

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING

APRIL 29, 2010 7:00 P.M.

in Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Brendan Sullivan, Member

Slater Anderson, Member

Douglas Myers, Member

Thomas Scott, Member

Christopher Chan, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Slater Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call the Board of Zoning Appeals to order. And as is our practice, we'll start with the continued cases. And the first continued case we have tonight is case No. 9626, 45 Foster Street.

Anyone here wishing to be heard on that matter?

JOHN GREENUP: Yes, please.

CONSTANTINE ALEXANDER: Yes, sir. You know the drill.

JOHN GREENUP: Good evening. My name is John Greenup, G-r-e-e-n-u-p at 45 Foster Street. We would like to withdraw this case.

CONSTANTINE ALEXANDER: You're not

going to get any argument here.

The Chair will make a motion that this case be withdrawn. All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case withdrawn.

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

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Slater Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER: And now we're going to call case 9569, 45 Foster Street.

JOHN GREENUP: Since this case has not been opened -- again, this is John Greenup from 45 Foster Street -- we'd like to continue this case for a period of three months.

CONSTANTINE ALEXANDER: The purpose is to see how we decided on some other cases?

JOHN GREENUP: Yes.

CONSTANTINE ALEXANDER: It's a case not heard.

SEAN O'GRADY: July 22nd.

JOHN GREENUP: Good with me.

CONSTANTINE ALEXANDER: Members of the Board?

I know there are people in the audience here on this case. Just so you understand what is going on. The case as we decided about this property, he's keeping this case alive just in case the other cases get reversed on appeal or something else happens, and then he wants to be able to pursue this theory. If nothing happens with the cases that we've decided, presumably on July 22nd, this case will get withdrawn like the other case. It's just a procedural step to preserve his rights and not to move the case along at this point in time.

So all those in favor of continuing this case until seven p.m. on July 22nd say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The motion continued to grant -- we have a waiver for the time of decision in the file. But you know the drill. You have to modify the signs.

JOHN GREENUP: I will do that immediately.

CONSTANTINE ALEXANDER: Okay. Maybe not so quick because it may get hurt by the elements before July 22nd. Why don't you wait until it gets closer to July 22nd.

JOHN GREENUP: I will.

CONSTANTINE ALEXANDER: You know, it has to be 14 days before the hearing date. So I suggest sometime in July you do that.

JOHN GREENUP: I'll do that.

CONSTANTINE ALEXANDER: Yes, Ma'am.

JOHN GREENUP: Thank you all.

UNIDENTIFIED FEMALE: I just wanted to ask a question. I'm curious, you know, the house next-door that you all have -- you've given the fact that it's going to be made smaller, etcetera, and I know all of that and I know it's won on appeal and continued. But there are rats inside the house. There are a lot of pieces of things

that are coming off the house. There's water running out of the house. I think right now that it's a public health hazard. Is there anything that can be done to the house? Can I go to the public health department?

CONSTANTINE ALEXANDER: Not this Board. I suspect Sean --

UNIDENTIFIED FEMALE: Can you tell me where I can go?

SEAN O'GRADY: Come to the Building Department and you want to talk to the building inspector.

UNIDENTIFIED FEMALE: Because there are rats coming out of it. And it's really a health hazard. We live right next-door and I don't even want to put my cat out.

SEAN O'GRADY: Come to the Building Department.

UNIDENTIFIED FEMALE: Thank you.

CONSTANTINE ALEXANDER: I think you've been duly advised.

JOHN GREENUP: If there's an issue,
we'll take care of it.

CONSTANTINE ALEXANDER: We took a
vote. We're all set. Continued.

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

(7:00)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Slater Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9884, 1558 Massachusetts Avenue. Anyone here wishing to be heard on that matter?

Sir, your name and address.

ATTORNEY DOUGLAS WILKINS: My name is Doug Wilkins. I'm from Anderson Kreiger. I'm filling in for Art Kreiger who was here a few months ago. We've gone through the basics of this application, but I don't know if you recall it or not. This is a proposal for three sets of antennas on a roof of the building. We provided you photo sims before.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY DOUGLAS WILKINS: I have extra copies. What we've done is on Monday submitted a revised proposal which was

responded from comments from the Board that we should have side-mounted antennas rather than rooftop antennas. I've got additional photo sims. If you're looking for them, I'll be happy to pass them out. I've got them handy.

CONSTANTINE ALEXANDER: Sorry.
Keep going.

ATTORNEY DOUGLAS WILKINS: I have the benefits of the photo sims.

CONSTANTINE ALEXANDER: Well, you should hand those out. There's also a letter from the Planning Board.

ATTORNEY DOUGLAS WILKINS: I'm aware of that. And I guess there's some difference of opinion whether we should go on the roof or side mounts. Frankly, we'll do whatever the Board requests. You know, our goal is to produce something that blends in, and either way I think we blend in.

CONSTANTINE ALEXANDER: Why don't

we refresh all of our memories, and certainly my memory, the case started with you wanted to put a number of items on the roof of the building?

ATTORNEY DOUGLAS WILKINS: Correct.

CONSTANTINE ALEXANDER: And you got a lot of grief from the Board because of that. And so we encouraged you to come back with some idea that you put on the facade of the building or false chimneys and a number of suggestions.

ATTORNEY DOUGLAS WILKINS: Correct.

CONSTANTINE ALEXANDER: And you come back with a revised proposal --

ATTORNEY DOUGLAS WILKINS: Yes.

CONSTANTINE ALEXANDER: -- that does put the antenna on the facade of the building.

ATTORNEY DOUGLAS WILKINS: We've got two sectors -- three sectors. One was on the facade of the building and one on the back

and is concealed. If you want to look at the photo sims, I also have extra copies of the plan that would show you exactly what we're planning to do.

CONSTANTINE ALEXANDER: It's in the file anyway.

ATTORNEY DOUGLAS WILKINS: It's in the file. There are extra copies.

CONSTANTINE ALEXANDER: I just want to -- actually, it sort of puzzled me. I was comparing the photo sims with the original proposal to what you submitted this time. And with regard to Follen Street, it looks like they're not supposed to be changing the chimneys. It looks like the chimneys are higher facing Follen if you compare the two.

ATTORNEY DOUGLAS WILKINS: That's not the intent.

CONSTANTINE ALEXANDER: I suspect not.

ATTORNEY DOUGLAS WILKINS: I don't

know if that's a glitch with the photo sims. There's no intention to increase the size of the chimneys on that side.

CONSTANTINE ALEXANDER: Why don't you tell us what you're now proposing.

ATTORNEY DOUGLAS WILKINS: The copy of Z2 of the plans, which I again got extra copies already in your materials. If anyone wants an extra copy, I'd be happy to get it out to you.

All right. So basically what happens along Mass. Ave. if you look on the north, north corner, the northeast corner, we're now showing our antennas, as you can see those artery-like things are the cable trays, run the cables to the side of the building which is shown in the hatched diagonal lines. So we propose two sets of antennas in that sector looking up Mass. Ave. And then the second modification we've made is of looking -- going east on Mass. Ave. We've

got additional -- you see the cable trays running again to the side of the building, and second degree antennas are mounted on the side of the building.

CONSTANTINE ALEXANDER: Excuse me. If you look at the photo sims, they'll show you. Look at this set, that will give you the best sense of it.

ATTORNEY DOUGLAS WILKINS: And the -- rather on Follen Street we propose no change from the original.

So that's the nature of the proposed revision. And then just on the photo sims, page one gives you a bird's-eye -- gives the various vantage points of which the photos were taken. As you go through, each gives you the existing conditions first. So there's the existing condition from the Cambridge Common, mounted -- facade-mounted option. We show you both the distance and the insets. And obviously they are somewhat

dismal, but you kind of have to look for them anyway.

The next one is looking from Mass. Ave. across the street. You can see them through the trees there.

CONSTANTINE ALEXANDER: It's not going to be brick obviously but faux brick.

ATTORNEY DOUGLAS WILKINS: It's fiberglass painted to look like brick. It has to be radio frequency transparent. My understanding is it's fiberglass, but it's not brick. You don't want brick structured like that anyway. It's a little on the heavy side. So we take you up Mass. Ave. and show you the conditions and the facade mounts.

CONSTANTINE ALEXANDER: There's no wires or anything going --

ATTORNEY DOUGLAS WILKINS: They'll run behind the antennas and up on to the roof. They don't run down the building, okay? That's why the wires are shown on

this -- within this cable tray on top of the roof. So the, you know, the wires will, I mean I think you have to really look to see the wires.

DOUGLAS MYERS: May I ask a question?

CONSTANTINE ALEXANDER: By all means.

DOUGLAS MYERS: As I remember, the Board asked for photo sims where the foliage had been reduced or eliminated. And the set that we're going through, I don't see any such.

ATTORNEY DOUGLAS WILKINS: What do you mean? I mean, we show pictures through the foliage. In other words, where there's no foliage like a vantage point for location 2 --

DOUGLAS MYERS: But there's absolutely no foliage in the city for six months out of the year. And we wanted to have

an impression of what the installations would look like at the time when there was absolutely or virtually no foliage. I believe that was a request.

CONSTANTINE ALEXANDER: I believe that was a request.

ATTORNEY DOUGLAS WILKINS: Well, all I can see -- you can see what they're going to look like.

CONSTANTINE ALEXANDER: But the point is the trees mask some of what it's going to look like.

ATTORNEY DOUGLAS WILKINS: Yes, but I mean, if you want to see what they look like full on, look at photo location 2. Okay? Now, if you look at that through a tree in the winter, it's going to be not as visible as that. So photo location, if you want to call it the worse case, there's nothing blocking those antennas in photo location 2.

CONSTANTINE ALEXANDER: These

aren't numbered.

ATTORNEY DOUGLAS WILKINS: At the bottom it says photo location 2, okay?

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

DOUGLAS MYERS: Okay. Yes.

CONSTANTINE ALEXANDER: At this point let me read into the record the letter we received from the Planning Board. It's a memo from the Planning Board dated April 26th. It's addressed to us. It's from Liza Paden, P-a-d-e-n, Community Development Department, staff to the Planning Board. It references this case. "As there is no Planning Board meeting scheduled before the Board of Zoning Appeal meeting of April 29th, Community Development Staff has reviewed the revisions for this revised application. In the spirit of the comments made by the Planning Board on the original proposal, the Planning Board staff respectfully disagrees

with the direction that this proposal is going. The use of the facade-mounted antennas instead of the stealth chimneys located behind the parapet and closer to the center of the roof makes the antennas, the mounting equipment and associated cabling more visible to the Massachusetts Avenue streetscape. By mimicking typical roof features such as the chimneys in an orderly way, setback from the edge of the parapet, the visual impacts are minimized. The staff continues to support locating the antenna chimneys on the roof while encouraging that they be made as short as possible so as to be less visible from the public street."

So to that point I think your testimony is you couldn't shorten them anymore.

ATTORNEY DOUGLAS WILKINS: Right, I believe there was, as I say, I wasn't here but Jobet Mariano who is the radio frequency expert can testify to that. We need to have

a one-foot height for every one foot height of setback.

CONSTANTINE ALEXANDER: Is he here?

ATTORNEY DOUGLAS WILKINS: He is.

JOBET MARIANO: Jobet Mariano, Grafton, Mass. Yeah.

CONSTANTINE ALEXANDER: And you confirmed the chimneys can't get any smaller?

JOBET MARIANO: Yes. There would be a shadow right in front of the building.

CONSTANTINE ALEXANDER: So we're in a situation where this Board had encouraged you to do what you've done, the Planning Board would encourage you to do what you did the first time, and I guess you're saying you're different as to what you want to do.

ATTORNEY DOUGLAS WILKINS: We will do whatever this Board wishes. I think it's a value judgment or aesthetic judgment, and you know, we don't pretend to know any more about that than you guys do, maybe less.

BRENDAN SULLIVAN: I did not like the original plan, I don't like this plan. In fact, I like this plan the least. I think it's starting to junk up the building. The other concern I have with that, I think we have identified the possibility of eight telecom carriers operating in the city, and this is the church next to the Common, then you got the church. And then there's like six buildings in a row. And I'm very concerned and I don't like the path that we can go down by putting stuff on this building, and then you got the next building and the next building and the next building marching down Massachusetts Avenue. And, gentlemen, I know we take them all individually, but there is that potential for the next item to come in and again maybe it's just the wrong building. But there has to be a better solution if it's going to be at this location. I don't think the stealth chimney are stealth

and these here to me are highly objectionable sight wise. So I'm not going to support it.

CONSTANTINE ALEXANDER: You don't support this proposal tonight but you support -- I'm not pressing you, but what about the original proposal?

BRENDAN SULLIVAN: No.

CONSTANTINE ALEXANDER: Other members of the Board have comments, questions?

DOUGLAS MYERS: I'd ask the Chair, the Chair's seniority is certainly greater than mine, how this Board has in the past has approached the divergence of opinion with the Planning Board when the divergence of opinion is as sharp as it is in this case?

CONSTANTINE ALEXANDER: I think we haven't had that many situations where we've had a divergence of opinion, but there are times when we have not, we have not accepted the Planning Board's views and reached a

decision that was contrary to what they recommended to us. I think, however, on balance we generally try to respect the opinion of the Planning Board and try to accommodate their views. But what I'm trying to say in a roundabout way, we don't feel that we have to follow their views automatically, but I think we give it great deference, so we generally do follow them.

BRENDAN SULLIVAN: Again, what I wrestle with is as any of these telecoms, to reiterate what I said before, initially the proposals that come down before us are probably the easiest for them, the least costly for them, and it may not always be the most pleasing. And even though they try to color it and make it blend in as much as possible, I'm not sure if it's the best solution. And I don't think either one of the two proposals are the best solution. And again, it may be the wrong building.

DOUGLAS MYERS: Well, for what it's worth and in the interest of continuing the discussion on these points which are important ones, I would just say that I mildly prefer the facade approach, the original approach. I am troubled by the emergence of what seems to me a greater visual impairment from the perspective of Follen Street specifically because we asked Mr. Kreiger about this last time. He absolutely assured us categorically that in that direction there would be minimal or no visual impact. And now it turns out that, at least on the basis of the simulations presented, the impact is greater. So I'm concerned about that. And I'm sorry, we don't have in the record the photo sims without foliage we requested although that's not dispositive.

BRENDAN SULLIVAN: I was the one that requested that. Do you have the transcripts from the previous one?

UNIDENTIFIED WOMAN: And I requested the transcript on January 28th and the Board requested to see the simulations on the worst case scenarios.

CONSTANTINE ALEXANDER: While you're looking at that, the only observation I would make is I think we're sort of, if you will, a little bit in a rock and a hard place. I don't think we have an absolute right to say we can't do this under basically federal law even. We have a right to, I think, propose aesthetic situations, regulate it. There are a lot of things we can look at, but to say that we can -- it's a dilemma. I mean, I will give you -- you're absolutely right, Brendan, we're going to have this proliferation. I don't know to what extent you can stop it. I don't think we can say to this petitioner you can't have relief on this building because we're afraid some other telecommunication carrier is going to want to

go on this building, too. Or it's going to go on the next building. I mean, we have to deal with cell phone coverage in our community. I think what you have to do is you have to pick the least, in our opinion, the least obtrusive proposal and hold every other person that comes into that same standard. But I don't know -- I'm troubled by flatly denying either of the proposals.

TIM HUGHES: I disagree with Doug a little bit. If I had to choose one of these two, I would choose the one that the Planning Board supports; the one with the faux chimneys. Where we have some leeway -- this is a residential neighborhood, isn't it?

CONSTANTINE ALEXANDER: Yes.

TIM HUGHES: And so I mean the one thing that can hinge this on is that they have to minimize the impact, visual impact in a residential neighborhood and a business neighborhood or in a commercial neighborhood

not so much. But in this neighborhood it's imperative on them. And I think that, I am -- not just this company, but all the companies have not succeeded in stealth anything, if I can turn stealth into a verb. They do -- I think Brendan's right, they do about the bare minimum they need to do. You know, it's like all of the bricks aren't the same, but yet the stealth antennas all look the same. It's like the brick doesn't match brick. And if we can't make them, you know, come to a higher aesthetic standard at this Board, then where can that happen? You know? I basically think that they have to do better with their designs in hiding these things in a residential neighborhood.

BRENDAN SULLIVAN: Everybody wants to pick up a cell phone, make a call or answer it. We just don't want to see where it comes from basically.

CONSTANTINE ALEXANDER: Right.

And I know, I think there's someone in the audience who wants to speak. Why don't we take public testimony at this point. Not cutting off our debate.

Ma'am, do you want to speak? You have to come forward and give your name and address for the record.

CARMEN STRAJEAN: My name is Carmen Strajean and I'm a resident at 1572 Massachusetts Avenue so it's the building next-door. So, our Board has reviewed the original proposal with the antennas mounted inside the chimneys on the roof and we respectfully like to oppose that installation because those chimneys are visible from our top floor units, they block the views of the units and also from our roof deck. And we really think, as you mentioned here, the aesthetics are very important because that's a very beautiful corner of Massachusetts Avenue. And architecturally

it's significant so I think that should play a very important role as the Board members have --

CONSTANTINE ALEXANDER: What is your view of putting them on the facade of the building?

CARMEN STRAJEAN: Well, I have not, I have not reviewed the new proposal. We have not reviewed the new proposal. So we need to look it over, yes.

CONSTANTINE ALEXANDER: All right. You have no opinion on the facade?

CARMEN STRAJEAN: Yes.

CONSTANTINE ALEXANDER: But you oppose the stealth chimneys, the original?

CARMEN STRAJEAN: Yes. But also the facade seems, it seems a bit unnatural, the whole either installation seems --

CONSTANTINE ALEXANDER: That's the sense you're getting from a number of Board members as well. Anything else you wanted to

add? Thank you very much.

Anyone else wishing to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: No one else wishes to be heard. I'll end public testimony at this point.

It's a dilemma, we don't have our own design staff. We don't have our own technical experts that say you can build a small chimney despite if you spend a little more money. We're at a loss. We have nobody to help us do it. Only the petitioners that have an interest in doing it the cheapest way, and the one that accommodates their business goals most appropriately. I'm at a loss as to how to deal with this. I've had this problem since I've joined the Board and I've expressed this on the Board as well.

