing around

the top of the roof?

ANDREW KEATING: No longer, no. There was with the proposed roof deck but now it's a flat roof and proposed skylights as well.

CONSTANTINE ALEXANDER: All set? Any other questions from members of the Board before I open it to public testimony?

TIMOTHY HUGHES: I have a question about the first floor plan. What's this room up front?

ANDREW KEATING: Could you be a little more specific?

TIMOTHY HUGHES: There's only one room in the front of the house on the first floor.

SLATER ANDERSON: To the right of the front door.

ANDREW KEATING: That's office 102.

TIMOTHY HUGHES: How do you get into it?

ANDREW KEATING: From the first floor hallway. When you come in the entry, there's a door into the right.

TIMOTHY HUGHES: It must be closed.

ANDREW KEATING: Yeah.

Essentially that's a feature -- I don't know what -- this may be a graphical thing.

TIMOTHY HUGHES: But just to follow up to that. This house at this point on the front is 18 feet wide, correct? Or thereabouts.

ANDREW KEATING: Let's see, just about, yeah.

TIMOTHY HUGHES: And it never gets -- it gets wider than that in the living room area with the two bump outs the two bays I guess?

ANDREW KEATING: Correct.

TIMOTHY HUGHES: And it narrows down in the back to what? The kitchen area can you tell me that?

ANDREW KEATING: Yeah.

Approximately -- well it's pretty similar. Around 18 feet. It's pretty similar to the front.

TIMOTHY HUGHES: And the four feet shorter.

ANDREW KEATING: Yeah.

TIMOTHY HUGHES: It's a staircase shorter.

ANDREW KEATING: Yeah, maybe more like 12.

TIMOTHY HUGHES: 12 to 14 feet?

ANDREW KEATING: Yeah, 12 to 14.

TIMOTHY HUGHES: Okay.

And where the deck had originally been planned and is being taken out, that roof is getting these two skylights?

ANDREW KEATING: Correct, as proposed, correct.

TAD HEUER: Are those skylights being added in a setback?

SEAN O'GRADY: If you give the addition, we let them have the windows.

TAD HEUER: Are those windows?

SEAN O'GRADY: We treat them as windows, yes.

TAD HEUER: All right.

CONSTANTINE ALEXANDER: Tim, any further questions?

TIMOTHY HUGHES: No, that's it for now.

CONSTANTINE ALEXANDER: I'm going to open it to public testimony.

Is there anybody here wishing to be heard on this matter. Sir, you wanted to be heard?

You have to come forward. Sit over here and give your name and address to the stenographer, please.

JAMES BROWN: Sure. My name is James Brown and I live at 32 Avon Hill Street.

CONSTANTINE ALEXANDER: Are you an

abutter?

JAMES BROWN: I'm a trustee. I am a neighbor and I live -- I am one of the trustees of the condominium of which there are two units and have an interest, a legal interest out on to the road that goes directly, is directly across from 10 Avon Place. So I know that there's been some objection to the construction, to the noise, to the trucks, all those kinds of things. Hopefully -- I'm sorry, tell me your name.

ANDREW KEATING: Andrew.

JAMES BROWN: Andrew will be aware of that. I think he is now. And I think a lot of the heavy stuff is down, over with, which is good. I don't understand all the technical stuff about the FAR and everything, but I guess it has to do with how much space there is around the building and front.

CONSTANTINE ALEXANDER: In the building. It's in the building. FAR.

TAD HEUER: Far is building, side setbacks are around the building.

JAMES BROWN: Around the building, okay. And I don't whether there's a problem with anything in the back.

CONSTANTINE ALEXANDER: There is a problem.

JAMES BROWN: There is a problem with that, too.

CONSTANTINE ALEXANDER: They have two problems. In the rear yard, the addition they're going to put on extends into the rear yard, and per our Zoning gets too close to the rear lot line. It should be at least 25 feet away. It's going to be 16 feet in round numbers.

The other issue is because of the work that's being done inside which is FAR, which goes to density of occupation of the lot, the building will have more square feet, therefore, it's more dense use of the lot and

it's a little bit in excess of what the Zoning Law now permits. They're seeking relief there as well. That's the two things they're seeking relief for.

JAMES BROWN: The what?

CONSTANTINE ALEXANDER: The two areas they need relief, the rear yard setback and FAR, the density of the structure as modified.

JAMES BROWN: Yeah. Well, you know, personally as I say, I'm a neighbor even though I front Avon Hill Street as well as the Avon Place.

CONSTANTINE ALEXANDER: Right.

JAMES BROWN: I front them both. And I have an interest all the way back to that street.

CONSTANTINE ALEXANDER: Right.

JAMES BROWN: That's across from 10 Avon Place. You know, that's really up to the Board to decide, I mean, the legality of

all that.

CONSTANTINE ALEXANDER: I take it then you're --

JAMES BROWN: I'm not a more direct neighbor in other words. It doesn't affect me --

CONSTANTINE ALEXANDER: I understand. I'm trying to get to the point. Are you opposed, in support, or a neutral with regard to the relief being sought?

JAMES BROWN: I'm neutral.

CONSTANTINE ALEXANDER: Thank you. I didn't mean to cut you off. If you have anything more to say.

JAMES BROWN: No, just that, you know, I share a condominium with somebody who couldn't -- the other unit in the condominium is directly along -- closer to the building itself, and this person is very aware of all the things that go on back there for better or for worse. And so I think for the harmony

of the neighborhood it's good if we can keep the noise and the confusion at a minimum.

CONSTANTINE ALEXANDER: Thank you.

JAMES BROWN: Thank you.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard? I can't believe you don't want to be heard.

BOB SAWYER: Are you talking to me?

CONSTANTINE ALEXANDER: Yes. Come up and give your name and address.

BOB SAWYER: Bob Sawyer, I own 14 and 12 Avon Place and I have lived there for 52 years. Can you imagine that?

CONSTANTINE ALEXANDER: I can.

BOB SAWYER: 52 years. And I've seen a lot of changes. But the greatest change that I have seen and which really impacts the man who was just speaking more than he seems to be aware, is that we all own part of the road that comes in from Avon Hill Street. And the lot line between his house

and the Cogan's house which is on the other corner, who's husband name is Bob Cogan, he wasn't here, is right down the center of the street. So, these trucks that have been coming in have been destroying the street. Who's gonna pay for it? Not the City of Cambridge because it's private property. So that's something that's lingering in the background for all of us that live there.

So I just wanted to make that clear, that all of these abutters may think that their entrances on Avon Hill Street but nevertheless they own half of the street that we use, yeah.

Thank you.

DOUGLAS MYERS: Mr. Sawyer, you live on Avon Hill Street?

BOB SAWYER: Mine's the inner most property on Avon Place.

TAD HEUER: To the left.

DOUGLAS MYERS: Where are you

situated with regard to the rear line?

You're over here. Okay. I see on the side.

SLATER ANDERSON: Is yours a two-family next-door?

BOB SAWYER: That's correct. And it always was a two-family. It's one of the very few in the city, you know, owner occupied two-family. But my tenants whose side of the house is most impacted by this construction activity. I don't believe either of them came, although they intended to. They can't even sit out on their porch because all they can see is this enormous Dempster dumpster that's been there all winter.

CONSTANTINE ALEXANDER: Thank you.

BOB SAWYER: Thank you.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard? Ma'am.

NEVA FOWLER: Yes, I have a question. My name is Neva Fowler, Eight Avon Place. N-e-v-a. It's just a question. I

just received this new -- but don't you have two skylights that were put in the roof of the attic? Two windows, two sky --

ANDREW KIZLINSKI: On the other side.

NEVA FOWLER: They're on my side.

KATHRYN GRANTHAM: Yes, on the original part of the house there are two skylights, yes.

NEVA FOWLER: And then you said there's no way to get up there, to get up to the attic. I think you have a trap door and you bring the --

CONSTANTINE ALEXANDER: I think we were talking about the addition that they're going to build in the back.

NEVA FOWLER: This, this has sky --

CONSTANTINE ALEXANDER: Is there any way of getting onto the roof of that addition?

NEVA FOWLER: Well, what I'm saying

is there's nothing written down about skylights here that I can see, and then you asked the question can you have access to the third floor? Well, I don't know. Would there be a trap door with a ladder? They can do whatever they want.

CONSTANTINE ALEXANDER: That issue is not before us here tonight.

NEVA FOWLER: That was not included. That's why I asked. The skylights then on the addition are flat skylights?

ANDREW KIZLINSKI: Yes.

NEVA FOWLER: The rain --

ANDREW KEATING: They're pitched sufficiently to get rid of the rain.

NEVA FOWLER: Okay, that's it.

CONSTANTINE ALEXANDER: Thank you. Anyone else wishing to be heard?

(No Response.)

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

is in receipt of four letters. They're identical.

SLATER ANDERSON: Did she say she was opposed?

CONSTANTINE ALEXANDER: I don't think she's either. I can ask. Do you want me to ask?

The question is are you in favor of the relief being sought are you opposed or do you have no position at all?

NEVA FOWLER: Well --

CONSTANTINE ALEXANDER: You don't have to answer.

NEVA FOWLER: No, I don't have to I know. It would be neutral I think as Bill said.

SLATER ANDERSON: Thank you.

CONSTANTINE ALEXANDER: Thank you.

TAD HEUER: Are there skylights on both the south and north elevation?

ANDREW KEATING: I don't believe so.

NEVA FOWLER: My side.

KATHRYN GRANTHAM: I'm sorry, can you repeat the question?

TIMOTHY HUGHES: They're on the wrong side.

ANDREW KEATING: No --

KATHRYN GRANTHAM: We've added skylights to the original part of the house since those drawings have been made, but they're on the original part of the house so they're not -- I mean, and since there is no attic there's no --

TAD HEUER: Are they in the side setback?

KATHRYN GRANTHAM: Are they inside the setback?

TAD HEUER: Stranger things have happened.

TIMOTHY HUGHES: Indeed.

KATHRYN GRANTHAM: They're on the original part of the house.

CONSTANTINE ALEXANDER: I'm going to read into the record as I said before, we have four letters submitted to us by the Petitioner. They're identical and I'll read the letter and then I'll identify who has signed the letter.

The letter is To Whom It May Concern:
(Reading) I am a neighbor of Kathryn and Oliver Grantham at 10 Avon Place. I spoke at the last Variance meeting to express my concerns at the proposed balcony on the second floor had handrails that could obscure my view or light. I may come to the next meeting on April 26th, but in case I am not there, I wanted to write this letter in support of their application for the Variance needed to build their eight-foot-by-ten-foot seven addition now that they have removed the balcony and handrails.

And the letter is signed by the occupant of Six Avon place. Someone who doesn't put

address and whose signature is illegible. Another person at Six Avon Place, and the other one is at Eight Avon Place.

NEVA FOWLER: Eight is me.

CONSTANTINE ALEXANDER: That's you?

NEVA FOWLER: Yes, I didn't write it. I didn't, really.

CONSTANTINE ALEXANDER: Okay.

DOUGLAS MYERS: Is that her signature is it?

CONSTANTINE ALEXANDER: Do you want to see it?

DOUGLAS MYERS: I can't say it's from Avon Place.

CONSTANTINE ALEXANDER: With that, I'm going to close public testimony.

NEVA FOWLER: Okay.

CONSTANTINE ALEXANDER: Any further comment? You're summing up or further comments.

ANDREW KIZLINSKI: All set.

CONSTANTINE ALEXANDER: So the public testimony is now closed and we will now have discussion among ourselves.

Slater, you want to go first or not?

SLATER ANDERSON: I'm a little confused, you'll forgive me on this. The focus that we've had here, a lot of comments that have been made about this construction. How long has this construction's been going on this? Is this work that you started or the prior owner started?

KATHRYN GRANTHAM: We started it in mid-January.

SLATER ANDERSON: Of?

KATHRYN GRANTHAM: Of this year, 2012.

SLATER ANDERSON: So this has been four months or so this has been going on. Okay.

CONSTANTINE ALEXANDER: I can testify, I was on the Board when the prior

owner came before us and put in a bulkhead or something, and the biggest issue was the truck. And the neighbors were very concerned about the traffic, the noise, the dust, the damage to the road. So that is a -- given the area, it's a very natural issue. But frankly to my mind anyway, the fact that the construction's not an issue before us, this is the Zoning Board. It's not a reason to --

SLATER ANDERSON: I was curious. There's an ongoing renovation.

ANDREW KEATING: Yes.

SLATER ANDERSON: And this would be an extension of that work.

ANDREW KEATING: Correct. There's a renovation scheduled such that in the hopes that the relief is granted that it would continue to, you know, briefly include this phase.

CONSTANTINE ALEXANDER: And it was

fair to say that if we did grant you relief, you would work with the neighbors and the neighborhood to minimize the dislocation to them, the noise, the damage to the common road it would appear?

ANDREW KEATING: Correct, absolutely.

CONSTANTINE ALEXANDER: And the hours in which people would be there. I mean, you've got to be good neighbors.

ANDREW KEATING: Absolutely. And really the intent is both a construction team and also on the part of the homeowners has really been -- who has been and will continue to be a spirit of real cooperation. And it seems like maybe we can all try even a little bit harder. So....

SLATER ANDERSON: That's it.

CONSTANTINE ALEXANDER: Anybody want to comments we go to a vote? What's the pleasure of the Board? I could go to a vote

if you want.

TIMOTHY HUGHES: I'm ready to vote.

CONSTANTINE ALEXANDER: Okay.

Everybody else ready to vote?

Okay. Are these the plans?

ANDREW KEATING: Those are the revised plans showing the --

CONSTANTINE ALEXANDER: Revised. The ones that you were going to go forward with if we grant you relief?

ANDREW KEATING: Yes.

CONSTANTINE ALEXANDER: You understand that if we do grant relief, we're going to tie it to these plans, you cannot change them and this is it?

ANDREW KEATING: Yes. They've been prepared with that in mind.

CONSTANTINE ALEXANDER: Okay.

The chair moves that the Variance be grand to the Petitioner for the relief being sought regarding a dining room addition to

the rear of their existing single-family home.

Such a Variance would be granted on the grounds that, and a finding to be made by this Board, that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship is they need additional living space to have a more commodious of the building that they occupy, particularly with a growing family.

That the hardship is owing to the circumstances related to the shape of the lot. It's a small lot. So that any addition -- it's an undersized lot by our Zoning Law. Any addition would require Zoning relief.

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

We would make the finding that this would be the case on the grounds that the intrusion into the rear yard setback still leaves a substantial amount of buffer to the neighboring property, and safety issues are not created by the intrusion into the rear yard setback.

That the increase in FAR is quite modest, from 0.55 to 0.56.

And that as I indicated before, that there is a need for a young family sometimes in smaller homes to increase the size of their residence. And this Board in the, past at least, has been somewhat, not always, but somewhat sympathetic to those situations provided that the relief being sought is not dramatically different than what is required by our Zoning By-Law and that is not the case here, and that's the basis for the motion.

And the Variance will be granted on the condition that the work proceed in accordance

with plans submitted by the Petitioner prepared by Stack Design Build. They're dated 4/23/12. The cover page of which has been initialed by the chair. It's numbered G1.1. That's the motion.

All those in favor of granting the Variance on this basis say Aye.

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Myers, Anderson.)

CONSTANTINE ALEXANDER: Those opposed?

TAD HEUER: No.

CONSTANTINE ALEXANDER: One opposed. The motion carries. The Variance has been granted.

(7:50 p.m.)

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

BRENDAN SULLIVAN: The Board will hear case No. 10230, 820 Somerville Ave.

Okay, since last we met, if you reintroduce yourself for the record and tell us where we have progressed.

ATTORNEY KATIE THOMASON: My name is

Katie Thomason from K&L Gates, here on behalf of the Petitioner Walgreens.

DAMIAN SMITH: And my name is Damian. I'm a district manager with Walgreens.

BRENDAN SULLIVAN: Okay, Katie.

ATTORNEY KATIE THOMASON: So when we were last here, we explained that Walgreens is leasing space in the Porter Square Galleria between the first and second floor on the White Street side of the building, and is seeking a Variance for a sign exceeding the height restriction and also larger than allowed.

TAD HEUER: Are you still exceeding the height restriction?

CONSTANTINE ALEXANDER: That's my question.

ATTORNEY KATIE THOMASON: Since that hearing, we had at the Board's request, submitted plans requesting the larger sign on

the lower sign band so that it will be conforming as to height but still non-conforming as to size.

CONSTANTINE ALEXANDER: Size, and what about illumination?

ATTORNEY KATIE THOMASON: It's actually because it's internally illuminated, it's too tall. The internal illumination is allowed, it's just not allowed to be that large.

CONSTANTINE ALEXANDER: Yes, okay. But is the sign itself putting aside the illumination, still too large?

ATTORNEY KATIE THOMASON: It's the same size, it's just moved down.

CONSTANTINE ALEXANDER: Yes, but I thought from the community affairs turn down when you went originally, that the problem was not size of the sign but the location.

ATTORNEY KATIE THOMASON: Right.

CONSTANTINE ALEXANDER: So if

you've solved the location problem, why is there still a size issue?

ATTORNEY KATIE THOMASON: Because the Zoning Ordinance doesn't allow -- one of the dimensions of the sign has to be 30 inches or less, and our smallest dimension is 40 inches.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY KATIE THOMASON: So we're still seeking relief for that.

BRENDAN SULLIVAN: There were three defaults the last time. They have corrected one of them.

CONSTANTINE ALEXANDER: Okay, thank you.

BRENDAN SULLIVAN: And I think what you probably have done is brought back a sign proposal somewhat consistent with the Planning Board's comments?

ATTORNEY KATIE THOMASON: Yes.

DAMIAN SMITH: Yes.

CONSTANTINE ALEXANDER: Has the Planning Board commented further on this? Have you gone to the Planning Board with your new signs?

ATTORNEY KATIE THOMASON: We have not.

TAD HEUER: Last time when we were considering the potential of being able to fix it by moving the second story sign to the first story, we had a discussion about whether the dimensions and the scaling of that sign would be different if you're bringing it down ten feet or so or not. Is this scaled differently than the sign we saw last time at the second level or is this simply the second level sign that's been dropped down a level?

ATTORNEY KATIE THOMASON: Exactly. It's the second level.

TAD HEUER: So there's been no additional scaling to the sign, it's the same

dimension?

ATTORNEY KATIE THOMASON: Exactly.
Just moved down.

CONSTANTINE ALEXANDER: The sign
you're proposing now is going to be located
where the Pier 1 Imports sign is?

ATTORNEY KATIE THOMASON: Yes, and
the dentist sign. I have renderings which we
submitted, but I have extra copies.

BRENDAN SULLIVAN: It appears
you're substituting a new sign, new tenant,
for the old sign, a previous tenant.

ATTORNEY KATIE THOMASON: Right.
It's actually two existing, there are two
signs there.

BRENDAN SULLIVAN: Correct, right.

TAD HEUER: So on this photo sim
where is the dentist's sign that will remain?
Is it shown or no?

ATTORNEY KATIE THOMASON: It's not
going to remain.

TAD HEUER: Okay.

ATTORNEY KATIE THOMASON: The original plans were made before the lease was finalized and Walgreens ended up taking more space than originally anticipated.

TAD HEUER: So there's a Pier 1 sign there now and a dentist sign, both of those will be replaced by the -- if granted by this Board, replaced by this sign shown in the photo sim?

ATTORNEY KATIE THOMASON: Exactly.

TAD HEUER: We discussed this last time, just if you could re-clarify for the record, what would be the hours of operation of the sign -- the illumination of the sign?

DAMIAN SMITH: It would be the hours of the store, and currently we're contemplating probably like a six to midnight type of illumination.

CONSTANTINE ALEXANDER: Even though the CVS next door is 24 hours, you're not

going to be 24 hours.

DAMIAN SMITH: Our plan right now is not to be 24 hours? But I guess what I would say --

CONSTANTINE ALEXANDER: You might?

DAMIAN SMITH: Well, we have no plans to do that now, but at some point in the future we may decide to do that. But we have no plans to do that right now.

TAD HEUER: So ideally your request, if we were grant the relief, would be to allow for illumination coterminous with the hours of the store as you determine not to a specific number of hours set?

DAMIAN SMITH: Yes.

TAD HEUER: Okay.

BRENDAN SULLIVAN: Consistent with the store being open, that's what you're --

TAD HEUER: Indeed, yes.

BRENDAN SULLIVAN: Okay.

Any other questions from the Board,

Tom, anything?

THOMAS SCOTT: Is the size of the sign indicated on the detail?

ATTORNEY KATIE THOMASON: It is. It's kind of small. The old plans show -- the original plans submitted show the more detailed plan of the sign itself. This is just a new elevation.

BRENDAN SULLIVAN: Tim, any questions?

TIMOTHY HUGHES: No.

THOMAS SCOTT: So is the height 40?

ATTORNEY KATIE THOMASON: It's 40 inches, yeah.

THOMAS SCOTT: And the length is?

ATTORNEY KATIE THOMASON: It is --

THOMAS SCOTT: 14-something.

ATTORNEY KATIE THOMASON: 14 feet, eleven and three quarters.

THOMAS SCOTT: Okay. And the photo sim, that's scaled appropriately?

ATTORNEY KATIE THOMASON: Yes.

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

Is there anybody here who would like to speak on the matter of Walgreens sign, Somerville Avenue. Yes.

CHRIS WAROB: I'm just an agent for the owner.

BRENDAN SULLIVAN: If you would come and identify yourself for the record.

CHRIS WAROB: Chris Warob, W-a-r-o-b. I just wanted to take a look at the -- where the sign would be going.

CONSTANTINE ALEXANDER: I'm sorry, I didn't catch who you are.

CHRIS WAROB: KS Partners, we own the building, property management company. So it's where the -- oh, okay, right there. Okay. Is there any way I could get a copy of that?

ATTORNEY KATIE THOMASON: You can

have that one here.

CHRIS WAROB: Great. We approve of the sign.

CONSTANTINE ALEXANDER: I'm sure you do.

BRENDAN SULLIVAN: You approved the tenant.

Is there anyone else who wishes to speak on the matter of 820 Somerville Avenue?

(No Response.)

BRENDAN SULLIVAN: There is correspondence from Councillor Craig Kelly.

(Reading) I write concerning the attached Variance application for the signage section of the Cambridge Zoning Ordinance. As I read the Zoning Law, this situation has none of the criteria required for a Variance, and I ask that it be denied. I increasingly worry by allowing a large, well-funded, and aggressive chain stores to change our Zoning Rules.

And then he goes on to basically say that he is against the Variance request. The middle part of this is not applicable. (Reading) The recent attempt to change the sign ordinance eventually failed, and the public actually thinks our current Ordinance should stand as is. I urge the BZA to think long and hard before granting corporate variances that increasingly change the nature of what is most desirable is a locally-based commercial area.

Well, anyhow. Thank you very much for your service to the city. That's very nice. Councillor Craig Kelly.

CONSTANTINE ALEXANDER: Mr. Chairman, for the record I'd like to say on behalf of the Board that I strongly -- or at least for more myself, I hope, I think the Board as well, strongly disagree with the City Councillor's comments about how we grant Variances and the like. I think it's just

wrong, frankly, and I want that on the record.

BRENDAN SULLIVAN: Correct. Thank you.

I will close public comment.

Any other comments from the Board at this point?

TIMOTHY HUGHES: I'm good.

TAD HEUER: I would agree with Mr. Alexander as to his comments. As to the Councillor's letter, I think the letter was submitted after the first application, does not take into consideration the reduction in height that's been presented by the Petitioners this evening. I would also point out that it is always within the purview of the City Council to amend the Zoning Ordinance which we will then duly enforce or grant Variances from as is allowed and permitted by law and at our discretion.

BRENDAN SULLIVAN: Let me make a motion to grant the installation of the

signage at 820 Somerville Avenue for the Walgreen Realty Resources, LLC as per the plan photo simulations submitted in the file.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would severely limit their identification to the public.

The Board finds that this is a major supplier of pharmaceuticals, prescription plans to the general public, and that being easily identifiable from the street, especially at a busy intersection is fair, reasonable, and quite necessary.

The Board finds that the hardship is owing to the siting of the lot of the building on the lot which sets back from Somerville Avenue, somewhat lower elevation from Massachusetts Avenue, the main thoroughfare, surrounded by other adjoining businesses,

and has this identification or lack of identification would severely limit their visibility.

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.

The Board notes the Petitioner's willingness to lower the sign to comply with the height requirement, which is a positive step, and thus will still allow them some adequate visibility.

Also the Board notes that this sign is taking away, doing away with, substituting for two existing somewhat incoherent signage, and that the placement and the lettering of this sign will add some aesthetic value to the front of that building and reduce the clutter.

Anything else to add?

CONSTANTINE ALEXANDER: You should tie it to the photo sims and the plans.

BRENDAN SULLIVAN: As per the photo sims and the plan.

TAD HEUER: And the timing of the illumination.

BRENDAN SULLIVAN: The Board grants as a condition that the illumination of the sign be tied to the hours of operation of the establishment.

CONSTANTINE ALEXANDER:
Mr. Chairman, I just question whether -- I'll be happy to vote for it on that basis, but I question whether you put that condition on. I don't think CVS has that condition. I don't think anybody else in the neighborhood has that condition. I don't see any harm there is for the light being on at three in the morning on that part of Mass. Avenue. It's not shining into a residential area. I mean, why do we care?

BRENDAN SULLIVAN: The CVS is on 24 hours a day. Healthworks is on 24 hours a day.

CONSTANTINE ALEXANDER: If that's the Board's wish, it's fine, but I don't see the need for it frankly.

TAD HEUER: It seems that the grant for relief for identification purposes is not necessarily required when identification of the premises is not necessary because they're not available to be utilized by the general public.

CONSTANTINE ALEXANDER: Well, okay. Not worth our time.

BRENDAN SULLIVAN: I mean, I think it's agreeable to the Petitioner so I -- probably amendable.

CONSTANTINE ALEXANDER: That's fine.

BRENDAN SULLIVAN: All those in favor of granting the relief.

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

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

DAMIAN SMITH: Thank you.

(8:00 p.m.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Timothy Hughes, Tad
Heuer, Douglas Myers.)

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

Okay, if you would introduce yourself
for the record and whoever and whenever
someone is going to speak.

PAUL FIORE: Hi, my name is Paul

Fiore and I'm the architect working with Ron Smith and Harry McShane who are the owners of the property. And I'll just present what, what's happening at the present.