SLATER ANDERSON: Well, I agree that it is, in this case, we're in a residential

zone which changes a bit of the discussion. And if I had to choose -- frankly, I was there. I was opposed to the chimneys but I think the facade ones will be worse than the chimneys. We've heard from the residential abutters who feel like there will be a visual impact. So, while I would choose the chimneys over the facade-mounting antennas, I find this is a location of high visual value to the city in a residential zone and I tend to agree with Brendan in that case. It's probably not the right building.

CONSTANTINE ALEXANDER: Let me -- just taking a note on that, I'm looking at the Zoning Code which is what we have to deal with and which to the extent gives us our authority. And it says, with regard to the Special Permit that you require, "Where it is proposed to erect such a facility," your facility, "in any residential zoning district, we would look at the existence of

alternative functionally suitable sites in non-residential locations."

Can you address that to us?

ATTORNEY DOUGLAS WILKINS: Yes. That was addressed in the original application. And it's also in the radio frequency report. We went through a number of locations in both residential and non-residential areas. If I can just get to the report and be a little more specific about that. I do recall that the one non-residential area that we looked at, the buildings were shadowed by other buildings and, therefore, were not suitable for the radio frequency standpoint.

CONSTANTINE ALEXANDER: What about the hotel, that's not a --

ATTORNEY DOUGLAS WILKINS: I don't know if Jobet looked at that or not.

JOBET MARIANO: I don't have a map. We don't need the height here.

CONSTANTINE ALEXANDER: It doesn't hurt you to have the height, does it?

JOBET MARIANO: It will hurt us. The land work is mature enough. We're trying to limit the leverage per site within the same air like a mile, mile and a half. Too much height would be all over the place.

CONSTANTINE ALEXANDER: What about the Harvard University buildings that are nearby? Assuming Harvard would let you put them on the building. Let's start with them. Have you approached Harvard University?

JOBET MARIANO: I believe they did, but I haven't gotten any building candidates from Harvard. It was late last year when it came up.

CONSTANTINE ALEXANDER: Did you approach Harvard and say how about this building and this building and this building, would you let us put stuff on the roof?

JOBET MARIANO: I would rather have

the site person answer that. I haven't got any candidates from Harvard.

CONSTANTINE ALEXANDER: No one has brought to your attention in your technical capacity from Harvard?

JOBET MARIANO: Yes.

CONSTANTINE ALEXANDER: Maybe, you know, do you know if you approached Harvard University?

ATTORNEY DOUGLAS WILKINS: I'm afraid we don't. It doesn't look like the Board is favoring my client. So we can come back to you with that information if you're inclined to continue instead.

CONSTANTINE ALEXANDER: I think my sense is, and you listened to Board members and my own view, we should continue this case. You see if you can find a better location rather than this building.

DOUGLAS MYERS: The only chance we have to discuss these things. I'm not

advocating for this point of view, but I'd like to mention the point of view maybe, if the Board -- if it's legal -- not legally improper and maybe your suggestion of a continuance is a de facto group towards this same end, maybe the Board is entitled to say well, we've looked and not on this building. Just not on this building.

CONSTANTINE ALEXANDER: I think we can get there. And I think we can make that decision whether legally justifiable is something else. But I think we should give the petitioner one more chance --

DOUGLAS MYERS: Absolutely.

CONSTANTINE ALEXANDER: -- before saying not on this building. Maybe you can come up with a better design or on your own accord come up with another building.

ATTORNEY DOUGLAS WILKINS: I appreciate the opportunity of looking at other buildings. We'll look at the Sheraton

Commander. If there are any other ideas --

JOBET MARIANO: May I speak?

Before to pick something in Harvard University campus, we would have to be close to Mass. Ave. because anything further away from that, it will be blocked by the same buildings that Harvard would have. Again, we're away from half a mile.

CONSTANTINE ALEXANDER: There are buildings on Mass. Ave.

ATTORNEY DOUGLAS WILKINS: We're talking about the buildings on Mass. Ave, the law school.

JOBET MARIANO: Yes, the law school. It's going to be the same chimney, the same facade-mounts. It's going to be the same thing.

CONSTANTINE ALEXANDER: It doesn't destroy the aesthetics of a very nice residential building. That's the complaint.

ATTORNEY DOUGLAS WILKINS: We'll certainly look at it. So, first --

CONSTANTINE ALEXANDER: One more thing. What about going further to Mass. Ave?

JOBET MARIANO: No, we're getting closer to another site.

CONSTANTINE ALEXANDER: You can't go three buildings down?

JOBET MARIANO: We can't go four blocks down from where that is.

CONSTANTINE ALEXANDER: Four blocks, you have a lot of alternatives.

DOUGLAS MYERS: Four blocks up Porter Square.

ATTORNEY DOUGLAS WILKINS: I mean I'm wondering, this is probably an infinite number of alternatives we can look at. The question is whether we have reason to believe that these alternatives are better. A lot are going to be the same. They're

residential and some are next to people. I guess what I'm looking for is some inkling from the Board, is there are specific things we should be looking at? Jobet already did an RF report. We ruled out the (inaudible) a commercial building that you're aware of because it's a whatever you want to call it of buildings and we don't think it's better to go back to the residential neighborhood. Probably staying on Mass. Ave. is where we need to be. Going farther up Mass. Ave. is (inaudible) --

CONSTANTINE ALEXANDER: Not necessarily. I think that's the point. I think you're hearing this building is especially strategically located. It's right across from the common, right by the church. As you go up, you're coming up Mass. Ave. from Harvard Square, it is a more visually prominent building from Harvard from a residential building right on your

left and you see it. If you go down and then it comes series after series of less de script buildings, and perhaps putting something on one of those buildings will have less of an aesthetic impact on the city.

Anybody disagree with that by the way?

DOUGLAS MYERS: How will the Board feel more toward the center of the area, Waterhouse Street there's another tall building on the corner of Concord Avenue and Waterhouse Street? Maybe that would be also somewhat less residential in terms of before putting the proponent on the wrong path.

BRENDAN SULLIVAN: I just want it to be as unobtrusive as possible.

CONSTANTINE ALEXANDER: One way of getting there is putting it on a different building.

BRENDAN SULLIVAN: I just called it out that this is maybe not the building for it. I really feel that they have to come up

with a much better design, not a simple design, not an easy one, but in a location of that area, that it has to be very stealthy. And I guess that would be an improvement.

ATTORNEY DOUGLAS WILKINS: Yes, I mean that's the other.

TIM HUGHES: We're stealthing this thing.

BRENDAN SULLIVAN: Yes, but anyhow....

ATTORNEY DOUGLAS WILKINS: That's the other point that you raised, other locations and other designs. I have to admit I'm confused about -- that all you see on top of these buildings is chimneys. What would we put up there other than a false chimney? That's what I'm at a loss --

CONSTANTINE ALEXANDER: Maybe it's not a false chimney, but maybe it's as high.

ATTORNEY DOUGLAS WILKINS: It's not a matter of, you know, clever, you know,

architectural design. It's a matter that these buildings block the signal. So I mean that's just a matter of physics. You can't shoot through a building. Jobet can confirm that. But, you know, building a shorter chimney is not -- is just -- you're going to hit the side of the building and it's like trying to shine a light down there while you're on top of the building.

CONSTANTINE ALEXANDER: Let me try it again. I understand your frustration a bit and you've heard our frustration. What we're saying to you is go back one more time and come up with something better; a different location, a different design and try your best. Because you're not getting a lot of sympathy here. We'll give you one more chance, and if you come up with some alternative, we will finally act. And maybe we'll deny you. At least on this building deny you what you wanted to do.

ATTORNEY DOUGLAS WILKINS: I hear that, and it's not just frustration, but I am actively trying to find a solution because we want a site. You know, we don't want a fight, we want a site. That's always been my mantra. I guess I'm having a hard time deciding what we want to do other than having a false chimney. I'm not really hearing anything about that. If we look at these other sites, which we're going to do, I think the Chair's observation and comment is that an accurate observation so we'll do our best. We will give it another shot.

CONSTANTINE ALEXANDER: We understand you won't do anything but your best. We don't have the ability to design it for you.

TIM HUGHES: Aside from the fact that we have the jurisdiction, that you have exhausted all the alternative sites which is what we're asking you to do. From a design

perspective, if it looks like a chimney that was already existing on the building, then that's a stealth chimney. If it looks like a plastic prefab mold of bricks that don't have any relationship at all to a brick building that's 70 or 100 years old, it's not stealth. You know? It looks like something that's stuck on and it doesn't go. Your design people have to take a better look at the building itself, the quality and condition of the brick, and design something that looks like that. That's stealth.

BRENDAN SULLIVAN: The word natural keeps coming.

ATTORNEY DOUGLAS WILKINS: I'm not seeing in the pictures where people are getting that from.

SLATER ANDERSON: We've seen it in other cases for sure.

ATTORNEY DOUGLAS WILKINS: That's not what we're trying to do here. We're

trying to do our best on that score, too. And we're at the -- somewhat of the mercy of the manufacturers who produce what they produce. This Board --

TIM HUGHES: You're the consumer here. You can tell the manufacturers what to do and buy only what you want. You're not at the mercy of them. They're at the mercy of you.

ATTORNEY DOUGLAS WILKINS: This Board will say put it up there and have it match existing conditions. And that's the specs we'll give to the manufacturer.

CONSTANTINE ALEXANDER: Bring in something the next time you come in here before us, the actual material, the sample of what that chimney will look like.

ATTORNEY DOUGLAS WILKINS: We may be able to do that. You will have to recognize it won't have been painted or colored to match the particular building that we're talking

about because that's a spec design. We'll bring in something. Maybe we'll bring in something, but I don't want to hear that hey, it doesn't match the color of the building because we already asked the manufacturer to do that. All right?

DOUGLAS MYERS: Would you be able to do it if the Board approved it with the condition that you subsequently treat the sample that you bring in such that it does match the building?

ATTORNEY DOUGLAS WILKINS: Well, I'm sure that -- all right. Well, we'll take a sample of it and match it I'm told. We'll do our best on that as well.

CONSTANTINE ALEXANDER: We're trying to give you as many alternatives.

DOUGLAS MYERS: Because if you say you can, that puts you in quite a different position when you come into the Board.

ATTORNEY DOUGLAS WILKINS: I was

just told we will provide you a sample. We'll get a match and then you can have in your condition, you know, it has to be that material with that color and Exhibit A to the third hearing of this matter.

CONSTANTINE ALEXANDER: And alternative sites. You're going to look at alternative sites.

ATTORNEY DOUGLAS WILKINS:
Absolutely.

SLATER ANDERSON: Can I ask a radio frequency question? I'm looking with and without proposed, and I have two questions:
The without. I assume the green is the good coverage?

JOBET MARIANO: Yes.

SLATER ANDERSON: Well, if you look at this and there's good coverage all on Mass. Ave. including to the without plan. And I mean here's Mass. Ave. The facade that we're most concerned about is facing all good

coverage. If you look at your rear antenna, you're addressing areas that are all to the west, not to the east of these antennas. And you're showing additional antenna on here that's not on here. There's a location.

JOBET MARIANO: That's another ridge. That's a different --

SLATER ANDERSON: Different carrier?

JOBET MARIANO: That's a different site.

SLATER ANDERSON: It's not on this one?

JOBET MARIANO: No, no, I was asked to show it both there. Right now we were doing that.

SLATER ANDERSON: So you're showing a site here, does that exist or not?

JOBET MARIANO: It's a site that already exists.

SLATER ANDERSON: You have a site

that's in this location that doesn't show. Okay, I understand. Well, that suggests to me do you really need this site?

JOBET MARIANO: Yes.

SLATER ANDERSON: If you just had one approved two, three, four blocks away.

JOBET MARIANO: We are addressing this part at the same time addressing traffic that will be moving through here.

SLATER ANDERSON: I see the green is good coverage. Am I missing something?

CONSTANTINE ALEXANDER: Not as far as I can see.

ATTORNEY DOUGLAS WILKINS: We'll clarify that as well. We'll provide you with additional information.

SLATER ANDERSON: All the coverage you seem to be addressing is west of Mass. Ave.

JOBET MARIANO: You have to understand when we do this, we're looking at

coverage and traffic and Mass. Ave. is a very busy area and that's why we have it pointed in that direction.

ATTORNEY DOUGLAS WILKINS: That's the third thing we'll do. We'll get you new sites. We'll get you matching brick and we'll clarify that coverage.

SLATER ANDERSON: And it would be helpful now that this one is approved, the one that I assume is over on Concord Ave. you can show that on the before and after.

ATTORNEY DOUGLAS WILKINS: You want to show that as existing. In other words, the before?

SLATER ANDERSON: It's not the before, it's on the without.

ATTORNEY DOUGLAS WILKINS: I think I got it.

BRENDAN SULLIVAN: This should go back to the Planning Board.

CONSTANTINE ALEXANDER: I'm going

to make that point. We would like you to show whatever you come back with, which I guess will be your final attempt at satisfying it, to show it to the Planning Board first so we can get it to the community staff. How much time would you need? Remember, you have to go back to the Planning Board.

ATTORNEY DOUGLAS WILKINS: Four weeks.

CONSTANTINE ALEXANDER: What's our schedule?

SEAN O'GRADY: June 10th is the earliest.

CONSTANTINE ALEXANDER: What's the next one? 17th? Do we have free time then? Not the 17th, the 24th, I'm sorry.

SEAN O'GRADY: Yes. You have plenty there.

CONSTANTINE ALEXANDER: I don't want you to rush into this. I want to give you a little bit more time.

ATTORNEY DOUGLAS WILKINS: Okay.

CONSTANTINE ALEXANDER: I would suggest -- it's a case heard so we have to be here. Everyone available on June 24th?

BRENDAN SULLIVAN: Yes.

TIM HUGHES: I am now.

DOUGLAS MYERS: Yes.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until -- Ma'am, will you be available on the 24th?

CARMEN STRAJEAN: Yes, yes, yes, of course.

CONSTANTINE ALEXANDER: The case will be continued until seven p.m. on June 24th. The petitioner already having signed a waiver for a time of decision, and on the condition that you modify the sign on the building to reflect the new hearing time.

So just with a magic marker change the date from today's date to that date.

BRENDAN SULLIVAN: And any submittals should be in the file.

CONSTANTINE ALEXANDER: I'll repeat it. Our rules are such that any new proposal you put, have to be in our files by five p.m. prior to the June 24th. So if you don't make that, you're late on that, we're going to continue the case again.

ATTORNEY DOUGLAS WILKINS: Okay. Got it.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

(7:45 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9917, 154 Mount Auburn Street. Anyone here wishing to be heard on that matter?

ATTORNEY JAMES RAFFERTY: For the record, James Rafferty on behalf of the applicants Rich and Paulette Crowley. The Board may recall the case. It's a subdivision case and it was seemingly going very smoothly. And one of the more alert members of the Board caught the notion that the subdivision would actually result in an encroachment because of an overhang of the building. So it goes to show you that with a keen intellect is on these Board, it's usually somewhere on that side of the room.

So it was suggested that the subdivision plan be modified to set the new property line three feet off the building. So we've provided a revised subdivision plan that shows that. We've made corresponding adjustments to the dimensional form showing the new area -- lot area changes as well as the new setbacks that are created as a result of the new lot line.

CONSTANTINE ALEXANDER: Talk a little bit about an easement you created and also a question that the astute member of our Board raised about the risk of a fence going along the property line and dividing the property visually where today it's not divided.

ATTORNEY JAMES RAFFERTY: Yes, that didn't come up at the last Board meeting.

CONSTANTINE ALEXANDER: I thought it did. Maybe I'm wrong.

ATTORNEY JAMES RAFFERTY: I think it's come up since. The easement area really

is a reflection of the fact that as -- I don't know if you'll recall the photos. There's a significant planting area along the edge of that building. And it was Mr. Crowley's belief that the new owner, presumably a commercial landlord would not have the same interest of maintaining that garden as he has so lovingly tended over the years. And he wants to be able to keep that. It's a much deeper planting area than the three feet. So we discussed ways in which he could do it. So, in the proposed deeds it describes what could be done in the easement area. And that means that he, the owner of the larger lot, can enter upon that area can maintain, plant and landscape edge. So that's what that's intended to do. Because as he said, he couldn't find a property owner of Lot A, that wouldn't have the same affinity or interest in maintaining that planting or garden area. Consistent with the comment about the single

lot, I must say that I don't think that we're as enthusiastic about the fence issue only because while there's no intention to put up a fence, and I would agree that visually it would be less than ideal, these things live forever and a two or three foot fence might be fine, it might not. Obviously if the Board feels that it's a necessary element of the subdivision, than the property owner would have to abide by it.

BRENDAN SULLIVAN: I guess we have similar interests, that I would like to see what is there today, continue looking that way and that I would not want to see either owner of property A or property B put up a fence for whatever reason. I know the Crowleys never would. But going forward many years from now, somebody may even though they could do it as of right. And I want to prevent it. I would like to see what we do is just be it paper, basically a transaction.

So my only proposal would be that no fence, and that depends on what your definition of fence or wall is.

ATTORNEY JAMES RAFFERTY: Yes. A structure. I seem to recall.

BRENDAN SULLIVAN: Anyhow, any barrier taller than 12 inches to prevent, that's all.

CONSTANTINE ALEXANDER: So I guess the proposal would be that we would grant the subdivision plan or approve the subdivision plan on the condition that there be erected and maintained a fence no higher than 12 inches.

BRENDAN SULLIVAN: That there be no fence.

CONSTANTINE ALEXANDER: The fence no higher. There be a fence but it be no higher than 12 inches.

BRENDAN SULLIVAN: Well, no, no -- well, no barrier.

CONSTANTINE ALEXANDER: No barrier.

BRENDAN SULLIVAN: Other than 12 inches being constructed along the property line I guess. And, again, it may be belts and suspenders. It may be an overreach.