So we were before you last in December of 2011, and immediately following our hearing over at the Historic Commission. And based on your recommendation, we asked for a continuance so that we could go back and address some issues that came up with a few different entities, and I'll tell you what's happened since then and then I'll introduce the project itself.

So since then we have revised the design in accordance with the comments of the Planning Board, the East Cambridge planning team, a few of the most affected neighbors, and there's somebody else.

HARRY McSHANE: Historic.

BRENDAN SULLIVAN: Did you go back before Planning?

PAUL FIORE: Planning, yes. We went before Planning. You should have a letter because it's addressed to you from the Planning Board that --

CONSTANTINE ALEXANDER: I didn't see it.

PAUL FIORE: Actually compliments us rather nicely.

CONSTANTINE ALEXANDER: Oh, yes, I did see this, I'm sorry.

PAUL FIORE: So since then, we have a letter of approval from the Planning Board dated February 14, 2012. The Historic Commission last week, two weeks ago terminated our demolition delay which means they're allowing us to move forward pending what this Board decides. The owners have met with two of the most affected abutters and we'll let them speak for themselves, but we've gone through a lot of their issues. And I've presented it again to the East

Cambridge planning team in case there were any other neighbors who wanted to comment on that. You should have a letter from them. I'm not sure. They didn't give me one.

BRENDAN SULLIVAN: East Cambridge, yes.

PAUL FIORE: Yes, okay.

BRENDAN SULLIVAN: Do you have a copy of it?

PAUL FIORE: Sure, if you've got one, that would be great. Thanks.

My take on that meeting mostly people were pleased with it. There were a couple comments made as I talk about the background of the project.

So 21-23 Sciarappa was originally two separate properties with two houses on it. And the 23 Sciarappa was raised in the 60's and has been I think in line ever since. So what we're faced with is now a legally joined non-conforming two-unit lot. So I mean the

basis of the hardship is that there's no real way under the current Zoning Laws to build a conforming house on that lot.

TAD HEUER: Why is that a hardship?

PAUL FIORE: The size and nature of the lot will not allow you to restore that.

TAD HEUER: Why is restoring a house to that lot required?

PAUL FIORE: It's not required, it's allowed. It's a two-unit lot.

TAD HEUER: Well, it's allowed how?

PAUL FIORE: It's allowed by Zoning rights that you can have two units on this lot.

BRENDAN SULLIVAN: Well, provided that you comply with all the other requirements.

TAD HEUER: Right.

PAUL FIORE: Correct.

CONSTANTINE ALEXANDER: As a matter of use, you can have two units. You've got

to comply with the dimensional requirements which is Mr. Heuer's comments to you.

PAUL FIORE: Right. Basically if we were to keep this house and design another house, the footprint would be so teeny within that configuration that it wouldn't be a viable house. And also it wouldn't comply to the Planning Board's -- their ideas of parking requirements and many other things.

TAD HEUER: Doesn't that suggest that nothing should be built on that lot?

PAUL FIORE: Not to me it doesn't, no.

TAD HEUER: Of course.

CONSTANTINE ALEXANDER: Let me ask the question -- sorry.

PAUL FIORE: It's a vacant lot. It's a hole. I mean, basically if you go down this street, it's a hole in the urban fabric.

BRENDAN SULLIVAN: You're starting off with a blank piece of paper. You're

starting off with a blank piece of paper.

PAUL FIORE: Correct.

BRENDAN SULLIVAN: And I would want you to come in and say this is what we can build as of right. However, we cannot build that as of right because, and then fill in the blanks.

CONSTANTINE ALEXANDER: And you've got to fill in the blanks, too, for a single-family home. You're assuming you have to have a two-family home. But if you built a single-family home, could you comply more -- better or better comply or entirely comply with the dimensional requirements of our Zoning Law?

PAUL FIORE: Possibly.

CONSTANTINE ALEXANDER: That's a big issue. That's a big issue. Then it gets, to me, it gets to the issue you want to push the use of the lot so you can make more money on the lot. But in doing so you're

derogating from the intents of our Zoning Ordinance.

PAUL FIORE: I guess I would agree with that if it were not originally a two --

BRENDAN SULLIVAN: Forget that. You're doing away with that. So once that house comes down, then it doesn't matter whether it's a two or a six or a Taj Mahal. You're starting off with a blank piece of paper.

PAUL FIORE: I'll address the issues -- I mean, there are a few issues with this house that make it what we're proposing, we think, a better solution than it's placement on the property is basically on three property lines.

BRENDAN SULLIVAN: Okay. Again, and I've read this case three times, and the question that -- the hurdle that I cannot get over is why can't you do something there as of right? And until I get the satisfactory

answer to that, it -- I can't get beyond anything else to be honest with you.

CONSTANTINE ALEXANDER: You keep trying to tell us this is better than what's there now. That's not the issue before us. We want to know what you're doing here has to be -- I mean, is there a better solution starting with that blank piece of paper that Brendan has pointed out that better complies with our Zoning Ordinance? I suspect there is, but you've got to build a single-family house.

PAUL FIORE: That's correct.

CONSTANTINE ALEXANDER: Okay, and maybe that's what you can build on this lot given its size. There's no Constitutional right to a two-family house. A two-unit house.

RON SMITH: If I could speak. Ron Smith, one of the owners the 21-23 Sciarappa Street.

When we bought the property, we intended on renovating the two-unit house that's there now and have living spaces. We've done all over the city and in the basement and have two separate units with outdoor space. What we didn't know about the property when we bought it was some of the structural issues. The entire back addition of the property is wood. It's been parched to look like it's a cement foundation, but below grade it's wood. So the whole back portion of the property has to be ripped down to try and to do anything with it. It has to come down completely. So we didn't -- by the time we started running the numbers on the repairs, we couldn't repair the house. We had to almost totally tear it down to start over and rebuild it. And we had a two-unit building with a fair square footage with living space in the basement that's heated even though it's it wasn't utilized for a long

time, there's heat that exists in the building since the forties.

TAD HEUER: But you're going from a 0.79 to a 1.01 in a 0.75. So when you say you had a good size building there, you do have a good size building on that lot. That's a 0.79, you're 0.4 over. I can kind of see if you want to do a 0.79 conforming on the merging lots. But you're not asking for 0,79 on the merging lots, you're asking for 1.01. Essentially what you're doing is you're asking for a lot that is only support 0.75 to go to 1.01 when there is nothing on the lot; right? The lot is -- so, I'm afraid we're kind of mixing and matching, at least in my mind. We're talking about the existing house on one hand, and then we're talking about the house not being there on the other hand. You know, it's a, you know, it's shorting or scat. It's alive and dead at the same time. Here I think that what you're

talking about is a blank lot, the blank lot, once it's blank, has to comply with Zoning. That's -- the Zoning Ordinance is written and designed to eliminate non-conforming lots within the City of Cambridge, and to have a more orderly use of those lots in accordance to the Ordinance. Usually when we have someone who comes in with a property and they say I want to add an addition on to it or something like that, we say the hardship is that you have a lot where the house is positioned on three lot lines, for instance, and they want to add a small addition on the inside, and we say we understand that because there's a hardship you don't, we sometimes say, you know, the hardship where you'd have to tear down the house and build a house conforming in order to get that addition, that seems like a bit much to ask of someone who wants to just expand their kitchen.

Here you're coming in and saying we will

demolish that house. So that's no longer the hardship. That you want to preserve the house and you need a bit of relief. You're saying the house is going to go. So, therefore, we have a conforming lot. The conforming lot then has apply with Zoning as any other empty conforming lot would have to. And that's I think where you're hearing some of the concerns from the Board because you're essentially operating as though the house is still there even though you've conceded the house won't be there. And I'm having difficulty allowing both two exist simultaneously. I think you have to go with either one or the other. You go with the house is there and you get a small addition to it maybe, or you take down the house and you conform with the Zoning. You can't take down the house and not conform with Zoning. That's where my concern is.

CONSTANTINE ALEXANDER: And a

post-script to that, and I endorse everything Tad is saying, what you haven't told us and you're not prepared to tell us, if you built a single-family house there, what kind of Zoning relief, if any, would you need. And I assume it would be a lot less Zoning relief and that's significant to our Board. If you could build one as a matter of right without any Zoning relief, that would be more significant. And, again, you keep directing us to our the two family-house has got to be torn down now and what you want to build, and there's a disconnect in that analysis. We've got to understand, you've got a blank lot. Forget about whatever -- I don't want to repeat what others have said one more time. Forget about the house you're tearing down. You're starting with a blank lot. Tell us why we should allow you the relief you want, which is significant, to build a two-unit structure when perhaps you can build a single

unit structure on the lot and with less departure from our Zoning, if any.

RON SMITH: Well, again, I don't know that it matters, but when we bought the property we bought it with the intent of having the two-unit building. The purchase price we paid reflected that.

BRENDAN SULLIVAN: Which, again, let me go back to my -- what I always say is that what you paid for the property is your cost, but that does not equate into the value. The value of the property is what you can do with it as of right without any relief from the Board.

RON SMITH: Right.

BRENDAN SULLIVAN: That's the true value. Now, if you overpaid, that's your cost. That's not your value. So now because you have gone beyond the value and you're starting off at a high number, now you have to justify that high number by now coming

back to us to say that we need to build a building a third larger than what is permitted, 25 percent larger than what is permitted, in order to justify that. I'm not sure if that's our mission in life here.

CONSTANTINE ALEXANDER: The hardship that you need for a Zoning purpose is not a financial hardship as an investor in real estate.

BRENDAN SULLIVAN: Now, if you came down to us and said, I can build as of right this two-family house, however, there is this big deposit of peat, rock, whatever it may be, and in order to build on that, a section of this house, it would be a hardship to us. So can we shift that over to encroach a little bit on the side yard setback or forward to the front yard setback or something? That, and the courts have found, is a fair and reasonable request, and because of soil conditions, shape or topography, then we

could grant relief. But to come down and just basically say in order to justify what we paid, we have to put up this two-family house and this is the size of the two-family house in order to sell both sides and in order to recoup our investment.

Does that resonate with other members of the Board?

TIMOTHY HUGHES: Yes, exactly. I mean, that's a hardship. It's not the legal standard of a hardship that we have to find in order to grant relief.

TAD HEUER: And let me also say like, personally I may like this solution of more density in this neighborhood. I mean, it's a dense neighborhood and, you know, the design seemed, you know, I'm not a huge modernist, but the design seems reasonable for developing a two-family in that size. That doesn't enter into the equation at all because we're bound by the Ordinance and the

restricters of where we -- to the extent to which where we can grant relief and to the extent to which we're not allowed to grant relief because essentially it's as though we're legislating like the City Council, and we can't do that. We can, you know, go a bit beyond, but we can't go so far beyond that we serve the authority of the elected officials. We're just appointed. We enforce the Ordinance and we look at exceptions when warranted. We don't write the Ordinance. So apart from whether we think it makes sense, you know, even as you note, gap in the streetscape and things like that. To the extent that gaps in the streetscape need to be changed or it looks wrong or something else, it's outside of our limited jurisdiction to grant. We have to look at the Ordinance the way it's written and apply it, and once it goes beyond what the Ordinance allows, we're not entitled, we're not

authorized. It would be illegal for us to do anything else. So you've got to get us within that hardship grounds that's authorized by statute in order for us to even have the authority to think about granting a Variance like the kind you're requesting.

CONSTANTINE ALEXANDER: And, again, from my perspective, despite maybe the hostile nature of my comments, I've not made up my mind, but what I'd like to know more about is other solutions that might be less detrimental from the Zoning point of view. I don't care what it cost you. I'm sorry. I know it's a real issue for you, but it's not our issue. But I want to know if you want to do a single-family house here what would the Zoning issues be here? If you can't at all with the same Zoning relief you need now, to me that's influential. I think that might put me over the top. But without that information, I can't support the relief you

want.

PAUL FIORE: With regard to that comment, a larger single-family house on this site isn't what, this neighborhood, it's dense. It's got a lot of smaller houses. And I mean one of the comments, I mean, I get this doesn't respond to your legal issue, but one of the comments from the East Cambridge planning team is that they liked the idea of more sort of family-oriented houses. This is like a three-bedroom unit and it would attract --

CONSTANTINE ALEXANDER: They also said they don't like two curb cuts being created --

PAUL FIORE: I could talk about that.

CONSTANTINE ALEXANDER: They weren't a hundred percent in support. They raised issues that your two-family house creates that could be solved if you didn't

build the two-family house on the property.

BRENDAN SULLIVAN: I just need to see an alternative. You know, this is what we can do as of right, however, we can't do it because and then --

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: -- go beyond that. Rather than saying this is what we want to do.

PAUL FIORE: Well, I understand that. You can obviously build something there. So you want to see what it is and why it works or does not work?

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Doug, have you any questions or comments?

DOUGLAS MYERS: No, no, I think what I would have said has already been stated by the Board more effectively than I can say it.

BRENDAN SULLIVAN: Tim?

TIMOTHY HUGHES: Well, I mean I

agree with all your arguments about the, you know, tearing it down, it's a blank slate. But even if you wanted to use their arguments that, you know, there was a two-family house there, that doesn't justify the jump from 2800 square feet to 3500 square feet. Your arguments don't support that.

PAUL FIORE: Yeah, and I guess.

TIMOTHY HUGHES: It's like coming in asking for two units at about 1400 square feet a piece, I'd be looking at this entirely differently.

PAUL FIORE: Well, they're only 1600 with the living space when all is said and done.

TIMOTHY HUGHES: It's counted as 17 almost 18.

PAUL FIORE: Right. And I guess we were under the assumption that that what was present on that lot previously had some jurisdiction.

BRENDAN SULLIVAN: No.

DOUGLAS MYERS: You can't get the benefit of what was there before.

CONSTANTINE ALEXANDER: Once you tear it down, it's gone.

TAD HEUER: Even then --

TIMOTHY HUGHES: That was only 2800 square feet.

RON SMITH: That was an additional 20-something hundred square foot house on that lot.

TAD HEUER: 50 years ago?

RON SMITH: Yeah. That was two -- so it was 40 some -- 5,000 square foot on the lot and the --

BRENDAN SULLIVAN: And once it comes down, it's gone.

PAUL FIORE: That's the part that I --

CONSTANTINE ALEXANDER: Again, I think there's a gap in the case that you've

got to present to us to persuade us. We need more -- I think you've just gone down a very narrow road. You need to come back, show us an alternative, things you can build on the lot that are more in conformance to our Zoning By-Law. Even a two-unit place even smaller in size if it's feasible. We need to know all the range of alternatives before we can make a decision to decide whether you have the hardship.

TIMOTHY HUGHES: We don't need the range of alternatives. We can just vote this down tonight if we want to.

CONSTANTINE ALEXANDER: We could. I want to give them an opportunity to see if they want to continue the case.

TIMOTHY HUGHES: I'm tired of where this is going. We're just going back and forth over the same things. Do you want us to continue this case or do you want us to vote on it?

DOUGLAS MYERS: I think the Applicant should be given a chance myself, and I think they understand loud and clear that if they want to present, they should present the best single-family plan they can, and even if they don't like it, then they should have the best two-family plan they can. One that responds to the objections to FAR and so on that other Board members have made and then we're in a position to go forward.

PAUL FIORE: Just to be clear, if we were to come back with a -- I mean, it's the issue of single-family versus two-family will always come back. If we came back with a smaller two-family that required some relief --

CONSTANTINE ALEXANDER: True. We consider it. We can't say we're going to grant you relief. That's absolutely the case. But you've given us what you want, and

we want to know what other alternatives are there before we decide what we want, okay? That's really what it comes down to. Until I have all the range of alternatives, I can't decide. Speaking only for myself. I can't speak for other members of the Board.

DOUGLAS MYERS: It seems even if your heart isn't in it, you ought to be responsive to what Board members have indicated for a single-family proposal. You don't have to build it. If we approve only the single-family in that case you don't have to build it.

CONSTANTINE ALEXANDER: Or a smaller.

DOUGLAS MYERS: Or a smaller two-family. That would be responsive to what the Board has indicated.

RON SMITH: We did spend sometime, and this may not answer that question. We did spend sometime on the planning in trying

to reduce the size of that existing two-family house by tearing down the part that's the biggest issue in the back and adding some kind of an addition to make up the space that we tore down so that we could have a structurally sound structure by leaving the main part of the house, and then another structure that replaced that square footage and have a two-unit town home but we couldn't resolve the parking issues with that, with that existing equation. They wouldn't get on board with anything that we did outside of that. So that's the reason I think we thought we were trying to get compliance with all the other Boards with this design as well and that it was, that it was important here.

CONSTANTINE ALEXANDER: You should know, if you don't, that we can grant relief for parking through a Special Permit process and it's pretty, much lower standards than a Variance. So don't feel you're out of luck

if you can't provide two, from a Zoning point of view, if you can't provide two on-site parking spots. You can seek relief for that.

RON SMITH: So we'd like to ask for a continuance then.

BRENDAN SULLIVAN: That's fine. The people I think have come down, and let me just ask if anybody would like to speak on the matter?

Sure. Just come up and identify yourself, please. What I think is on the table, what they're going to propose that we continue this matter but I'll allow you to voice your opinion.

MICHELENE FEDERMAN: I'm Michelene Federman, F-e-d-e-r-m-a-n and I'm on Sciarappa Street, on one side of this property. That I've had many discussions with these people and they've been very good and they've been trying to be very accommodating, and I -- the concerns that

I've had have been the ones that you've expressed about the size, and we've talked about that. And they know that I would bring it up. And I -- my view was to have the two houses, two units but smaller. And that's what I felt could probably be done because I understand what they're trying to do. And they say they're trying to also be good neighbors and they have been very nice to -- at least to myself and other people. But I do not -- as well as the FAR, all along has been much too large to my liking. But from what I understand of the Zoning since the old house that is going to be demolished, was a two-family house. That that lot could support a two-family house, but smaller than what they're proposing. So, that's all I have to say.

BRENDAN SULLIVAN: Great, thank you.

Anybody else? You're letter is in the

file anyhow?

UNIDENTIFIED FEMALE: I'll hold my comments.

BRENDAN SULLIVAN: Nobody else? Let me close public comment at this time.

When do you think you'll be ready to come back to us?

PAUL FIORE: I don't know. Can we, can we call and schedule it?

BRENDAN SULLIVAN: We have to set a date tonight.

HARRY McSHANE: What's your next available hearing?

BRENDAN SULLIVAN: Sean, we're booked up for May. When are we in June?

SEAN O'GRADY: We are the 14th.

BRENDAN SULLIVAN: June 14th and after June 14th.

SEAN O'GRADY: It's open sail after that. 28th and then we can go into July.

BRENDAN SULLIVAN: The 14th or

thereafter.

HARRY McSHANE: June 14th.

BRENDAN SULLIVAN: June 14th.

CONSTANTINE ALEXANDER: Can you
make it on the 14th?

TIMOTHY HUGHES: I'm not sure that I
can.

SEAN O'GRADY: The 28th.

TIMOTHY HUGHES: The 28th is more
definite.

BRENDAN SULLIVAN: 28th?

The thing is if you went on the 14th and
Mr. Hughes is not here, you have to go with
four members. You really should go with five
members.

The 28th works?

CONSTANTINE ALEXANDER: You
understand, you need four votes, not a
majority of the people here. So if you only
have four of us, you need all four. If you
have five of us here, you can get still one

dissenter and still get the relief. So you're better off, that's the point, you're better off with all five of us.

BRENDAN SULLIVAN: Let me make a motion then to continue this matter until June 28, 2012, at seven p.m., on the condition that the Petitioner -- we have a waiver, Sean, do we?

CONSTANTINE ALEXANDER: Yes, we do.

BRENDAN SULLIVAN: Going forward. And the Board notes that there is a waiver of the statutory requirement for a hearing in the file signed by the Petitioner.

That the Petitioner change the posting sign, maintain the sign as per the Ordinance, change the posting sign to reflect the new date of June 28, 2012, at a time of seven p.m.

That any new submissions and applicable dimensional forms be in the file by the five p.m. on the Monday prior to the June 28th hearing.

DOUGLAS MYERS: Case heard?

CONSTANTINE ALEXANDER: Yes.

TAD HEUER: If you come back with a plan that needs parking relief, for instance, if you need something that the parking doesn't quite work, the 28th gives you enough time -- you haven't advertised for the parking relief and you'd need to advertise it, you'd need to file a new case. But it gives you enough time if you kind of work through your plan. You say we've got something, it all works or it comes really close except for the parking, go to Inspectional and file, you know, by early June another case, and I think I would ask the Board to try to hear that coterminously because it's relatively minor relief, it's Special Permit relief.

SEAN O'GRADY: We've already closed June out.

TAD HEUER: Right, well, I'm saying

to the extent that I understand it's closed, I would suggest to the Board that we may consider, you know, make an exception to allow them --

BRENDAN SULLIVAN: Sufficient time for public notice and then --

TAD HEUER: Correct.

BRENDAN SULLIVAN: -- I would agree with that. So I think we need to be in contact with Sean to make sure where all the ducks are, and in case you do need some additional relief, that may require another case, though, that it can be heard on that night also. This case can go away, and the other case can be heard. It would behoove you because going forward it could push you way off.

TAD HEUER: The other question, and this is more informational than anything else, but to address what needs to be addressed, on A14 the parking layout.

PAUL FIORE: Yes.

TAD HEUER: My only question was on your proposed marking layout space 3, which is the space between the two curb cuts, I confess I'm not an expert on the parking regulations. My sense was that there would need to be space on the either side of the curb cut or turning radius, and that would reduce the amount of space of what you're designating as an 18-foot space three to let them --

PAUL FIORE: Right. We spoke with Jeff Perenti (phonetic) and he basically said there is no written -- and that, that's what a standard space is, but cars are usually 15 to 16 the most so that provides -- he felt that was adequate.

TAD HEUER: All right. I just wanted to make sure that didn't come up to bite you later on.

PAUL FIORE: Yeah, no, we did our

research on that. That came up at the East Cambridge planning team as well.

TAD HEUER: Okay, thanks.

DOUGLAS MYERS: It seemed that you had a result of five minus one plus two equals five, and I very sympathetic of to Mr. Heuer's question. Five parking spaces minus one curb cut plus two curb cuts still room for five.

PAUL FIORE: Still room for five. Plus the cars were off the street so it's actually --

DOUGLAS MYERS: I'm glad you addressed that.

BRENDAN SULLIVAN: On the motion to continue this.

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

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

(8:30 p.m.)

(Sitting Members: Brendan Sullivan,
Timothy Hughes, Tad Heuer, Slater Anderson,
Douglas Myers.)

BRENDAN SULLIVAN: The Board will
hear case No. 10239, 26 Oxford Street.

You would introduce yourself for the
record.

JENNIFER GRAVEL: I'm Jennifer
Gravel here on behalf of Harvard University.

CRISTA MARIN: I'm Crista Martin

also here on behalf of Harvard University.

JENNIFER GRAVEL: We're here to request an amendment to existing use variance to operate the farmer's market. We currently have a Variance to operate at the -- just adjacent to the overpass between Memorial Hall and the Science Center. The -- there's a city reconstruction of the Harvard Square Tunnel, and a restoration of the surface of the overpass will necessitate that this area be shut down for construction staging work. And we would like to continue operating the market during that time so we'd like to temporarily relocate the market to a new location at 26 Oxford Street which is the area we'll call the Museum Green. It's just in front of the Museum of Natural History. And we would like to do this just for one season and then move back to the originally approved location after that.

The original Variance was approved in

2005 and the market has operated successfully every season since then. It runs from early June till late October.

The market is a centerpiece of the Harvard's literacy program. This is an educational project to educate the community. Harvard, the Harvard community as well as the broader community on agriculture, nutrition, community, and food preparation. And the market itself is also a popular amenity for both the Harvard and Cambridge communities which really has limited access to locally sourced and fresh produce as part of the city.

So a little bit more about the relocation site. The relocation is completely on the campus, in the green space in front of the Museum of Natural History. This particular site was chosen due to its proximity to the current site. We thought it was important for the market to continue to

serve the same clientele. They have sort of established a base clientele over the years. It was also very important that it remain visible to the public way. We see this not only the university but the community as well. So we didn't want to have it too internal to the campus. This is on the campus. It does front on a public street. We thought that was important to maintain that exposure. And it also had to be a location that had a workable -- that could provide a workable layout for the market on this site. It was flexible enough and we felt pedestrian friendly enough to work for a farmer's market. The market will continue to operate as it previously operated which is a from probably mid to late June to the end of October on Tuesdays. Open for sale from noon to six. Generally it's setup from ten a.m. to noon and a break down from six to seven p.m..

As before, there will be a market manager from dining services on-site from the beginning of set up until the end of the break down. Until the site is clear and clean there will be a manager on-site that will deal with issues that might arise and provide assistance to anyone who needs it. It is our hope to continue the market through the construction period to not have to shut it down for the year. I think that shutting it down would be a hardship to the educational mission of the literacy program as well as university. We also believe it would be a disappointment and a hardship for the vendors that sell there, and the larger community that has come to rely on it as a source locally sourced produce.

There will be -- most of the -- all of the vendors are returning vendors from previously. So they're all very familiar with how the market operates. And as they

did previously tend to set up and take down efficiently and quickly and have been good stewards of the site. So we would expect that to continue.

BRENDAN SULLIVAN: Where does the general public park?

JENNIFER GRAVEL: The previous market, as well as this one, a vast majority of the patrons arrive by foot. And that has been the case. We did not provide parking previously. I would imagine that if they are driving, would be parking -- there are metered parking spaces.

BRENDAN SULLIVAN: There isn't a problem because there just isn't any basically.

JENNIFER GRAVEL: There is some metered parking. It's never been raised as an issue in the past.

BRENDAN SULLIVAN: And as a detail there obviously to keep them moving.

JENNIFER GRAVEL: Yes.

DOUGLAS MYERS: Nonetheless despite those considerations, could you just simply compare the two proposals with regard to parking? I mean, in terms of any consideration that might be given to parking.

JENNIFER GRAVEL: Sure. The previous -- well, I mean, we'll start with this market. As you can see the layout, we wanted to limit the number of vehicles, farmer's vehicles parked actually on the site to remain a pedestrian-friendly environment. So when -- in the application process for the market, vendors were asked if they could park off site. And most of them said that they do that. There were six for which that wasn't really feasible because they tend to be high volume farmers. They -- so they have to sort of restock their table frequently. Or there's a, for instance, a health code reason why they have to have a sort of a refrigerated

vehicle on-site because a seafood vendor, for instance, who needs a refrigerated vehicle. So for those vendors that will be parking off site, we made arrangements for off-site parking at the Harvard University's Oxford Street garage which is this -- our closest facility to the site. And we're making arrangements so they can have easy access to that site.

At the other location the -- all of the vendors parked on-site. The character of this area is a bit different, I think -- and there was a strong interest in a lot of the users of the surrounding buildings to maintain as much of this open air as possible. So we really wanted to sort of respect that and try to accommodate as much off-site parking as possible for the vendors.

BRENDAN SULLIVAN: Okay. Any questions? Further questions?

DOUGLAS MYERS: I've asked mine.

TAD HEUER: I just have a technical question. So, you're operating under a Variance now for the site at Science Park. I will just note and -- well, for the purpose of the Board, that Variance for a non-conforming use in a Res C-3 District that not have been used since October of 2010 and it will continue to not be used, if that makes sense, until June of 2011. It will continue not to be used until June of 2013; is that right? The farmer's market purposes.

JENNIFER GRAVEL: Yeah, assume roughly the market closed this last season around November. So November 2011. We fully intend to open the market at the same location in 2013. I should say that there is a possibility that it may not be exact same location which we may be back before you. Your question is the duration of time for which the Variance --

TAD HEUER: Is not used because it

could constitute an abandonment of that use, which depending on how it's viewed, of because it's a non-conforming use and it's a Variance could be viewed strictly as to an abandonment as of when it's evidence that you're not using it. You're not using it because there's construction going on so it's at least in my mind understandable temporary abandonment. But as to the law, just think about it when the time comes, whether you actually need a new Variance for the Science Park site because 9212 has been abandoned and therefore lapsed because you are here temporarily for a year on the Oxford Street side. So not necessarily something for tonight but just to keep in mind.

JENNIFER GRAVEL: Yeah, thank you. What is the opinion of the Board on that? Is that within the time frame of abandonment?

SEAN O'GRADY: Were you under a Variance at the current location or a Special

Permit?

TAD HEUER: Yes.

SEAN O'GRADY: Under a Variance.

JENNIFER GRAVEL: Under a Variance.

Yes, they can come back in 50 years and seek a Variance.

DOUGLAS MYERS: I think if the worst case is if you apply for a Variance, the Board would be very favorably disposed.

JENNIFER GRAVEL: Okay.

BRENDAN SULLIVAN: Let me open it to public comment.

Is anybody here who would like to speak on the matter at 26 Oxford Street, the farmer's market.

(No Response.)

BRENDAN SULLIVAN: I see none. And there are no letters in the file.

There is a correspondence from the Planning Board. They have reviewed the above case but they leave the determination

to the Board with no comments or recommendations.

Let me make a motion, then, to grant the relief requested which would be to amend the existing Variance as obtained in case No. 9212 granted on January 26, '06, for the location next to the Science Center and Memorial Hall.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship not only to the Petitioner Harvard University, but also to the Harvard's food literacy project, a project between Harvard University dining services, Harvard School of Public Health, University Health Services, and Harvard College, and also the general public would also be at hardship if a literal enforcement were enforced.

The Board finds that the hardship and the reason that they're here is because the

existing site, which has been in existence since 2006, has to be closed down due to repairs to the underground tunnel for repairs and that the site would be too dangerous to hold this farmer's market, and relocation to this site is warranted and necessary in order to accommodate the farmer's market.

The Board finds that desirable relief may be granted without substantial detriment to the public good. In fact, it will enhance the public good, and the program of the Harvard food literacy project to be relocated at this particular site.

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

All those in --

TAD HEUER: Do you want a termination date?

BRENDAN SULLIVAN: The Board finds that on the condition that the hours of

operation are Tuesday from twelve p.m. to six p.m. from June to October.

TAD HEUER: 2012.

BRENDAN SULLIVAN: 2012. And you're saying it's not going to go --

JENNIFER GRAVEL: It is not our intention to keep the market in this location until the other side is preferred.

BRENDAN SULLIVAN: Do we want to put it for one year?

TAD HEUER: Otherwise they could hold farmer's markets there for as long as they wish.

BRENDAN SULLIVAN: Therefore, as one year as per the proposal.

TIMOTHY HUGHES: Can we make it two years in case the construction runs over or there's some problem with the site?

SLATER ANDERSON: I second that.

TAD HEUER: That's fine.

BRENDAN SULLIVAN: So, let me amend

that, then, for the Variance to run for a period of two years from June to October of 2012 to June through October of 2014.

TAD HEUER: That would be three years.

BRENDAN SULLIVAN: I'm sorry '12 and '13, two years.

TAD HEUER: The Variance shall terminate on the date --

DOUGLAS MYERS: Not to exceed two years.

TAD HEUER: I was going to say the Variance shall terminate on the date certain November 30, 2013.

BRENDAN SULLIVAN: That's fine.

DOUGLAS MYERS: You can abandon it before then.

TAD HEUER: Yes.

TIMOTHY HUGHES: Wait a minute, that's two years and one month.

BRENDAN SULLIVAN: Anything else to

add?

TIMOTHY HUGHES: I'm good.

BRENDAN SULLIVAN: Delete, change
amend?

All those in favor.

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

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

BRENDAN SULLIVAN: Good luck.

(8:45 p.m.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Timothy Hughes, Tad
Heuer, Douglas Myers.)

BRENDAN SULLIVAN: The Board will
hear case No. 10240, 85 Hamilton Street.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank
you. Good evening, Mr. Chairman, members of
the Board. For the record, my name is James

Rafferty. I'm an attorney with the law firm of Adams and Rafferty located at 130 Bishop Allen Drive in Cambridge. Appearing this evening on behalf of the Applicant.

Miltenyi Biotic, M-i-l-t-e-n-y-i. Biotic, B-i-o-t-e-c (sic). It is a biotech company located at 85 Hamilton Street.

CONSTANTINE ALEXANDER: It's Biotic by the way.

ATTORNEY JAMES RAFFERTY: You're right. It is Biotic. It has a double something over the O's. What is that? It's the German.

CONSTANTINE ALEXANDER: Umlaut.

TAD HEUER: How are we doing with the stenographer over there? You got all that?

ATTORNEY JAMES RAFFERTY: That's why I gave her the card, because seated to my right is Harald Fritzenkotter. And the project architect is seated to my left, Christopher Chan. And Mr. Chan has prepared

the drawings and the application.

This is an application for a Variance that seeks to put essentially two additions onto this structure. This is a warehouse building, a rather handsome building, on Hamilton Street in Cambridge, but originally built for the Myerson Tooth Company.

Cambridge actually in this little area had a lot of tooth denture manufacturers in this little stretch that was Ideal Tooth and Myerson Tooth. I often wonder if it had to do with the fact of all these candy factories up the street, some synergy for the need of teeth for candy proliferator. But like their colleagues in the candy business, Myerson Tooth moved on and in the case of Necco we now have biotech, Novartis is in the Necco building. And in this case we have a new tenant and occupant in this building. It's a district that was part of an overall Zoning change years ago that allows for

certain uses to remain, the Special District 10 that we're already in existence, and also does try to create some incentives for housing here. The proposal tonight, as I said, involves two discrete elements:

One is to add a rooftop pavilion containing approximately -- how much on the roof?

CHRISTOPHER CHAN: 1400 feet on the roof.

ATTORNEY JAMES RAFFERTY: 1400 square feet on the roof to accommodate the creation of two dwelling units, rather small size, about 300 square feet, 500 square feet.

And the second portion of the application would allow for the construction or creation of a basement space. The building is essentially on a slab today. As part of the restoration work of the building, there is some need to do improvements to that slab and the decision has been made to see if

they could construct a basement that would allow for some uses associated with the company's occupancy of the building. Chief among them, though, it would allow for a shower area and a bathroom area for employees who bicycle to work or who might exercise.

BRENDAN SULLIVAN: But no relation to the apartments on the roof?

ATTORNEY JAMES RAFFERTY: No, totally unrelated. The apartments on the roof, the two apartments would independent access. They would accommodate executives of those visiting business. So they are residential. They're not transient, but they are not -- it's not envisioned that they would be occupied full time. But nonetheless the dimensional issues presented involve the GFA of those spaces. The building is in a district with a 35-foot height limit, and these, this pavilion, as we're describing it, does exceed that by

about 18 inches. There was great effort made by Mr. Chan to see if we could achieve the necessary height without having to seek height relief, but that wasn't possible and he can walk the Board through the elements of that. But there is some height relief associated with that. And when Mr. Chan walks you through this pavilion, which I think is the most significant aspect of the relief being sought, you'll also see the effort that was made to have the siting of this conform to the setbacks in the rear, particularly the relationship between the abutting property. There's a commercial building, a former commercial building to the rear of this site with an Erie Street address that was converted to condominium, and many of those units are very close to that and have open decks and areas that look right on to the roof of this building. One of the attributes that we leave of the plan here is the change

in the roof scape. It is a typical rubber membrane roof now with a variety of mechanical equipment located on it. The visual improvements here will be significant. We did have an opportunity to host an open house for all of the unit owners in the abutting building, and we received some favorable commentary about that. So, I think with the Board's indulgence we'll have Mr. Chan walk you --

BRENDAN SULLIVAN: What is the nature of the two units? Now, obviously residential but not occupied all the time. So I'm trying to get as to what classification would they fall into? You're saying it's not a rooming house obviously. It's not transient.

ATTORNEY JAMES RAFFERTY: No. I think that --

BRENDAN SULLIVAN: But an executive or visitor would come and spend -- what would

be the usual amount of time?

ATTORNEY JAMES RAFFERTY: I believe --

HARALD FRITZENKOTTER: We guess right now something five to ten days max or something.

BRENDAN SULLIVAN: And it may be vacant and then somebody else would come in after that?

ATTORNEY JAMES RAFFERTY: Or it could be the same person.

HARALD FRITZENKOTTER: They're used, they're vacant if somebody else comes in.

ATTORNEY JAMES RAFFERTY: The principal, it's a privately owned company. The principal lives in Germany, would be coming here on an average of five to ten days a month. He would be one of the principal users. But to answer the threshold question, I think they're dwelling units. I

think it's no different than someone anyone having a pied a terre in a condominium building or apartment building. The level of activity --

CHRISTOPHER CHAN: They're small.

ATTORNEY JAMES RAFFERTY: They're small. We're not suggesting that it's anyone's full-time residence, but I heard it suggested that this somehow comes close to a hotel use. That's not accurate. This is simply an apartment that will be owned.

BRENDAN SULLIVAN: That's what I'm trying get at. What differentiates that from an apartment that one would rent on a full-time basis?

ATTORNEY JAMES RAFFERTY: Well, it doesn't. I would say it is akin to someone owning an apartment that they use less than on a full-time basis. And then -- in this case or in many of these cases, they're corporate -- they're owned by an entity and

people come through and use them on occasion.

CONSTANTINE ALEXANDER: Think of it in the term of the pied a terre.

CHRISTOPHER CHAN: I mean, essentially as Jim mentioned, Stefan is the owner of the company, his last name is the name of the company. It's a very European concept actually, that you live and work in kind of the same location. They actually brought that idea with them when they came over. It's very green thing to do. No commuting, no travelling. And that those things can be compatible together. So, you know, we can actually make these things work together. That's kind of the idea. And they are definitely designed completely as units, separate from the business, in that they have a separate entrance, the driveway's on that side. They could be split off if that was --

BRENDAN SULLIVAN: I'm certainly

familiar with people who have -- I mean, with professional beds, we have done over apartments on Beacon Hill where the tenants, if you will, pay for the entire rent on January 1st for the year and they only spend literally two weeks there. But it is a tenant, a single tenant. The rest of the time it is totally vacant, and the guy comes and goes. He's an international business, and he comes and goes whatever. And I'm just trying to get the feel, the classification of what the use of these two units would be, that's all. Because if it's -- a -- it's not necessarily sure if it's an integral part of the business down below.

ATTORNEY JAMES RAFFERTY: Right. I don't think we -- I don't think we would make that claim that it's integral. It clearly is an amenity. It's an accessory use. It does provide for the owner to be there. It's desirable.

BRENDAN SULLIVAN: It's a convenience.

ATTORNEY JAMES RAFFERTY: It's a convenience. Interestingly, though, it represents a move in the direction that the special district is intended to do, which is to create some residential use. Now, it's not a garden variety use in that these occupants aren't going to be living there full time, but in terms of its compatibility with surrounding uses, and in some ways the fact that it's not fully occupied all the time, we received some favorable feedback on. And also the acknowledgement that it is, it is gonna be in close proximity with other units. And there are, there are people that -- or entities that own condominiums or rent apartments that use them on a sporadic basis like this. I acknowledge it's a hybrid, but I don't think we're making the case that it's integral. But I think two

things:

The design approach here really reflected an awful lot of analysis and understanding of how to approach this sensitively, mindful of the burden the Petitioner faces in obtaining the relief. And I know that there was, when Harald looked at the building with his colleagues, they were particularly attracted to the size of the building. The fact that there's green space. It fits very nicely with the size of the company. And there's an effort here to restore the building. It's had a significant amount of deferred maintenance. And one of the design approaches that impressed them was what was done at the Swiss House on Broadway. They were --

CONSTANTINE ALEXANDER: Very similar.

ATTORNEY JAMES RAFFERTY: -- they were putting a small transparent pavilion,

and we've applied a term that's been applied to that space in a way that's not incompatible with the neighborhood.

CONSTANTINE ALEXANDER: Before Chris starts just a few things.

One, thing we should get on the record, the FAR issues. They are significant. The numbers are significant. You're going to go from a 0.94 to a 1.01 in a 0.6 district. So you're almost going to be twice what's permitted if we grant the relief that you're seeking.

TAD HEUER: 0.85?

CONSTANTINE ALEXANDER: Maybe I got the math wrong.

CHRISTOPHER CHAN: We're going from 0.85 to 1.01.

CONSTANTINE ALEXANDER: Wrong notes. You're right.

CHRISTOPHER CHAN: And the allowed was 0.6.

CONSTANTINE ALEXANDER: I'm sorry, looking at my notes, I'm reading the next case. And the other thing is I just want to address a little bit the issue about the purpose of the special district. The Special District 10 was supposed to encourage housing. And in fact we brought another client of yours we granted relief across the street on a case 72 Hamilton Street, where there was a complete conversion of an industrial structure, warehouse structure to regular housing. Here, I'm a little bit troubled by it. The housing you want to put here is not really conducive to the purpose of what the district wants to do. The district wants to create a community, a streetscape, a residential streetscape; people coming and going. And this is going to be sporadically used. It doesn't mean it's precluded, but I'm not sure if this really has the purpose of what is desired in

Special District 10 in my mind. I'm happy to have you address it.

ATTORNEY JAMES RAFFERTY: Sure. I mean, I'm happy to address it because I also saw some correspondence in the file by a former member of the Planning Board who is an abutter who sets forth the intent of the district. But I think with all due respect to Mr. Studen who I have a great amount of respect for, I think his letter and that comment almost too narrowly describes the district. It's worth noting that the Special District was part of a larger rezoning effort in this portion of Cambridgeport. And while it's clear that the, it is a laden with incentives to create housing, it's also noteworthy that there were, there was an effort made not to render other uses non-conforming. And in fact, if you look at the uses allowed in this district -- so this is not a case

where -- which happens in some cases where you change the district and the real idea is when that use goes away, we're going to convert it something else because it's non-conforming use.

There are additions, including this office technical research that is permitted in this district. The only caveat is that as long as the building hasn't previously had a residential use in it. So there was some effort in the language of the district to accommodate pre-existing commercial uses. So in this case I think this building fits into that category given its prior use. And while it is true that the -- many of the properties, the abutting property in the rear, the property across the street, are fine examples of adaptive reuse of commercial or warehouse type structures, I don't think it's quite accurate to say that allowing a retaining use to stay within the neighborhood

represents a conflict with --

CONSTANTINE ALEXANDER: I wasn't thinking conflict. I would suggest this project, this kind of residential development furthers the purpose of the Special Permit.

CHRISTOPHER CHAN: Well, I think the only reason you're thinking it doesn't because members of the company were living there. Say we were renting those out or we were selling them, that would be furthering residential in the neighborhood. In fact, it would be bringing the two together, so trying to make them work together even in the same structure. So it's just by the fact that we're renting them to the owner of the building, it feels like it's not furthering but, in fact, we're having more people live there. More people live there than there were before.

CONSTANTINE ALEXANDER: I don't

want to belabor the point.

CHRISTOPHER CHAN: But, no, I think a lot of people have brought that point up, but it's very subtle the difference. You know, at some point this owner may move out and the neighborhood's left with two additional units in the neighborhood that weren't there before the project came. And the other owner could change the rest of the building to residential, too, at that point. But certainly we're adding residential to the neighborhood. It's being used at this time by members of the company. And, you know, it does -- I think Gus brought -- actually Brendan brought up the someone downtown. But you can think about it as the owner of this company is owning those apartments and letting members of the company use it, you know, several times a year and then he uses it several times of the year. So I think, you know, it's not unlike -- they're small. I

think that's the main difference from the apartment, that we're talking about 300 square feet for one and 500 square feet for another. We made them as small as we could to make them realistic and still --

BRENDAN SULLIVAN: The word hotel keeps coming back to me.

SEAN O'GRADY: Can I interject for just a moment? We're going to view these as transient accommodations and more than one.

DOUGLAS MYERS: Speak up, Sean, I'm really sorry.

SEAN O'GRADY: We're going to view these as transient accommodations. I think there's a use issue here. If you occupy it for anything less than a month, we consider it a transient.

ATTORNEY JAMES RAFFERTY: Well, I don't think that's accurate. I mean, I think you're not saying that if I bought a condo and used it once a week every month --

SEAN O'GRADY: No, I'm saying that when your client said that he has somebody for five or ten days, then somebody's gone for five or ten days, and then somebody else comes in for five or ten days, you have a lodging house or a hotel or a motel. You have something. You have a transient accommodation.

HARALD FRITZENKOTTER: We have to discuss the point.

SEAN O'GRADY: I'm just --

HARALD FRITZENKOTTER: It's use for only for members of our company and for us, it's somehow the right combination between business and private living, not producing any more traffic. Mr. Miltenyi will be there anyhow, stay on the first floor and second floor most of the times, or maybe myself or some other guy and close after midnight those guys will move up and be there next morning at seven.

ATTORNEY JAMES RAFFERTY: Well, obviously we'll need to address that.

TIMOTHY HUGHES: If corporations are people; right?

CONSTANTINE ALEXANDER: That's what the Supreme Court said.

TIMOTHY HUGHES: And the corporation owns this, than that's like -- the person owns this, the actual people that are staying there aren't transient if they're all part of the corporation; right?

TAD HEUER: Corporations need to sleep.

TIMOTHY HUGHES: It's like family; right? You know, I don't care what we call it. I think we got to get to the place where we can define this and make sure we're talking about the right, you know, the right request. But I think It's a great idea. It's a hybrid neighborhood with a hybrid use in a hybrid

neighborhood. Where better than Cambridge to try this out?

ATTORNEY JAMES RAFFERTY: So if this corporation bought a condominium unit in the adjoining building and used it in the manner in which you've described here, it would be the Department's position that they would be violating Zoning by using their condominium unit?

SEAN O'GRADY: Oh, yes.

ATTORNEY JAMES RAFFERTY: Yeah, I think we would explore --

SEAN O'GRADY: Well, otherwise they just let people come into my corporation and file them through the house, and say don't worry about it Zoning because they're in my corporation.

CONSTANTINE ALEXANDER:

Mr. Rafferty, I'm sorry, whether this is transient or transient or not, that's really not before us tonight. If we were to grant

relief then you might have to do further. I think we should move on to Mr. Chan's.

ATTORNEY JAMES RAFFERTY: I agree.

TIMOTHY HUGHES: Well, I think, you know, if it's a question of use, doesn't that have to come part and parcel with this? If they're going to consider it transient and we grant relief to build it without a use variance.

CONSTANTINE ALEXANDER: Well, we can't grant a use variance tonight because they haven't requested it.

TIMOTHY HUGHES: I understand that. So is there any point in granting half of this if they're going to view it and they are going to need a use variance, is there any point in granting half of this and not continuing it and have them come back and grant the whole thing part and parcel or vote on the whole thing?

CONSTANTINE ALEXANDER: That's a

fair point. My view was that we don't know for sure whether the ISD's position is going to be on this. And if we grant, if we granted relief tonight, I would, give Mr. Rafferty and his clients the opportunity to try to persuade ISD that they don't need further relief.

TIMOTHY HUGHES: That they don't need further relief.

CONSTANTINE ALEXANDER: Yes, that's the only purpose. But the alternative is what you're suggesting. We just stop tonight and come back another night on the issue.

For me, I think the idea in doing it in two steps if we are going to do it in two steps is the way to go. Let's find out if we can allow them to do what they want to do from a dimensional point of view. Then later on we'll see whether you have a use issue. If you do, you'll come back for the second one.

We all know about it tonight. It's not like the two salamis, salamiing us. The issues are all on the table tonight. But I think we should go ahead and this is just my view, it's up to you, Mr. Chairman, to go ahead with the issues tonight.

BRENDAN SULLIVAN: Tad, what is your input?

TAD HEUER: Why is everyone looking at me?

TIMOTHY HUGHES: Tad was speechless.

TAD HEUER: I have an entirely separate question.

ATTORNEY JAMES RAFFERTY: But I only say to Mr. Alexander's point if an applicants files an applicant files for relief and obtains relief and then later realizes that he doesn't have -- she doesn't have all the relief needed as a result of analysis by the Department, then they have to either remedy

that or come back.

BRENDAN SULLIVAN: I guess what I'm wrestling with if we were to grant relief for these two apartments, is there a condition on those two apartments, No. 1, or do we just grant it as per the applicant?

And then testimony has shown that the use of these apartments differs from what the application is for. In other words, what type of relief are we going to -- if we were to grant, what type of relief?

CONSTANTINE ALEXANDER: We're going to grant a Variance and it would run with the building.

BRENDAN SULLIVAN: But two apartments?

ATTORNEY JAMES RAFFERTY: But essentially we're asking for dimensional relief. We haven't addressed the use question. I'm not familiar with the provision that suggests 30 days as a

relevance in determining -- I don't know if the determination was then made by the owner that only he would use the apartment, whether that would change the view of ISD as to whether or not he has to be here more than 30 days, or is it just that he can't allow others to be here for more than -- I think it would require a lengthy analysis and inquiry as to does one get a hotel license from the License Commission to operate this? I don't think so.

BRENDAN SULLIVAN: It's administrative.

CONSTANTINE ALEXANDER: Plus it's a moot issue if we don't grant you relief.

BRENDAN SULLIVAN: Let's plow along and see which road we go down I guess and then we'll --

TAD HEUER: So I have a question that goes back about 15 minutes. I take the point about -- I take your point, Mr. Rafferty, is

that if the city meant to preclude -- this is on the issue of commercial and residential in the same district. If the city meant to preclude commercial use, they simply would have zoned this Res C-3 which is the governing standard under the special district, and they said you get to use anything you want that's residential otherwise we've got to come back to commercial uses per a Variance because we want to get rid of those commercial uses in the district. And they didn't, that's why they made a Special District rather than just a straight Res C-3; is that fair?

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: So my question somewhat goes to Mr. Alexander's point, and was also raised by Chris, that you have right now a commercial building that as we've seen you can do adaptive reuse in this neighborhood across the street. You know, this building could be an adaptable use into loft-style

apartments with huge oversized windows, what have you.

When Mr. Chan mentioned that certainly a subsequent owner could come in if we granted relief tonight, and we have two units on the roof they say, fine, it was a commercial building but I'd like to convert to residential, you would then have the benefit of the converted residential units which seems to be where Special District 10 is going. It's pushing for more residents, not pushing for more commercial. If you had done that first and you had said we've converted building, we've come in, we'd like to put two more units on the roof, would our analysis change at all? Because my mind is we would at least view it differently. Maybe the relief wouldn't be. So my question is we have a commercial use now, we're going to add two units. We say that seems to make sense as mixed use. If you come in and say we're

going to convert the building for a commercial to residential and we'd like to put two units on the roof, wouldn't we say that's kind of odd? I mean, do you see where I'm going?

ATTORNEY JAMES RAFFERTY: No.

CONSTANTINE ALEXANDER: I'm sorry, since you don't know where he's going --

ATTORNEY JAMES RAFFERTY: I'm not being flip. I'm lost.

CONSTANTINE ALEXANDER: I think we're going off track. I mean, the issue before us is whether it's going to be an apartment or more manufacturing space should we allow this -- one of the issues -- should we allow the structure to go as high as 36 and a half square feet? Which is the thing. Let's deal with that issue. That's the issue. And you have to deal -- you haven't dealt with yet, but I assume you will, is why you have -- you're justified to get a Variance

to go from the 36 and a half feet, recognizing, one, that height variances, as I'm sure you know, are very rarely granted by this Board.

And two, what is the hardship and what are the special circumstances that would justify allowing the structure to go as high as 36 and a half feet. That's what we need to hear it seems to me. That's the main issue to me before us. Anyway, that's what I would like to say.

ATTORNEY JAMES RAFFERTY: No, I find myself in agreement but I think what I'm --

TAD HEUER: My question is if you can convert the existing commercial building into fixed units, we would say go ahead and you might need a Variance to do the conversion.

ATTORNEY JAMES RAFFERTY: And maybe we could use the 5.26 Special Permit.

TAD HEUER: Right. But you need

some relief I think to do a conversion just -- well, maybe you wouldn't. Let's say for the sake of argument say you did. I'm not sure that we would say yes, and two more units on the roof makes sense. I think the argument here is that it's a nice combined commercial slash residential, you know, mixed use, single owner situation which makes it somehow unique, my question is given that the commercial space underneath the existing brick building is somewhat fungible, it sounds like it's attractive when it's commercial plus the two residential, I'm not sure we would find it, you know, be inclined to find it as attractive or have it on the table if we were converting and adding some more space on the top.