ATTORNEY JAMES RAFFERTY: Well, let me offer one perspective, and that is some day that structure may not be there, I'm referring to the small structure, for whatever reason; fire, age. I mean, we're talking decades, centuries from now. This condition would be there forever. I wonder if the desire was that strong, could be linked as long as the structure is there. I can envision a day perhaps not long after I'm gone, but if that thing wasn't there -- what I'm trying to understand, what the civic public interest is in never letting a separation exist between the two lots. And I -- in its current configuration, I can see it, but I always am mindful. It's also one

of those conditions quite frankly that's going to be put in a drawer and 20 years from now I think the Building Department would say if someone put up a fence -- it's not something I want to spend any more of your time on other than if the feeling were that strong, I wonder if there would be a link to the current structure. If it were never there some day you would wonder why --

BRENDAN SULLIVAN: The brick building?

ATTORNEY JAMES RAFFERTY: The one-frame, one-story commercial building. The store.

CONSTANTINE ALEXANDER: Do other members have a point of view on this by the way?

SLATER ANDERSON: I do and I hate to disagree with my esteemed colleagues. If this case were before us, Mr. Crowley could put up a fence in that location by right; is

that correct?

ATTORNEY JAMES RAFFERTY: Sure.

SLATER ANDERSON: He can put a fence down the middle. So I sort of feel like it's burdening and I intend to agree that burdening the property, and you are here asking obviously for some relief from us, but conditioning and not no fence, it seem.

ATTORNEY JAMES RAFFERTY: The irony is that the subdivision plan in the deeds are achieving a lot of what Mr. Crowley is talking about. He's preserving the right for himself to control that area for planting and frankly --

BRENDAN SULLIVAN: All right, we've spent enough time on it. That's fine. Let's go with it.

CONSTANTINE ALEXANDER: Do you want to --

BRENDAN SULLIVAN: No, let it go the way it is. Present it before us. I just

throw it out there for discussion, that's all.

CHRISTOPHER CHAN: Is it off the table?

CONSTANTINE ALEXANDER: Off the table.

By the way, anyone wishing to be heard on this matter?

ATTORNEY JAMES RAFFERTY:

Mr. Chair, I'm sure you'll recall there was significant support at the prior meeting.

CONSTANTINE ALEXANDER: I was going to get to it anyway. I think we just want to build the record up a little bit before we take a vote.

The fact of the matter is there's significant community support or neighborhood support I should say, for the proposal. That although I think our Board is not favorably disposed toward creating undersized lots, which is what you're asking

us to do with regard to the so-called Lot A, there are times when there are special conditions. One of them was Philip Johnson House where we did that. And this is another one it seems to me. It doesn't make any sense to pair in one lot a commercial structure and residential structure that leads to the deterioration of both structures over time. It's in a residential district bordering on a commercial district basically. I think the proposal -- there is a substantial hardship if we don't grant relief. The lot is unusually shaped and I think we're furthering the purpose of the Zoning By-Law in terms of the rationing use of land by granting relief. So I think there is enough here to grant a Variance.

Any members want to add or subtract anything from that?

TIM HUGHES: No.

CONSTANTINE ALEXANDER: Okay.

Anything else you want to add, Mr. Rafferty?

ATTORNEY JAMES RAFFERTY: Nothing.

CONSTANTINE ALEXANDER: The Chair moves that the Variance be granted to the petitioner to subdivide his lot on Mount Auburn Street in order to create a separate lot for a pre-existing commercial building.

The Variance would be granted -- this is backwards. Let me start again.

I move that this Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. Such hardship is the forced marriage of a commercial structure and a residential structure which makes the property not as commercially valuable and leads to a possibility of deterioration of the property over time in terms of maintenance.

That the hardship is owing to

circumstances relating to basically the shape of the lot. And also this is a pre-existing non-conforming lot -- or pre-existing lot to our Zoning By-Law.

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

The finding would be on the basis that there is universal neighborhood support for the project. And as I've said, this proposal or this relief would rationalize these two lots by separating the commercial lot from the residential lot which would lead to a more desirable, more likely maintenance of both structures rather than having one ownership at the risk of deterioration of one of the structures.

The Variance would be granted on the condition that the subdivision would be

accomplished in accordance with a subdivision plan prepared and submitted by the petitioner. It's dated April 20, 2010, initialed by the Chair.

The Chair would note further that the condition that the petitioner grant an easement to the benefit I guess of the owner of Lot B as set forth in the deeds, draft deeds submit by the petitioner with his petition. Anything else?

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

ATTORNEY JAMES RAFFERTY: Thank you very much.

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

(7:55 p.m.)

(Sitting members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9918, 53 Webster Avenue. Anyone here wishing to be heard on that matter?

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman. For the record, James Rafferty on behalf of the applicant 53 Webster, LLC. Seated to my right is Mr. Scott Schuster, S-c-h-u-s-t-e-r. He's a principal of the LLC. And to Mr. Schuster's left is Nelson Olivera, O-l-i-v-e-r-a.

CONSTANTINE ALEXANDER: You're seeking a Variance and a Special Permit. Let's start with the Variance.

ATTORNEY JAMES RAFFERTY: Sure. This is an application to allow for an addition to a two-family structure in a

Residence C-1 Zone. The Zoning issue is created with regard to the Variance issue with regard to the setback. If you had an opportunity to look at the site plan, the lot itself is an exceptionally unusual lot and it's bounded by a couple of public ways, but the proponent is in the midst of renovating the structure and they are looking to create more liveable space on the second floor. The second floor unit of the apartment. What they're proposing is an increase in square footage that is still below what the allowable FAR is. So I think for purposes of the Variance it's not GFA, it's just that the back lot, the back portion of the house is closer to the rear lot line. There has been a pretty extensive discussion with the rear abutters. There was an earlier design, you might recall, and it got filed a little bit late and that's why we continued the case. But the impact is from the setback

perspective. There's about an increase in the neighborhood of 18 inches of that back wall when they redo this roof line. It's still within the height. Still within the GFA, but that wall as it sits, the rear setback now is three feet, 3.7 feet. So that wall gets extended slightly to accommodate the --

CONSTANTINE ALEXANDER: You're actually going to the rear lot line? I thought you were going higher.

ATTORNEY JAMES RAFFERTY: No, just going up. Extended in height. No, there's no change in the actual setback that's why I couldn't reach no change. That's why the height of that wall is now about 18 inches higher than currently to accommodate a raised roof. So that's the, that's the issue with regards to the Variance. So the actual increase here is slightly below 25 percent, which as the Board knows, for conforming

condition is a Special Permit. But because of the setback issue, it doesn't qualify as a Special Permit style addition, but it does I think give some sense as to the extent of the relief being sought.

The second issue, we have some windows and doors on some non-conforming walls that are being relocated. And for that we're seeking a Special Permit for relief.

CONSTANTINE ALEXANDER: I thought I had the plans that show the relocation. I think it's a different set of plans as I recall.

ATTORNEY JAMES RAFFERTY: Well, the latest -- the plans are dated 4/26.

CONSTANTINE ALEXANDER: There's only one plan. Same plans. 4/26, right?

ATTORNEY JAMES RAFFERTY: 4/26.

CONSTANTINE ALEXANDER: It doesn't show where the old windows were and the new windows are going to be, and that's on

something that was submitted on March 2nd.

ATTORNEY JAMES RAFFERTY: Yes, the existing elevations are on a different plan than the proposed elevations, and by looking at the two you can see the change in the windows. And the lot has some non-conforming setbacks on the right-hand side. And the left-hand side is non-conforming for a portion, and then the balance of it becomes conforming because it has this significant dog line.

SCOTT SCHUSTER: If you look at the -- where the space is in the front the windows and bear with me actually.

ATTORNEY JAMES RAFFERTY: The front's okay.

SCOTT SCHUSTER: If you look at the -- I don't have the existing addition in front of me, but we did make an effort to move them very minimally and there's really not a great addition of windows as well. I can't

speaking off the top of my head the exact amount of feet we're off, but it's pretty insignificant. But we showed to both abutters, all three abutters I should say, as well as the other people across the street, showed them where the window changes are going to be and showed them all the plans. You know, individual meetings with all of them, and they indicated that they were in favor of all the changes.

CONSTANTINE ALEXANDER: That was the question I was going to ask you. The issue with us usually is privacy issues and impact on abutters. And the people who will be affected by this you have spoken with and they are in support. You have more letters?

ATTORNEY JAMES RAFFERTY: Yes, more letters.

SCOTT SCHUSTER: Attorney Rafferty has letters. You'll see there are letters from every abutter as well as people down the

street and across the street as well. And they were all in favor of our plan.

CONSTANTINE ALEXANDER: There was one abutter, I guess the one most affected, and they're out of the country for this hearing. Did he express anything in writing? Do we have anything?

ATTORNEY JAMES RAFFERTY: He submitted a communication to the Board. I think I saw a copy of it. Did he leave it that night?

SCOTT SCHUSTER: I think I gave it to you and he probably just gave it to him. It was a similar short letter.

CONSTANTINE ALEXANDER: Is it the same letter? We have a form letter.

SCOTT SCHUSTER: It's a form letter from Mahesh. I don't know how to pronounce his last name.

CONSTANTINE ALEXANDER: 40 Bristol Street, No. 3?

SCOTT SCHUSTER: That's correct.

CONSTANTINE ALEXANDER: And he's the one most affected?

SCOTT SCHUSTER: We met with him six or seven times and redesigned the project.

ATTORNEY JAMES RAFFERTY: Exactly. You recall he was here. Very eager to speak but wisely advised it would affect the ability to reconstitute the Board. So he --

CONSTANTINE ALEXANDER: He has given a letter of support.

ATTORNEY JAMES RAFFERTY: He gave a letter, and his concerns were addressed by the adjustment in the elevation.

DOUGLAS MYERS: Is his address on Bristol Street the building that is actually closest?

ATTORNEY JAMES RAFFERTY: Yes, to the rear.

DOUGLAS MYERS: The new third wall window that has the three rather white

balconies of this building.

ATTORNEY JAMES RAFFERTY: He doesn't get a window, though, does he?

SCOTT SCHUSTER: There's window in the back, but we moved it farther away from the existing. If you were looking at the building more to the left than what it was originally, it's more to the left.

ATTORNEY JAMES RAFFERTY: The petitioner's representation, the actual number of openings has not increased, just some relocation of them. And in some cases decrease in certain elevations.

CONSTANTINE ALEXANDER: Questions?

BRENDAN SULLIVAN: How did you increase the open space?

ATTORNEY JAMES RAFFERTY: By installing green space on what is now an entire asphalt, the entire area, and we did submit a somewhat rendered site plan showing that. It's in the file.

CONSTANTINE ALEXANDER: The file's a mess.

ATTORNEY JAMES RAFFERTY: It's kind of a -- I dropped it off when I did the revised plan and dimensional form.

BRENDAN SULLIVAN: You're taking out asphalt?

ATTORNEY JAMES RAFFERTY: Yes. It's in that package right there. You'll see it right there. The current lot under the survey has no green space at all. And it has parking -- it probably has parking for a ton of cars. So, the idea here was to create a green edge along the street to create an area of a minimum of 15 feet to qualify for usable open space that abuts the house. Put green space in the rear. There isn't a piece of green space on the lot today. There's an unsightly chain link fence and there's nothing but asphalt. So in talking with the neighbors and others, the thinking was to

create a green edge along the street edge, green on the corners.

CONSTANTINE ALEXANDER: And parking on-site for four cars?

ATTORNEY JAMES RAFFERTY: That's right.

CONSTANTINE ALEXANDER: With access from Bristol Street it would appear.

BRENDAN SULLIVAN: A couple of condos.

ATTORNEY JAMES RAFFERTY: Two condos. It will be two units now and two when it's done.

DOUGLAS MYERS: Am I correct, there will be a deck on the third floor unit of approximately 15 feet by 8.8 feet?

ATTORNEY JAMES RAFFERTY: I don't know the dimensions, but there is an area in the front that would contain a deck, yes.

CONSTANTINE ALEXANDER: In the front facing what?

ATTORNEY JAMES RAFFERTY: The street.

CONSTANTINE ALEXANDER: Which street?

ATTORNEY JAMES RAFFERTY: Webster.

DOUGLAS MYERS: Is that deck completely open and exposed?

ATTORNEY JAMES RAFFERTY: Yes. It's not -- no relief is needed for it. It's not GFA. It's below the third floor. Below third floor and above not covered.

CONSTANTINE ALEXANDER: What Doug may be getting at, you don't need relief for the deck. We're not favorable to roof decks. And if you want relief on other items, the trade off could be, could be --

ATTORNEY JAMES RAFFERTY: I want to be clear it's not a roof deck. It comes off the -- it comes off the -- it comes out of the apartment onto the deck. I mean, it's not accessed to the roof. It comes through the

unit.

SCOTT SCHUSTER: And it's not common. It's only for one unit.

DOUGLAS MYERS: I just take note that it's there and it's a very dense, densely populated neighborhood.

CONSTANTINE ALEXANDER: That's a good point.

DOUGLAS MYERS: There are no other decks in the neighborhood that front on that street, that front on Webster Avenue within one or two buildings of 53 Webster Avenue. I'm willing to be corrected but these are my impressions of the view this afternoon. But in any event, I do note it's an extremely dense, densely populated neighborhood and the type of neighborhood that if there were large gatherings on a rather large sized deck -- and my question -- if there were, it would undoubtedly be unfavorable impact on the neighbors.

ATTORNEY JAMES RAFFERTY: I

understand the concern. It is a bedroom deck. It comes off the bedroom. It's -- the bump on that floor is the master suite with the deck. The open space is constrained there, limited. Residential uses, these are typically seen as beneficial elements for residential living for unit owners to be able to sit outside, enjoy the fresh air. You're living on the second floor up there. I don't think there is -- I think in a larger perspective they're not as frowned upon as it might be suggested here. There's actually a well-sized appropriately scaled deck is actually seen -- I've had lots of cases where you're encouraged to include these things as residential amenities. It's what leads to some of the open space requirements required with residential living. It does give a level of domesticity their intended to -- if they become a problem, I agree with you, this

is facing the street. It's not against the side abutters. The thinking was it presented an opportunity when the building was finished to provide a nice amenity for the residents of the building coming -- I mean, the residents of that particular unit.

CONSTANTINE ALEXANDER: I hadn't noticed that. And that's the tension we have. I understand that it does increase the amenities for the people that inhabit the structure, but it could have a detrimental affect for the neighborhood with privacy, etcetera. Which is why we never looked with great favor on this.

SCOTT SCHUSTER: May I, Mr. Chairman?

CONSTANTINE ALEXANDER: Yes.

SCOTT SCHUSTER: I did point this out when I originally thought about this design. We thought about doing it in the back. We got negative feedback about having

it in the back. I talked with each individual abutters myself. They're aware of the deck. They understood it. They like the aesthetic idea of having the deck up there. They like the idea of the building being improved. They like the idea of green space. We were upfront and we -- you know, I sent you a letter to every person in the neighborhood. Even to people who couldn't see it, people around the corner, and said, look, I would like to meet with you individually. This is what we're proposing to do. And, again, brought full-sized plans to the meeting. And this was something that they, you know, we talked about. We came back after we met with the abutters as well and shown the plans again. It was something very favored upon.

With all due respect to you, sir, just down the street, maybe three houses down the street, you'll see three of them in the back

that's facing Webster Avenue. I would submit that it's not something.

DOUGLAS MYERS: In the back?

SCOTT SCHUSTER: It's facing Webster Avenue. This deck is not necessarily something that's unique.

CONSTANTINE ALEXANDER: How big is this deck going to be?

ATTORNEY JAMES RAFFERTY: This deck, it's dimensioned at 8-by-15. But I couldn't help but noticing the scale of this house compared to the surrounding structures, the structures around it are quite large. They're the traditional three-family front to back. This is a two-story, two-unit house and its height is considerably below the other structures. So it's not a case where this deck is looming down on others. In fact, it's a full third floors all around. This would be considered a two and a half story style building. It

doesn't have the same imposing bulk and mass as the structure that immediately abuts it, the structure in the rear.

DOUGLAS MYERS: Is this building going to be a three-story building?

ATTORNEY JAMES RAFFERTY: No, it's currently a three-story building. That's a step back. You can see the peak of the roof over there. That relationship doesn't change.

SCOTT SCHUSTER: We just increased the size of the attic.

ATTORNEY JAMES RAFFERTY: This is going up 18 inches, but there's no change in the height. The peak of the roof will be where it is today. It's just that the pitch of it is different. But the overall height of the building is not changed.

SCOTT SCHUSTER: In the back. The front --

ATTORNEY JAMES RAFFERTY: The front

will match the back height. There will be a new front.

DOUGLAS MYERS: As I understand the Variance is to construct the addition, and the deck is part of the addition whereas -- or did I understand Mr. Rafferty to say that the deck is as of right?

ATTORNEY JAMES RAFFERTY: No, the Variance is to allow for setback relief. The deck doesn't have anything to do with the setback relief. The deck doesn't have any GFA associated with it. The building doesn't need GFA, a Variance because it's below what's permitted given the size of the lot, so it's just that the house is too close to the rear for setback purposes. So were the entire house to move forward, it would occur as of right. The Variance is directly related to the rear setback and the deck has frankly nothing to do with the risk.

CONSTANTINE ALEXANDER: To be sure

that's right, on the other hand as a condition of the -- if we wanted to go there as well, the condition of granting the Variance, we could require other elements of the construction to be changed. And one of them would be no deck or a smaller deck. So I'm not sure --

ATTORNEY JAMES RAFFERTY: I don't question your authority. There's no question.

CONSTANTINE ALEXANDER: All right.

ATTORNEY JAMES RAFFERTY: It's conditioned, but I would only suggest that conditions tend to have a relationship to relief. And I would say that we're talking rear setback, so it's really the rear abutter that's affected. And one could condition a whole range of things. Put a tree here, put an item here.

CONSTANTINE ALEXANDER: I mean, the Board's authority --

ATTORNEY JAMES RAFFERTY: I'm sorry, but I don't see the relationship between the setback relief and this deck frankly. But if the Board sees otherwise --

SCOTT SCHUSTER: Mr. Myers --

CONSTANTINE ALEXANDER: Wait a second.

Privacy issue on both. It's the issue with the rear setback and why you need the Variance, and the thing we need to be concerned about is privacy. And we would -- if you're also invading the privacy of other members of the community by the deck in the front, they are related. I think there is a relationship.