ATTORNEY JAMES RAFFERTY: Well, that might be the case, but that isn't what we have tonight. And I think what we should, with all due respect maybe let Mr. Chan do it,

and then we would present evidence related to the burden before us and which is related to dimensional. I would say that for purposes of the application, we are treating these two spaces as residential dwelling units. If we need to work out with Inspectional Services as to what limitations exist on dwelling units that aren't occupied full time, then we will do that. If we can't reach an accommodation, then we'll come back here for relief. But, yes, I think it's clearly, it's -- but we want to be clear admittedly, it's not too unrelated because we did actually discuss about if we simply said we want to put two apartments up there and get rental income, we thought well that wouldn't really, that didn't feel -- so there is something unique about the building. And the only exception I would take slightly with Mr. Alexander is I think the fact that it is residential does distinguish it from the mere

fact if we were simply -- in fact, I'm pretty certain we wouldn't be here if it's just about getting a little bit more office GFA on the building.

TIMOTHY HUGHES: Go ahead, you can go, but I have to clarify something after you're done.

CONSTANTINE ALEXANDER: If someone had a residential structure, single-family house and they're 35 square feet now, and they wanted to put another foot and a half up so they can add a third floor, that's the issue before us tonight.

ATTORNEY JAMES RAFFERTY: I agree completely.

CONSTANTINE ALEXANDER: Let's deal with it. I'm sorry. But you've got to persuade why doing that meets the requirements for a Variance.

TIMOTHY HUGHES: And I want to pick up on what his question draws on and what Tad

said that, you know, if you had -- if the building was converted to residential, we probably wouldn't frown on it going to 36 and half feet and adding those two on top. My question is is there any way you can carve a residential piece out of the building as it exists now? Or was that plan put forward? Was it kicked around?

ATTORNEY JAMES RAFFERTY: Well, we looked at that. And I think and I'll let Mr. Chan speak to that.

I'll tell you one of the things that occupy our thinking on that was the comparable size of rooftop mechanical equipment that could be on this building or might be in terms of its footprint, and its height in the context of this proposal. Now we do recognize of course that there are height exceptions to mechanical equipment and --

CONSTANTINE ALEXANDER: Well,

beyond that it doesn't justify the substantial hardship just because you can do this.

ATTORNEY JAMES RAFFERTY: I'm trying to build to that point. You've asked me to make the case.

CONSTANTINE ALEXANDER: All right, I'm sorry I shouldn't interrupt. What's the hardship?

ATTORNEY JAMES RAFFERTY: That's why we brought Mr. Chan.

CHRISTOPHER CHAN: Passing the hard stuff on to me.

So as Mr. Rafferty has mentioned, it's an existing building. One thing I want to note about the height is that there are several two-story industrial buildings nearby. Two of them you already spoke about. One is across the street which is this one over here. It's got a third floor attic. The one is the one immediately behind us which

is actually back here, also added a third floor residential units asked for Variances, got Variances. Those two have lower floor to floor heights than we do.

We were actually if we --

DOUGLAS MYERS: What are the heights of those buildings?

CHRISTOPHER CHAN: I know the one in back is exactly 35. They built to the limit. I don't know exactly what -- Jim may know that one. That one might be also exact.

DOUGLAS MYERS: Are you prepared to say it exceeds 35 feet?

ATTORNEY JAMES RAFFERTY: No.

CHRISTOPHER CHAN: No, no. Jim was the lawyer for that. Unless they didn't build it right. I don't believe that.

ATTORNEY JAMES RAFFERTY: That doesn't have height relief.

DOUGLAS MYERS: Your comment did not exclude the possibility that those were --

CHRISTOPHER CHAN: No, no, what I was saying is that there other two-story buildings that I think ours has a higher floor to floor. If we do this project, we are actually contemplating moving the structure inside. We'd like to add the basement as Jim had said, so that we can put radiant flooring in, geothermal in, and concrete slabs. We would basically lower this upper slab as far as we can go until we get to the windows of the existing building. And the reason they bought this building, is because they liked this existing buildings. They're really nice -- as Charles's letters says it's a really nice, old industrial building. We're going so far as taking these windows and actually refurbishing them and try to put insulated glass to make them work as opposed to making new windows which would probably be half the cost.

The reason it's a hardship is we just

can't lower it anymore and get the third floor off. I've lowered it, you know, I suppose if we got rid of the green roof, we might be able to get a of couple inches out there, but I don't believe we're going to get to 35 no matter what we do just because these two stories are higher than the adjacent two stories of the other building. The existing note is the hardship in terms of adding a third floor.

CONSTANTINE ALEXANDER: Chris, I have to take issue with you. You're starting on the wrong premise. You're saying because we can't create this additional space and stay within a 36 and a half feet, we have a hardship. We can't lower it a bit. But that starts from the wrong point. The question is why are you justified from going up higher? You have no legal Constitutional right to do what you want to do inside the building or the like unless you comply with the Zoning

By-Law. It's a disconnect. You've got to start with the fact, we've got a building here, we want to do -- we want to put more on the building on the top. We want to go over the height requirements. And we have to -- you can tell from my questions Mr. Rafferty has said it already, I don't see how you get there. I don't see how you say there are special circumstances, there's a substantial hardship, if you can't build two small pied a terre apartments on the roof. There's no hardship. You have to use a hotel when you come to Massachusetts. And there are no special circumstances regarding this building that require that you have to go above -- to use the building, you have to go above 35 feet. You just want to use the building for something which is entirely desirable. You can't do it.

ATTORNEY JAMES RAFFERTY: So not to -- the hardship is related to the

structure. Okay? So that's, that's we're asserting.

CONSTANTINE ALEXANDER: Whether it's a hardship related to the structure only if you need to use the structure you need to have two apartments on the roof.

ATTORNEY JAMES RAFFERTY: I've become convinced that you're not persuaded.

CONSTANTINE ALEXANDER: You're right.

ATTORNEY JAMES RAFFERTY: Could you turn up your name plate?

Seriously, I'm not sure that the notion that -- I mean, what Chris has said is that the building is constructed a certain height, that it would in order to achieve this, we would have to do invasive demolition to the building to create a third floor that would be disruptive to the fabric of the building. The building is an older historic structure. So rather than do that, the building has

volume to accommodate the third floor. And as Chris said, he could come into the building, take out the windows in the third floor and drop that third floor. In the end of the day, frankly we're talking 18 inches, that's the height relieve we're looking at.

CONSTANTINE ALEXANDER: That's right.

ATTORNEY JAMES RAFFERTY: And we balance the disruption to the building, the fabric of the building, and that's why we asked Mr. Sullivan to evaluate the approach we were taking here. So the conclusion was that the hardship is related to the structure, certainly on the issue of height. That there is a way to take off the roof, insert a floor at about midpoint of the existing windows on the second floor, reduce those windows to smaller windows. It would be bad in our view for the functional use of the building, and we think for the appearance

and the historic nature of the building it would be disruptive as well. So that's the hardship.

HARALD FRITZENKOTTER:

(Inaudible).

CHRISTOPHER CHAN: I would say that we probably wouldn't have gotten the letter from Charles if we made the height work.

CONSTANTINE ALEXANDER: One final comment. If you were looking to get the increase the height for the purpose of the building, the biotech use, I'd be absolutely persuaded with what you're saying. You're doing something that's entirely unrelated to the use of the building. It's for the convenience and accommodations of the executives of this company, and that's where you don't meet the hardship argument. You do it if you were going to need more manufacturing or research space, but I'll shut up now. I've said too much already.

BRENDAN SULLIVAN: What's floor to ceiling in the second floor?

CHRISTOPHER CHAN: I don't know. I might have to ask. Floor to ceiling on the second floor. Eleven feet existing.

ATTORNEY JAMES RAFFERTY: So then --

DOUGLAS MYERS: What would be on the third floor as designed?

CHRISTOPHER CHAN: We've made it minimal. I think it's code allowed. I think it's eight feet or something like that, in the public space so it's lowered.

BRENDAN SULLIVAN: You're saying you're only going up 18 inches, and that's fine. And the next guy comes down and says we're only going up 20 inches. You gave him 18 and the next guy you gave the other guy 18, you gave the other guy 20. I only want to go up 22, 24. There's a yard stick. Where do you stop?

CHRISTOPHER CHAN: I understand.

ATTORNEY JAMES RAFFERTY: We understand. And we also know --

BRENDAN SULLIVAN: And far --

ATTORNEY JAMES RAFFERTY: We haven't got to that yet and I agree. And I mean, the issue related to height is that to, that to --

BRENDAN SULLIVAN: The height is very sacred dimensionally.

ATTORNEY JAMES RAFFERTY: Understood. I guess what I'm saying is to identify the hardship, as we've laid it out in the application, is the height relief is related to the fact that to create the third floor within the height limit is it would be, we would have to do significant disruption to the facade and face of the building.

BRENDAN SULLIVAN: What do you need for operation, though, floor to ceiling height? What is for the biotech operations,

what is floor to ceiling?

CHRISTOPHER CHAN: Oh, they can be mostly office in there essentially.

BRENDAN SULLIVAN: They could work at eight feet?

CHRISTOPHER CHAN: Well, I'm not sure at eight. But certainly they don't need anything extra substantial.

BRENDAN SULLIVAN: It is possible to drop that third floor down?

CHRISTOPHER CHAN: We just run into the head of the windows of the second floor.

BRENDAN SULLIVAN: Right. Or you could push it back from the face so that the windows in the front could remain somewhat intact so that the facade would remain intact.

CHRISTOPHER CHAN: I suppose. We did not investigate that. But we would obviously have some structural issues that we would have to deal with because we would be,

you know, not holding up the building where we have the windows, we'd have to figure out some structural solution for the third floor slab, but I suppose that is possible.

BRENDAN SULLIVAN: Yes.

CHRISTOPHER CHAN: Maybe, you know, if you're going to tell me that we're going to do this, if you can get this under 35, I'll go -- maybe I'll look at those extra solutions you're talking about.

BRENDAN SULLIVAN: You take the roof off and you build the floor down, that's all. You come down into the second floor space.

ATTORNEY JAMES RAFFERTY: Right. So that's the hardship is exactly --

BRENDAN SULLIVAN: It's an expense you like not to incur, but again, that's personal relation related to --

CHRISTOPHER CHAN: Absolutely.

ATTORNEY JAMES RAFFERTY: And I think the standard, as we know, it's not that

it's not technically possible, it's just would having to do that represent a hardship? And our claim is that it would, and therefore, both the cost of it but primarily the disruption to the building.

The second part of the relief, of course, is related to the GFA and the GFA's occurring in two locations. It's the GFA of the dwelling units themselves and also the basement. If we can speak about the basement for a second. There is only a slab there currently. And there is a desire to create basement space for the typical use of storage and the like in the basement. The -- as you know, if the basement were created at six feet, eleven it would not result in a GFA issue. But then there's the ability to put a few uses in the basement such as bathrooms and showers could not occur. Our view was that relief allowed for -- to put that function in the basement, the building is

well sized for the business of the company. This, again, while it is not the core business, it is consistent with the city's policies of encouraging people to bike to work, to walk to work, to create some amenity space in the basement for employees particularly related to shower. The storage space I think we could probably do at six-eleven, but it's that additional space. So it's GFA by way of arithmetic, but it doesn't certainly change the bulk of the impact. It doesn't represent additional employees a more intensive use of the building.

CHRISTOPHER CHAN: And, you know, if we do this project, one of the things we're doing is trying to get the stuff off the roof. So you can see you'll see there's, you know, most of these roofs have fairly good size mechanical equipment. We have none. We hope to do this geothermally which means

actually more stuff in the basement because we have pumps and the like to do that.

So I'm going to go through this really quickly because I know we've been here a while already.

This is the basement that we've talked about. We're talking about adding this space. A couple of bathrooms, shower room, stair, elevator, and the rest is essentially mechanical.

First floor, this is the company that makes equipment that some people use for -- in the biotech industry. There's a small demonstration lab here. I think it's about 700 feet. People can tryout the equipment if they bought it. They can learn how to use it better. The bulk of the space is really mostly office space on the first and second floors. Not only do they make equipment, they're developing protocols for cancer and other difficult disease, high disease

protocols. So a lot of the stuff that they're doing is working with hospitals and research institutions and running protocols. So there's a lot of paperwork, federal paperwork, medical paperwork involved with that. So really in terms of biotech it's mostly office space.

Third floor, here's what we're talking about. One small apartment there, apartment A, it's about 320 square feet. This one's 530 square feet. A small corridor between the two elevator and a stair to get up there. So fairly minimal. There are a couple of decks, and we've developed this green roof. Essentially we said okay, this is what they see now out there from especially from the rear 98-100. We spoke to the owner of the person who's on this deck right here, you know, she has the choice of that or basically a garden on the third floor. She preferred the garden.

We've also engineered it so that you can kind of see the two large trees here that come through and an existing chimney. The bulk of the building is actually behind that. So the vision from their deck is actually through here. It doesn't affect the sunset etcetera, etcetera. You kind of see those trees here. Actually this one's still leafed, but that one's actually out so we're back in that area.

The one other area we're asking for relief is the size of the GFA, is the building is all the way up existing on this side of the lot and the rear and very tight also to this side of the lot, and L-shape. So this third floor I think is also about -- I think it starts at this end about 18 inches, and this end it's about eight or nine inches because it's not square into that side setback. This is also a calculated setback so it changes when we add the third floor a little bit.

This building right below here, I don't know if I have a picture of it right here. It's the one right here -- yeah, this is the front of it right here. You may know that one, that's good news garage click and clack. It's actually owned by MIT. We discussed it with MIT at length, and they're -- they have no problems. In fact, they were going to try to write a letter of support but it's not something that MIT can really produce given the institution. So, you know, they don't feel affected in the least bit in that area.

TAD HEUER: So, Chris, on the alley side, that's going to be grass pavers; is that right?

CHRISTOPHER CHAN: Yeah, let me go back.

TAD HEUER: That's not going to be parking?

ATTORNEY JAMES RAFFERTY: On grade.

CHRISTOPHER CHAN: That's going to

be grass.

ATTORNEY JAMES RAFFERTY: No parking.

CHRISTOPHER CHAN: No, it will be -- I'll go back to the plan so you can see. The entry for the two units is actually on that side of the building. So that's the elevator, so they can actually come in on the first floor on this side and get to that elevator or use that stair. Arrives on the third floor. This little driveway here, you can see here, we don't expect it to be used that much by a car. I mean, one of the reasons they bought this building was that it's in town and Stefan actually has a bike. When he comes, he doesn't even rent a car. We have a path that goes this way. This would be grass creat so we have to provide two parking spaces for those units. One of them could be in this location here.

TAD HEUER: That's more my question.

Where -- so you have the lot on the this --

CHRISTOPHER CHAN: On this side, yes, this full lot.

TAD HEUER: Are all 11 in that lot or are you counting some into that?

CHRISTOPHER CHAN: Probably one here and one over on this side. Because we're not allowed to use tandem here. With two separate units, they can each only have one.

ATTORNEY JAMES RAFFERTY: We don't need those spaces /we've got 11 and we're only required to have 11.

BRENDAN SULLIVAN: It's 92. You're required for nine.

ATTORNEY JAMES RAFFERTY: We need nine for the office and there are two. There are 11 in the parking lot.

CONSTANTINE ALEXANDER: Your form says 11.

CHRISTOPHER CHAN: We meet exactly

the code I believe, right?

TAD HEUER: My question is if you don't need that, would you be amendable to closing the curb cut and giving the city back a parking space?

CHRISTOPHER CHAN: I have to make sure that Jim is right. One of these is -- this is actually a handicapped in here.

TAD HEUER: Okay. Just more curiosity than anything.

CHRISTOPHER CHAN: There is also the possibility there's a loading dock at the end here. This could be used when they deliver the equipment. That was one of the ideas that this would be used also as a loading dock for the first floor, but you know, it's not that they couldn't come around here if that was up on the back side.

So going back to the elevations, the plans, it's covered in ivy now. The idea is to just bring that ivy back. Really make

this glass, the two sides that face both the MIT building and the rear are mostly opaque glass, so you can't see through or potentially colored. So even though they're glass, you can't see through the windows, there's privacy on both sides. And then really green up the roof so it's almost like a sculpture garden on the roof on the top.

And you've got a get a sense of that. These are some of the things that we were thinking of, and I've got to say, that we were doing that on the grade level, too, trying to bring back some plants and put a green wall between some of the neighbors and us.

And finally we did a bunch of shadow studies and view studies four times a year. Most of the shading is on the MIT building which is a single story. So, you know, they don't really have an issue with it. The people close behind us really don't get affected very often if at all. I think

there's one time in late December or something when the sun is low. But, you know, the way this is situated really doesn't affect our neighbors too much in terms of -- and we've shared that with them.

DOUGLAS MYERS: What about the three residential units on Brookline Street, are they affected.

CHRISTOPHER CHAN: The three residential units on Brookline Street? No, I don't believe it ever really shades that side.

HARALD FRITZENKOTTER: It's quite a distance.

CHRISTOPHER CHAN: Yes, we're also set back on our side of the lot, though. So I don't -- I think in fact -- if -- I'll have to look at these, but I believe the, you know, there are some shadow on there early in the morning and it doesn't even get across our old lot at that point.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, in conclusion
Mr. Fritzenkotter was hoping he might
briefly address the Board with regard to the
objectives, what they're hoping to achieve
here and the decision making that led to them
filing this application.

HARALD FRITZENKOTTER: Okay, thank
you. Excuse my English. I'm not quite
firm --

CONSTANTINE ALEXANDER: It's very
good.

HARALD FRITZENKOTTER: -- doing the
right words.

TAD HEUER: It's better than our
German.

HARALD FRITZENKOTTER: Just some
words to the background why we bought this or
purchased that building. We had been
looking for a long time around Boston and
Cambridge and downtown Boston and elsewhere

for the right place for us. And our company is a little bit different to other companies. It's privately owned. And the target to get something done in Boston was not driven by our financial department or by our shareholders. It's the idea -- our common idea of Mr. Miltenyi and me and he studied physics and I studied architecture, but he's very much into achieving a good and straight design. And he was very much looking for a brick building, a real brick building which is well done, which has good proportions and straight design, and which has a strong character. And finally in the right time we found that building, and it was not on sale but at the very end, the beginning of last year we finally purchased it. And we purchased it because of the character. And it's our target and our -- what we really would like to do is to upgrade that building to make it looking good again, because it -- as it was

a big lack of maintenance within the last years, and we want to preserve it. We want to upgrade it. And we pushed lots of time into finding the right architect to have the feeling to preserve the structure on one side, and on the other side to upgrade it and to make something from our time into it. And it's -- for us it's like kissing that building, like, the Sleeping Beauty. Like standing around there a long time, and now we think we are the right company with our emotions and our feeling for what's to preserve and what's to save and what's to upgrade. And so we are quite happy to find this.

And one more thing is the combination between private and business. Our office life which is in our company very close. And we have huge expensive and I think, I cannot tell you any numbers, but half of our company's work the search and development.

And so we would like to use that property to make real piece, a good looking piece of architecture out of it. Like, to preserve what is there and to add one crown on top of it like a glazed cube which looks good from the inside and looks good from the outside and which plays with the contrast between old and new, and which gives some kind of outlook on a green roof and which doesn't do any harm to the neighborhood or anybody else. Like we did some kind of little presentation to the neighbors, and the vast majority of it was in favor of this and we know that it's all the time and other tricky thing you do everything according to the code, but we don't do anything mean or anything what's wrong about it. I think we want to upgrade it. We want to push good energy to that building. That's our thought.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY JAMES RAFFERTY: Thank you

very much. I think, Mr. Chairman, we're probably at this time completed our presentation.

BRENDAN SULLIVAN: You know what I don't see, you're asking for height variance. I don't see any elevations -- I'm sorry, am I reading this wrong? Here it is.

So the height is at 36, 5 and that's to the top of the -- is that elevator shaft?

CHRISTOPHER CHAN: No, that's the main part of the building.

ATTORNEY JAMES RAFFERTY: That's the part of the -- roof of the addition.

BRENDAN SULLIVAN: That's here?

CHRISTOPHER CHAN: Yes, correct. Correct.

HARALD FRITZENKOTTER: We asked for elevator without that override.

CHRISTOPHER CHAN: They do them in Europe but not here unfortunately.

TAD HEUER: They do hydraulic?

CHRISTOPHER CHAN: No.

BRENDAN SULLIVAN: And then the shaft, how much is that?

CHRISTOPHER CHAN: Maybe three feet I think. How high is the elevator override on the regular part of the building? About five feet.

BRENDAN SULLIVAN: About five feet?

CHRISTOPHER CHAN: Whatever's the minimum for the elevators.

TAD HEUER: So you're going to be going -- you're going to be excavating down anyway. You know what I'm thinking of is the Supreme Judicial Court building where I know they have a hydraulic internal.

CHRISTOPHER CHAN: We looked all over for an elevator with an override and even a small one. They have them in Europe, but there's none that meet code in the U.S.

ATTORNEY JAMES RAFFERTY: It's not that the hydraulics are up there, it's just

that they need --

CHRISTOPHER CHAN: I think they don't want it if someone happens to be on top of the elevator, when it rises up, they want enough room so they don't get crushed. I think that's what it is.

HARALD FRITZENKOTTER: Something like the machine room.

CHRISTOPHER CHAN: They could easily do it without. But no U.S. manufacturer will make them. They have one in Germany.

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

Is there anybody here would like to speak on the matter of case No. 10240, 85 Hamilton Street? Anybody want to speak on the matter.

Sure, come forward and identify yourself and give your name, spell your last name and your address.

JONATHAN AUSTIN: Good evening. My name is Jonathan Austin. I'm here with my wife Laura Sheffield, sitting behind me here. We live at 219 Brookline Street and we also own the property 216-218 Brookline Street which is directly behind the 85 Hamilton Street. I have a letter that I've written. I have six copies that I can hand out. I'll do that.

CONSTANTINE ALEXANDER: Can you summarize it for us in case we haven't had a chance to read it in advance.

JONATHAN AUSTIN: I'll read it and then I can be briefer. There's one more here.

BRENDAN SULLIVAN: Maybe to Mr. Rafferty maybe.

JONATHAN AUSTIN: Sure. Just a little bit of background here.

We've been owners of 216-218 Brookline since 1990, which is the adjoining two-family

house adjoining the property. And shortly after we moved to Cambridgeport, we joined with a group of neighbors in what became known as the Lynch Zoning Petition. This Petition sought to balance the potential for commercial and institutions throughout in and around University Park with residential development primarily along the Brookline Street corridor between Brookline and Sydney Streets. At the request of the City Council at the time our group was asked to meet with MIT and other major land owners to iron out our differences over a four-month period. This was a most rewarding experience for me personally, and I think for the other neighbors and business owners working through a complex set of aspirations for the good of the neighborhood and the city as a whole.

The result was the 1992 rezoning of East Cambridgeport that enabled land owners and

developers to plan with confidence and it's the foundation for much of the remarkable development of commercial institutional and residential development you see today. So I was quite pleased to be part of that process.

We're here today to ask you to deny the variance request for 85 Hamilton Street.

The variance is requested to allow two dwelling units be built on top of the existing non-conforming building, and ask for relief from height and FAR. The application states that the public good will not be harmed, and that the creation of the two dwelling units is consistent with the Zoning to promote housing in Special District 10.

The intent of the Zoning in this area which we were active participants in and as I've just described, was to promote residential development on the east side of Cambridgeport should the conversion of existing industrial and office type

buildings for which 85 Hamilton Street has just been described as the classic example. That need to balance the robust commercial growth further towards MIT and Central Square with complimentary residential development is no less important today as it was then. Special District 10 and the adjoining Special District 9 along Brookline Street were created to specifically provide incentives for such types of residential conversions. And at the same time to permit existing uses to remain within the normal limits of continued use and dimensional conformity provisions. The attached plan, which is behind here, shows the evolution of the residential uses in these two districts and it shows simply that the Zoning is working. So I'd refer you to this plan here.

This is Special District 9 to the left and Special District 10. The dark footprints that there are houses that are

obviously residential. The dark, the lighter grey buildings are industrial buildings that are a part of the this district. And the orange buildings, buildings that have over time and as a result of this Zoning been converted to residential. I don't know the numbers involved, but there are literally dozens of residential units that have been created like this. And all of them, three of them in Special District 10 have been created around the subject property of 85 Hamilton Street, and another one across the street in Special District 9. So the Zoning worked and it's made a big difference to the neighborhood.

We ask you to deny this proposed Variance at 85 Hamilton Street because the two dwelling units are not of the housing type described in the Zoning Code in Section 17.100. The proposal is not taxing; that is, quote, integrating with the existing

neighborhood physically, architecturally, and socially. It's not housing that addresses current housing needs in Cambridge, especially the needs for units that are affordable to houses with children. The dwelling units are by design, and if you look carefully at the plans, and which I do agree, that it's a very elegantly conceived building, and all of the things that the owner has just described. But by design these are small accessory hoteling units for use by the Biotic office's staff while visiting from out of town. They're not genuine family oriented. They're not at all consistent with the Zoning to promote genuine residential family oriented and, where possible, affordable housing. Furthermore, the public good will be harmed if this Variance is granted because it will have provided an incentive for the expansion of a commercial use in an already existing

non-conforming building by relaxing FAR limits and height limits. Its approval in my opinion would be a big step backwards in the promotion of a gradual evolution from non -- I'm using the Zoning sort of code's words here, gradual evolution from non-residential to residential uses in this district. So we ask you, therefore, to support the Zoning Code that many residents in this neighborhood, business owners, MIT, community, and the city worked hard to pass and to deny the application.

I've provided excerpts from the zoning on the next page that provide the specific language that's provided here.

I also have just a general question here about the continued use of this property. Since 1990 I think the property, I don't have the dates here, so I would -- I think it would be important to research this, but the building was purchased -- it was largely

empty with a teeth operation as was mentioned until about 1992 when a person bought it for a glassworks and a Special Permit was requested for the glassworks and that was granted. Subsequently I think they moved out in about 1995, and an owner moved in and used it as a single-family dwelling. It was least for a year and it was quite possibly for two years. Then that family moved out, they couldn't stomach the neighborhood as I recall, and moved to elsewhere in the city. And then changed the use to an office use. That use has been either wholly absent or partially absent for a number of years now. So I sort of question the continued use provision of this. I'd like to sort of know who was in there in the last few years.

My primary reason for being in here is I just don't think this is part of the spirit and letter of the Zoning and for that reason I object to it.

CONSTANTINE ALEXANDER: Thank you.

JONATHAN AUSTIN: Thank you.

BRENDAN SULLIVAN: Anybody else who would like to speak on the matter?