ATTORNEY JAMES RAFFERTY: And if there's evidence in the record by testimony or written concern expressed by abutters, I would say the Board is free to do as it sees appropriate. That concern has not been expressed by anyone. There's been an

extended effort of outreach to abutters.

DOUGLAS MYERS: And that's appreciated and I've listened to that. We're talking about the building in the neighborhood and people come and go, and the building and the deck are there forever. I mean, I really understand your point of view. My -- I think my final comment is that a 8-by-15 deck on the second floor directly over or directly fronting overlooking a street in a highly densely populated, congested area is a very -- we have decks and we have decks. That is a significantly sized deck.

ATTORNEY JAMES RAFFERTY: Okay. I hear your point. I just want to add some factual perspective here. It's setback from the building edge that is not directly fronting the street. And I think that setback appears to be at its deepest. I mean, it doesn't go to the front of the

building. It appears by my scaling here, about five feet setback. I would say before one is totally lost on decks, there are some of the finest homes, two- and three-family homes that have second floor porches on them and even third floor porches and some of our -- you go through parts of neighborhoods and they're -- in particularly the front ones are not seen. I mean, people don't -- I mean, it's all how they're used. And I think this deck actually fits in nicely because the mass of the building is considerably setback on the third floor from the first two floors. So it was an opportunity that was presented. This is not a projecting deck or a bay that's going out beyond the wall. It's not even flush.

DOUGLAS MYERS: I noted that. I noted that there was a setback from the -- if it doesn't front in the sense of being flush with the front wall, it certainly faces out

over Webster Avenue.

ATTORNEY JAMES RAFFERTY: I'll be candid, it is a design feature that has been well received and going to give lots of light and air into that building, and it was a street and a house that was in significant disrepair.

DOUGLAS MYERS: That I understand.

ATTORNEY JAMES RAFFERTY: It is not -- here are the other houses. I mean, they are full. I mean, in other -- the irony here is that similar houses don't have a deck. They have the full front wall going up to 35 feet. So the full mass and bulk of the house runs three feet up. This house goes two stories up, steps back for about 15 feet, and the third story it says, I don't think this is in your face as --

DOUGLAS MYERS: I understand. But that's a question of mass and aesthetics. And the deck is a question of, you know, walls

don't talk. But decks tend to generate noise and have a neighborhood impact.

ATTORNEY JAMES RAFFERTY: Well, I won't take up any more time. But I don't think there's empirical data to suggest that. I do a lot of this work and the License Commission has a noise ordinance. And it might be helpful for the Board some day, it is unusual to come here so often and you gear these decks so roundly criticized when in fact they provide, in a majority of cases, when appropriately scaled, they provide necessary amenities for people living in the building. And the history of people buying condominiums like this and then disturbing their neighbors on decks, I don't think empirical data suggests we have a problem in this area with that.

CONSTANTINE ALEXANDER: I don't want to cut this short. Mr. O'Grady may have identified a different more significant

issue.

TIM HUGHES: I'm out of step with the rest of the Board concerning decks anyway. I like decks. I love decks. And I think, you know, that an amenity like this giving outdoor space to a second and third floor unit makes a lot of sense. I think what mitigates some of the privacy issues is the very fact that it fronts on main street rather than a backyard where typically other people would be using their open space. I also think that what mitigates the idea of this being a crowded party type deck is that it's off the master bedroom. And typically, I don't know what kind of parties you go to, Doug, but when I go to parties, after you throw your coat in the master bedroom, that's the last time you see that until you're ready to leave at the end of the night. People don't congregate at master bedrooms at a party and they don't pass through them typically.

And I have to answer one other point about the density in this neighborhood. I live in this neighborhood. I live a few blocks away from here. And being out on porches is a very intricate part and integral party of neighborhood life in the Wellington-Harrington neighborhood. Being out on the front stoop, being out on the porches especially in the summertime. We -- obviously in the summertime. So I think the deck addresses some of those privacy concerns. I think it addresses a noise concern, although I agree with Mr. Rafferty that I don't think that necessarily outdoor spaces here are generally a nuisance, you know. That decks are generally a nuisance. In a city, I mean in a city you have to take your outdoor space where you can get it. At least in my part of the city where I live in Wellington-Harrington. You got to take your

outdoor space where you can get it, you know.

BRENDAN SULLIVAN: Well, Wellington-Harrington may be a deck. In West Cambridge we consider it a front porch.

TIM HUGHES: Why should you get porches and we don't get decks?

BRENDAN SULLIVAN: Two- and three-families historically had front and back porches. My tenants use front porches. They go out and read the paper and whatever it might be. Personally I think it's a nice amenity to have, and I think they function well. I agree with Tim that I think that a front porch deck/deck is less obtrusive than one in the back because of the noise, the echo out in the main street.

ATTORNEY JAMES RAFFERTY: And not withstanding all your concerns, I do think it's worth noting there's nothing in the relief being sought to allow for the deck. So I'm not saying -- and I think all those

concerns are -- obviously they're legitimate concerns, but it's true, the Board has the authority to impact design, but there's nothing in this application by way -- that's asking the Board to allow that deck.

So -- and I think, I think it's scaled -- I think it's -- they're great things frankly, and I think the housing stock here benefits from having it. And I do get troubled when I think people immediately assume that decks are bad things.

DOUGLAS MYERS: I don't immediately assume that. But I do immediately assume that 8.8-by-15 decks should be questioned.

CONSTANTINE ALEXANDER: By the way, the different issue with regard to the decks. Sean, you think there might be an issue with additional relief?

SEAN O'GRADY: Is the deck not in the side setback or the front setback?

ATTORNEY JAMES RAFFERTY: No, it's

stepped off the side. I believe it's stepped off the front. The front setback is measured to the middle of the street.

SEAN O'GRADY: You're in what zone?

ATTORNEY JAMES RAFFERTY: C-1.

SEAN O'GRADY: Your minimum setback is ten feet?

ATTORNEY JAMES RAFFERTY: Ten feet.

SEAN O'GRADY: And your side yard setback is a calculation that you didn't do, but I think is probably eight, 12 feet?

ATTORNEY JAMES RAFFERTY: I would guess in that range. I don't know if it multiplies.

SEAN O'GRADY: So it appears to be that you may need relief for your deck as drawn.

TIM HUGHES: From the side yard setback?

SEAN O'GRADY: From the side and perhaps the front. I haven't sat down and

scaled it.

ATTORNEY JAMES RAFFERTY: Well, there are opportunities and there's no relief being requested, so there are opportunities to step it back on both the side and the front. So I suspect if that proves to be the case.

CONSTANTINE ALEXANDER: I think what Sean is suggesting, unless you modify what you want to do, you may have to come back a second time before us. You want to build according to those plans, you might have a problem is the suggestion.

ATTORNEY JAMES RAFFERTY: Yes.

BRENDAN SULLIVAN: What is being proposed for the back part?

ATTORNEY JAMES RAFFERTY: I think we'll proceed with that, and if there's an issue with the deck and it needs to be modified, we can seek another order of relief.

CONSTANTINE ALEXANDER: And that's the point.

ATTORNEY JAMES RAFFERTY: I think all of those comments are even more germane. Because now if there's relief needed for this deck, I would agree perhaps. But that might be the time to discuss the deck.

CONSTANTINE ALEXANDER: Let me open this to public comment. Anyone here wishing to be heard on this matter?

(No response.)

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

For the record, we are in receipt of letters from numerous people. It's the same letter, I'll just read the form of the letter. It's addressed to us, the letter says: I am a neighbor of 53 Webster Avenue in Cambridge, Massachusetts. Please be advised that after discussing the project with the developers of the building and after reviewing their plans for the project, I am of the opinion that the development at 53 Webster Avenue will be a

welcome addition to our neighborhood. As a result, I am supporting the project and urge the Board to grant the petitioner's requests."

And these letters have been signed by residents at 40 Bristol Street, No. 3; 45 Webster Ave; 42 Bristol; 49 Webster; 44 Webster; 54 Webster, apartment 3L; 50 Webster; 62 Webster; 50 Webster, No. 2; 45 Webster -- it may be a duplicate. Just for the record, I've got to get them all into the record. 42 Bristol Street; 44 Webster Ave. I think these are the same ones you've given me already.

ATTORNEY JAMES RAFFERTY: Yes, they were.

CONSTANTINE ALEXANDER: Okay. Anyway the point being there are no letters of opposition. And further that the person most directly affected is one of those persons who signed a letter. The person at

40 Bristol Street, No. 3.

Okay. Any further discussion from members of the Board?

Are those our set of plans, Mr. Rafferty?

ATTORNEY JAMES RAFFERTY: I hope they're mine because I'm writing on them. They're dated 4/5 with the revision of 4/26.

BRENDAN SULLIVAN: What is it, C-1?

ATTORNEY JAMES RAFFERTY: C-1.

CONSTANTINE ALEXANDER: Where is the revision? I see the 4/5 date, but I don't see a revision.

TIM HUGHES: There's a note here on this side.

ATTORNEY JAMES RAFFERTY: You don't have the current one? I was suggesting if the deck needed an adjustment, we would reduce the size of the deck.

CONSTANTINE ALEXANDER: That you can do after we're done. And this is

duplicate copies. There's only one page, A1.

ATTORNEY JAMES RAFFERTY: You're right.

CONSTANTINE ALEXANDER: You can have yours back. Are we all set?

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Okay.
Ready for a motion?

The Chair moves that the Board make the following findings:

That a literal enforcement -- and I'm talking with respect to the Variance part of the application -- that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. The hardship being is that we have a structure that is a need of updating to make it more suitable, more habitable, and the only way to accomplish this relief is through the way the

petitioner is seeking to proceed.

That the hardship is owing to circumstances related to the extremely unusual shape of the lot, and that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of the this Ordinance.

The Chair would note in that regard that there is numerous neighborhood support. That of the goals of our Zoning By-Law is to encourage for a better residential character in neighborhoods in making our residential buildings more inhabitable, and that this project is designed to do that.

And further that the relief being sought is rather relatively modest in nature. And it results from the fact that we are dealing with a non-conforming structure and that the structure only violates our Zoning By-Law or doesn't comply with our Zoning

By-Law in terms of setbacks. And as a setback is not going to be further diminished except vertically. We're not getting closer to the lot line, we're just going farther up.

The Variance will be granted on the condition that the work proceed in accordance with plans submitted by the petitioner. They are one page of plans numbered A-1 dated 4/5/2010 and is revised 4/26/2010 initialed by the Chair.

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

ATTORNEY JAMES RAFFERTY:

Mr. Chairman. I'm sorry, I apologize. Would it be understood that it should -- I know we're going to link it to the plans, but to the extent modifications need to be made to the deck to make it conform, that those changes -- that that's an acceptable deviation from that.

CONSTANTINE ALEXANDER: Well, if

the changes to the plan are not going to bring you in compliance with the Zoning By-Law, yes, you can make as of right changes to the -- all right.

ATTORNEY JAMES RAFFERTY: Sometimes yes, sometimes no.

CONSTANTINE ALEXANDER: You're right. I went a little too quickly on that.

In granting the Variance -- I want to hear from Doug before I finish.

That the petitioner may modify the plans that we condition the approval of the Variance on with respect to the deck/porch in the front so long as what is done will not bring the deck/porch to not in compliance with our Zoning By-Laws. In other words, that there will be changes that are otherwise permitted by our Zoning By-Law. So you cannot modify the structure in any other respect, but you can with respect to this deck so long as you don't make it in violation of

the law. It may not be violated to today. Maybe.

DOUGLAS MYERS: That would be without further hearing by this Board such modifications as you just mentioned?

CONSTANTINE ALEXANDER: I think it's going to be further hearing by this Board, then we should not grant the relief.

DOUGLAS MYERS: My question to you is the formulation that you just made.

ATTORNEY JAMES RAFFERTY: My objective is -- my understanding is there may be and we may be -- there may be as appearing on the plans, that the deck may need to be modified.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: And it would be modified to make it conform because the application didn't seek relief from the deck, and I didn't think the Board wanted to adopt a plan that might have a deck on it that

wasn't complying. But then some slick developer will say you a-ha, they approved the plans so I can build the deck. So, we're saying, if it's okay with Mr. O'Grady, if we need to adjust the deck to make it conform, I don't think you intend by the vote A, to grant any relief related to that deck. Nor B, would the reference to the plan prevent the petitioner from making the adjustment to reduce the size of the deck.

CONSTANTINE ALEXANDER: That's my point I'm trying very clumsily to make. And that's simply that to the extent you want to modify the plans to reduce the size of the deck, that is permitted within the bones of the Variance was granted. Any other action with respect to changing the construction they do not comply with the commission.

ATTORNEY JAMES RAFFERTY: Fair to say deviations from the plans to reduce the size of the deck are permitted provided that

they're allowed under the Ordinance.

CONSTANTINE ALEXANDER: Otherwise zoning complied.

All right with you, Doug.

DOUGLAS MYERS: I understand what you're saying. I guess my comment is that if the deck -- if it's determined that the deck is non-compliant with a setback requirements of the Ordinance, it would seem to me that it appears that a Variance would be required.

CONSTANTINE ALEXANDER: No, what Mr. Rafferty is saying if that is the case, he wants the right to be able to redesign the deck to bring it in compliance with the Zoning By-Law.

DOUGLAS MYERS: That's fine.

CONSTANTINE ALEXANDER: And he doesn't want to have to --

ATTORNEY JAMES RAFFERTY: And that's just by illustration the deck, both its front and side would need to be adjusted.

That would be the only --

DOUGLAS MYERS: I understand.

That's perfectly -- then I understand you're phrasing the issue and I would vote against it for that reason.

CONSTANTINE ALEXANDER: Okay. I think I made the motion. Anybody want to change it or add, subtract?

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Scott.)

CONSTANTINE ALEXANDER: All those opposed?

(Show of hand.)

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

(Myers opposed.)

CONSTANTINE ALEXANDER: Now the

Special Permit.

The Chair moves that we make the following findings with regard to the request for a Special Permit to install windows and doors on a non-conforming wall.

The Chair proposes that the Board make the following findings as required by our Zoning By-Law:

That the proposed relief would not impact traffic or patterns of access or egress that would cause congestion, hazard or substantial change in established neighborhood character.

That the continued operation of and development of adjacent uses would not adversely affected by the proposal.

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

And that the proposed use would not

impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of this Ordinance.

These findings would be made on the basis that we again we have unanimous -- not unanimous, but we have substantial neighborhood support for the proposal.

That it allows the structure to better serve the community for a residential purpose, and that the impact particularly on the neighbors most affected by the relocation of the windows has been approved or at least supported by the neighbors so affected.

The Special Permit would be granted on the condition that the relocation of doors and windows be in accordance with the plan submitted by the petitioner, one page in nature. It's dated 4/5/2010, revised as of 4/26/2010 and initialed by the Chair.

And also that the work is consistent

with the existing elevations submitted by the petitioner. They're numbered EX-1, EX-2, EX-3. First page of which has been initialed by the Chair.

I just want to make it clear that we worked off the fact that this is what we saw, this is what you're going to do and that's the way it's going to be. Okay?

ATTORNEY JAMES RAFFERTY: All right.

CONSTANTINE ALEXANDER: Okay?

ATTORNEY JAMES RAFFERTY: I thought you were conditioning them on that plan. I didn't pay close enough attention.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Hughes, Sullivan, Scott,

Myers.)

CONSTANTINE ALEXANDER: Before I call the next case I'm going to jump ahead to our regular agenda in the following sense, we have three cases on the regular agenda that are going to be continued. And I'll identify them in a second. If anyone is, you know, here for those cases, I want to let you know now so you don't have to stick around and learn a half hour from now the cases have been continued. The cases that are going to be continued for various reasons to a future date will be the 289 Brookline Street, No. 9923; 24 Decatur Street, 9924; and 9926, 22 and 27 Cottage Park Avenue. If you want to find out what the times are going to be continued to, you have to stay here or contact the Zoning office tomorrow or the day after. It's going to be several weeks from now before we hear each of those cases. So, just so if you're here for those cases and you don't want

to otherwise listen to us babble up here, you can leave and we'll move on to other cases.

(8:35 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: Let's take Mr. Boyes-Watson. Let's take that case first and then we'll take the three other cases.

The Chair is calling case 9919, 34 Sherman Street. Is there anyone here wishing to be heard on this case?

MARK BOYES-WATSON: Mark Boyes-Watson from Boyes-Watson Architects, 30 Bow Street, Somerville.

ELLEN BRODSKY: Ellen Brodsky, 34 Sherman Street.

TED RYBECK: Ted Rybeck, Ellen Brodsky's husband, 34 Sherman Street.

CONSTANTINE ALEXANDER: You want a Variance for various things?

MARK BOYES-WATSON: Right. What

maybe though I just want to start with a little bit about where the house is because I think it's relevant.

The house sits on the corner of Sherman, Sherman and Stearns. And that's, I just want to characterize that a little bit, which is that if you know that stretch of Sherman, it says you come into town from the west. You're coming up Sherman. Well, actually on the other side of the street. It's a busy street. And this house sits on that corner. So it's a relatively noisy spot, and the house is actually close to its lot line. It affects what we're trying to do in kind of sense of the house. The owners, and I'll let them speak to this, have been there a long time and they love the house. And I think that -- well, I don't want to steal your fire, but the children live there and they're growing. One of them is here tonight. So, what we're here for is to talk about the

addition of this existing house of dormers on the third floor. They're sort of flagged in this drawing that allow the master bedroom to move from the second floor to the third floor and accommodate, you know, more privacy for the owners, etcetera, with their two daughters who would be on the second floor. And there are a couple of -- and those are in excess of FAR. So they create the need for relief.

CONSTANTINE ALEXANDER: And the building right now is non-conforming?

MARK BOYES-WATSON: Modestly.

CONSTANTINE ALEXANDER: Just for the record, the building right now is 0.88 FAR in a 0.75 district, and you want to go to 0.92.

MARK BOYES-WATSON: Right.

CONSTANTINE ALEXANDER: 0.88 to 0.92 in a 0.75 district.

MARK BOYES-WATSON: Right. And there's another 135 square feet. And I just

want to point out now I don't think it's a big issue that a part of that relief -- this is the front door. We're trying to construct a canopy over that front door, 15 square feet. I just want to speak a little bit to what's going on internally to the house so the Board can see how the physical condition on the lot relates to this.

So what happens is that right now if you go -- there are really no changes at all proposed on the first floor, except for the canopy. Nor on the second. You can see actually, the house has been much modified over the years from its original condition, and there's a staircase that actually winds up in a very beautiful way through this house, comes up here, comes up here to lead to the three rooms that are used now as bedrooms and to accommodate obviously bedrooms.

The attic right now, when they bought the house, actually I was involved -- when

they bought the house 15 years ago I was involved helping them get in. And there wasn't actually a stair at all to the attic. There was like a hatch and you climbed up. We constructed a sort of stair that got you up in a good fashion and it uses the whole back of this plan to take advantage of this small dormer that you see here actually.

That's -- if you look at the floor right here, there's virtually no room in this dormer. It's a gable actually. And so it gets you up. There's actually very little usable space here. And there's a nice space with an existing dormer right here.

CONSTANTINE ALEXANDER: Why did you build that staircase to go up to a third floor where you can't use it?

MARK BOYES-WATSON: You can. You can see from this FAR diagram that there is -- you see this, it's one of those things where there is a bit of usable space up the

middle. And they've been using that. It's low and the kids could --

CONSTANTINE ALEXANDER: Using it for what?

ELLEN BRODSKY: Well, my niece lived there one semester and I used it as an office. And we used it as a room.

CONSTANTINE ALEXANDER: And there's no bath on that floor?

ELLEN BRODSKY: No.

MARK BOYES-WATSON: So what actually also is true -- so basically, so basically what we're trying to do is we can't -- we don't do much here, but we're trying to get this big enough that there's a decent bedroom up there. The one of the things that's interesting about this room here, this is Sherman, this is Stearns. This is a tough room to sleep in because it is noisy. It's actually very exposed to all the traffic that comes up the road. And so,

that's -- and actually they've been working on insulating it, changing the windows and stuff. So it's still difficult. It's one of the factors -- one of the factors (inaudible), first of all there's the desire to stay. And then there's the desire to really accommodations.

CONSTANTINE ALEXANDER: Show that window the elevation. Which of the --

MARK BOYES-WATSON: There's a pair of windows over here. You see this flat? It's that window and that window.

CONSTANTINE ALEXANDER: Got it.

MARK BOYES-WATSON: And what happens is the rest of the thing, this is to the hallway. So actually, there's no other rooms. If you look, the circulation is down that in the plan. I keep turning myself around. But the circulation in this house, see this? That's all because of circulation. So this is what happens,

that's the equivalent window on the first. And here they are, they're on this corner. It really affects -- there's a loose manhole cover, it's too noisy there. And that's not to say, in fact this house is very vertical. And I was mentioning the stairs. We've got the stair system winding through the house. And what's nice about the house being vertical, I know it's already non-conforming but it -- actually, if you look at the site plan and if you go there, it's really substantial and delightful and why they love the house despite, the house is actually non-conforming right here all ready to setback. It actually preserves big trees and a really nice backyard which is actually protected by the house from Sherman. So you know it's kind of an interesting configuration. It's a vertical house with lots of circulation through it. They are -- there's four of them but it's like,

wow, do you really need? But this is how they get there.

So, what we're trying to do just to finish what we're trying to do to make it clear is we're trying to -- basically there is this dormer here. We're just extending it slightly so it's big enough for a bed with two end tables. And there is, as we were just looking, that flat roof area out here, that -- and this dormer, it's really the -- if we construct this dormer, if you let us construct it, there's a -- looking in this location because you're looking way far west, you look over Sherman and it's way down. It's actually concealed from the noise and from view by the flat roof portion that sits in front of it. And it's going to be that deck that leads on to. But that, but that dormer works there and it looks west. It looks down the busiest part of Sherman Street.

CONSTANTINE ALEXANDER: You mentioned a dirty word.

MARK BOYES-WATSON: Deck.

CONSTANTINE ALEXANDER: Decks are something that we -- I don't mean to be sarcastic to a fellow Board member, it's something that we do deal with a lot. Where is that deck -- what's the deck going to be, off what?

MARK BOYES-WATSON: The master bedroom. And it's on that corner of Stearns. It's not on back. It's on the corner of Stearns and Sherman. It's a little confusing. So here's Sherman. And there's the deck right there.

CONSTANTINE ALEXANDER: It's on the tree side right there?

MARK BOYES-WATSON: Yes. And there's a flat roof part.

CONSTANTINE ALEXANDER: A balcony?

MARK BOYES-WATSON: A Juliet

balcony. There's just room for a chair and a person. That's the back of the house and it's just --

CONSTANTINE ALEXANDER:

Overlooking the garden?

MARK BOYES-WATSON: Yes, overlooking those trees. It's a very sweet moment. Which is another reason, you could say, well, you could say why isn't a bathroom? You know, what could you constrain by putting the bathroom there or something. But actually it is (inaudible), in a house that is cleverly -- let's put it this way. Why it's a nice house, it's cleverly managing its location. But if you were to put a bathroom on the street, the noise and buffering on the street again, on Sherman Street, and this is very sweet. So that's just a -- I don't think it's actually FAR or anything new requiring relief. So that's why it's there. It's sort of obvious, a tree house almost with

these big trees in the garden.

And it would be helpful -- I sat down, you would be interested in how the family has grown and the love of commitment to this location is huge. So I don't know if you would like to hear from Ellen.

CONSTANTINE ALEXANDER: Any testimony you want to give us?

ELLEN BRODSKY: Well, all that's helpful I think you received the letters we have from our neighbors.

CONSTANTINE ALEXANDER: I was going to ask you about that. I have one letter.

ELLEN BRODSKY: Oh, I have about three.

CONSTANTINE ALEXANDER: You have more?

ELLEN BRODSKY: Yeah.

CONSTANTINE ALEXANDER: Why don't you leave them with me and I'll put them in the public record and I'll read them.

ELLEN BRODSKY: Sure. We love our street and we love our corner. And we have two kids. And they still share the same bunk beds that they shared since they were little. And I keep thinking at one point they're going to want to move out. We have a 14 and a 11 year old. We're in the bedroom right next to them with the dormer in between the two rooms. I think it would be much nicer for them to each have their own bedroom and us now as adults next to teen-agers so that was a big reason to move.

I also do a lot of work out of my house now and I need to be in an office. And so we've spent a lot of time all together in the one room together. It's a big open room layout. It will help out a lot as we're getting older and growing. So that's it.

TED RYBECK: And let me just add that we're -- I don't know if it's relevant, we're very close to our neighbor.

CONSTANTINE ALEXANDER: Did you identify yourself for the record?

TED RYBECK: Yes, I'm Ted Rybeck Ellen's husband and the kids' father. And we moved in when Ellen was pregnant, and had the kids there. So we're very close to our neighbors. On the side where we're closest we actually redid a fence together so that we have a shared backyard between us.

ELLEN BRODSKY: We share tree care with them.

TED RYBECK: We share tree care and we talked to each of the neighbors and they're very supportive.

ELLEN BRODSKY: The shorter story, when our kid turned 12, we had 12 different addresses around us that they went to for a scavenger hunt. And someone asked us you have 12 neighbors that you knock on the doors and ask for things?

TED RYBECK: We love living in the

neighborhood.

CONSTANTINE ALEXANDER: Questions from members of the Board?

BRENDAN SULLIVAN: Mark on the proposed drawing, the proposed southwest elevation, is that Sherman Street?

MARK BOYES-WATSON: You know, I have to look at it. The southwest is actually facing Sherman exactly.

BRENDAN SULLIVAN: That's Sherman?

MARK BOYES-WATSON: Yes. And then the Stearns is the northwest.

BRENDAN SULLIVAN: This is Stearns Street?

MARK BOYES-WATSON: Yes. So the flat, yeah, with the flat bit on it.

BRENDAN SULLIVAN: This is not a porch, it's a deck?

MARK BOYES-WATSON: Right.

BRENDAN SULLIVAN: It's on the corner of Sherman and Stearns.

MARK BOYES-WATSON: The one that's relatively next to the house adjacent on Sherman is the one where there's that existing dormer. So it shows, it faces you in this southeast elevation. You see that existing dormer on the southeast elevation?

BRENDAN SULLIVAN: Yes, that's going up Sherman.

MARK BOYES-WATSON: When you go down, you can see it's getting enlarged.

BRENDAN SULLIVAN: That's going up Sherman?

MARK BOYES-WATSON: Yes. But it faces the house next-door. The other one really faces the open space looking down the hill west.

BRENDAN SULLIVAN: Northeast faces out the backyard?

MARK BOYES-WATSON: Exactly.

BRENDAN SULLIVAN: And that balcony, how far does that protrude up?

MARK BOYES-WATSON: I think it's three.

DOUGLAS MYERS: Three and a half by eight?

MARK BOYES-WATSON: Yes. Three-foot, four actually.

BRENDAN SULLIVAN: Sean, what do they usually allow as of those Juliet balconies coming off the --

SEAN O'GRADY: Well, we often see them invading setbacks at three-and-a-half feet. Is this invading a setback?

MARK BOYES-WATSON: No, this is --

BRENDAN SULLIVAN: No, but if -- how much does the Department allow basically as a Juliet balcony, or in other words.

MARK BOYES-WATSON: Oh, yeah, sort of you mean like a true like French balcony?

BRENDAN SULLIVAN: Right.

MARK BOYES-WATSON: This is like it's just flush and it has like, you know,

you're saying when you put the rail almost flush with the doors?

BRENDAN SULLIVAN: Correct.

SEAN O'GRADY: Flush. You know, what's reasonable to get that flush.

BRENDAN SULLIVAN: So anything beyond that --

SEAN O'GRADY: Would be --

BRENDAN SULLIVAN: -- then it gets counted. I thought there was 18 inches or something off --

MARK BOYES-WATSON: There is that new rule. Does that affect the new double wall ordinance?

SEAN O'GRADY: That's not in place yet I don't think.

These balconies are kind of funny because if they're cantilevered, and they're hanging over empty space or a driveway, not over an entryway, especially if they're at the third floor, I'm not sure whether this one

is. Yes. We generally don't count that as FAR. We generally allow it to come off the side of the building three and a half feet even if it's going to invade a setback. So, I guess maybe three and a half feet is the one that sort of gets by both of those rules. Beyond that --

BRENDAN SULLIVAN: This is at the third floor and it's projecting out three and a half feet with nothing below it.

SEAN O'GRADY: Yes, I would say that's pretty much overlooked.

Now the rules, you know, I don't want to say that the rules are a little unclear on it, but we have traditionally viewed those as not FAR and not setback.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Wait a minute. We had the case on Magazine Street, the apartment house, the condominium. And one of the things they needed relief they were

going to put Juliet balconies.

SEAN O'GRADY: Strangely enough that was a height issue.

CONSTANTINE ALEXANDER: I remember the hearing. It wasn't a setback issue?

SEAN O'GRADY: No. I don't think so. Well, hold on. That's in -- well, you know, it might have been a setback issue because the calculated setback on a building like that would be -- but then the wall that it was coming off of.

TIM HUGHES: Wasn't it inside an L when it's coming.

MARK BOYES-WATSON: You can't make changes to a non-conforming facade.

CONSTANTINE ALEXANDER: Right. But is your --

MARK BOYES-WATSON: Ours is conforming. Our facade is actually conforming.

SEAN O'GRADY: As long as it's

coming off a conforming wall, if it's a non-conforming wall, different story altogether.

MARK BOYES-WATSON: We do have things happening. We don't actually decrease any setbacks, but we do have things happening. In these elevations there's that existing conformity on Stearns Street, so we cited that as a problem as something for which we needed relief.

BRENDAN SULLIVAN: That's it.

CONSTANTINE ALEXANDER: No further questions?

BRENDAN SULLIVAN: No.

SEAN O'GRADY: And I'm sorry to interject, I just want to make sure I'm giving the right advice here.

Mark, were you just listing it as informing the Board or did you feel it needs relief?

MARK BOYES-WATSON: I think it's all

part of the relief.

SEAN O'GRADY: Why do you feel it needs relief.

MARK BOYES-WATSON: Well, I think it's -- there's actually two. It's a deck or a balcony, but it's the two of them, they need relief.

CONSTANTINE ALEXANDER: I don't think it's in the advertisement.

TIM HUGHES: Yes, it is.

SEAN O'GRADY: It says balcony and deck. I'm curious why the balcony is there. Is this informational?

MARK BOYES-WATSON: Yeah, you know, I just don't want to be called out.

SEAN O'GRADY: Neither do I.

TIM HUGHES: Part of it being in the side yard setback from Stearns Street.

MARK BOYES-WATSON: It looks like it's fine. So, you know, I think it's just being thorough. That element, because it's

not coming off the third floor, it's not combined.

CONSTANTINE ALEXANDER: I'll open it to public testimony. Anyone wishing to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. We do have letters in our file. We have a letter from Steven, S-t-e-v-e-n Brettler, B-r-e-t-t-l-e-r addressed to our Board, dated April 7th. "This is a letter in support of Ellen Brodsky and Ted Rybeck's application for a Variance on their property at 34 Sherman Street, Cambridge, Mass. I'm a direct abutter and own the property at 40-42 Stearns Street. I've reviewed their plans for the third floor renovation and have no reservations whatsoever."

There's a letter from Debbie Abram, A-b-r-a-m, Klein K-l-e-i-n who reside at 20

Stearns Street. "We are writing this letter in support of our long-term neighbors Ellen Brodsky and Ted Rybeck. They live at 34 Sherman Street and are hoping to complete a renovation project at their house. We live at 20 Stearns Street, only two doors away from Ellen and Ted and have known them to be lovely and courteous neighbors since we moved into our house almost nine years ago. They have been living in their house for 15 years. Our children are friends and attend the same school." I'm skipping some of this because from a zoning point of view. They're nice words in your favor.

ELLEN BRODSKY: Thank you.

CONSTANTINE ALEXANDER: "We support their plans to build -- and this is a truncated version of the letter -- "we support their plans to build a bedroom and a bathroom on the third floor. This would not adversely affect anyone's views in the

neighborhood. And in our opinion it will increase their property values and therefore other property values. The plan would not interfere with anyone's shade or light and would increase the beauty of our neighborhood. We are excited to see how the project turns out. It will help our neighborhood by adding an additional lovely exterior for all to admire."

A letter from Adam P. Mitchell at 48 Stearns Street. "I'm writing in support of my neighbors of 15 years, Ted Rybeck and Ellen Brodsky plan to remodel their third floor. Their plan for renovation is logical and make their house more comfortable for their family. The impact on the renovation will be minimal on the neighborhood and allow them to create more room so they can remain in their house with their two teen-age daughters. The proposed work will be almost invisible from the street and will not block any views

or light into abutting property. An existing dormer will be slightly enlarged. A second dormer will be added along with a small roof deck. In my opinion as an architect, this renovation is modest and should not inconvenience anyone. I strongly urge that you grant Ted and Ellen a Variance. The Rybeck/Brodsky family is an important part of our community and I would hate to see them move to a nearby suburb because their house could not comfortably fit them. The Board of Zoning should enable long-term resident families to stay in their homes."

And we only have three letters. The other one is a duplicate. That's the sum and substance of public testimony. Public testimony is now closed.

Comments from members of the Board.

DOUGLAS MYERS: Questions?

CONSTANTINE ALEXANDER: Questions, comments.

DOUGLAS MYERS: I didn't have a one-eighth inch scale when I happened to review the plans, and I interpolated from whatever scales were available. But I made out the dimensions of the roof deck to be 10 feet by 15 feet.

MARK BOYES-WATSON: Yes.

DOUGLAS MYERS: And can you explain how you determined those dimensions?

MARK BOYES-WATSON: Yes, we were -- we basically -- if you look at the -- basically that's coming to the face of the building. So -- and it's the reason that we're not taking it the whole way down, which is a simpler construction, you know, to line that up with the exterior wall, because we actually have to reinforce -- we have to reinforce this to take the loads. So we're lining it up with the outside wall. We're not making it as big as that whole piece because there's a skylight that lights that

stair, the end of that piece of plan, but that's why it's that size. It's really working off that existing flat roofed area that's below it.

DOUGLAS MYERS: You mentioned that your primary motive was alteration and improvement of the living space in the house. Are the dimensions of the deck, can you explain if there is any relationship between the dimensions of the deck and your alterations concerning living space?

MARK BOYES-WATSON: No, I think it's really is the -- I mean, that it's just to create amenity there. And as I say, it's one of the recompenses of being on that corner is to get up there. They can't see that view right now. It's an increased amenity. It doesn't affect the internal layout or workings. It's not an easy -- it's actually not an easy project for them to do. So this is definitely a great -- when you lift that

dormer, it's asking for you to just step out and look west.

DOUGLAS MYERS: Will there be an extensive view from the deck.

MARK BOYES-WATSON: Yes.

DOUGLAS MYERS: Can you say about how far? What you would see -- what objects you would see on a clear day.

MARK BOYES-WATSON: You look far to the west. It's surprising how as you -- you know, it's surprising how Sherman sits above the surrounding -- there's almost like a ridge there that looks west. And this house is in a great spot for that. I mean, it just asks for this exact spot. And also because it's on the corner, it's not -- there's no houses close. You're looking, you don't look down on the houses, you look out on the view.

ELLEN BRODSKY: And the sun sets there and these gorgeous trees that go down

Stearns. And we spend a lot of time in our backyard which is great. And you're surrounded by three-story houses and there you have like a wraparound. It's something. It's a view we never had before. But once he pointed it out to us, it's gorgeous.

THOMAS SCOTT: You said this is a skylight here.

MARK BOYES-WATSON: Yes, a skylight that lights the stair. That's already there.

THOMAS SCOTT: What's there?

MARK BOYES-WATSON: That's there, yeah.

CONSTANTINE ALEXANDER: Further comments or questions from members of the Board? All set, Brendan? I know you're set.

TIM HUGHES: I'm set. I'm good with it.