TAD HEUER: Can I ask you a question before because you were part of the rezoning area? A similar question I asked Mr. Rafferty. Is there a reason you didn't request a rezoning of this simply to Res C? So Res C is the governing, the governing Zoning for Special District 10.

JONATHAN AUSTIN: I understand your question.

TAD HEUER: So, yes.

JONATHAN AUSTIN: It's the art of compromise. We wanted to have that Zoning just as you described, but it was very clear that there were existing building owners in the neighborhood at the time whose livelihoods would be threatened. And so we didn't want to do that, we just left this to

enable them to continue but not to expand. And this building has undergone one, two, ownership, now onto a third ownership change. So, you know, these are not the original owners we were intending to protect. The intent underlying here of everybody involved was to have this building and other buildings like it to be ultimately converted to residential.

TAD HEUER: And I appreciate that. And I understand entirely the political aspect of it. But isn't that what's accomplished by rezoning, and any time you rezone, you're grandfathered as to the existing use on that lot. And then once you go, it reverts if it's been abandoned for a period of time to whatever the underlying Zoning is. So if the concern is really to protect the current small commercial operator, a rezoning for Res C would accomplish that because they could continue

operating as long as they had a viable going concern be it one year or 15 years or 50 years. And once they departed and appropriately abandoned, then the lot would revert to Res C and you can go on. So I guess my question is: What was the push back from the -- was it just the commercial owners didn't understand that they would be grandfathered? I guess I'm still somewhat confused.

JONATHAN AUSTIN: I think this provided them with protection to continue -- I mean, for instance Aetna Lighting is one of the owners. They still operate there. They are still the original owners. They were concerned that their livelihood would be threatened if this wasn't a continued use.

ATTORNEY JAMES RAFFERTY: I would offer an observation. There are special districts throughout the city, I've been involved in a number of them. The difference

in the special district you question is that the uses that were already established were not rendered non-conforming as a result of the rezoning. So if they've gone through Res C-3, they would be non-conforming uses that fall into at that stepchild category of Article 8. So Special District 10, while it clearly -- and these special districts had incentives to move towards housing, the distinction was that these other uses were allowed and weren't rendered non-conforming as a result of the rezoning. It was a political compromise because it took a legislative act of City Council and affected property owners, this had a long history. And it was a good outcome, and I couldn't agree more there was great successes there, but there was an acknowledgment that uses that were there weren't simply allowed to continue their non-conforming status but they could continue without having to be

rendered.

TAD HEUER: Okay.

JONATHAN AUSTIN: These are now different owners. Thank you.

BRENDAN SULLIVAN: Thank you.

DON GROSSMAN: My name is Don Grossman. I live and work at 179 Sydney Street which is at the corner of Sidney and Erie, around the corner from the property. I'm not an architect. I'm a building owner and business owner and a resident at that location. I bought that building in 1986, rehabbed it in 1987/'88, and moved in in 1989. At the time we bought the property it was Industrial B FAR 4.0 unlimited height. So, the rezoning, I was also a part of the Lynch rezoning effort, and it was very much a draconian rezoning from the perspective of a property owner. And the protections that were in there to allow existing uses to continue and be not non-conforming were very

deliberate. You know, my perspective is that it was a very forced political compromise and that the sacrificial lamb was the Brookline to Sydney Street corridor. I haven't seen Jonathan's map or conversions. There's certainly been a few successful buildings that have converted to residential, but there are also large parts that are going to remain commercial in perpetuity. The Stimson properties that are just north of Erie Street between Brookline and Sydney are large properties and were in the family for a hundred years or more and so haven't been converted to biotech and I don't think they're going residential any time soon. So anyway that's a little background on the Zoning.

I live at a mix use building. I live on the top floor. There are three commercial floors below. There are a number of other buildings in the area that have mixed use.

There's an artist that lives on -- right at the next-door to Vertex Pharmaceutical. At the corner of Sydney and Hamilton, there's a building that was actually broken up into two, but it was originally a single building and it has a resident in the corner location and then commercial around it. So, I'm -- you know, when I moved in, the Zoning didn't even allow residential use. We got around it by a little bit of subterfuge. I was the night watchman and it was a night watchman's apartment. Luckily I don't have to fall back on that now. So I'm very happy to see, you know, the mixed use, and I also -- and I don't know the, you know, all of the details, but I'm much happier to see what I see is that they could, you know, develop the building as biotech as of right, and without this accessory use apartment, as it stands now and what they're doing is taking a step further and saying we like to, you

know, do something that moves in the direction of the Zoning that's positive for the neighborhood. And frankly I'd much rather see those rooftop units on there than rooftop HVAC units. I mean --

CONSTANTINE ALEXANDER: Are the mixed use buildings that you're referring to are they all higher than 35 feet?

DON GROSSMAN: Mine is.

CHRISTOPHER CHAN: You might recognize that building you drive down Sydney Street with the glass tower.

DON GROSSMAN: So anyway.

CONSTANTINE ALEXANDER: Okay, thank you.

DON GROSSMAN: I would much rather see that type of roof structure than HVAC roof structure and, you know, I don't find it at all offensive.

BRENDAN SULLIVAN: Thank you.

CONSTANTINE ALEXANDER: Thank you.

DON GROSSMAN: Appreciate it.

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

CONSTANTINE ALEXANDER: Give your name and address.

CHRISTINA IRWIN: Christina Irwin, 212-214 Brookline Street. I'm here on behalf of my parents. They're out of town. They are totally against the apartment. So the rooftops or whatever you want to call it. It's take -- we'll take the sun from our property. We abut the building.

TAD HEUER: Which of the three -- is this in that three house row of.

CHRISTINA IRWIN: We are directly --

TAD HEUER: Yes.

CHRISTINA IRWIN: They're against it. I'm hoping that there will be another meeting that they can attend soon and voice their own opinion. And I have an issue with parking. I understand they have a parking

lot, but when it comes to deliveries, there's a lot of times you come down Hamilton Street, you can't get down Hamilton Street due to the unloading stuff there right now. But a lot of times you have to back up and go all the way around the block. So if they're going to have deliveries coming in, where are those trucks going to stop to make these deliveries? They are not going to be able to go into their little bit of the parking lot. That's an issue, too, for me anyways. I come home there's nowhere to park as it is.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: Thank you.

Anybody else wishes to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: I see nobody.

There is correspondence in the file.

(Reading) The Board of Zoning Appeal members: A resident 98 Erie Street, eleven years a former Planning Board member, I am

writing to urge the Board to deny the Variance required to construct a rooftop addition containing two dwelling units at 85 Hamilton Street. Units will require both an FAR as well as a height variance, especially since the existing, legally, non-conforming building already exceeds the allowable FAR. As you are aware, 85 Hamilton Street is located in Special District 10, a Zoning District adopted many years ago following an extensive and often contentious public planning process. The purpose of the district is to promote significant housing development, especially affordable, and to encourage the (inaudible) evolution to residential use through the districts. While it is very unfortunate that the Biotic purchased the property without fully understanding the purpose and intent of the Zoning, enforcement of the Ordinance will not pose a substantial hardship, financial or

otherwise, to the Petitioner. Biotic's desire to allow the building footprint and facade to remain intact as well as provide a green group is admirable. However, this objective can easily be satisfied by simply not building the residential units at all or putting the rooms for visiting company executives within the existing structure rather than on the roof. Effectively hotel/motel rooms are occupied only occasionally. The two units are an accessory use and not essential to the company's primary office, laboratory purpose and are in fact a prohibited use in Resident C District. Living elsewhere the occupants are likely to have little or no commitment to the well-being of the neighborhood. It is also my concern that if approved, the Applicant would possibly use the third floor residential space for office or other business purposes. There would be nothing

that the city or we as neighbors could prevent this from happening. I disagree that the public good is not being compromised. The proposed addition unnecessarily adds height and bulk to an existing building for use not related to the business purposes. The company should use the building as is, with no additional FAR or height variance granted so that the shadowed and blocked views impact are minimalized on surrounding buildings, including the living units and rooftop decks at 98 to 100 Erie Street. Thank you for your consideration.

On the letterhead of Cambridge Historical Commission addressed to the Commissioner, (reading) The proponents in this case have asked me to review their plans and convey my opinion to the Board. The building at 85 Hamilton Street was built in 1938 by the Myerson Tooth Corporation, a firm that manufactured implants, dentures, and

false teeth for dentists. The firm was originally located across the street at 90 Hamilton Street. The business was good during the Depression and they were the one of thee firms to pull permits for significant factory constructions in that year. The rarity of the buildings of this period contributes to the significance of 85 Hamilton Street. The building has very large expansive windows, and most elevations which maximized natural light for the skill workers inside. The exterior is characterized by brick pile lasters and art modern detail and the spandrels are in substantially in original condition and the Applicants intend to maintain its appearance and restore the original steel sash. I cannot comment on the use variance request, but I do commend the Proponents for recognizing the significance of this building and their plans. I urge the Board

to give their request full consideration.
Charles Sullivan, executive director.

The Planning Board sends a communication that they have reviewed the above case and leave the case and the determination to the Board of Zoning Appeal with no comments or recommendations.

And that's the sum substance of the public comment, and I will close public comment at this point.

Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Thank you. Without much further, the hardship is related to the structure. It is noted by Mr. Sullivan. It is of significance. It has historic value. The effort to create a third floor unit without disrupting the overall integrity of the building is what leads to the height relief. Similarly the GFA relief occurring in two places is also related to the fact that the building doesn't

have a basement, could have a basement at six-foot, eleven but would like to be able to accommodate some amenities for workers that are consistent with the city's policies. And so for the reasons set forth in the application and the testimony provided, we would urge the Board to acknowledge the presence of the hardship by virtue of the structure itself and grant the relief.

BRENDAN SULLIVAN: How much gross floor area are you adding?

CHRISTOPHER CHAN: 1679. We're taking a little bit away from some of the floors because of the stair and opening an atrium. And one edge of the building is actually over the property line, so if we do the large renovation, we actually may pull it back about eight inches.

ATTORNEY JAMES RAFFERTY: Well, why don't you give them the floors just quickly.

CHRISTOPHER CHAN: The basement's

501.

BRENDAN SULLIVAN: You're adding
501?

ATTORNEY JAMES RAFFERTY: In the
basement.

CHRISTOPHER CHAN: Yeah. First
floor minus 72.

ATTORNEY JAMES RAFFERTY: What are
you adding in --

CHRISTOPHER CHAN: 14, 19 on the
third floor.

ATTORNEY JAMES RAFFERTY: The net
increase.

CONSTANTINE ALEXANDER: Roughly
that's 300.

CHRISTOPHER CHAN: Take it away.
1679.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Okay.

CHRISTOPHER CHAN: Just one other
thing, there was some question about how the

building was used before this owner purchased this, they purchased it in I believe June; is that correct? Or May of last year? This was in the file at the ISD from the previous owner saying that the building had been used for office purposes for the previous five years. I don't really know the history beyond that.

BRENDAN SULLIVAN: Okay, anything else?

ATTORNEY JAMES RAFFERTY: No.

BRENDAN SULLIVAN: Let me close the presentation part and let the Board discuss it among themselves.

Mr. Myers.

DOUGLAS MYERS: Well, rather than just give a speech, I really feel I ought to start by commending the Applicants for considerable design effort they put into it, I might add successful innovative design effort that went into this and to say that there's no doubt that it's a commercial

property with anything like this designs that could make a contribution to the City of Cambridge and to the neighborhood. That being said, I despite being sympathetic with the general desirability of the project, I simply can't get over certain basic objections raised by the Zoning Ordinance. I just don't feel that there is adequate basis to give a Variance for height. I think that the -- in terms of the hardship analysis, and I have listened to Mr. Rafferty, I nonetheless, I nonetheless believe that -- I mean, basically the structural changes, while they relate to the building, they are volitional on the part of the Applicant. There could be numerous other approaches to modifying the building consistent with its commercial use that don't require residential uses, constructions on the third floor that would require the raising of the height and I'll let it go at that I think.

Whether that position is right or wrong, I've stated it clearly.

With regard to the FAR, I feel that I understand that most of the FAR relates to the roof use. I'm not against it per se, although I feel, as I'll discuss it, when I view it in the context of the Zoning Ordinance, it really -- it's not persuasive to me. But with regard -- I just feel the increase in FAR is very substantial and it's unnecessary for -- I don't see that it's absolutely necessary or reasonably necessary for improved commercial use of the building even somewhat along the lines of the admirable design improvements suggested. The increase in FAR is 20 percent total, and I do view the floor and the residential in the context of this application as an entirety in terms of increase in FAR, and that's an increase of 20 percent in a building that is already non-conforming to the tune of 30

percent. So, I just don't see that any amplification of substantial hardship, as I understand, would justify that sort of an increase in FAR for this building.

Finally on the question of the zone, I just feel that this proposal does not tend toward the type of changes that I believe the Ordinance intended to be furthered in Special District 10 without admitting that there's no question that it did not render existing commercial uses non-conforming, but in terms of the tendency what the Ordinance had in mind for that area, I just don't believe that it had in mind substantially increasing commercial and residential use along these lines by these types of apartments with their narrow social impact and implication. I just feel it's out of keeping with the purposes of the Special District 10 Ordinance. So for those reasons I'm not able to support the application and

vote against it.

BRENDAN SULLIVAN: Mr. Alexander.

CONSTANTINE ALEXANDER: First of all, I want to echo what Doug has said about the quality of the design, it's very good, and the quality of the presentation tonight. You had a difficult case and I think you did a very fine job in putting your best foot forward. That's No. 1.

No. 2, unlike Doug I have no problems with the FAR increases particularly in the basement. I would be in favor of those. I think they favor the commercial use of the property and they really have no impact on the neighborhood. But we get to the rooftop apartments, and as Brendan has said, height is sacrosanct under our Zoning Ordinance. If you came to the rooftop apartment looking for setback relief, I wouldn't have a problem. Depending on how much the intrusion was. Similarly if you were

looking to go up higher than 35 feet to make the building more commercial usable, you had increased business, more space, I might be in favor just predisposed, because there's your hardship. But there's no hardship to my mind that justifies creating two residential units on top of this building. It's unrelated to the nature of the use. So I don't think you get there because of the hardship and the special circumstances. Because of that, I never get to the whether we further the purposes of the Special District. Although I don't think it does, but by the same token I don't think that's a negative necessarily. It's just a neutral. To me it's neutral. But I just can't get there because of what you want to do given the, you want to raise the height beyond what is permitted by our Zoning Ordinance, and for the reasons you want to increase beyond the height. It doesn't get there for hardship or

special circumstances. For those reasons I'm go to vote against it.

BRENDAN SULLIVAN: Tim.

TIMOTHY HUGHES: I can't disagree with what you guys say down there, but I have to tell you I think this is a great design. I think it's a very interesting approach to things. I think we're getting a great business moving into the area, and I would be in favor of this project just because of how innovative it is. You know? And I don't think -- I'm not -- you say the Board says, you know, certain things are sacrosanct, but no, they're not, you know? We make changes for other reasons. Would you rather see this thing get developed and have, you know, a bunch of mechanicals on top of it rather than a glassed in place for the owner of the business to stay while he's he in town? Not me, you know? And if I have to give up 18 inches to see this kind of design like this

come into that area, I'm willing to do it.

BRENDAN SULLIVAN: Tad.

TAD HEUER: I generally concur. I agree that I don't think -- well, as to the basement FAR, I think the basement FAR is warranted. It doesn't in my mind increase the intensity of the use on the lot. It allows for a better usage of the existing structure without substantial detriment in my mind to the intent and purpose of the Ordinance, I would be in favor of granting the FAR for the excavation.

I would agree somewhat with Tim, and I don't think that height is necessarily any different than any other provision of the Ordinance. As the Board is aware, I tend to be more strict on the other provisions of the Ordinance. So I view height in the same way in that all of the provisions of the Ordinance, not just height, should be viewed as important and governing and there should

be substantial hardships from deviating from them.

As to the units on the roof, this is one of the hard ones where usually you can vote against something because you don't like it. Here it's that unusual situation where because of the restrictions of the Ordinance, I'm forced to vote against something I like very much. And I don't enjoy that at all, but nor do I have the legal ability to say otherwise. I think that it's a large amount of FAR, it is adding a residential use that as Gus mentioned, is unrelated to the purpose of the structure it's being put to. I think the structure could equally itself as is be converted to a residential use. And as I pointed out, I don't think that if we had converted -- if this was a conversion for residential units for five units as of right or with Special Permit under 5.26, that we would look kindly upon more units on the roof.

We'd say you could convert it to the number of units that are permissible. And the fact that it's being retained as commercial, I don't think makes it any better, it just makes it different in my analysis.

I don't necessarily think that the -- I'm convinced with the shadow studies. I don't think there's any impact that's significant having looked at the shadow studies on the neighboring properties. And I think I would disagree slightly with Gus that even if this were a request for additional commercial space, I'm not sure I can support it. My mind is that this is an, you know, 8,000 square foot commercial structure, can be used for a company that needs approximately 8,000 square feet of space. I don't think going up would necessarily change my mind as to allowing more height, simply get more floor plate for commercial use. I think it's a

building structure for someone who needs that amount of space. Some companies need more. Some need less. That's why we have a variety of buildings.

So, I think my end position is I would be happy to grant FAR in the basement. I think that combination of the height, I think as well as the lack of hardship related to the use of the buildings being put -- make it impossible for me to find that there's a hardship under Chapter 40-A that would allow for me to vote in favor of the Variance for the residential units. That being said, it's one of those awkward things where I'm constrained to vote against something that I think is actually a very, very well done and wouldn't overall be a valuable addition to the neighborhood. And if the Zoning permitted it, I would wholeheartedly be in favor of it.

CONSTANTINE ALEXANDER:

Mr. Chairman, can I make -- I'm sorry to interrupt you, make a suggestion that we break the vote into two votes. Vote to grant the Variance with regard to the FAR for the basement and then a separate vote, Variance because it's all covered, a Variance with regard to the height. Can we do that? You're looking skeptical, Sean.

SEAN O'GRADY: I'm not seeing an advertisement for the basement.

CONSTANTINE ALEXANDER: Well, they wanted relief for and increased FAR.

SEAN O'GRADY: Well, I mean they say to construct a rooftop addition. We've always said that you've got to say what you're doing.

CONSTANTINE ALEXANDER: That's a fair point. They don't mention FAR.

BRENDAN SULLIVAN: After we were just lambasted two weeks ago in City Council.

CONSTANTINE ALEXANDER: Say again?

Oh, yes. Too bad. We can't. I think you're right, we can't break it into two votes.

BRENDAN SULLIVAN: Let me make a motion to grant the relief requested to construct a rooftop addition containing two --

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, can I make a request before the motion?

I was going to suggest at this point that the Petitioner would seek to amend the application and only seek a Variance for additional GFA of 501 square feet to be located in the basement, and to withdraw the balance of the relief requested.

BRENDAN SULLIVAN: Fine. I think it would have to be advertised as such. I mean, that's my way of thinking. I mean, it may be included in your dimensional form, but it has not been --

CONSTANTINE ALEXANDER: I'm persuaded by that, too. I don't think we can do that.

ATTORNEY JAMES RAFFERTY: Okay.

In that case would the Board permit a continuance so that we could make a quick filing on that issue so that we don't find us -- because if this Petition were to be denied in its current form, I don't think we can come back for two years with the basement piece.

CONSTANTINE ALEXANDER: I think you're right.

ATTORNEY JAMES RAFFERTY: So we would come back on a limited, modified request limited exclusively to the basement and ask for action on that application.

CONSTANTINE ALEXANDER: You have to re-advertise.

ATTORNEY JAMES RAFFERTY: It would be a new application I think asking for GFA

relief in the basement.

BRENDAN SULLIVAN: Keep this one alive.

ATTORNEY JAMES RAFFERTY: Keep this one alive. Take action on that one with the expectation that this one would be ultimately withdrawn.

DOUGLAS MYERS: What would be the fate of the rest, the balance of the remaining parts of the present application?

ATTORNEY JAMES RAFFERTY: I would say this application is in all likelihood gets withdrawn before it ever comes to a vote.

CONSTANTINE ALEXANDER: He would withdraw after he gets his relief on the basement. If he gets it.

ATTORNEY JAMES RAFFERTY: Right. And if I didn't get it, we would still withdraw.

BRENDAN SULLIVAN: On the motion to continue this matter until?

SEAN O'GRADY: Well, if you were to -- how soon do you think you'd come in?

ATTORNEY JAMES RAFFERTY: Tomorrow.

SEAN O'GRADY: Tomorrow. Okay, so I think you're going to get July 12th is what I expect.

ATTORNEY JAMES RAFFERTY: Okay.

SEAN O'GRADY: Do you want to do July 12th?

ATTORNEY JAMES RAFFERTY: Sure.

BRENDAN SULLIVAN: Was not June?

SEAN O'GRADY: I think Maria told me that the 28th closed. I'm just not sure. Jim's always here so we could probably get him to withdraw a case.

BRENDAN SULLIVAN: Closed because of the number of cases or closed because she has to --

SEAN O'GRADY: Closed --

ATTORNEY JAMES RAFFERTY: It would have to be the -- because it's not been

advertised.

SEAN O'GRADY: Because of the number of cases I believe. Yes, it's too far away to be advertising.

BRENDAN SULLIVAN: Okay.

ATTORNEY JAMES RAFFERTY: If the case were merely continued, would it get an earlier date if this case were continued?

SEAN O'GRADY: Well, I mean the first opening that we have is June 14th for continueds.

ATTORNEY JAMES RAFFERTY: But I'm wondering if the second -- if it was continued to the second hearing in June, if for whatever reason we couldn't get on the second hearing in June with the new case, we could simply further continue this case.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Sure.

BRENDAN SULLIVAN: June 28th?

ATTORNEY JAMES RAFFERTY: And June

28th would work. And if we're not able to secure that date for the new case, we would come back on the 28th and ask for the 12th.

CONSTANTINE ALEXANDER: If we don't fill it up before then. We'll try to save a space for you on the 12th no matter what. We have a long time between now and the 28th.

BRENDAN SULLIVAN: Let me make a motion then to continue this matter to June 28, 2012, at seven p.m. on the condition that the petitioner change the posting sign to reflect the new date and time. And also that any new filings pertinent to this particular case be in the file with amended dimensional forms by five p.m. on the Monday prior to the June 28th hearing. A waiver is -- we would need a waiver to be signed also by the Petitioner. Agree to sign a waiver to the statutory requirement for a hearing under the decision to be rendered thereafter.

All those in favor of continuing this

matter until June 28th.

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

ATTORNEY JAMES RAFFERTY: Thank you
for all your time.

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

(10:20 p.m.)

(Sitting Members: Brendan Sullivan, Timothy Hughes, Tad Heuer, Douglas Myers, Slater Anderson.)

BRENDAN SULLIVAN: The Board will hear case No. 10242, 27 Granville Road.

JANET KINASEWICH: My name is Janet Kinasewich. I live at 27 Granville Road. I would like to extend my back porches by three feet. That's it.

TIMOTHY HUGHES: Apology accepted.

TAD HEUER: I have one question. You say in your application that the reason for your hardship is that the lot size differs from the rest of the neighborhood.

JANET KINASEWICH: Well, I think you --

TAD HEUER: They're all exactly the same size. I was just wondering what the --

JANET KINASEWICH: Well, the house is located on the property differently than some of the others so that the backyard is smaller.

TAD HEUER: So it's not. Maybe it's just a misunderstanding. So you're saying the lot size, the lot size differs from the rest of the neighborhood and the lot is undersized and the house is located so far back. My question is only in that No. 2 where you say the lot size differs from the rest of the neighborhood. Granville Road I think was subdivided at the same time and all those lots are identical, at least when I look at them, they're all 43 feet wide by 77.85 feet deep and across the street.

BRENDAN SULLIVAN: (Inaudible).

TAD HEUER: Yes. And across the street they're all 77.85 feet deep and 45 feet across. So it's just --

JANET KINASEWICH: I'm sorry, I

might have said that wrong.

TAD HEUER: That's okay.

BRENDAN SULLIVAN: You're saying it would create a hardship. What would the hardship be? How long have you lived in the house?

JANET KINASEWICH: Since 1994.

BRENDAN SULLIVAN: So it's been a hardship for --

JANET KINASEWICH: Well, it's a very narrow back porch. I think we've discussed it recently and decided they were probably built for hanging laundry.

The hardship has to do with the quality of life. I would like to extend this by three feet so that I could put a table out there with some chairs.

BRENDAN SULLIVAN: So you don't use your background.

JANET KINASEWICH: I use it but I have to climb over to be able to sit at the

table. I'd like a little more space. And if I'm going to do the upstairs, I better do it downstairs, too.

TAD HEUER: How close are you to your rear lot line right now?

JANET KINASEWICH: Non-conforming.

TAD HEUER: Right. I guess my question, you're in a 25-foot zone. You're at ten-foot, two, and you're looking to go to seven-foot, two.

JANET KINASEWICH: Yes.

TAD HEUER: All right. And how close are your rear abutters to their lot line? To that same lot line?

JANET KINASEWICH: The rear abutter.

TAD HEUER: From Fayerweather.

JANET KINASEWICH: From Fayerweather Street. Back substantially. They have a larger backyard.

TOBY FAIRBANK: And also it's a

garage.

JANET KINASEWICH: And they have a garage also at the end of their driveway which abuts my property.

BRENDAN SULLIVAN: So what happens to the space if the porches were to get extended three feet, then what happens to the space in here?

JANET KINASEWICH: Well, there would be, you know, a narrow space that -- I don't know. Not much, I mean it's not gonna be used for much. Maybe some kind of garden or planting or something like that. The larger yard is on the side.

BRENDAN SULLIVAN: Right. So the backyard area, even though it's typical, for your needs is somewhat not usable, and the back porches are somewhat not usable because neither one is fish nor foul in a sense, I mean, of adequate size to really enjoy or do much with them is that basically it.

JANET KINASEWICH: Yes, basically. And I did send letters around to everybody in the neighborhood explaining what I was hoping for.

BRENDAN SULLIVAN: Okay. Do you have a design in the file as to what it will look like? Any construction design at all?

TOBY FAIRBANK: I'm Toby Fairbank. I'm the architect working with her. We didn't do much for design in case it doesn't, you know, go ahead. I didn't want to put a lot into it. But it would be similar to what's there. There's a south elevation showing the existing and it has railing and, you know, with vertical balusters and then showing it as proposed. So it's very similar. In fact, what's there now the railing on the long side, it cants out a little bit. There's a back twist to this built in bench which we would not do. We would --

BRENDAN SULLIVAN: My thought is for us to approve something and yet didn't want to put too much effort into it, it's tough for me to approve something. I know you're just saying well approve us to go three feet further a total of nine feet, but without actually seeing something to approve, it's hard to approve it. You know, not only do we approve dimension, but we approve aesthetics and because the building inspector is going to have to have something.

TOBY FAIRBANKS: Oh.

BRENDAN SULLIVAN: And you're going to go and do a drawing to get the permit on and then his question is going to be is that what the Board approved? You know.

TOBY FAIRBANKS: I think it's a small drawing. I think the vertical square balusters. In effect that's what it is now.

BRENDAN SULLIVAN: You're talking just two by two?

TOBY FAIRBANKS: Yeah.

BRENDAN SULLIVAN: Three-eighths or three-eighths balusters or something of that nature?

SLATER ANDERSON: Replacing this sort of modern looking railing.

TOBY FAIRBANKS: Replacing that with more evenly spaced vertical balusters. I mean it's -- I believe totally in keeping with everything else that's in that neighborhood on the back porches.

TAD HEUER: Can you do it with seven feet?

JANET KINASEWICH: If that's what we need to do, probably could.

TAD HEUER: I guess my question is what's the given the width of tables and chairs these days, what's the minimum amount? Because when I look at that nine feet out, that's a good size depth out. It would make a generously sized deck, but the issue that

we're looking at is that you're going into a rear setback, which we're trying to avoid, and you're already in it. So I guess my question is certainly nine would be ideal. It gives you, you know, room for the eight-person table. You know, if you're looking for the four-person version, what, what's your -- six doesn't work, is there something between six and nine that does or nine starts looking --

JANET KINASEWICH: Eight.

TIMOTHY HUGHES: Seven and a half? Do I hear seven and a half?

TOBY FAIRBANKS: I do think ideally -- I mean, we do -- I think eight would work well for having, you know, people on either side of the table. It would be kind of a narrow table. It's kind of surprising how much you actually need to walk around behind chairs that are at a table. So if you're few feet, three feet -- well, 30

inches, 30 inches and 30 inches still seven and a half.

TAD HEUER: Right.

JANET KINASEWICH: It would be okay with me to go back to eight feet. If that's what --

BRENDAN SULLIVAN: Then you've got the railing that's going to take up another six inches or so. In other words, you're going out max of whatever, nine feet, and then you're going to -- your actual floor space is going to be reduced by the width of the railing, six inches or so.

JANET KINASEWICH: Uh-huh.

TOBY FAIRBANKS: So eight with the less the railing would --

JANET KINASEWICH: Or nine less the railing. Were you thinking --

TAD HEUER: Under this plan or under that theory you'd only have eight and a half feet of deck anyway.

JANET KINASEWICH: That would be okay.

TAD HEUER: I'm sure it would be. That's what you've asked for.

BRENDAN SULLIVAN: Any other questions?

DOUGLAS MYERS: No. I'm kind of disappointed we're going ahead without a plan and with everything still a little unresolved. I mean --

TOBY FAIRBANKS: There is a plan.

DOUGLAS MYERS: There is a plan?

SLATER ANDERSON: I'm personally satisfied with the plan. I think it's like many decks. I mean, it doesn't give the dimensions of the structural pieces, but.

BRENDAN SULLIVAN: It would be a -- this one here obviously is not code compliant. Okay? So the new one would be code compliant. We will write down there that they be two-by-two balusters, as per the

code which is a max of four-inch spacing between them. The railing has to be a certain height, and I think it probably just very what I could glean from that plan what the intent is. And there's no access from the second floor down to the first floor.

JANET KINASEWICH: Not on the porches. There's a back stair inside.

BRENDAN SULLIVAN: Correct.

Any other questions? Tim, have you any questions?

TIMOTHY HUGHES: I think the tradeoff is some elevated outdoor space for a backyard that's not, you know, being used for much of a backyard anyway. So whatever you decide about how far you want to go, I'll be in favor of it. I don't really need a big plan either. I mean, I built porches with no plan so, you know, it's not like brain surgery and I mean, but whatever -- however we need to markup that paper to the distance that you

want to go that we can all agree on or four of us can agree on to send these nice people on their way, I'm in favor of it.

SLATER ANDERSON: Do we have any neighbor correspondence?

BRENDAN SULLIVAN: Yes, we do.

Let me open it to public comment.

Is there anybody here who would like to speak on the matter 27 Granville Road?

(No Response.)

BRENDAN SULLIVAN: I see none.

There is correspondence in the file.

(Reading) To Whom It May Concern: I am in support of Jan's plan to expand the back porches on her property at 27. I live next-door. Steve Nitsky (phonetic), 33 Granville Road, No. 3.

(Reading) As an immediate abutter to Jan's I support wholeheartedly her request for an extension of two back porches at her property at 27. Ruth Stokes at 23.

(Reading) To Whom It May Concern: This letter is to state my support of 27 Granville Road and her plan to extend her back two porches by three feet. The owner of the 25 Granville Road, unit 2.

And these are duplicates. Those are some three, four people.

SLATER ANDERSON: So the abutter behind you that you look out the porch at, you spoke to that abutter?

JANET KINASEWICH: She doesn't actually live there. She rents those two apartments.

BRENDAN SULLIVAN: They would have been notified anyhow.

The underneath part here, I'm just writing two-by-two nominal square balusters as per code. And underneath here is going to be enclosed, not enclosed?

JANET KINASEWICH: The first floor porch?

BRENDAN SULLIVAN: Underneath the first floor porch.

JANET KINASEWICH: Oh, it already is.

TOBY FAIRBANKS: It would be with lattice.

BRENDAN SULLIVAN: Okay, lattice or equal. Whatever equal is. I just want, again, the Building Inspector is going to have to sort of -- Sean is going to have to sign off on it and we just want to make sure it's something that they can look at.

Any other questions by members?

DOUGLAS MYERS: How many feet are we extending it?

BRENDAN SULLIVAN: We're extending it three feet so that we can get more feet.

DOUGLAS MYERS: On the porch.

BRENDAN SULLIVAN: On the porch, right. Any questions?

TIMOTHY HUGHES: No, I'm good with

that.

BRENDAN SULLIVAN: Concerns?

TAD HEUER: I pick my battles.

BRENDAN SULLIVAN: Let me make a motion to grant the relief requested to extend the rear porches, the first and second floor, by a total of three feet from the existing six feet to nine feet.

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 much needed usable space at the back of the house. The existing site location of the house and the existing porches renders the available ground level space somewhat not useful. The addition of these, this three feet on both first and second floor will be much far more usable a space not only to the occupant of the first floor but also of the second floor.

The hardship's owing to the siting of the house on the lot, the existence of the porches which extend six feet somewhat inadequate to be used in an amenable fashion.

The Board finds that substantial detriment to the public good would not be -- it would not be any substantial detriment to the public good, and that relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance. And the Board notes resident support from the abutters.

All those in favor of granting the relief requested as per the plan submitted and initialed and marked up by the chair.

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

JANET KINASEWICH: Thank you very much.

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

(10:35 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10241, 171 Allston Street.

Give your name for the record and whoever is going to speak and whenever you speak, please identify yourself.

EDRICK van BEUZEKOM: My name is he Edrick Van Beuzekom. E-d-r-i-c-k, last name v-a-n B-e-u-z-e-k-o-m. I'm the architect for the project. I also live in the neighborhood. Completed the design. My clients are James and Kate Regal. And let me we pass around some 3D views to element the plans that you have in the file, and I have

photos of the house and surrounding property.

I'll present the project and then the owners would like to speak a little bit about why they want to do the project as well.

Basically there's two components to the project: One is we're proposing to add a dormer on the third floor of this house and in order to fit a small bathroom up there into a space where you currently have two small bedrooms, not much headroom, and then the other part of the project is on the second floor where we're proposing to take out an interior stair that goes down to the first floor to a small laundry area that's cramped, make some space on the second floor to be able to fit the laundry up there, get a more usable kitchen, and then expand out since the kitchen is very small and an eat-in kitchen currently, we want to basically get a dining room off of that which would be built over an existing second floor deck. And then put in

new egress stair down from there.

CONSTANTINE ALEXANDER: Is that going to be a metal stair?

EDRICK van BEUZEKOM: Yes.

DOUGLAS MYERS: Is some portion of the second floor deck going to be retained?

EDRICK van BEUZEKOM: No. We're adding a small piece of deck off of the addition here to create the exit. And including a little piece of Isotec so they have a little bit of outdoor space up there.

The house is non-conforming -- well the property is non-conforming to lot size. It's a small lot. And the houses, as you see in the photos, it's one of the smaller ones compared to the houses surrounding it. It's a narrow lot. The house is pushed all the way over to one side of the lot. So the changes we're proposing are all on the side of the house that has a little bit more breathing room, a little bit more lot area there.

Basically the house is non-conforming to FAR being such a small lot. It's a two-family.

TAD HEUER: Can I stop you there for a minute?

EDRICK van BEUZEKOM: Yeah.

TAD HEUER: You have this as a 5,000 square foot lot. That's a conforming lot.

EDRICK van BEUZEKOM: No, that's the requirement. Where'd I say that?

TAD HEUER: Oh, I'm sorry. I got it. Okay, right. You're 25.

EDRICK van BEUZEKOM: So we're half the size of what the required minimum lot size is. And the current per square footage of the house is 2365 so we're already up 0.94 FAR in a 0.6 area. So, we're already up against FAR. It's very, you know, just adding the dormer pushes it higher up against that. So that's the primary issue.

Setback issues, again, with the proposal here, we're basically keeping all

the additions within the footprint of the house except for the stair down. So we're trying to be respectful of that and keep it contained as much as we can.

CONSTANTINE ALEXANDER: What's the need for the stair?

EDRICK van BEUZEKOM: The need for the stair is a second means of egress.

CONSTANTINE ALEXANDER: So why do you need a second means of egress?

EDRICK van BEUZEKOM: Because it's a second floor unit. This is a two-family. There's a first floor.

TIMOTHY HUGHES: What's the second means now?

EDRICK van BEUZEKOM: Second means is an interior stair. So -- and the reason we want to change that, let me pull out the plan on that.

BRENDAN SULLIVAN: Basically you want to capture that space for interior use

and you want to then push the stairway to the outside.

EDRICK van BEUZEKOM: Exactly. And the reason we want to capture the space for interior use is just because it's such a small space as it is currently configured that's hard to make use of that space.

CONSTANTINE ALEXANDER: I'm sorry, how much space would you be capturing and what would you use it for if we were to grant you relief?

EDRICK van BEUZEKOM: The space would be capturing by taking out those stairs about three and a half feet by eight feet roughly. So --

CONSTANTINE ALEXANDER: 25 feet.

EDRICK van BEUZEKOM: 25 square feet, yeah. But the situation right now is at the bottom of the stairs, there's a laundry built in down there which is just really narrow and it's very inconvenient for the

second floor. So by couching this little bit of space it gives us the room. To get the laundry up here in the kitchen, it gives us the room. The kitchen as it is, we've got chimneys and pipe chases coming up through here. It's difficult to get any counter space in here. So capturing that little bit of space just really makes a huge difference in the usability of this kitchen area.

CONSTANTINE ALEXANDER: Does it really -- I hear you. But I mean I'll give you my superficial, maybe not superficial reaction. One, I don't like the fact that you're changing the footprint of the building.

No. 2, I think, just me thinking, I think a metal stair is ugly.

[And], three, I think you're going to change the flow -- this secondary means of egress is going to become the primary one. People tend to go into the kitchen, into the

dining room, and all of sudden you're going to affect the traffic flow on this lot with impact, whatever it may be, on a neighboring property. That's one element of this -- of your design that's -- I'm not sure it's going to defeat it for me but it troubles me.

EDRICK van BEUZEKOM: Uh-huh. Well, I would say I think metal stairs can be done quite attractively. I would disagree with you that it's necessarily an ugly element.

CONSTANTINE ALEXANDER: Fair enough.

EDRICK van BEUZEKOM: Let me let the owners speak a little bit about their needs and perhaps they can address the traffic issue.

BRENDAN SULLIVAN: This is a very traditional five room apartment and it's prevalent throughout the city, and I think what's probably wagging the dog here is the

office. Taking a bedroom and making an office out of it. And then because we've taken an office, then we have to then rearrange all of this in order to become somewhat adequate. And then that means that because this is eating up so much room which used to be a bedroom, well, let's now put a bedroom upstairs. And then also we need to redo all of this because this has become an office, you know, and we're getting away from the traditional five room apartment.

How long have you lived here?

KATE REGAL: I've lived here nine and a half years. I'm Kate Regal, R-e-g-a-l and I've lived here for nine and a half years.

JAMES REGAL: I'm James Regal, I've lived here for seven years. We purchased the house in June of 2010 and the things that have changed for us over this period of time is that 13 months ago we had our first child. We have a daughter. And, you know, like many

other things that change when you have a kid how you use the house changes. And so our -- what you're seeing reflected in the plans here are really a reflection of our evaluation of how your lives changed over this past year, how we use the house differently, and what our expectations are sort of going forward with the family in the same space. So I think for us they revolve around three different things.

One is the number and the location of a bathrooms. Right now we have the one bathroom that's on the other side of the house from where the -- from where the bedrooms are. We have three bedrooms, one down on the second floor, two on the upstairs. And thinking, you know, down the road right now even that's a little tight with the bathroom. But going further, we have another child, a family of four living in that space feel like having that second bathroom would be a huge

benefit for us.

Second piece of this is sort of as Edrick was pointing out the space and configuration, space and the layout essentially of the kitchen, we have about three feet of counter space, one on either side. About a foot and a half on either side of the sink is what we were talking about. And kitchen's become a, you know, an important area for us especially with our child, and what we're trying to do is figure out a way to increase our counter space in that area. And as Edrick had pointed out, there's the chases that kind of keep us from that one wall that's on the east side -- sort of northeast side of the house. And it seemed like from the plans that we had, the only real solution we had is to create a new sort of island area that has counter space to it. What that does, though, is it takes away the seating area that we used to have which

would be a table and chairs area for us to sit. So that sort of bleeds into why we wanted to then enclose the smaller space of the deck, because then we push the seating out into that area that's currently the deck usage.

The third piece of this, in our eyes, is really about sort of the configuration and the relationship of what is our laundry area and the back egress to our house. It's a, it's a tight space as Edrick was pointing out merely in the bottom area. There's no place to put the washer and dryer machine, and that area down there, there's no way to shift it so that it can be more accessible given that there's four doors that are down in that particular area. The one that opens up to the outside area, the one that opens up to the kitchen, and then a smaller alley kind of door that goes down to our basement.

KATE REGAL: And the closet.

JAMES REGAL: Excuse me, and the

closet actually is just sort of an enclosure where there's more piping that goes up into there.

So part of is a spatial issue, and I think one of the things that has come up over the last year, year and a half, was, you know, as Kate was pregnant, she couldn't even get down that area. As I go down there, it's --

KATE REGAL: I'm not a big person but --

JAMES REGAL: And so as a pregnant person, that was difficult, and impossible actually. With a child going down that area is also difficult. Why we would want the washer and dryer up on the second floor really is especially, again, thinking about a family and kind of what that means is to do the laundry, you have to go down to the first floor. You want to be able to watch your kid, but that's not a space I can bring them to.

So having it up there where I can keep an eye on them and also be functional with that part of our lives is -- that's what we're looking to do.

CONSTANTINE ALEXANDER: So what you're saying is the only way you can have a laundry on the second floor is to do what the plans show and put in this metal staircase; is that what the testimony is?

EDRICK van BEUZEKOM: It's not exactly saying that's the only way, but the only way to get the laundry up there or to fit it in here we felt was by taking that space of the stairs. So yes, it does push you in a situation where, you know, if you take that stair obviously, yes. You need another egress from the another stair, exterior stair to it.

KATE REGAL: I would -- I don't foresee that ever becoming a primary. I mean one of the issues you brought was whether that

would become a primary. One, is it's a spiral staircase. I don't foresee that being kind of the entrance of choice especially coming in and out of work and that kind of thing. But it's also being in the back of the house for safety reasons. I think, you know, our front entrance is terrific.

CONSTANTINE ALEXANDER: I may have overstated. I don't think it will become your primary for purposes, but with kids and a backyard, it's just going to get used an awful lot even though it's a spiral and it's metal. And it would be for you as well to go down and sit in the backyard, you're going to be using that. And I don't know what the impact is on the neighborhood.

EDRICK van BEUZEKOM: I'm not sure that would make it used any more than the current stair. I mean, there's currently a stair in the back, which if they have kids

playing in the yard, they're going up that back stair anyway.

KATE REGAL: And the same with using the deck to be honest with our baby now. In the morning, she's, like, six in the morning she like wants -- the deck is right there, why can't I go out there?

CONSTANTINE ALEXANDER: You can go on the deck, you just can't go down in the yard from the deck.

KATE REGAL: Absolutely, but the impact on people. Having the deck, it's the same kind of thing with our neighbors.

CONSTANTINE ALEXANDER: I see.

TAD HEUER: So I have a couple of questions. The house is right now 2365.

EDRICK van BEUZEKOM: Yes.

TAD HEUER: Okay. It's two-family?

KATE REGAL: Not our portion.

TAD HEUER: You own the house?

KATE REGAL: Yeah.

TAD HEUER: Why not expand downstairs? You'd have a 2300 square foot house, great for your family needs. That sounds like it's the right size. Why not expand downstairs and not require an addition on the undersized lot for over FAR house?

JAMES REGAL: I understand. I think what we were thinking is, and that's kind of deferred to you, what the opinions here are. But in weighing what the detriment to the neighborhood might be, I think one of the considerations might be taking a rental unit out of the neighborhood and off the market as opposed to having a hundred square feet to which essentially be the deck area, to add on. We don't feel in evaluating our own needs, we don't feel like we need that much space. Again, that's why we're only asking for the bump up of the 200 square feet, and 100 of that being the dormer area and the other 100 being the deck area.

EDRICK van BEUZEKOM: Can I add also? I think it's a financial hardship with the rental income with the first floor unit is essential.

CONSTANTINE ALEXANDER: Sure.

TAD HEUER: That's a tail that wags the dog for me.

BRENDAN SULLIVAN: Financial impact.

TAD HEUER: All right. My next question is how big is your unit?

KATE REGAL: Like 1100 square feet I think.

CONSTANTINE ALEXANDER: I didn't hear the question.

TAD HEUER: How big is their unit?

KATE REGAL: Where we're living.

EDRICK van BEUZEKOM: It's probably more like 1300.

TAD HEUER: So it's the larger of the two?

EDRICK van BEUZEKOM: Yes, because of the larger. Not a lot of space on the third floor.

TAD HEUER: How much did you pay for the house?

KATE REGAL: Well, my family bought it in 2002. And then with the my mom, I was the caretaker of my mom, she was on the first floor. She passed away in 2010, and so we bought it from my brother and sister. So essentially refinanced I was an owner.

TAD HEUER: What's it assessed at right now?

KATE REGAL: I think 500,000.

TAD HEUER: Right. At a certain point don't you just buy a new house?

KATE REGAL: We've thought about that. I mean, I think part of it is that we absolutely love where we live.

TAD HEUER: Wouldn't other people love where you live? And here's my question:

You're a young couple of two, 1100 to 1300 square feet works well. You come in and say well, now we're a family of three and maybe -- you have a house that's valued at least half a million, say 470,000. You're adding 172 square feet. That's about \$200 a square foot. So you're asking for essentially an addition in the ballpark value wise of \$35,000. Every time that we grant an addition of the \$35,000 to a half million dollar house, it works for a family of three and four, but it means that a couple of two all of a sudden, that's out of reach when you do move. Every time we do a reconversion in an up conversion and addition of this type to permit for a growing family, it means that a non-growing family, the use of eight years ago, are priced out of that house. It seems to me that the appropriate thing to do is for the houses, particularly where they're oversized for their lots, is to say what that

is that 1300 square foot unit for those who can use and live in and need a 1300 square foot unit don't have to worry about the kids getting stuck in the dryer and stuff like that. And for those who need 1500 square feet, we have 1500 square foot units in the city. We leave the 1300's where they are, and then those who need 15 got 15. And those who are renting and want to own go to a condo at 11 or something. There's a transients that I think is necessary for the rental market and the housing market in the city that every time -- and the Board hears me say this almost every week. Every time we grant one of these, we take away the option of the people who you were to do what you did. And that troubles me deeply. Deeply, deeply troubles me. And I acknowledge that here we have a situation, as we do with most two-families where the rental income is valuable and assists, but to me that's the

tail that wags the dog. Certainly the rental income is valuable, but at a certain point if there were questions for the rental income and the space, I think there's a tradeoff that needs to be made. Not necessarily -- and this is by no means, you just happen to be those in front of us, but I think this is the paradigmatic example that we get week after week. Particularly on this lot where it's a very undersized lot, where the addition is being placed in the rear setback, where it's just very tight. I mean, I've stood in all of those driveways, on all different sides and it, you know, I understand you have a behemoth living over you on the right. So discussing packing the lot is a bit unusual when you're talking about, you know, four-story whatever it is, immediately as your abutter, but that being said, it's still packing, bulking up a lot, by my count already has at some point in its history two additions

to it. The first rear large one and then a smaller one. And a bump. I mean, I just have difficulty looking at in an additional addition to a bulked out lot in addition to all of the, you know, kind of structural concerns about, I think the Zoning Board housing stock of the city of Cambridge and the use of the housing stock by the residents of the City of Cambridge, those two things together for me are very difficult for me to get over in this case regardless of what I see is the merit. I think there are more systemic issues that are involved as well as the structural issues of where this particular addition is being placed on this particular lot.

KATE REGAL: You know, you mentioned not wanting to talk -- the financial didn't necessarily play in terms of the rental, but at the same time to buy a condo of 1500 square feet, may be for 470,000, maybe, and all we

get is half, you know, we don't own whatever. We have another owner. And so it's not -- I mean, it's hard to make -- I don't know, it feels hard to make that argument and then not accept the argument that the rental income factors in as well just because we can't just move to a 1500 square foot house. Now, I mean it just might come down to what we're kind of willing to live with and that kind of thing obviously, but it does factor in that we can't just go buy this amount of space for even a comparable --

EDRICK van BEUZEKOM: I would say I understand what you're saying about the housing stock, but I think 182 square feet addition which, you know, 65 square feet of that is the bathroom on the third floor, is not kicking this unit totally up into a different market than what it is currently.

BRENDAN SULLIVAN: You don't think it does?

EDRICK van BEUZEKOM: No, I think adding a bathroom certainly adds value, but I don't think it's pushing it out of the market. I think you're still in the same market for buyers relatively there. It's not a huge jump in value. And I don't think that I mean, again --

TAD HEUER: The rental because it's really difficult. I mean I think part of the argument is that every time you do add something that's a multi ten-thousand chunk, it doesn't bump you into a value.

EDRICK van BEUZEKOM: Again, I'm talking about a matter of scale here. And then if you're advocating that it would be better to combine, you know, get rid of one rental unit to make a larger house for them.

BRENDAN SULLIVAN: What are we talking about \$150,000?

EDRICK van BEUZEKOM: For the total?

BRENDAN SULLIVAN: Yes.

EDRICK van BEUZEKOM: In terms of increased value or construction costs.

BRENDAN SULLIVAN: Construction costs.

EDRICK van BEUZEKOM: Constructions costs, no, I think we're talking more like probably 70 to 80,000. Something in that range.

BRENDAN SULLIVAN: More than that. Even if we, between all the costs and everything like that, \$100,000. You had \$100,000 to, again, not knowing what you paid for it, but say in the, you know, \$550, \$600 range then you're in the high sevens. In other words, you add \$100,000 on top of this, whatever you have here. If they were to sell it the day after all this work was completed, you're -- I'm sure that they say now we have a \$757,000 house which goes back to your point of what happened to that \$500,000 house? So I think that's what Tad is saying.

EDRICK van BEUZEKOM: Okay.

BRENDAN SULLIVAN: And I think it would be hard to say that you disagree with that.

KATE REGAL: Although I think we can condoize it now and sell them. You know, I don't know if that --

TAD HEUER: You get a bigger house.

DOUGLAS MYERS: I'd like to raise a point. I know Tad is extremely conscientious. I know he's thought it through, and I really acknowledge my limitations as not being completely conversant with the Cambridge real estate market. But without taking one word away from the validity of what you say, we're not a valuation Board. We decide cases on a case by case basis. We have a shifting membership. We don't have a staff. We don't even have guidelines, policies, anything that explicates the type of

considerations you mention except the right reason of members as we address a case-by-case basis. And it seems to me that if we're putting this large, these larger social questions which are somewhat indeterminant and somewhat subject to flux and different points of view, we're putting them on the back of these people on this concrete case. And I just -- I'm very sympathetic to also the common social experiences you've described which Tad has completely embraced in his analysis, but on a case by case basis, taking what they say and looking at the Ordinance in other respects, the fact that it's completely dormer compliant and other technical aspects, I don't see why they should bear the burden in their case of these larger somewhat amorphous social and economic concerns that aren't codified before this Board.

CONSTANTINE ALEXANDER: Let me

strongly endorse what Doug has said. I've given a lot of thought to this, but Tad again makes good points. But it's not a very simple -- it's a fast analysis to say well, you know, if you want more house, move, and sell the house. You've got to leave the neighborhood. You may not find a house, and given the Cambridge market that meets that you could afford. If you have to step up, what happens, you move to Arlington or some other community. That's not what we want. We don't want to push people out. I think we have to be very, very careful about this notion of preserving starter houses. And to me when people come in and they seek what I would regard to be as modest relief with a good purpose for why the relief, I'm not as worrying as much about losing starter houses in the community. So, it's a different point of view. But I think concept is right, but I think we've got to temper that with reality

and take it, as you said, on a case by case basis.

BRENDAN SULLIVAN: Tim, any thoughts to this point?

TIMOTHY HUGHES: I have a couple of thoughts but, you know, they have to do with -- I think a lot of people come before us looking for too much house. And I think this is just a little bit too much. I think what you want to do on the third floor is fine. I think the expansion out the back, it just packs this on the lot too much. And that's where I'm coming down. And it's not just you, it's everybody wants more house than they really need. I mean, I raised two kids in a 1200 square foot house and they're adults now and they're gone, and the house seems downright spacious by the way.