CONSTANTINE ALEXANDER: Before we

get to the vote, a housekeeping matter brought to my attention by Sean O'Grady, this is a continued case. And we never have received a waiver of a time for rendering a decision. And without that we're going to run into time constraints. Before I take a vote, I would like to ask that you, your clients sign a waiver for a rendering of decision.

Just so you know what you're being asked to sign. By law, we have to render a decision within a certain period of time. Because the case was continued, we can't do that. So this is a waiver of that statutory requirement.

I think we're ready for a motion.

The Chair moves that this Board make the following findings with regard to the petitioners seeking a Variance to extend and reconfigure an existing dormer and add a new dormer. Change the fenestration and add a

balcony at the third floor and new exterior overhang at roof deck.

That a literal enforcement of the provisions of our Ordinance would involve a substantial hardship to the petitioner. The petitioner needs additional living space for a growing family, and is -- given the size of the lot and the structure more importantly with the location of the structure on the lot, the only way to deal with these needs is to do the kind of relief the petitioner is seeking.

That the hardship is owing to the circumstances relating to the shape of the structure. The structure is non-conforming. And further that it is located on the corner of the lot creating a non-conformance that would require relief for virtually any addition to the structure.

And that relief may be granted without substantial detriment to the public good or

nullifying or substantially derogating from the intent or purpose of this Ordinance.

In that regard the Chair would note that there are unanimous letters of support from the neighbors and abutters.

The additional relief being sought is relatively minor in nature. There's a slight increase in non-conforming FAR but no more than that. And that again this would allow -- it's consistent. The relief being sought is consistent with the desire of our city to allow families to continue in their homes and to have a more rationale use of the structures they inhabit.

The Variance will be granted on the condition that the work proceed in accordance with a plan. This is it, one page, Mark.

MARK BOYES-WATSON: It should be two. Do you have two sheets or one?

CONSTANTINE ALEXANDER: I have one.

MARK BOYES-WATSON: 02 is really

just presentation stuff, photographs. 01 will do it.

CONSTANTINE ALEXANDER: That the work proceed in accordance with the plan numbered 01, one page in nature, prepared by Boyes-Watson Architects bearing a date of 4/5/10 and initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(9:05 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9923, 289 Brookline Street. Anyone here wishing to be heard on that matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair would note that we have a letter in the file, it's dated April 28th, and addressed To Whom It May Concern. It's signed by Christopher Ian Wright, W-r-i-g-h-t and Ingrid H. Wright who are the petitioners in this matter.

"To Whom It May Concern: We'd like to

continue this case to the next available hearing."

When is the next available hearing, Sean?

SEAN O'GRADY: We have one left on June 10th.

CONSTANTINE ALEXANDER: Okay. This is a case not heard.

All those in favor of continuing this case until seven p.m. on June 10th on the condition that the petitioners sign a waiver for a time for decision, and on the further condition that the sign which was not posted originally be posted in compliance with the Zoning By-Law and modified to show the new hearing date of June 10th.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor. The case is continued.

(Alexander, Hughes, Scott, Myers.)

(9:05 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will next call case No. 9924, 24 Decatur Street. Anyone here wishing to be heard on that matter?

ATTORNEY JAMES RAFFERTY: Thank you. Mr. Chairman, James Rafferty on behalf of the applicants. We have filed a request with the Board to continue the hearing and we have notified all the abutters that we are aware of the request.

CONSTANTINE ALEXANDER: Thank you. Sean, what date?

SEAN O'GRADY: June 24th.

CONSTANTINE ALEXANDER: This also is a case not heard. So we can proceed. The Chair moves that this case --

ATTORNEY JAMES RAFFERTY: I believe there is a member of the public that wanted to be heard on the continuance.

CONSTANTINE ALEXANDER: Understand that you're obviously entitled to be heard on this case. I don't want to get into the merits of this case. I don't know whether you're a supporter or proponent. Let's not talk about that. Let's talk about continuing to June 24th. And again please, for the record, give your name and address.

KATHYRYN PODGERS: My name is Kathryn Podgers. I reside at 148 Pearl Street and I'm an owner of 146-148 Pearl Street. And while I'm technically not a direct abutter, it's because the two properties next to me have dog legs with my

property running straight back. I would be a direct abutter to the property in question. And both my bedrooms and both units and kitchen windows and backyard -- or the view from my backyard is in fact the property in question. So you have direct abutters and then you have privacy abutters, whatever you want to call it. I support the continuance.

CONSTANTINE ALEXANDER: You support the continuance, okay. I thought you were going to say I support the petition. I wanted to stop --

KATHRYN PODGERS: Give me a little space here. Jim can affirm to you all that I've been over the past 20 years a strong supporter of property rights. I'm not a radical in any way, and I don't just come out knee-jerk joining with various groups on postings. That gets to the point of why I support the continuance. I simply haven't been contacted in this matter while many

other non-abutters who live further away than I do from the property have been contacted by the current owners. I'd just like to point that out. My immediate next-door neighbors are the major abutters at 144 Pearl Street. It's the back three units of the nine-family condo, and we think that the owners who are putting this proposition forward should make a concerted and genuine effort to communicate with all of us. Because we appreciate that they're cleaning up that property which has been a nuisance. On the other hand, perhaps the current proposal isn't going to be a sustainable long-term solution and might cause problems of a different kind, so therefore, we're hoping they use this opportunity to continue this to get in contact with all of us. And I've made myself and our phone numbers available to Mr. Rafferty who does know me, and maybe we can all come to an agreement that meets

everybody's concerns.

Did I say that well?

ATTORNEY JAMES RAFFERTY: You've said it very well. A lot more than you need to, but very well.

KATHRYN PODGERS: But I want to let the Zoning Board know that we would like to see a successful outcome.

CONSTANTINE ALEXANDER: I think it goes without saying and so does this Board. It's always more pleasant for us and for the city when we have an outcome that supports, as you saw from some of the other cases, everyone involved rather than bitterness by what's going on. But you're not going to hear any opposition to continuing the case from this Board. So --

KATHRYN PODGERS: Obviously. I'd like to bring --

CONSTANTINE ALEXANDER: We'd like to move on to other cases if we could.

KATHRYN PODGERS: I'd like to bring to your attention the serious matter of Decatur Street, a two-lane road with parking on both sides and it's not possible to drive on Decatur.

CONSTANTINE ALEXANDER: You're getting into the merits. Please, I don't mean to cut you short. I don't mean to be rude.

KATHRYN PODGERS: I'm trying to bring to your attention how important it would be, and when you write back to the owner, that I strongly encourage him that we're not opposed to him developing, but we might be seriously concerned with what we've looked at to date. And we're very glad that he's looking at a continuance and we welcome him to communicate directly with us.

CONSTANTINE ALEXANDER: I'm sure that you will have many communications after this night. And when we come back on the 24th

where I think we're going to continue the case to, I'm sure we'll hear from you and Mr. Rafferty and other neighbors whether or not you've reached agreement or not and, we'll review the plan and hear you all out and make a decision.

KATHRYN PODGERS: We're here for the owners that are putting the proposal forth. Thank you very much.

CONSTANTINE ALEXANDER: Thank you very much.

Anyone else wishing to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: No one else wishes to be heard. The Chair will again move that this case be continued. I think I made the motion. Did I make it?

SEAN O'GRADY: I believe so.

CONSTANTINE ALEXANDER: Are we ready for a vote? You've got the condition,

signed the waiver. You just sign and change the sign.

ATTORNEY JAMES RAFFERTY: And the date is?

CONSTANTINE ALEXANDER: June 24th.

DOUGLAS MYERS: Why did this end up to the 24th and the other to the 10th?

SEAN O'GRADY: We ran out of the 10th.

CONSTANTINE ALEXANDER: All those in favor of continuing the case so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The case continued until June 24th.

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

(9:10 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9926, 22 and 27 Cottage Park Avenue. Anyone here wishing to be heard on that matter?

ATTORNEY JAMES RAFFERTY: James Rafferty on behalf of the applicants. That also is a case for which a continuance is being sought. After meeting with neighbors, we notified I believe again the neighbors of the request.

CONSTANTINE ALEXANDER: I notice your letter to the file requesting the case

be continued until June 10th. Do we have that time available? I don't think.

SEAN O'GRADY: We're out of June 10th now.

ATTORNEY JAMES RAFFERTY: The reason I suggested June 10th without getting too far afield is that this could be a case, this case involved in its original filing, the case is currently before the Board. It seeks to convert a quanset hut into a parking structure.

CONSTANTINE ALEXANDER: Quanset hut according to your application.

ATTORNEY JAMES RAFFERTY: The quanset hut becomes parking for an office use across the street.

CONSTANTINE ALEXANDER: I'm sorry. To expand parking supply by using pre-existing quanset hut parking structure?

ATTORNEY JAMES RAFFERTY: Yes. So, the quanset hut is across the street from the

building. And to make a long story short, the proposal was to convert the quanset hut to parking, and we got there because we were slightly discouraged in taking it down by the Historical Commission. We met with the neighbors and they don't share the same fondness for the structure as some of the staff of the Historical Commission.

And then upon further examination, I discovered the quanset hut is way more than you need, but the quanset hut was actually permitted by a Variance in 1947 that was supposed to come down in '57. They got a five-year extension on it. So it appears that the quanset hut shouldn't be there after 1962. The reason for the June 10th is we're going to go to Historical Commission on June 1st and I suspect what we'll do, and I discussed it with Mr. O'Grady, and I think because the nature of the relief is going to be a bit different and if we fair well in the

Historical Commission, we're going to ask not to convert the quanset hut but to use it as a surface parking lot and it is the intention of the notice that speaks to, a conversion of the structure of the parking as opposed to on-grade surface parking that we should change it.

CONSTANTINE ALEXANDER: Are you going to park cars in the quanset hut?

ATTORNEY JAMES RAFFERTY: No. The plan is to knock the quanset hut down and build a parking lot. I think what I'm going to do is continue this case and file a new case, because that case isn't the right case to park the surface. If you're filing a new case today, you'd get June 10th because there's only so many for continuance and so many for new. So I intend to file tomorrow for a June 10th hearing and then suggest that maybe these two should stay together. If we then got the relief for the parking lot, we

would simply withdraw that case. But if that's on June 24th, we withdraw it on June 10th.

SEAN O'GRADY: I forgot your conversation, Jim. I would be happy to have the Board do whatever you decide.

ATTORNEY JAMES RAFFERTY: I mean the concept of June 10th was a new case can get on for June 10th, it would be a week after the Historical Commission. It is a new case. I didn't want to run into a situation where if we withdraw the case now, have a repetitive petition. Keep this one alive, file a successor case, get the successor case heard and determined and then -- presumably. So the 10th or the 24th, either way.

CONSTANTINE ALEXANDER: We'll change it to the 24th.

TIM HUGHES: Is our regular agenda full on the 10th?

ATTORNEY JAMES RAFFERTY: I think

what Sean was saying -- the 10th is wide open. Actually, if you file today, you can still get May 27th as of yesterday.

SEAN O'GRADY: We got a bunch yesterday.

ATTORNEY JAMES RAFFERTY: Did you? Someone else doing this kind of work that I don't know about?

So June 10th will work, but then -- but I thought what you might have been saying since it's unlikely that the continued case will ever get heard even though it's on the June 10th list, it may not take up time on June 10th. Whatever you feel most comfortable with is fine with me.

CONSTANTINE ALEXANDER: June 24th.

BRENDAN SULLIVAN: That's fine.

ATTORNEY JAMES RAFFERTY: That's fine with me.

CONSTANTINE ALEXANDER: The Chair moves that the case be continued to seven

p.m., and June 24th. On the condition that the petitioner file a waiver for a time for decision which he has done.

Then on the further condition that the sign on the premises be changed and reflect the new hearing date.

All those in favor of continuing the continuation on the basis so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

(9:15 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9925, 44 Follen Street -- I'm sorry. For the record.

ATTORNEY VINCENT PANICO: Members of the Board, I'm Vincent Panico. I'm the attorney for the petitioner. And on my right is the architect. Introduce yourself, please.

AMY NASTASI: I'm Amy Nastasi, architect working at 44 Follen Street. N-a-s-t-a-s-i.

ATTORNEY VINCENT PANICO: And on my

far right, the owner.

DOUGLAS YOFFE: I'm Doug Yoffe,
Y-o-f-f-e.

CONSTANTINE ALEXANDER: You're
looking for a Variance and a Special Permit.
Why don't you go through and show us what you
want to do. I know we have plans in the file,
but I'd like you to identify starting with the
Variance specifically what you're seeking a
Variance from.

ATTORNEY VINCENT PANICO: Okay.
May I briefly give a history of this site?

CONSTANTINE ALEXANDER: Do that
first.

ATTORNEY VINCENT PANICO: I think
some members of the Board are acquainted with
it, but I'll just go over it. In 19 -- during
the 1940s this Board, not the same members,
granted a Variance in this Residential A
District to have a club in a rooming house
which would be -- today would be a scandal.

And the neighbors unfortunately learned that Variance ran with the land and had been before the Board at least one time seeking to have the club removed. And they failed because we all know it runs with the land. The neighbors have done everything except -- there are letters of support. The place has been neglected and has been a nuisance to the neighbors. Eventually it was turned into a fraternity house for a law students. And I can't imagine a worse group of neighbors.

CONSTANTINE ALEXANDER: The Lincoln Inn.

TIM HUGHES: Hockey players.

ATTORNEY VINCENT PANICO: Hockey players, a close second.

And so the neighbors are very, very anxious that we convert this to residential units. It's a big place. There's 5100 square feet. The Variances we are seeking

are kind of minimal. As you face the building on the left side and the right side, there were exits. We proposed to take those exits and make them into windows. The windows will conform with the architectural design. In the rear we propose to have exits at the basement level, two exits. And on the first landing exits going out onto a deck and a stairway. And the stairways unfortunately have been hand drawn in. I don't know whether you have that plan.

CONSTANTINE ALEXANDER: This is the only plan we have.

DOUGLAS YOFFE: That's pretty much it.

AMY NASTASI: It's the concept.

CONSTANTINE ALEXANDER: While we're on the subject of concept, if we're going to grant relief, if you're going to change these plans --

ATTORNEY VINCENT PANICO: No.

CONSTANTINE ALEXANDER: -- you're going to have to come back before us. You're talking about concept. This has got to be it. I want to make sure you understand.

ATTORNEY VINCENT PANICO: The Historical Commission requested that the stairs be moved to the back and we got some White Out and took them out.

CONSTANTINE ALEXANDER: You need relief because you're going to a two-family house.

ATTORNEY VINCENT PANICO: From a single to a two and we're doing the backyard.

CONSTANTINE ALEXANDER: The backyard. You also have parking issues.

ATTORNEY VINCENT PANICO: I'll address the parking issues.

CONSTANTINE ALEXANDER: You have parking issues with regard to the Variance, and you have a parking issue with regard, I guess, to Special Permit. But the Variance,

you're looking for a Variance to park in the front yard.

ATTORNEY VINCENT PANICO: Yes, but may I address that?

CONSTANTINE ALEXANDER: I just want to get it on the record exactly what it is that you're --

ATTORNEY VINCENT PANICO: That's exactly what we're doing.

Now, on the front yard parking, we've been meeting with the Commissioner on this and he says first of all, there is no tandem parking there. The parking -- Mr. Yoffe's family has owned the building next-door since the 1940s.

CONSTANTINE ALEXANDER: The apartment house as you face it to the left?

DOUGLAS YOFFE: Yes.

ATTORNEY VINCENT PANICO: They constructed that building. And they said as far back as they remember, there have been two

cars parked in that area. We have, as Ranjit said, well, you can't say it yourself, get some statements from the neighbors. And, Doug, would you -- we have statements from the neighbors saying --

CONSTANTINE ALEXANDER: I'm sorry, what are the statements from the neighbors?

ATTORNEY VINCENT PANICO: They say -- they have lived there since the sixties, and those two spaces have been there since the sixties.

CONSTANTINE ALEXANDER: They're basically saying the non-conforming -- the parking in the front yard is non-conforming?

ATTORNEY VINCENT PANICO: Pre-existing non-conforming use.

CONSTANTINE ALEXANDER: Why are you seeking relief?

ATTORNEY VINCENT PANICO: Well, because we then started out, we wanted to make sure we covered all the bases. And the last

time we met with Ranjit he said you really don't need it. See if the Board will establish it as a pre-existing non-conforming use and I will confirm it. And that was --

CONSTANTINE ALEXANDER: The reason I'm knitting my brow, because I don't know that we do that. I don't know if that's for the Board to do, to establish an existing non-conforming. That's not been advertised. If you believe you have that and Ranjit believes you have that, end of story.

ATTORNEY VINCENT PANICO: I thought if we presented the statements of the neighbors --

CONSTANTINE ALEXANDER: I'll read them into the record. But we'll either grant you a Variance for front yard parking or we'll not address the issue in which case --

BRENDAN SULLIVAN: You're asking for us to legitimize what is an existing

condition?

ATTORNEY VINCENT PANICO: Right.

CONSTANTINE ALEXANDER: If it is, it is. It stands for what it is. And if it's not, and the Building Department will make a determination at the outset. They agree with the letters that you have, that this is a legal non-conforming use as parking, then we don't get involved in the support. You don't need to come before us.

TIM HUGHES: The issue is not just front yard parking but tandem parking in the front yard.

ATTORNEY VINCENT PANICO: The Commissioner defined tandem parking, one parking behind the other. You've got to move one car behind the other to get the other one out. That is not the case here. If you look at the plans, I'll show you the dimensions of the parking area.

TIM HUGHES: I believe you. It's

just that on your Special Permit application to allow tandem parking.

CONSTANTINE ALEXANDER: That's why we're doing this. I'm not being anal. I'm, confused by what's been advertised and what it is you want to achieve.

ATTORNEY VINCENT PANICO: Well, what we want to achieve is just to make parking legitimate.

CONSTANTINE ALEXANDER: But you have, you have as I understand it, your position is you have a right to park in the front yard, a legal non-conforming use?

ATTORNEY VINCENT PANICO: Correct.

CONSTANTINE ALEXANDER: There's no zoning violation that you have to address. There's no tandem parking because that's prohibited under our Zoning By-Law. You're saying there's no tandem parking?

ATTORNEY VINCENT PANICO: That's right.

DOUGLAS MYERS: May I further confuse the issue?

CONSTANTINE ALEXANDER: By all means.

DOUGLAS MYERS: It appears by listening to others and what Mr. Panico just said about if the cars can freely move without the necessity of one car blocking the other, then the parking's not tandem. I would very much like to hear and be satisfied that if that is the case or if that really becomes an important position that you make in your application here, that your treatment of the right of way, as it is depicted on the plan, actually leaves you enough land through the applicant, enough land to move the cars the way that you say they will be moved in order to avoid a requirement relates to tandem parking.

ATTORNEY VINCENT PANICO: Would you like to see it on the plan?

CONSTANTINE ALEXANDER: We don't have it on the plans that we have.

DOUGLAS MYERS: I'm talking there is no parking plan, but I'm talking what I understand to be the intention of the applicant to abandon the right of way as it's shown on the plan. And to separate so that it would just be a little area of land near 44 Follen Street that will surround the area where these cars are parked.

ATTORNEY VINCENT PANICO: Doug, would you describe what has happened over there in the last 50 years as far as --

DOUGLAS YOFFE: Right.

50 Follen Street what we -- there is a driveway and then there's the strip of land in front where there's parking always been in front of 44 Follen Street. We actually intend to continue that right of way across the land of 50 Follen Street so you can just pull out. So you don't have to -- they come

in the driveway.

DOUGLAS MYERS: Don't your documents say that the right of way is to be abandoned?

DOUGLAS YOFFE: For 22. 22 had the right of way. I believe -- it's a very --

DOUGLAS MYERS: 50 is the building immediately next-door.

DOUGLAS YOFFE: To the right.

DOUGLAS MYERS: To the right you say?

DOUGLAS YOFFE: Well, immediately next-door, but the building behind there is actually a little dog leg. There was a dog leg behind on 22 Follen Street which owned a little -- it owned this little six-foot by 17 foot piece of land that came in in the twenties originally to access a barn that was there. And that right of way, that was from 22 Follen to go out through Follen Street, but he has a pool, a pine forest and he has no

intention of going through there. And I purchased that land at 22. So to -- and he has also given up that right of way because it's been fenced off for 50 years anyway. So that one is up.

The right of way across the land on 50 Follen Street is -- we're going to still continue to have that so that 44 can drive out so it will not be tandem. You will just be able to come in the driveway and park just as the other cars are behind.

CONSTANTINE ALEXANDER: How many parking spaces will be available to the people who live at 44 Follen Street?

DOUGLAS YOFFE: Two.

CONSTANTINE ALEXANDER: Two. And those are going to be side by side?

DOUGLAS YOFFE: No, end to end.

CONSTANTINE ALEXANDER: End to end?

AMY NASTASI: Parallel parking.

DOUGLAS YOFFE: Parallel parking.

ATTORNEY VINCENT PANICO: 55 feet of parking space.

THOMAS SCOTT: Can you show us where in the plan that is?

CONSTANTINE ALEXANDER: That's my next question. Where in the plan?

THOMAS SCOTT: Show us where the two cars would sit.

TIM HUGHES: There's enough room for them to get in there to parallel park, it's not considered as tandem.

ATTORNEY VINCENT PANICO: We own the land all the way back to here now.

CONSTANTINE ALEXANDER: Show it again.

ATTORNEY VINCENT PANICO: We own the land all the way back here. He purchased this piece right here.

CONSTANTINE ALEXANDER: Okay. And where is the two parking spaces? Over here.

ATTORNEY VINCENT PANICO: Right

along here.

THOMAS SCOTT: The right of way extends to here. So they can drive here and parallel park?

TIM HUGHES: Correct.

CONSTANTINE ALEXANDER: Please, one at a time. Let me ask my question. Can you avoid tandem parking from a zoning point of view by using a right of way as opposed to a street, private street? This is a driveway this right of way. Does that mean that they're okay from a tandem -- they can get access without parking one behind the other? Is that okay? Can they get their access to a right of way?

SEAN O'GRADY: I believe they could. I think that right of way would need to be ten feet wide.

AMY NASTASI: I think it's 12.

DOUGLAS YOFFE: It's 12 as it stands right now in addition to the width of

the -- the width of the --

SEAN O'GRADY: Where's the --

ATTORNEY VINCENT PANICO: The
parking.

SEAN O'GRADY: From whom?

And has there been analysis that they
were able to cut that off?

DOUGLAS YOFFE: Yes.

SEAN O'GRADY: You cleared that with
Ranjit and FAR and all that?

DOUGLAS YOFFE: Yes.

SEAN O'GRADY: And then these
properties merged?

DOUGLAS YOFFE: No.

SEAN O'GRADY: They're separate?

DOUGLAS YOFFE: Yes.

SEAN O'GRADY: And you're going to
park against this building here? What's
that distance right there?

DOUGLAS YOFFE: That is -- yeah, we
have continuous parking all along here, for

this over here. And so that these will actually be jogged in. It will be another, about 13 feet more than the parking is in the back.

AMY NASTASI: So that dotted line, the outside edge is 16 feet.

CONSTANTINE ALEXANDER: Are you going to be -- our Zoning Law has requirements. You can't be within 10 feet of a building wall containing windows where you're parking. Are you going to be within 10 feet?

SEAN O'GRADY: There is going to be an exception for a two-family in this instance.

CONSTANTINE ALEXANDER: No, no. That's D. B says except for one, two or three-family dwellings in the district at the time of the effective date of the Ordinance.

SEAN O'GRADY: I wonder if that's the case here.

AMY NASTASI: That's a rooming house.

CONSTANTINE ALEXANDER: More than a three-family?

DOUGLAS YOFFE: It's rooming house.

CONSTANTINE ALEXANDER: It says no on-grade open parking space or driveway shall be located within five feet of any side or near a property line. That's one requirement.

The next one is no on-grade open parking space shall be located within 10 feet of that portion of the building wall containing windows or habitable basement of one story. However, on-grade open parking spaces serving one, two or three-family dwellings may be located within five feet of that portion of said stone wall.

So with regard to these requirements, we can waive these by Special Permit if we need to. I think it was advertised properly

so I think we can do that.

SEAN O'GRADY: If they test of A-. I'm worried about B because it's not a one, two or a three-family dwelling in existence. Perhaps it isn't in existence at the time of the effective date of the Ordinance. And then the other thing that worries me for parallel parking, and this is a brand new concept to me, I think it has to be served by a driveway that's ten feet wide.

CONSTANTINE ALEXANDER: I thought it was 12 feet.

AMY NASTASI: We have 12 feet.

SEAN O'GRADY: You have 12 feet total. But you need eight and a half for the parking pad and then 10 feet for the driveway.

DOUGLAS YOFFE: Oh, no, the driveway is more than 12 feet.

SEAN O'GRADY: Your right of way though. But I'm saying, and again, I don't like pop quizzes. If indeed from this point

to that point, 16 feet. Then it's less than eight and a half wide and ten feet wide.

DOUGLAS YOFFE: Yeah, but the parking is actually up further at a wider point.

SEAN O'GRADY: Well, unless you have --

TIM HUGHES: Closer to Follen Street?

DOUG YOFFE: It's closer to Follen Street.

SEAN O'GRADY: Well, I guess a parking plan --

CONSTANTINE ALEXANDER: We don't have a parking plan.

DOUGLAS YOFFE: Actually, we have a parking plan.

AMY NASTASI: We had it.

CONSTANTINE ALEXANDER: You may have it.

DOUGLAS YOFFE: We have it. Where

is it? We do have a parking plan. It is closer because it was the existing that we've --

CONSTANTINE ALEXANDER: That parking plan should have been in file in our office by five --

DOUGLAS YOFFE: Yeah, it should be on there.

DOUGLAS MYERS: I didn't see it.

CONSTANTINE ALEXANDER: I don't remember seeing it either.

DOUGLAS MYERS: I read every paper in the file.

BRENDAN SULLIVAN: Is there something there from Historical?

CONSTANTINE ALEXANDER: I don't believe so.

I'm sorry, at this point --

DOUGLAS YOFFE: There it is.

CONSTANTINE ALEXANDER: You have it. This has been a confusing presentation,

and I I think at the end of the day the relief is desirable on this property, but I want to do it right and it looks like the Historical Commission hasn't signed off on the parking according to the letter we have in the file from them.

ATTORNEY VINCENT PANICO: Does it have a date here?

CONSTANTINE ALEXANDER: I'll read it into the record from Historical with regard to this property. "The property is located in the Old Cambridge Historic District where exterior alterations are subject to review and approval of the Historical Commission. The application has been approved pending review and approval of construction details and parking arrangements by the staff."

You haven't gotten there. They haven't signed off on the parking.

ATTORNEY VINCENT PANICO: They

didn't make any objection or comments?

CONSTANTINE ALEXANDER: All I can read, Mr. Panico, is what they said in their order.

THOMAS SCOTT: The other thing, too, I'd like to just comment on the plan. You're changing the stair in the back of the building and that's not reflected on the elevations.

AMY NASTASI: I know.

THOMAS SCOTT: And I really think the file should reflect what you're going to build.

CONSTANTINE ALEXANDER: Yes.

THOMAS SCOTT: Because that's what we're going to hold you to. We don't want any confusion for Sean's sake later with the documents showing one plan showing something in the elevation showing something else.

CONSTANTINE ALEXANDER: I would like to see this case continued until you have sign-off on Historical, on the parking, and

you've given us a parking plan. Tonight maybe you want to rethink it dealing with the issues that you heard us talk about tonight, the right of way why there's no tandem parking. I'm not ready to vote on this case tonight.

DOUGLAS YOFFE: If we do this, you know, is there a need to come before there to come through the building, through an existing -- what was it? You originally had said that we didn't --

CONSTANTINE ALEXANDER:
Non-conforming.

DOUGLAS YOFFE: An existing non-conforming use.

CONSTANTINE ALEXANDER: Right. That's as to the fact that you can park in the front yard.

DOUGLAS YOFFE: Right. Okay.

CONSTANTINE ALEXANDER: And you're of the view, and maybe Inspectional Services

are in the view that the legal non-conforming use of parking in the front yard is not an issue. If that's the case --

DOUGLAS YOFFE: If we come back, we don't really need --

CONSTANTINE ALEXANDER: My suggestion is you get some determination from Inspectional Services that they're satisfied that's a legal non-conforming use or nobody is going to challenge you on that.

TIM HUGHES: And if you put together the parking plan that we don't have, right, and you run it by them and they say it's a legitimate parking, you only need two spaces so you don't need any relief there. And, you know, if they buy it, we can scratch that whole thing and just deal with the conversion aspect of it and the Special Permit on the other stuff. But the other thing is that you should redraw your plans for the back porches, too.

DOUGLAS YOFFE: Right.

CONSTANTINE ALEXANDER: And those redrawn plan.

TIM HUGHES: All those ducks in the a row we'll be fine.

CONSTANTINE ALEXANDER: Those have to be in by 5:30 p.m. on the Monday before we're going to continue this case. I don't want to hear this case before you've gone before Historical and gotten sign-off. This is too vague right now. I want to know that they're happy with the parking, and if you don't need Zoning relief for parking. We don't care whether they're happy or not. Come before us. If you do need Zoning relief for parking, I do want to hear from Historical.

DOUGLAS YOFFE: If they're satisfied with the parking as it exists, then we can come forward on just the --

CONSTANTINE ALEXANDER: If you and

the Inspectional Services Department are satisfied that there are no Zoning issues with regard to parking. It's not our purview to worry about what Historical thinks about it. But if it's not, if you need relief from us, the data points from our point of view is what does Historical say about this? That's why I want you to see Historical if there are any parking issues.

DOUGLAS YOFFE: Okay.

CONSTANTINE ALEXANDER: Okay? You look puzzled tonight.

ATTORNEY VINCENT PANICO: That's not unusual for me.

CONSTANTINE ALEXANDER: For me either. Go ahead.

ATTORNEY VINCENT PANICO: What about the other issues?

CONSTANTINE ALEXANDER: I'll take them all up at the same time. I would hope the next time you come before us you would be

more precise of exactly what the other issues are from a Zoning point of view. We identified the conversion of a one-family to a two-family. I don't recall if there's a FAR issue. There may be. And the better plans that reflect what's going on in the back of the structure. They're not reflected in the plans that we saw.

ATTORNEY VINCENT PANICO: Now we have another case that was continued to the end of May. Are you aware of that?

CONSTANTINE ALEXANDER: That was because you didn't have adequate plans in the file the last time. Yes.

ATTORNEY VINCENT PANICO: And I wonder if we advertise that case, will we get on the --

CONSTANTINE ALEXANDER: That other case you asked for -- the relief you were asking for is to have an accessory apartment. And the plans you had before us don't involve

an accessory apartment. That's not going to do you any good.

DOUGLAS YOFFE: And so now when I go in there is there a difference if I do these two units -- I'm doing two units so it's not -- they'll end up being two condominiums or two -- so it really will not be a two-family --

CONSTANTINE ALEXANDER: It is two-family?

DOUGLAS YOFFE: It's still a two-family?

CONSTANTINE ALEXANDER: It is.

DOUGLAS YOFFE: How soon can we get one?

CONSTANTINE ALEXANDER: Remember, you have to go to Historical. We can put it on quickly maybe, but then you'll have to continue. If you need Zoning relief on parking and you don't have sign-off from Historical. I want, I want the Historical

Commission to basically sign-off on this project before you come back before us.

DOUGLAS YOFFE: Right.

CONSTANTINE ALEXANDER: Because they had other things about architectural detail they wanted to see.

DOUGLAS YOFFE: They said they were leaving that up to Charlie Sullivan.

CONSTANTINE ALEXANDER: Whoever. We want that taken care of so we know when you come before us we know exactly what Historical wants. We know exactly what Zoning relief you're seeking from us. And we have adequate plans that we can tie whatever relief we may grant to. None of that is present tonight which is why we're going to continue the case.

ATTORNEY VINCENT PANICO:

Mr. Chairman, if you had in your possession tomorrow a letter from Historical saying they agree with the parking?

CONSTANTINE ALEXANDER: Well, you have other conditions that you have to satisfy with Historical. I have a letter from Historical saying here is a certificate of appropriateness there are no longer subject to, that would be fine. That's not what they said when they wrote in the file. Let me go through it one more time.

They said "The application has been approved pending review and approval of construction details." Whatever that's supposed to mean. "And parking arrangements by the staff." That pending I want to be eliminated. I want to know -- not eliminated. But I want to know what their views are on this.

DOUGLAS YOFFE: What it is we were not quite sure as far as windows go which replacement, you know, windows --

CONSTANTINE ALEXANDER: That's important to us. That's important to us as

well.

DOUGLAS YOFFE: You know, I mean that was the way we had left it was Charles Sullivan would review instead of having to go before the Board, he would review the detail, you know, which window we would choose.

CONSTANTINE ALEXANDER: If he gives us a letter saying whatever he wants to say, I reviewed it, you don't have to do it. I'm satisfied or this is what I want. As long as we know the position of the Historical Commission or in this case Mr. Sullivan.

ATTORNEY VINCENT PANICO: When do we seek this?

CONSTANTINE ALEXANDER: How long is it going to get through Historical and Mr. Sullivan?

ATTORNEY VINCENT PANICO: I'll go tomorrow morning.

SEAN O'GRADY: Your next opening is July 8th.

TIM HUGHES: We're already full on the 24th?

SEAN O'GRADY: We just filled it.

CONSTANTINE ALEXANDER: I think it will be -- it's a case heard. Can everybody be here on July 8th by the way?

BRENDAN SULLIVAN: We're closed on the 24th?

SEAN O'GRADY: We have filled it. If you want to put more on.

CONSTANTINE ALEXANDER: This case may take a little bit of time. I'm fine for the 24th. I would caution the Board that this is not a rubber stamp.

BRENDAN SULLIVAN: If everything is in the file by five o'clock the Monday before and that checklist that Historical has signed off, again, once they keep on saying pending that than our decision is pending.

CONSTANTINE ALEXANDER: That's right.

BRENDAN SULLIVAN: If you satisfy Historical and you satisfy the parking plan and you satisfy some of the other details with getting them back, I think it should go rather quickly myself.

CONSTANTINE ALEXANDER: There are a lot of ifs there.

TIM HUGHES: The three continued cases going the 24th, one is Cottage Park Avenue. One of them is the one we heard from Ms. Podgers, and the other one is the singular antennas on the building which we sent back.

BRENDAN SULLIVAN: I suspect that those are going to take a while. We would take some of the ones that we could probably dispose of sooner.

CONSTANTINE ALEXANDER: I am willing to have a longer night than maybe we would like on the 24th to accommodate.

BRENDAN SULLIVAN: I would go for

the 24th.

CONSTANTINE ALEXANDER: I would support that. But other members, you'll have to sit here that night and make sure you're available, too.

ATTORNEY VINCENT PANICO: We'll try to have it cleaned up.

CONSTANTINE ALEXANDER: I know you will. But let me see what other members want to do.

DOUGLAS MYERS: 24th is fine.

CONSTANTINE ALEXANDER: And be prepared for a longer evening on the 24th.

DOUGLAS MYERS: I'm not objecting.

CONSTANTINE ALEXANDER: Okay.
Ready to go.

The Chair moves that this case be continued until seven p.m., it may not be seven p.m. exactly, but seven p.m. on June 24th. This being a case heard, on the following conditions:

On the condition that the petitioner -- we already have a waiver for a time of decision so we don't need that.

SEAN O'GRADY: No, this is a fresh case.

CONSTANTINE ALEXANDER: It's a re-advertised case. Thank you for that.

A condition that a waiver of time for a decision be signed and it has.

On the condition that the sign on the premises be modified to reflect the new date. Just take a magic marker.

On the further condition that the petitioner have in the public file no later than five p.m. on the Monday before June 24th, all the necessary details, sign-offs from the Historical Commission so that there is no pending pending.

On the further condition that the revised plans, both as to the structure and as to the parking, that those also be in the

file by that date.