BRENDAN SULLIVAN: Did they suffer any psychological damage?

TIMOTHY HUGHES: There is no

psychological damage that I can detect.
Neither one of them ever spent a night in
jail, all right? And I --

BRENDAN SULLIVAN: They survived.

TIMOTHY HUGHES: You know, I'm
sympathetic with the idea that you want to get
your laundry up on the second floor, but you
know, you've got an office here that could
accommodate the laundry. There's plumbing
in this wall we already know; right, isn't
that the kitchen? The plumbing in this wall
you back it up with your laundry --

KATE REGAL: There's no plumbing
there. That would only be if we had to move
the sink.

TIMOTHY HUGHES: But it will be if
you put the kitchen there. Oh, that sink.

KATE REGAL: If we had to put the
sink in there.

TIMOTHY HUGHES: You know, I think
there are ways to do this without taking that

staircase out and without putting that circular staircase down the back, which may be a second means of egress but I don't think it's a safe second means of egress in an emergency. You know and I don't think it's going to be something you're going to like using when you get pregnant, you're in your seventh or eighth month.

KATE REGAL: I don't know.

TIMOTHY HUGHES: I might be totally wrong.

EDRICK van BEUZEKOM: The current stair's narrow and steep so it's a tradeoff. But I hear your point, and I'm just wondering okay, you know, maybe there's a way we can rethink this to keep that stair and fit the laundry in if we were -- if we were able to still build out over the porch so that the eating area could be pulled out the kitchen, maybe we can still work a way to fit that in there and that would eliminate the stair back

here and keep it all within the footprint of the house.

CONSTANTINE ALEXANDER: Well, speaking for myself, I'm somewhat agreeing with Tim. That would be satisfactory to me. You'd get my support. I'm not troubled. It's a staircase and the reasons why you need it don't persuade me. If you can come around with an another solution, you've got my vote. And I believe there is a need for the dormer on the bathroom on the second floor. And I can understand the need for a larger kitchen area with a small deck off the back. That all makes a good deal of sense to me.

BRENDAN SULLIVAN: Let me open it to public comment.

KATE REGAL: I also have a support from these are from.

BRENDAN SULLIVAN: Let me open it to public comments.

The Board is in receipt of -- anybody

wishes to speak on the matter?

TRACY VERA: I'm sorry. My name is Tracy Vera. I live at 169 Allston Street. I also own 163 Allston Street, and I abut one whole side and abut a hundred percent of the setback on the back of the building. I don't agree with this. I don't think they have a hardship until they have three more kids. I've been there. I've lived on that property for over 60 years and there's been families upstairs and downstairs, of three, four kids that grew up in the house. I think the house is fine the way it is. They should have bought a bigger house if they wanted a bigger house. I'm totally opposed to this and also I like to say that William McNeil is here which is my neighbor on the other side. He's the abutter on the other side, between the two of us we abut about 90 percent of this. He's a stutterer and he asked me to -- because he may not be able is to speak.

BRENDAN SULLIVAN: Well, I have the letter from Mr. McNeil which I can read into the record.

WILLIAM McNEIL: Yes.

TRACY VERA: He gave me a copy of the letter, but if you have it.

BRENDAN SULLIVAN: Yes, all right. Let me read it into the record. The Board will acknowledge Mr. McNeil's presence and his correspondence: (Reading) Dear members of the Board: I'm writing to you regarding case No. 10241 which is a request for a Variance at 171 Allston. I'm the owner and resident of 236 Pearl Street which immediately abuts 171 Allston. The request is for the approval of a Variance to expand the existing house with the addition of a third floor dormer to accommodate a new bathroom and to construct an addition on the second floor which would enclose an existing roof deck on the west side of the house. The

addition of a third floor dormer at 171 Allston Street would be aesthetically unpleasing and a detriment to the existing structure. I have lived at this property for 30 years. Each year on the 4th of July holiday my family visits me to celebrate the holiday, and we have been fortunate enough to view the fireworks from the property. The addition of a third floor dormer at 171 Allston will most certainly block my view.

Additionally I have maintained a vegetable garden in my yard which now will become shaded from such an addition. This will have an adverse effect on me as I've been growing my own vegetables for years. For the above reasons, I strongly oppose the approval of this Variance. Sincerely, William McNeil. As you would say.

WILLIAM McNEIL: Yes, right.

BRENDAN SULLIVAN: Good, okay.

And then we have the other letter.

Anything else to add.

TRACY VERA: That's pretty much it. I just want to say, and I don't think that they have a hardship until they have more kids. I mean, the family's growing up in that house. I've been there for over 60 years.

WILLIAM McNEIL: The washer and dryer in the cellar. I worked in the house. I've been in there more than once.

BRENDAN SULLIVAN: Okay.

And you lived at, I'm sorry, what was your address again?

TRACY VERA: I live at 169 Allston Street, which is right -- I mean, you can touch my building.

BRENDAN SULLIVAN: Okay. So your letter is in the file here also.

TRACY VERA: And also in the back every year. I have the back setback which you can touch the buildings. You've been there.

BRENDAN SULLIVAN: Let me -- thank you. Other correspondence in the file from 146 Allston Street.

(Reading) Dear Board Members: My name is David Eon, E-o-n and I am the owner and long-term resident of 146 Allston Street. I would like this letter to be added to the BZA hearing scheduled for Thursday, April 26th, and recorded that I'm opposed to the issuance of a variance to alter the property at 171 Allston Street.

Is there anybody else who would like to speak on the matter? Yes.

ALEX KRUTSKY: My name is Alex Krutsky. This is my wife Maggie and we live at 232 Pearl Street. And we abut the -- our yards. We share our yards. And so I just want to read this. We have reviewed the proposed plans for additions on the James and Kate Regal's house at 171 Allston Street and as residents of Cambridge and abutting

neighbors to the Regals, we fully support their petition for Zoning Variance. And we've lived there since 9190.

CONSTANTINE ALEXANDER: Thank you for coming down.

BRENDAN SULLIVAN: Thank you.

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

(No Response.)

BRENDAN SULLIVAN: There is another correspondence in the file. (Reading) To the Board of Zoning Appeals: We have reviewed the proposed plans for the additions and adjustments to Kate and James Regal's home 171 Allston Street. As residents of Cambridge and neighbors of the Regals, we fully support their Petition for a Zoning Variance. Signed by -- is it Roy?

KATE REGAL: Yeah, Roy Auger.

BRENDAN SULLIVAN: Roy Auger, A-u-g-e-r 224 Pearl Street; Margie A. Murphy,

198 Allston Street; Bill Q-u-i-v-e-r-e, Quivere, 238 Pearl Street; and Lisa Dalmeida, D-a-l-m-e-i-d-a, 156 Hamilton Street.

There's also correspondence in the file from 220 Pearl Street. (Reading) Dear Members of the Board: We are writing to support the application for 171 Allston Street. We have lived there for 31 years and while we, not abutting the property, we are adjacent to the rear abutters and look directly at the back of 171 Allston over a low garage. We see no negative impact from the proposed addition and urge you to grant the Petition. Sincerely, Luka Child and Carol Faulkner, F-a-u-l-k-n-e-r.

That's the substance of the correspondence. Let me close public comment.

EDRICK van BEUZEKOM: I guess I would ask if, with your permission, if you would consider voting on it if we agreed to

move the stair.

BRENDAN SULLIVAN: For me I would have to see a plan. And if you want to, I guess, go back and take into consideration comments from the Board and what you feel is a revised plan, but I would have to --

EDRICK van BEUZEKOM: You want to see a drawing?

BRENDAN SULLIVAN: -- want to see a revised plan.

CONSTANTINE ALEXANDER: Nice call.

BRENDAN SULLIVAN: That would be my --

EDRICK van BEUZEKOM: Okay.

BRENDAN SULLIVAN: It would have to be marked up anyhow. The dimensional form would have to change. There's a whole bunch of stuff.

EDRICK van BEUZEKOM: Okay, that's true. Well, I think in that case we would like to request a continuance.

BRENDAN SULLIVAN: Okay. Any comment on the --

CONSTANTINE ALEXANDER: Oh, no, no. I'm all in favor of a continuance. I think it's worthy of seeing new plans. No guarantee we're going to approve them when you see them.

BRENDAN SULLIVAN: Tim.

TIMOTHY HUGHES: Yes, I'd like to see them try again.

BRENDAN SULLIVAN: Sean, we are on to?

SEAN O'GRADY: We are -- we can do this June 14th.

CONSTANTINE ALEXANDER: Does that give you enough time?

EDRICK van BEUZEKOM: Yes.

CONSTANTINE ALEXANDER: Is Tim here?

TIMOTHY HUGHES: That's up in the air. Is the 28th still open or not?

SEAN O'GRADY: Well, you've got Hamilton is just going away.

CONSTANTINE ALEXANDER: We can do the 28th. Let's try the 28th.

BRENDAN SULLIVAN: Let me make a motion, then, to continue this matter until June 28th at seven p.m.

EDRICK van BEUZEKDOM: We appreciate it.

BRENDAN SULLIVAN: On the condition that the Petitioner change the posting sign, maintain the posting sign as per the Ordinance requirements, and change the sign to reflect the new date of June 28th.

CONSTANTINE ALEXANDER: Let me just emphasize one thing, as your architect knows well from another house, you've got to take that sign that's there now and keep it up at least for the 14 days before the hearing. Get a magic marker, change the date, change the time. If you don't do that, we won't hear

the case.

EDRICK van BEUZEKOM: Thank you.

BRENDAN SULLIVAN: To reflect the new date of June 28th, and a time of seven p.m.

And also on the further condition that the Petitioner sign a waiver to the statutory requirement for a hearing and a decision to be rendered thereof, and that any changes to the present plan and the related dimensional form be in the file by five p.m. on the Monday prior to the June 28th hearing.

EDRICK van BEUZEKOM: Yes. We'll have it in.

BRENDAN SULLIVAN: And I would suggest that you have more conversation with some of the neighbors and, again, the file is here for review and they should probably review also. More dialogue probably may be helpful.

Okay, on the motion then to continue this.

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

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

(11:15 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, timothy Hughes, Tad Heuer, Douglas Myers.)

BRENDAN SULLIVAN: The Board will hear case No. 10243, Mr. John Gates. And as per earlier conversations, Mr. Gates has requested a continuance to correct submissions in the file.

The Board has granted his continuance until June 14th at seven o'clock on the condition that Mr. Gates sign a waiver form to the statutory requirement of a hearing and decision to be rendered thereof.

And also that he change the posting sign, maintain the posting sign, as per the

Ordinance to reflect the new date and time.

And that any changes to the plan, submissions, and dimensional form be in the file by five p.m. of the Monday prior to the June 14th hearing.

And it was voted on unanimously by five members of the Board.

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

(11:25 p.m.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Timothy Hughes, Tad Heuer, Douglas Myers.)

BRENDAN SULLIVAN: We'll go to case No. 10244. Is there anybody here going to speak on this particular case at all, either for or against?

ALAN JOSLIN: We had Pam Delphenich, the head of design from MIT Planning who was here until ten o'clock. She submitted a letter to you and she was simply going to read from that. And there were some other --

BRENDAN SULLIVAN: I'm wondering if there are any concern or opposition or anything on this particular.

UNIDENTIFIED FEMALE: No, I'm for it.

BRENDAN SULLIVAN: Okay.

UNIDENTIFIED MALE: We're all for it, but we're here for our own edification.

BRENDAN SULLIVAN: If you could sort of plow through it.

ALAN JOSLIN: My name's Alan Joslin. I'm the architect with Epstein Joslin Architects in Cambridge. This is Bob Steininger.

BOB STEININGER: I'm Bob Steininger. I'm a board member, a long time board member and past president and past treasurer for the Phi Beta Epsilon Corporation and a local Cambridge resident.

ALAN JOSLIN: And Steve Carhart who is the Applicant who is the president of the corporation, was not able -- he's out of town today on a family matter and, therefore, Bob has come in his place instead.

[If] I stand at the boards, is this possible?

BRENDAN SULLIVAN: Sure.

ALAN JOSLIN: Just to take you through this quickly. The location of the -- property's 400 Memorial Drive. This faces Memorial Drive. In fact, the front entrance is on Endicot Street. And the north side of the property bounds what's called Amherst Alley on the MIT campus. And this basically is the main thoroughfare for students coming and going. You all know? Okay, good. It's the main coming and going from the center of campus to all of the dorms and student residences down below. Basically we're seeking a Variance on three issues.

One is a tower which contains an elevator and a stair, and for connected circulation. That violates FAR as well as setbacks.

Secondly, we're -- in conjunction with that, we are needing to change the location of the loading dock, loading zone. This plan has the existing site plan conditions, and this is the proposed site plan conditions. The existing has, in this dashed red, is the allowable location for the loading area. The loading area serves a kitchen for a house of 45 residents and we're not changing the resident count at all.

In adding the elevator and stair tower, it's -- we're having to relocate that loading dock and that's being located where a curb cut for the loading dock once was. It's being -- it will be completed as a sidewalk and the City of Cambridge has agreed to allow us to mark that as a loading area.

The second Variance that we're requesting has to do with a photo voltaic array that's mounted on a trellis above the roof deck. This -- basically the project is

an upgrade of a fraternity house that was built in the early 1900's. It was renovated in about 1969 to add a floor and a roof deck, and then since that time there have been minor upgrades, but for all intents and purposes the house has not seen any significant upgrades since 1969.

We are coming to this house to provide serious upgrades from top to bottom, and I'll -- and that includes trying to bring this -- incorporate as many sustainable features as possible and create a model version for student residents on the MIT campus. So the photo voltaic array would provide ten percent of the electrical energy for this property.

And the third variance that we're seeking is for the addition of this bay on the south side of the fraternity house and that's an FAR issue.

CONSTANTINE ALEXANDER: What's the

purpose of -- why do you need the bay?

ALAN JOSLIN: The bay is the only one that doesn't have a direct hardship, the -- I'm going to go through --

TAD HEUER: That's not great language for you.

CONSTANTINE ALEXANDER: That's why I was laughing.

ALAN JOSLIN: No, I understand. I'm going to take you through each of them.

TIMOTHY HUGHES: Is there an indirect hardship by any chance?

ALAN JOSLIN: There is a hardship, but I'll explain it as we get there. So now to go through each of them.

The tower. What has required the tower is the fact that we have by virtue of having to renovate all the mechanical, electrical systems, windows, the new roofing, basically new insulation, etcetera, gone over the threshold for ADA requirements. So now we

have to make this building fully ADA accessible. And what that means here is we have to provide an elevator. We have to make sure we have a stair of adequate width for negotiation. We also have to provide a front entrance that is accessible with a ramp. And then, of course, on the interior we have to enlarge the bathrooms, so the bathrooms are fully accessible which means shower stalls have increased, bathroom stalls have been increased.

Now, to take -- this rectangle represents the stair, the new stair, and the elevator. The current stair in this location, the second means of egress, does not meet the dimensional requirements, and we have to upgrade that with this scale of renovation. So we now have to find a bigger footprint for that stair. The elevator is -- has to be sized as a stretcher elevator so it's a, it's significant in size. And

when you take those and you add the -- well, let me add the increase in bathroom size and the like, there is no way to do all of this internal to the house without losing significant -- this is just the elevator in the stair. I put the stair where the old stair is plus the elevator, plus enlarging the bathroom, we can no longer sustain the fraternity with the population it has in there and economically it's not viable.

So we have been required to put this somewhere. The geometry of the site is such that there is really only two viable locations. It's either somewhere in the property on the Memorial Drive side, which is completely impractical and certainly detracting to the major public facade. And so we looked for ways to put it in the back of the building or currently in the back of the building. You'll notice that this volume sits and the location off, somewhere

off this wall. This is the main corridor of the fraternity on all floors. We can't locate this any closer to the building and still be able to enter the building, which is this area becomes the required front door, because this front door is too close to the sidewalk to be able to get handicapped accessibility to that door. So now we're creating, we need to create a new front entrance with a distance off to the sidewalk to that we can get a ramp to that door. So it's those four -- three or four things which have basically placed the primary volume of the addition.

The -- what we have done is pulled the -- make sure this stays off the property line of what is called the DKE fraternity and it allows us to take what was a lot of service activity, dumpsters and the like, which were in the backyard and now contain it within an open but enclosed alley. And now what used

to be the dumpster area and the back of the building becomes the front door of the fraternity.

Why MIT has been supportive -- I'm sorry, I'm hoping you received letters from all the various abutters, but MIT has been particularly supportive of this because Amherst Alley they have on the agenda to improve the quality and character and friendliness of that environment, and given the current condition of the fraternity, and here is the existing condition photo, this is a very mean and unpopular place along Amherst Alley. And by putting this in its location and redesigning the boundary between their property and ours in conjunction with MIT, we're developing a terrace landscape out in front of the building. So that now this has -- becomes a popular spot along the student route.

DOUGLAS MYERS: Where is Amherst

Alley in that depiction?

ALAN JOSLIN: This right here is the sidewalk of Amherst Alley. The roadway is right here. Paralleling the roadway is a green space. And so MIT's property comes all the way to this line right here which we are, which we are -- there's the property. This is Amherst Alley. The roadway, this is Amherst Alley the green way. And this is MIT's property. We're designing with them integrated landscape area.

TAD HEUER: So you're going to have a patio that allows you to have an unobstructed beautiful view of DKE's parking lot?

ALAN JOSLIN: No, this has nothing to do -- DKE's parking lot is back here.

TAD HEUER: Right. So as I'm walking down the street, I see --

ALAN JOSLIN: You cannot see DKE's parking lot.

TIMOTHY HUGHES: Anymore.

ALAN JOSLIN: Anymore. It's gone.
DKE's parking lot is behind this.

TAD HEUER: Well, right because I'm
on Endicot Street.

ALAN JOSLIN: Right now, right now
you can. This is the DKE's parking lot.

TAD HEUER: Right. But if I'm
walking down -- I guess -- it's kind of, does
MIT -- my question is does MIT have plans to
do things with the structures along that
stretch of Amherst Alley as well as just right
behind you?

ALAN JOSLIN: Their intentions are.
The issue is they're finding source. So what
they're doing is they see an attraction
working with us because we will fund some
portion of the improvements, and they will
probably seek to have arrangements, if they
can, with properties along Amherst Alley.

DOUGLAS MYERS: We the fraternity?

ALAN JOSLIN: We the fraternity, exactly. So it's, you know, it's a negotiation and a, you know, each side trying to help the other in developing a space that works for both.

TAD HEUER: How long has the fraternity been on this site?

BOB STEININGER: Since 1960.

TAD HEUER: Were they the original tenant?

BOB STEININGER: They bought the land before MIT moved over.

ALAN JOSLIN: Yeah, here's the original rendering, and that's where we'll come back to the bay window. And that's the original rendering. It was done in 1913. It was finally occupied in 1916. It's the ADA and current codes which suddenly have become the threshold that kicked this requirement.

And nonetheless it gives us, I believe

it, I and MIT and others, feel that it has given an opportunity to improve, the quality and character of Amherst Alley. And that's been our goal is you have to put an elevator tower and a stair, how do you make the most beautiful version of that in this location.

What's also interesting is you'll notice there's another elevator tower down here. In other words, the pattern of use of the development pattern of the dorms put the elevator towers in this back so you -- long view of this you have a series of these elevator towers.

TAD HEUER: Could you put up the --

ALAN JOSLIN: Yeah.

TAD HEUER: Do you know how they got the elevator towers? Is that from us?

ALAN JOSLIN: These?

TAD HEUER: Yes.

ALAN JOSLIN: I have no idea. I don't know. I couldn't tell you what year

each of these were. These are more modern. They're probably in the early seventies.

TAD HEUER: Well, not the end of the block but the ones in the center.

ALAN JOSLIN: There's one here. One here. And there's one there.

TAD HEUER: Right.

ALAN JOSLIN: And this is parking area. This is a -- generally a masonry wall that's been built as an edge. And this is a green way. And this is the -- these are the tennis courts and the fields.

BRENDAN SULLIVAN: Okay. Is that it basically?

ALAN JOSLIN: That explains the tower. The photo voltaics -- well, I'm sorry, it was placed in such a way, we studied sun angles. We're not casting any sun angles on the adjoining properties, any of the habitable areas. We have not created any kind of windows or view patterns into

privacies on the adjoining abutters, and yes.

DOUGLAS MYERS: Despite its roll for solar generation, is it also intended for any social uses?

ALAN JOSLIN: Well, the deck exists.

DOUGLAS MYERS: Yes.

ALAN JOSLIN: The deck exists, and what we're doing is basically refurbishing it. We're keeping the same footprint of the deck.

CONSTANTINE ALEXANDER: The answer to your question is yes.

ALAN JOSLIN: Yes, yes. We're also trying to increase safety in the way that it's been built.

The photo voltaic trellis would only be built with the photo voltaics. We're not interested in a trellis. You can place any kind of restriction on that if you like.

In terms of the photo voltaics, as I said, it handles ten percent of the property.

In the Zoning Ordinances Cambridge seems to be favorable in terms of trying to incorporate sustainability features such as solar collectors. They give special height allowances for that. We don't need special height allowances because we're still within the height limit, but it is in the spirit of what Cambridge is seeking. We're hoping that this addresses that.

TAD HEUER: So what's the relief technically that's required?

TIMOTHY HUGHES: Setback.

ALAN JOSLIN: Setback. It's setback.

TIMOTHY HUGHES: And FAR.

TAD HEUER: It can't be for FAR.

ALAN JOSLIN: Well, it's not FAR. It's just setback.

TIMOTHY HUGHES: Not on the photo voltaics but overall. Are you talking about overall?

ALAN JOSLIN: Just the photo voltaic and setback. The FAR has to do with the tower and the bay window in the front of the building. The roof deck is there. It's in the original square footage.

CONSTANTINE ALEXANDER: They're in the setback now and they're increasing the bulk in the prohibited setback. It's going up higher and that's why it's a setback.

TAD HEUER: It's not a mechanical?

TIMOTHY HUGHES: That's what Sean was just saying.

CONSTANTINE ALEXANDER: Is it mechanical?

SEAN O'GRADY: Well, I mean my first reaction would be to exclude the whole thing as a mechanical if indeed it is simply structure just there to hold the panels.

CONSTANTINE ALEXANDER: The answer is you may be seeking relief you don't need.

SEAN O'GRADY: On the other hand,

though, I mean it's certainly --

CONSTANTINE ALEXANDER: You're here now, let's move on.

ALAN JOSLIN: I'm here for safety, I would rather make sure everyone agrees as to what it is.

TIMOTHY HUGHES: So it's ten percent electrical use offset the increase in electricity for your elevator?

ALAN JOSLIN: Good question. Yes, it offsets the elevator usage of course. Hopefully it offsets more than the elevator usage.

TIMOTHY HUGHES: All right, so the historical element on the bay, can you get to that?

ALAN JOSLIN: Yeah, the -- just the -- we were amused and pleasantly amused by the original rendering of the fraternity, and this was in 1913. You'll notice it's a four-story building. The mansard roof which

is there was done in '69, that was added fifth floor. What we're doing in this phase is we're cladding it and in copper. Right now it's unattractive concrete. You notice all the ornamentation on this facade which is missing from the current one. So value engineering was very heavy at that time as well. They did have this wonderful bay element as part of it. They also had a fenced in forecourt which we are also reviving because that forecourt is right off of the dining area. So we're putting French doors in where there are now windows so you can get out into this area. We did have French doors originally in that facade presented at the MIT housing. They were not keen on the French doors. They liked very much having eyes on the street. They said that's a problematic area on the campus because it's kind dark and visitors, etcetera, they're always concerned about who's coming and going

there. We said okay, we won't be putting openable doors because they're worried about noise, etcetera. But what if we produce a larger window and eyes on the street as it were?

CONSTANTINE ALEXANDER: At the end of the day you're talking about aesthetics, aren't you?

ALAN JOSLIN: It's an aesthetic issue and it's about -- yes, it's an aesthetic issue and it's about trying to come to terms with the, you know --

CONSTANTINE ALEXANDER: It's very late at night and Mr. Rafferty will yell at me. What's your hardship for the aesthetic change?

ALAN JOSLIN: Because to do any other aesthetic change would be impossible because it's a structural wall and we can't, we can't widen the aperture. So we're leaving the apertures the size they are.

CONSTANTINE ALEXANDER: Why do you need an aesthetic change other than to improve the aesthetics? I mean, what's the need?

ALAN JOSLIN: Greater security on the street. That would be its benefit. And that, that is the great concern about camp -- you know, campuses and campus life.

CONSTANTINE ALEXANDER: And there's a problem with the bay window, what's the relief setbacks?

ALAN JOSLIN: The front, the setback on Memorial Drive there is no problem. We're well within our setback area. It would simply be the setback in proximity to the abutting dorm here, which is I think we're five feet off of the party wall, and setbacks are about 16 feet off the party wall. So that's where the encroachment is incurring. We have, I believe, you should have a letter in the file from that fraternity who has

reviewed it.

CONSTANTINE ALEXANDER: We do.

ALAN JOSLIN: And is in support of that.

TAD HEUER: And there's also FAR relief, correct?

ALAN JOSLIN: Yes, correct.

BRENDAN SULLIVAN: Any other questions at this point?

CONSTANTINE ALEXANDER: I'm fine.

TAD HEUER: I have one question. So I understand why you're doing it. I get it. You're going from a 3.2 in a 3.0 district to a 3.9.

ALAN JOSLIN: Mostly with an elevator and stair.

TAD HEUER: Mostly with an elevator and stair indeed. But at what point do I just throw the Zoning Code out the window and say it's necessary so whatever --

ALAN JOSLIN: Are we talking about

the bay?

TAD HEUER: No. We're talking about the -- I mean, the alternative here is as you had to sit through for the last case, you have a building that -- the one thing you're not -- the variable that isn't moving is that you want to house 45 individuals in the building.

ALAN JOSLIN: We have to do that otherwise we can't support the fraternity.

TAD HEUER: Well, you can't support the fraternity --

ALAN JOSLIN: And we can't do a renovation.

TAD HEUER: -- in this location which is where you want to be. Those are immovable --

ALAN JOSLIN: I'm sorry, and we can't renovate this building.

TAD HEUER: Oh, sure you can. I mean, you could -- there are other things that

could be done with it presumably. I mean --

TIMOTHY HUGHES: You mean besides being a fraternity?

TAD HEUER: Yes.