Any of those things that I've just cited are not satisfied, we're going to continue the case again. So this has got -- you've got to be -- that's why you if want that 24th, you've got to meet the schedule. If not, we'll continue it. Those are our rules and those you have to live by.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued. See you on the 24th.

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

(9:45 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Slater Anderson, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9922, One Broadway. Anyone here wishing to be heard here on that matter?

And as you come forward, the Chair will offer an apology.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, for the record, James Rafferty on behalf of the applicants Ace Brand, LLC. Seated to my left is Ken Williams from the MIT

Office of Treasurer, the real estate division that owns One Broadway. His colleague Maureen McCaffrey who just --

CONSTANTINE ALEXANDER: Where are the restaurant owners?

ATTORNEY JAMES RAFFERTY: Well, I have to share this with you --

KEN WILLIAMS: While we were waiting for you, he got an urgent phone call from his children. His house caught on fire. Everyone's safe, and he had to go.

CONSTANTINE ALEXANDER: I heard unique explanations as to why people are not here but that's a first.

ATTORNEY JAMES RAFFERTY: You know the name of the restaurant is Slow Fire Academy. That's the name of the restaurant and now he got a call.

CONSTANTINE ALEXANDER: Were the kids cooking?

ATTORNEY JAMES RAFFERTY: I don't

know the details.

KEN WILLIAMS: We don't know the details.

ATTORNEY JAMES RAFFERTY: The case is somewhat generic so we were hoping we would proceed and if there are specifics, we'll get a continuance. Mr. Williams and Ms. McCaffrey are familiar with cooking and she's prepared to answer questions about the operation.

But the legal issue or the Zoning issue presented here, I'm sure you discerned, is that One Broadway is in an Office 3 District. And for reasons that are not all that clear to me, the retail uses are not permitted in the Office 3 District. However, if you were to get a PUD Special Permit from the Planning Board, they would be. The building is not built for someone with a Special Permit. So over the life of the building there have been a series of Variances granted. In fact, we

discovered a restaurant Variance from the 1970s at this very location. So we initially thought we could build it on that because Variances do remain forever, but it turned out that this location in addition to the interior space is a significant component this is the exterior space.

The building originally built as the Badger Building, I'm sure you all know it, it's recently under MIT's ownership and has had some nice facade improvements and kind of moving it away from its concrete facade with some glazing and some accent elements. But it really is part of the emerging mutt mix district. That stretch of Third Street at the corner there.

CONSTANTINE ALEXANDER: Excuse me, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Sir, sir. Do you mind stepping outside if you want to

speak? Thank you.

I'm sorry, go ahead, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: So on Third Street alone within a block here of this site there have been in the last two or three years approximately seven to eight hundred new dwelling units. The 303 Third Street project on the left developed by Extell, 500 plus units. The Watermark Building behind this, 200 plus units. So there is a very active or increasingly active residential component here. The fact that there's been a recent, a very successful opening of a restaurant on the ground floor of the Watermark Building, it's EVOO. EVOO. We were here on EVOO. Extra virgin oil.

CONSTANTINE ALEXANDER: They moved from over on Beacon Street near the corner of Kirkland Street.

ATTORNEY JAMES RAFFERTY: Right. We didn't need any Zoning relief.

CONSTANTINE ALEXANDER: That was before my time, not before Brendan's time.

ATTORNEY JAMES RAFFERTY: You knew what EVOO was.

CONSTANTINE ALEXANDER: Well, I eat there.

ATTORNEY JAMES RAFFERTY: But you knew.

TIM HUGHES: Doesn't everybody?

ATTORNEY JAMES RAFFERTY: No.

KEN WILLIAMS: It was in the transcripts.

ATTORNEY JAMES RAFFERTY: At any rate.

BRENDAN SULLIVAN: We asked somebody one night what it meant.

ATTORNEY JAMES RAFFERTY: Yes. And you made some reference to your father in using it. Am I totally off on this? But anyway --

So this space -- at the ground floor of

this building, the building is really designed in the urban planning for that area has once active ground floor uses there. So the Planning Board actually in its recommendation attempted to kind of spell out kind of a logic behind the current zoning, but at any rate we're here seeking a Variance because the Ordinance requires us to do that given the way the Table of Uses is set up.

There are a range of uses that could go here, but suffice it to say, one of the distinguishing characters about this space it's very significant expansion before you then get to the sidewalk, and it's that whole intersection is being reworked as part of the City of Cambridge. There's new building across the street as part of MIT's Sloan School development.

And the hardship really has to do with the space itself. It's been vacant for a period of time now. And to be successful

there, it's the thing of MIT that an active use. A bank or an insurance company can go in there as of right frankly. And the thinking was that that isn't the kind of street activation that that area could use. So MIT, to its credit, really went out and did what I would characterize as somewhat of an RFP, and looked at local restaurateurs rather than chains to see if there was a concept. And Mr. Strack emerged from that concept. He's the owner and operator of Central Kitchen. He's been running that for about 12 years and he's been very successful there. And this opportunity presented itself so he's been able to reach a business arrangement with MIT. He would need to go on to the licensing process, but this location, one of the challenges of it is it does require a Variance. There have been a couple of fast food Variances granted there. There's some food. There's a Dominoes, there's a Dunkin'

Donuts. Around the corner is Zigo. They were granted relief in all those cases. This is consistent with that. There's parking in the building.

CONSTANTINE ALEXANDER: One of the questions I was going to ask you, are there any parking requirements for this area?

ATTORNEY JAMES RAFFERTY: Sure. The parking requirement is for all restaurants based on the tables. One per five. But the building itself as you know the numbers.

CONSTANTINE ALEXANDER: You'll be able to satisfy the Zoning requirements within the building?

KEN WILLIAMS: Yes, we will.

CONSTANTINE ALEXANDER: That's all I need to know.

ATTORNEY JAMES RAFFERTY: We will accommodate it for this. There's existing parking spaces --

CONSTANTINE ALEXANDER: Would you be able to park for free?

KEN WILLIAMS: There's ample space, parking meter parking space.

CONSTANTINE ALEXANDER: No, no, the Zoning point of view I believe, do we need to have on the site a certain number of parking spaces tied to the number of tables as Mr. Rafferty points out. But if it's a parking lot that's a paid parking lot, I just wonder whether that satisfies the requirement.

ATTORNEY JAMES RAFFERTY: Sure it does. The Traffic Department says you should charge to park. So when the hotel gets billed for the restaurant and they have a parking garage, it's not part of the rate. You come with a car or come by taxi, you get charged for the car. The restaurant doesn't draw a distinction. Same thing with a residential building. You know, there's

no --

CONSTANTINE ALEXANDER: How many seats inside and outside are going to be in the restaurant? It seems like quite a lot of seating from the plans we have here.

ATTORNEY JAMES RAFFERTY: It's a big space. The proposed seating --

BRENDAN SULLIVAN: We're being asked for a Variance --

CONSTANTINE ALEXANDER: I thought it was 120 total.

BRENDAN SULLIVAN: -- for the use.

CONSTANTINE ALEXANDER: Use Variance.

BRENDAN SULLIVAN: Not only inside the building but also exterior.

ATTORNEY JAMES RAFFERTY: Correct.

BRENDAN SULLIVAN: And --

CONSTANTINE ALEXANDER: Well, again, the use Variance is to operate a restaurant on the premises.

BRENDAN SULLIVAN: On the premises. It is somewhat permitted inside by granting relief, but the Ordinance does not address the exterior. So we're being asked to grant relief for that also in a sense.

CONSTANTINE ALEXANDER: In a sense. We're being asked to grant relief for a restaurant.

BRENDAN SULLIVAN: The restaurant, and the proposal is inside and outside.

CONSTANTINE ALEXANDER: Yes, like I said, inside and outside.

BRENDAN SULLIVAN: Licensing gets involved in use of alcohol.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: And what else? Obviously the license.

ATTORNEY JAMES RAFFERTY: Hours of operation, capacity, entertainment.

BRENDAN SULLIVAN: So we have the use basically and also the parking is

provided.

CONSTANTINE ALEXANDER: Parking is a Zoning requirement.

BRENDAN SULLIVAN: So it goes to our -- two is the use and then also that parking is provided. Okay.

ATTORNEY JAMES RAFFERTY: Right. Well, the application doesn't seek any relief for parking. So they really are on the existing parking supply.

BRENDAN SULLIVAN: It's an issue we have to address and comply.

CONSTANTINE ALEXANDER: It would be if they're not conforming, but they are conforming. Now, this seating plan, this is part of the plan. Is this the final plans, number of tables and the like.

ATTORNEY JAMES RAFFERTY: I say for tables and chairs, yes. The location of them could move, but that's been pretty well thought out. Location of kitchens

capacities and all.

CONSTANTINE ALEXANDER: I think the number of tables in the restaurant I like to tie in the relief we grant if you're comfortable the number of tables is not going to change. I would move that we grant the Variance on the condition that no more than these number of tables -- I'm just sort of exploring. Is that an issue for you?

TIM HUGHES: Isn't there another department that takes care of that like the fire?

CONSTANTINE ALEXANDER: Do they look at the number of tables?

ATTORNEY JAMES RAFFERTY: The licensed premises is approved under licensing. And I would say, you know, you can renovate some day and change booths to tabletops and all that. Then you go to the Licensing Commission for change of premises. But typically the use, that would be a level

of involvement on a use Variance that --

CONSTANTINE ALEXANDER: I can see it in a different location. I think if we're going to grant a use Variance, this isn't a residential district.

ATTORNEY JAMES RAFFERTY: It's not.

CONSTANTINE ALEXANDER: I know. If it were. We would be interested in the number of tables and the impact on the neighborhood beyond licensing. I'm satisfied.

ATTORNEY JAMES RAFFERTY: And I agree. One of the standards and here is compatibility with surrounding uses. So I fully agree. I think the nature of this, there's a high level of compatibility with office uses which is the predominant use around the location. It is an office district. There's commentary from the Planning Board and the East Cambridge planning team.

CONSTANTINE ALEXANDER: I'm going to read it.

ATTORNEY JAMES RAFFERTY: We're all done.

CONSTANTINE ALEXANDER: You all set?

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Any questions before I open to public testimony?

Anyone here wishing to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: No one wishes to be heard. We do have two letters in the time. One from the Planning Board.

It says: The Planning Board reviewed -- this is dated April 21st. It's a memo addressed to us as the Board of Appeal. "The Planning Board reviewed and discussed this case at the regular business meeting of April 20, 2010. The Board supports this

restaurant at this location and the Variance that would permit it. The restaurant use would create more activity on the sidewalk and streetscape than many of the as of right ground floor uses allowed in the Office 3A District. The Planning Board and city development policy encourages active ground floor retail uses throughout the Eastern Cambridge Development area, and has been requiring such uses along Binney, Third and First Streets in approving a number of planned unit development projects. Historically office districts had been created as transitional districts used to create buffers between low density residential neighborhoods and business neighborhoods and thus exclude what were thought to be more disruptive retail activity. This particular location neither low density nor a quiet residential street and would benefit greatly from the lively

business of a restaurant. The Board recognizes the fact that there is a PUD district as an overlay of the Office 3A District at this location that allows a wide range of retail uses. But the property's lot size is not large enough to meet the PUD development threshold required to make use of the PUD regulations."

What they're trying to say in so many words if the lot size was big enough, they could have gotten a Special Permit, am I right, from the Planning Board and would not have to come before our Board?

ATTORNEY JAMES RAFFERTY: That's right.

CONSTANTINE ALEXANDER: And the reason you're before our Board is because of the site.

And we have a letter dated April 28th from the East Cambridge Planning Team addressed to the Board. "The East Cambridge

Planning Team met tonight with Mr. Gary Strack, owner of the Central Kitchen Restaurant in Central Square and his attorney, James Rafferty to discuss the opening of a new restaurant with a patio at One Broadway in Kendall Square. Because the Zoning there is for Office 3, retail is not permitted without a Variance. We understand that he plans to open Slow Fire Academy, a casual crowd friendly bar and grill featuring classic slow-cooked entrees such as rotisserie chicken and beef. The restaurant will seat 120 with another 60 on the outdoor patio. There is plenty of sidewalk space for a patio and no one should be disturbed by noise. ECPT members are unanimous and enthusiastic for their support for yet another restaurant in Kendall Square, and look forward to its opening. We urge you to grant the necessary Variance." Ready for a motion.

The Chair moves that the Board make the following findings with regard to the Variance being sought to operate a restaurant with outdoor patio:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the petitioner. The hardship being that this space is best used for, given the nature of the taker of the structure itself, for a restaurant-type activity. And therefore and is witnessed by the fact that other activities have not proved successful in this location.

That the hardship is owing to basically the shape of the structure. It's an office structure with only minimal uses in terms of what's complied with the Zoning By-Laws.

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

In this regard the Chair would note that with a letter of support from the Planning Board, a letter of support from the East Cambridge Planning Team, that there is a stated policy in the city of encouraging greater street activities, including outdoor dining. And that the Variance being sought would support all of these goals of the city.

On the basis of the foregoing findings, I move that a Variance be granted to the petitioner. All those in favor of granting the variance, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(10:05 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: Last but not least, the Chair will call case 9927, 89 Appleton Street. Anyone here wishing to be heard on that matter?

For the record, name and address, please.

CHARLES MYER: Charles Myer.

Charles Myer and Partners Architects. And with me is David Graslow (phonetic) the owner of 89 Appleton Street. And we're here tonight -- we have a 1885 mansard on Appleton Street. It's on a 36,400 square foot lot. And it's a non-conforming pre-existing structure in two respects. It has the tower in the front which is 40 feet tall which exceeds the height limit in an A-1 District by five feet. And it has a garage that is slightly in the side yard setback. A 1922 garage.

CONSTANTINE ALEXANDER: And you're not planning to take that garage down?

CHARLES MYER: We're going to leave it there at this time being.

So, David and his family, he has four children and they're buying this house and renovating it. We've -- the proposed work is all conforming except in one respect in that we're exceeding the 10 percent as of right

rule, and so we're adding 111 percent to the original structure in square footage and 117 percent in cubic volume.

So this above is the existing structure. And below is -- and you can see, this is the north view. There's a house here, the street's out there. There's the tower that exceeds the height. And we're proposing to add a second story addition here. It's 10 feet deep, 40 feet long. So that is the north elevation.

Same thing here. This is the back elevation and we're seeing -- that's what it is now. And that's what it looks like with the addition. So it almost looks exactly the same. It's almost as if we're pulling the wall forward.

DOUGLAS MYERS: Can you show us the porch that's on the rear portion of the addition? Is there a new porch being added?

CHARLES MYER: No. It's all on the

second floor.

DOUGLAS MYERS: It's on the second floor? Okay.

CHARLES MYER: We are doing an addition on the first floor but that's as of right.

And so again, we're looking now at the south elevation. This is where the addition goes. And here it is shown here.

David has gone to every house and knocked on their door. I think all but one was met. We sent a letter out to everyone. The neighborhood had some issues in the past with -- it's Appleton, it gets very congested here. There's parking issues with construction sites. There was a house across the street that was renovated for -- it was a three-year long renovation. We all know about this. And so David has organized the site. So we've -- because we have such a large backyard, we're going to park a lot

of cars, as many as we can, I think almost all of them are going to get there. So we haven't had any complaints or issues there so far.

CONSTANTINE ALEXANDER: We don't have any letters of support in the file. You didn't bring any with you? You don't have any. Did you bring any?

CHARLES MYER: No. It was a month ago that you went to every door to door?

CONSTANTINE ALEXANDER: There's a copy of the letter that you sent out to everyone.

DAVID GRASLOW: Right.

CHARLES MYER: And they have the e-mail. We didn't solicit letters. We felt that if anyone had an issue, we should have correspondence.

CONSTANTINE ALEXANDER: And no one has raised an issue with you?

CHARLES MYER: No.

CONSTANTINE ALEXANDER: That you

haven't resolved?

DAVID GRASLOW: No, we made it to the last one that wasn't there. So, it seemed like everyone was supportive. Didn't have a....

CHARLES MYER: We've had two phone calls about someone parking in front of the hydrant. And we've now put cones out in the street to keep people from parking in front of the hydrant. So that's it so far.

So we're asking for relief.

CONSTANTINE ALEXANDER: And the relief you're seeking is a Special Permit not a Variance?

CHARLES MYER: Right. Special Permit.

CONSTANTINE ALEXANDER: Questions from members of the Board? Or comments?

TIM HUGHES: I'm good with it.

CONSTANTINE ALEXANDER: Anyone wishing to be heard?

(No response.)

CONSTANTINE ALEXANDER: No one wishes to be heard. And there's nothing in the file. So I think for further discussion we can go right to a motion.

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

That any addition to this structure cannot meet the requirements of our Ordinance because of the non-conformance due to height.

That what is being proposed -- this conforming addition to a non-conforming structure will not impact traffic or patterns of access or egress or cause congestion, hazard or substantial change in established neighborhood character. In fact, we're talking about a relatively modest addition increasing the size of the structure in a way that's architecturally consistent with the structure itself.

That the continued operation or development of adjacent uses will not be adversely affected by the nature of what's being proposed.

That no nuisance or hazard is going to be created to the detriment of the health, safety or welfare of the occupants or of the citizens of the city. And that the proposed use would not impair the integrity of the district or adjoining districts or otherwise derogate from the intent and purpose of this Ordinance. In fact, it's noted that the project is aesthetically pleasing. It has no neighborhood opposition, and is relatively modest in nature. And in fact it is a Special Permit which is a lesser standard to be satisfied than a Variance.

On the basis of the foregoing, the Chair moves that the Special Permit be granted to the petitioner on the subject to the condition that the work proceed in accordance

with plans -- let me interrupt right here. You know the drill. These are the final plans.

CHARLES MYER: These are the final plans.

CONSTANTINE ALEXANDER: In accordance with the plans submitted by the petitioner prepared a Charles R. Myer. They are numbered A1.0, A1.1, A1.2, A1.3, A2.0, A2.1, A2.2, and A2.3. The first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted. Good luck.

CHARLES MYER: Thank you, gentlemen.

(Whereupon, at 10:10 p.m., the meeting adjourned.)

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

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

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in this matter by blood or marriage and that
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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 10th day of May 2010.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
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