ALAN JOSLIN: Oh, I'm sorry, location of the fraternity which has been here for years is a --

TAD HEUER: That's not something that's in the Zoning Ordinance, that's my problem.

ALAN JOSLIN: I understand, but that is a hardship for this property.

TAD HEUER: That you would always be there?

BOB STEININGER: It's an MIT fraternity.

ALAN JOSLIN: We built this house and we're in charge of maintaining it and keeping it usable, and we're trying to do that and we're not allowed to do that without putting an elevator and stair.

Now we did talk about well, my God that's an expense. Do we do it? Do we tear down the house? Well, if we tear down the house? We can't build what we want here. Then do we move? Well, we can't -- if we move, we're somewhere else and the house doesn't survive because the location of the house is one of the features that is a benefit to the house.

BOB STEININGER: Just a little addition to that, one of the aspects that we do have, and there are quite a few fraternities associated with MIT, many of them are in Boston. Many of those are trying to come back to the MIT campus. Because it's been very difficult, one, to sustain something far away. And, two, it's a different MIT student population who wants to be close, who wants to actually be able to go and access the facilities that are there, and it's difficult, even though they have the

rides and the like to go to Boston to do that. So by not having it close to MIT, you potentially -- if you consider this a business, and in some sense we're in the business of educating men, then we're actually making it difficult for us to educate those men because we can't supply an area that those students would want to live. And that's a reality.

CONSTANTINE ALEXANDER: Yes, but the relief you're seeking is generally analogous to a single-family residence where you need more living space. You need a dormer, the house is not really usable for the people living in it without the additional space. Here it's the same thing, you have rooms for 45 people. You've got to make renovations because of legal reasons, and you're going to use your ability to use the house. Therefore, you need -- that's your hardship. I think it strikes me as

compelling. I mean, I don't have a -- speaking only for myself, I don't have the problem with that.

BRENDAN SULLIVAN: Well, the extent of the renovations that are necessary to maintain and sustain the house, and because of the amount of work then triggers compliant with applicable codes which then sort of balloons the project into another level and to -- you have to do that. You have to do part B which is a big part in order to maintain part A. And then because part B is now wagging the dog, if you will, that the finances of having to do part B requires that you maintain the number of residents in part A, basically the existing. And you're saying as far as moving away or what have you, that fractures that bond which is so vital to the fraternity.

TIMOTHY HUGHES: Could you repeat that, Brendan?

ALAN JOSLIN: Just for the record, the threshold is \$50,000.

BRENDAN SULLIVAN: It's low. It's quite low. And I was familiar with another religious institution wanted to buy a property, they bought the property, but then wanted to renovate it and then all of sudden they triggered a whole bunch -- well, they ended up having to sell because they cannot support having to comply with the ADA and just, you know, it's a long, expensive road.

Let me just open it public comment so that we can somewhat move along and people can hold all their other thoughts.

Is there anybody here who wishes to speak on the matter of case No. 10244, 400 Memorial Drive.

(No Response.)

BRENDAN SULLIVAN: There is correspondence in the file. To the Board of Zoning Appeal: From the Association of

Sigma Tau alumnae of Delta Kappa Epsilon or better known as ASTA DKE. (Reading) The association which directly abuts the Applicant's property at 400 Memorial Drive along the Applicant's requested property line. The Applicant, they have reviewed, have solicited feedback, comments and questions of the proposed design, has made the Applicant's design team available for follow-up communications. They understand the amount of relief being requested, and that they did express some concerns about the extent of the work and the addition of the roof trellis with a photo voltaic array, and the addition of the bay window on the Memorial Drive side and the relocation of the loading zone. We have considered the likely impacts on our property for the aforementioned at 403 Memorial Drive and have no objections to any element of the proposed design. We have considered the visual impacts on the field of

view from our house, the potential of shading of our back lot, and the improvements in the visual appeal of the Memorial Drive side of the APE property. The potential for increased use of the roof deck and the relocation of the loading zone. After careful consideration, further discussion among our members ASTA DKE fully supports Phi Beta Epsilon's request for the needed Variance to proceed with the proposed designed improvements.

On the letterhead of the Massachusetts Institute of Technology, also known as MIT, Department of Facilities. (Reading) Dear Secretary: On behalf of the Massachusetts Institute of Technology, I'm delighted to support the Variance application of PBE. Although it's been in the building envelope to include a new stair tower, elevator, and the new bay window will extend the pre-existing non-conformance with Zoning

Regulations, the proposed expanded building remains in scale with the neighboring fraternity and sorority buildings and reflects some of the elements of Baker House, Burton Corner and other residence halls on Amherst Alley.

With regard -- they find that the parking behind BPE and its replacement with a beautiful new entryway will greatly improve the alley. With regards, Pam Delphenich, D-e-l-p-h-e-n-i-c-h, director campus planning and design.

On the letterhead of Tom Stolman, Jr. AIA, (Reading) To Whom it May Concern: I am the President of Gamma Phi Corporation of the Kappa Sigma Fraternity at MIT and alumnae. I'm writing to the Board in support of the Variances requested by Phi Beta Epsilon. They have taken the time and made an effort to explain their plans, seek input from the neighbors, and included us in the process. I

believe the resulting renovation will be a positive addition to the neighborhood along Amherst Alley, and in particular supportive of their addition for an elevator for handicapped access and the improvements to the landscaping on Amherst Alley side, both of which would be difficult to achieve without a Variance. Thank you, Tom Stolman. And I think that's the extent of the correspondence.

The Planning Board has --

CONSTANTINE ALEXANDER: Another one?

BRENDAN

SULLIVAN: -- correspondence which basically leaves it up to us.

ALAN JOSLIN: Sure. Just for note, Sigma Tau Alumnae of Delta Kappa Epsilon also produced a letter. I think they may have mailed it late. They sent me a copy. But they said it was mailed to you.

BRENDAN SULLIVAN: Dated 15 April?
We have it.

ALAN JOSLIN: Oh, that's it. And
Theta Delta Chi, I'm sorry. Theta Delta Chi,
that's the one I'm referring to. That's the
one you don't have. Across the street. And
then --

BRENDAN SULLIVAN: Delta Chi at MIT.
Delta Chi -- Delta -- Theta Delta Chi.
They're supportive of the renovation.
(Reading) We have discussed these plans at
the TDC house, and there's agreement among
the alumnae and the undergraduate that this
renovation is a very positive step for all of
the houses on Amherst Street. I think we've
gone through the alphabet. The Greek
alphabet.

CONSTANTINE ALEXANDER: The Greeks
stand together because they don't know when
they're going to come before us seeking
relief.

ALAN JOSLIN: The city, this is Sue Clippinger with an e-mail supporting the curb cut provided that we removed the curb cut -- I'm sorry, approving the moving of the loading dock in front of the old curb cut provided that we remove the curb cut and replace it with a sidewalk.

BRENDAN SULLIVAN: And so you have agreed to comply with this requirement of the Planning and Traffic Parking and Transportation Department?

ALAN JOSLIN: Correct. And they would be the ones.

BRENDAN SULLIVAN: And we will enter Susan Clippinger's letter and make it a part of the record, and the Petitioner has agreed to comply with. You may also --

ALAN JOSLIN: And Susan Rasmussen in Community Development, about sustainability on the photo voltaic array and trellis, she said their office does not write letters but

are available for comment and they support the approach towards sustainability. And I think that's it.

BRENDAN SULLIVAN: We will make it as part of the record.

TAD HEUER: She doesn't send letters but sends printed e-mails that become part of the file.

ALAN JOSLIN: I'm just sharing e-mail correspondence if anybody did an investigation would want them anyway.

BRENDAN SULLIVAN: Okay. Anything else in rebuttal?

ALAN JOSLIN: I won't disagree with any of those people.

CONSTANTINE ALEXANDER: I hope not.

BRENDAN SULLIVAN: All right.

ALAN JOSLIN: But we did, as you can see, have a very extensive community process of trying to make sure everybody was in part of it.

DOUGLAS MYERS: One more time, very briefly, if there were no bay window, what would your best architecturally feasible alternative be?

ALAN JOSLIN: We would just replace the windows that are there. They would remain the big double hung windows. I mean, we would replace them as insulated glass then but they remain.

DOUGLAS MYERS: Leaving them as they are in terms of appearance?

ALAN JOSLIN: Yeah, yeah. And here you can see in this photo the elevation which unfortunately I have to say from our standpoint is pretty banal presentation on Memorial Drive. So I personally would like to see a recognition of a change that would benefit the security and the aesthetics of the front of the house.

TIMOTHY HUGHES: Does the bay window have an element of the pre-patinized copper.

ALAN JOSLIN: Yes, it does. The underside and the top roof will be patinated copper.

BRENDAN SULLIVAN: Okay, anything? Gus?

CONSTANTINE ALEXANDER: I want to compliment you on the design and also compliment you on the presentation, too, both very good.

TIMOTHY HUGHES: We like pretty pictures.

BOB STEININGER: He's also a fraternity brother.

TIMOTHY HUGHES: No kidding.

BRENDAN SULLIVAN: Tim, any questions?

TIMOTHY HUGHES: No, I'm good.

BRENDAN SULLIVAN: Tad, any questions?

TAD HEUER: No, my concern is just the general one. An expansion from, again,

from 3.2 to a 3.9 or 3.0. It's 3600 square feet. I understand the desire of sustainability. I understand the ADA requirements, and I understand what you're doing and why you're doing it. My general sense is that with such a large amount of square footage being requested, this in my mind is what the change in the Ordinance is for particularly given the structures along that street. I don't think that we should be dealing piece meal with these types of things. 4.0 is an appropriate FAR for that district which it would appear to be given the amount of massing that's along the remainder of the Amherst Alley stretch along that portion of Memorial Drive. I wouldn't see that City Council would be opposed to it, but a huge request for this Board to be granting it and on that ad hoc basis.

BRENDAN SULLIVAN: Okay. Let me make a motion to grant the relief requested

to build the elevator stair tower, the bay window, and the photo voltaic trellis, as well to relocate the loading area from on-site from the site in front of the abandoned curb cut.

As per the application, the drawings in the file, these are it. There will be no changes, and initialed by the Chair.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude the Petitioner from a much needed renovation of the property.

The Board finds that the fraternity house which was originally built in 1916 and partially renovated in 1970 is in need of significant renovation and restoration without which it will become an unsafe residential environment.

The Board finds that the scope of the

renovations require a total upgrade of systems, and also that it triggers compliance with MAAB regulations for provisions of full handicap accessibility and with Mass. Building Code Regulations for increased egress stair dimensions and stretchers at egress pathways. And as such, the addition of a new elevator sized for both handicap access and horizontal stretcher handling is required, an expansion of bathrooms and shower rooms to accommodate accessibility are required, and the expansion of the egress stairs from 36 to 44 inches in width for reasons of safety are required, hence the much needed build out of the building as per the plan.

The Board finds that the hardship is owing to the size and shape of the lot. The size and shape of the building that's cited thereon. And that also the amount of renovations in order to bring up to Code is substantial enough that -- and the relocation

of those additional facilities are such that would require some relief from this Board.

The Board finds that 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.

The Board notes letters of support of abutters also from the office of MIT planning and the willingness of the Petitioner to accommodate and work with the MIT facilities and the adjoining sororities and fraternities.

Also, the Board is in receipt and acknowledges the correspondence from Susan Clippinger and the agreement by the Petitioner of the off street loading zone and the elimination to rebuild a sidewalk and to eliminate the curb cut that currently exists.

And what was the other one? This was from Susan.

ALAN JOSLIN: Rasmussen.

BRENDAN SULLIVAN: Rasmussen. And you're going incorporate those suggestions also in the --

ALAN JOSLIN: Sustainability. She's just commenting that she's in support of sustainability approach.

BRENDAN SULLIVAN: And the sustainability part of the project. Anything else to add?

CONSTANTINE ALEXANDER: I think you've got it all.

BRENDAN SULLIVAN: All those in granting the relief as per the application?

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Alexander, Hughes, Myers.)

BRENDAN SULLIVAN: One opposed.

Any comments?

TAD HEUER: I believe that by

definition it derogates from the intent and purpose of the Ordinance as the Ordinance has established a 3.0 FAR in this district. It's a 3.2 going to 3.9 and that relief should be requested properly on an ad hoc basis.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Granted.
You're all set.

ALAN JOSLIN: Thank you very much.

TAD HEUER: Good luck.

(12:05 a.m.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Timothy Hughes, Tad
Heuer, Douglas Myers.)

BRENDAN SULLIVAN: The Board will
hear case No. 10245, 190 Brattle Street.

ATTORNEY JAMES RAFFERTY: For the
record, James Rafferty on behalf of the
Applicant Marjorie Garber, G-a-r-b-e-r.

Ms. Garber is seated to my right. This is an application filed by Ms. Garber seeking to allow for an increase in gross floor area in a somewhat unique location on her property. Ms. Garber is a professor of English Literature at Harvard University. Has lived in the house since 1995. Prolific author, including author of the well known book Sex and Real Estate.

TAD HEUER: Is there a chapter on Zoning?

MARJORIE GARBER: There will be.

TIMOTHY HUGHES: I don't think it's going to be very sexy.

ATTORNEY JAMES RAFFERTY: Speak for yourself.

The house currently it is over the FAR but approximately 1500 square feet of the GFA is in the basement, and it's being used currently today as storage. Ms. Garber's family has recently expanded. And what

she'd like to do is to take the area under the deck and simply expand the basement. It will allow for, it's not so much the area that provides it, it's going to allow for air and light to come into the lower level and allow for an office to be created in the basement level. As you well know, the basement area when it exceeds seven feet, does get included in the GFA calculation. The desire here would be able to make this space functional as part of the overall renovation. You'll see an elevation, it's hardly discernable the change that's taking place here. The Historical Commission provided a Certificate of Non-applicability because none of this work can be seen from the street. It does not change the character, nature or purpose of the house, and it is a case where the original application, the footprint of this was slightly larger. When Ms. Garber retained a new architect, he wisely noted that there was

about 50 feet of it that really wouldn't be adding much by way of light, and it's kind of the area by the stairs. So that area has been omitted. So now the additional GFA is closer to 350 as opposed to the previous 500. So we filed an amended revised dimensional sheet to reflect that change in the footprint and that's essentially what this is all about.

TAD HEUER: So you're at 5600 square foot house?

ATTORNEY JAMES RAFFERTY: 5979.

TAD HEUER: I have 5680?

ATTORNEY JAMES RAFFERTY: You should be looking at the revised. The we -- there was a discovery that the dimensional form might have been impaired by reliance on Assessor's data as opposed to actual measures, so we filed an amended, a revised dimensional form.

TAD HEUER: So how many people in the house?

ATTORNEY JAMES RAFFERTY: There's Ms. Garber and her partner and they've recently had a child. So I mean, we're not asserting a hardship based on the size of the house. We're asserting a hardship with regard to the fact that 1500 square feet of the house, the FAR is located in the basement, and given the existence of the deck and the impact that has upon the windows and the air and light into the basement, doesn't really make it particularly functional. So the relief is sought to allow for that space to become, to have air, to have light, to have windows that can open. And that's the request. It's related to the structure itself. It's not a hardship based on an absence or the lack of square footage in the existing structure.

BRENDAN SULLIVAN: You're creating this base in the basement by capturing the area underneath the porch which is somewhat

incidental storage space for whoever wants to put stuff down there and crawl in and get it and what have you, it's more of a crawl I guess.

MARJORIE GARBER: The dog crawls in there.

BRENDAN SULLIVAN: And you're using it for your work?

MARJORIE GARBER: That's right.

BRENDAN SULLIVAN: But you don't employ anybody there?

MARJORIE GARBER: No, no.

BRENDAN SULLIVAN: And clients don't necessarily come anymore?

MARJORIE GARBER: No, no, I don't have clients.

BRENDAN SULLIVAN: It wouldn't be indistinguishable from any of the other houses the in the neighborhood.

MARJORIE GARBER: Right.

BRENDAN SULLIVAN: Basically just

to have your work.

MARJORIE GARBER: Yeah, because I keep a lot of my books in the basement.

BRENDAN SULLIVAN: So this is secluded and a designated and dedicated spot is really what it is?

ATTORNEY JAMES RAFFERTY: It really is designed to allow for existing basement to become more functional, because the -- as you can see some of the photos, the windows in the existing basement look into that crawl space so there is not any natural light. But the ceiling heights in the basement are generous now. So the thinking is if this were simply extended to the edge deck.

DOUGLAS MYERS: What are the ceiling heights in the basement?

MARJORIE GARBER: It's eight feet but there are some pipes.

DOUGLAS MYERS: What will be the floor to ceiling height of this enclosed

space?

ATTORNEY JAMES RAFFERTY: It will be -- that's the reason really to have the same. If this was only being done at six-eleven, there wouldn't be a GFA implication, but then you'd have storage but then we'd call the police if someone walked in there and put a desk. It is a little form of a function. It's basement, and I would respectfully suggest that not all GFA is equal in terms of its impact, and I understand FAR is I would say a tool designed to control bulk and size of structure. When it's happening in a location like this, I think the Board should be able to recognize there is no impact on the bulk and the size of the structure.

DOUGLAS MYERS: And what is the nature of the flooring in the main, the basement into the main part of the house?

MARJORIE GARBER: The basement,

yes. Most of it is carpet, and then there's some epoxy flooring in the laundry room.

DOUGLAS MYERS: Concrete underneath?

MARJORIE GARBER: Yes, concrete.

DOUGLAS MYERS: And under the deck the present addition?

ATTORNEY JAMES RAFFERTY: Gravel. That's a photo of the area.

DOUGLAS MYERS: Thank you. Gravel on dirt presumably.

TAD HEUER: Anything on the topography?

ATTORNEY JAMES RAFFERTY: Well, it's late and we have floor. No, I mean, I mean, it's the structure. It does slope off, sure.

BRENDAN SULLIVAN: Have you considered other properties in the neighborhood at all?

TAD HEUER: I'm not going to go

there.

ATTORNEY JAMES RAFFERTY:

It's -- yes, you could make -- there's definitely a change in topography here.

BRENDAN SULLIVAN: I would think soil conditions in that area.

CONSTANTINE ALEXANDER: That's a better one.

ATTORNEY JAMES RAFFERTY: Strike that. Soil conditions.

TIMOTHY HUGHES: I like it.

BRENDAN SULLIVAN: Tim, any questions?

TIMOTHY HUGHES: Not at all.

BRENDAN SULLIVAN: Let me open to public comment.

Is there anyone here who would like to speak on the matter at 190 Brattle Street. Nothing? Silence is golden.

(No Response.)

BRENDAN SULLIVAN: There is

correspondence in the file --

CONSTANTINE ALEXANDER: Especially at this hour.

BRENDAN SULLIVAN: -- from the Historical Commission. (Reading) The property is located in the old Cambridge Historic District where exterior alterations are subject to review and approval of the Historical Commission. The Historical Commission reviewed the application at a public hearing and approved the work with a Certificate of Non-applicability because it will not be visible from the public way. There's a big certificate here which says can be carried out as described because nobody can see it.

Okay. I'll close public comment.

Anything else to refute, to add to change?

ATTORNEY JAMES RAFFERTY: No, thank you.

BRENDAN SULLIVAN: Any words of wisdom to carry it over the finish line?

ATTORNEY JAMES RAFFERTY: No thank you. I'm a realist.

BRENDAN SULLIVAN: Any other questions at all or concerns?

Let me make a motion to grant the relief to enclose and excavate under the existing rear deck as per the application, and the drawings contained therein.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner because it would preclude the Petitioner from capturing this space underneath a deck and part of basement level which is adjacent to the lower level walkout area.

The Board finds that the hardship is owing to the fact that the first floor main level is six-foot, six-inches above the grade

at the backyard. Makes it very difficult to access the backyard easily, and the Historical Commission will not allow any publicly visible additional volume on the sides of the house that would allow better access to this particular area.

The area that is being granted relief is underneath and not visible from the public way, hence receiving a letter of non-applicability from the Historic Commission.

The Board finds that this relief is a fair and reasonable request. The desirable relief may be granted without substantial detriment to the public good, and the 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 requested.

(Show of hands.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Alexander, Hughes,
Myers.)

BRENDAN SULLIVAN: And opposed?

(Show of hand: Heuer.)

BRENDAN SULLIVAN: One opposed.

ATTORNEY JAMES RAFFERTY: Thank you
very much.

(12:15 a.m.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Timothy Hughes, Tad
Heuer, Douglas Myers.)

BRENDAN SULLIVAN: The Board will
hear case No. 10246, 605 Mount Auburn Street.

NORMAN KHERLOP: I'm Norm Kherlop,
K-h-e-r-l-o-p. I'm the architect for this

project. And the owner of the property is Grigory Mesrobian.

As you know, the property is right at the corner of Mount Auburn and Aberdeen. He just purchased the gas station about a year ago, and there's a terrible retaining wall which is falling apart that has to be replaced. And we have to excavate the back of the building. At this time he is also thinking of adding more space into his property, and also restraining the whole structure with the another structure at the back which is more code compliant of the existing building.

The setbacks require ten foot from residential units that are adjoining the property or the setbacks are in compliance, but because he's expanding his business, he has to apply for a Special Permit.

CONSTANTINE ALEXANDER: How is he going to get into the new addition? Where is

it?

NORMAN KHERLOP: The bays as you see from here are going -- these are going to open up so these, these walls will be knocked down so that this space is connected to that like that.

CONSTANTINE ALEXANDER: Got it. There's no separate entrance to the --

NORMAN KHERLOP: No, no, only an exit. Emergency exit door from there.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: The question I have you're going to be building a retaining wall.

NORMAN KHERLOP: Well, we will be replacing the existing retaining wall.

BRENDAN SULLIVAN: Right. And then are you going to put a fence on top of that?

NORMAN KHERLOP: Yes, of course. We say that on the drawings.

BRENDAN SULLIVAN: And you've

spoken to your next-door neighbor?

NORMAN KHERLOP: Yes. Two of the adjoining neighbors we have spoken to. They are in full support. One of them was here, he left about an hour ago. So actually the next-door neighbor, he said, he would allow to use my property for access in case you need it.

BRENDAN SULLIVAN: Now, and then getting back to the fence because I'm sort of -- I would like to see some kind of barrier between the residential and yours. A vigil --

NORMAN KHERLOP: Like a stockade fence.

BRENDAN SULLIVAN: So as far as a fence is concerned, what kind of fence are you going to put up there.

NORMAN KHERLOP: We haven't decided on the material, but it's going to be a fence that will obstruct the vision from one side

to the other.

BRENDAN SULLIVAN: If we say like a stockade fence?

NORMAN KHERLOP: Like a stockade or something similar to that.

BRENDAN SULLIVAN: Okay. And not to exceed six feet in height from the top of the wall.

NORMAN KHERLOP: Six feet in height.

BRENDAN SULLIVAN: With the smooth side facing the neighbor? I'm just not trying to get technical. But I've been here a long time and I go by and then, well, you didn't tell us. So, you know. It's -- I just don't want to leave it to chance.

TAD HEUER: And extending for how long, the length of the retaining wall?

BRENDAN SULLIVAN: Well, the retaining wall actually comes along. I guess my thought would be from here out to Aberdeen Avenue and not necessarily along

here. I mean, I would not want to see a fence here, because I think that visually you'd want to be able to, as you come down, want to be able to see across this way here. I mean, your plan was to put a fence from here down to the corner of Aberdeen.

NORMAN KHERLOP: Yes.

BRENDAN SULLIVAN: And not return it.

NORMAN KHERLOP: We will probably stop it 20 feet short of Aberdeen because the wall is not as high as towards the back.

BRENDAN SULLIVAN: That's fine.

NORMAN KHERLOP: This is more like a three-foot wall here.

BRENDAN SULLIVAN: Okay.

NORMAN KHERLOP: And that section, there is no, you know, cars or no parking and it's better to have the view open.

BRENDAN SULLIVAN: All right. Can we say -- if that's 100 feet, can we say 80

feet?

NORMAN KHERLOP: 80 feet fence.

BRENDAN SULLIVAN: 80 foot fence at six foot high, and we're going to say stockade.

NORMAN KHERLOP: Or similar.

BRENDAN SULLIVAN: Or equal.

Stockade is -- yes, okay. Smooth side toward residence.

TAD HEUER: Lot 39.

BRENDAN SULLIVAN: Towards residence, Lot 39. Okay. And to be maintained. I've specified these in the past and once they get up, well, the guy says I put that fence up and this didn't stay.

So anyhow and that's it.

NORMAN KHERLOP: That's it.

BRENDAN SULLIVAN: Let me open it to public comment.

Is there anybody here who would like to speak on the matter 605 Mount Auburn Street?

(No Response.)

BRENDAN SULLIVAN: There's nobody in attendance. There's no correspondence in the file. Okay.

Anything to add?

CONSTANTINE ALEXANDER: No.

BRENDAN SULLIVAN: Comments? Let me make a motion to grant -- I'm sorry did you have comments?

TAD HEUER: No.

BRENDAN SULLIVAN: Okay, let me make a motion then to grant the Special Permit to construct a single floor addition at the ground level and replace existing retaining wall as per the plan in the file, and the pertinent dimensional form.

The Board finds that the requirements of the Ordinance can be met. Traffic generated or patterns of access or egress would not cause congestion, hazard or substantial change in the established

neighborhood character.

The Board finds that this will actually be an improvement to that corner and to the improvement aesthetically with the adjoining residential structure.

The continued operation of or development of adjacent uses as permitted to the Zoning Ordinance, would not be adversely affected by the nature of the proposed use.

There would not be any nuisance, hazard created to the detriment of the health, safety, and welfare of the occupants of the proposed use. And the proposed use would not impair the integrity of the district or adjoining districts otherwise derogate from the intent and purpose of the Ordinance.

All those in favor of granting the Special Permit.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Hughes,

Heuer, Myers.)

(Whereupon, at 12:25 a.m., the
Zoning Board of Appeals
Adjourned.)

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original of the Errata Sheet has been delivered to Inspectional Services.

When the Errata Sheet has been completed and signed, a copy thereof should be delivered to the Inspectional Services and the **ORIGINAL** delivered to Inspectional Services, to whom the original transcript was delivered.

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ATTACH TO BOARD OF ZONING APPEAL

DATE: 04/26/12

REP: CAZ

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I have read the foregoing transcript of Board of Zoning Appeal, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made.

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
 BRISTOL, SS.**

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

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

this matter.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of May 2012.

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

My Commission Expires:
April 23, 2015

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