

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING

MAY 13, 2010 7:00 P.M.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Brendan Sullivan, Member

Thomas Scott, Member

Tad Heuer, Member

Douglas Myers, Member

Mahmood Firouzbakht, 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, Thomas Scott, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call this meeting to order. The May 13th meeting of the Zoning Board of Appeals. As is our custom, we're going to start with continued cases.

The first continued case is case 9893, 23 Sciarappa Street. Is there anyone here wishing to be heard on that matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. We've been advised that the petitioner wishes to continue this case. This is a case not heard. What's the next available date, Sean?

SEAN O'GRADY: I'd ask that you put

this one -- there's another case that has to be heard before and if it's going to proceed, so I'd suggest August 26th.

CONSTANTINE ALEXANDER: Okay. The Chair moves that this case be continued until seven p.m. on August 26th on the condition that the petitioner modify the sign indicating a new hearing date.

The Chair would also note for the record that a waiver for time of decision is already in the file the case having been continued once before.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

(7:00 p.m.)

(Sitting Members: Constantine Alexander,

Tim Hughes, Thomas Scott, Tad Heuer, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9911, 10 Fawcett Street. Is there anyone here wishing to be heard on that matter?

(No response.)

CONSTANTINE ALEXANDER: We have oral notification from the petitioner. We have been notified that the petitioner wishes to continue this case. What date, Sean?

SEAN O'GRADY: Fawcett, I think we can do on July 8th.

CONSTANTINE ALEXANDER: July 8th. This is a case heard. We have to make sure everybody can be here why don't -- let's wait until the other members are here. I'll just recess this matter until sometime later in the evening. And then Brendan and Mahmood can make it.

SEAN O'GRADY: And prudence would

say to hold off on the other ones until the time being or do you want to dispose of those?

CONSTANTINE ALEXANDER: The regular agenda? I'll wait until we get into the regular agenda.

SEAN O'GRADY: Okay.

(Case recessed.)

CONSTANTINE ALEXANDER: The next case that's going to be heard is case No. 9816, 9 Ash Street. However, before we have people jump up to the front of the room, one of the five members who has to sit on this case, Brendan Sullivan, is not here yet. So, we're going to have to wait for his arrival. Actually two, we're also missing Doug -- no, just Brendan. And also the next case as well. So I think we have to wait for Brendan's arrival.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Or 7:30, whichever comes first.

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

(7:10 p.m.)

(Sitting Members: Tim Hughes, Brendan
Sullivan, Thomas Scott, Tad Heuer, Douglas
Myers.)

TIM HUGHES: The Chair will call
case No. 9816, 9 Ash Street. Where were we?

You're looking for a Variance to change of use, is it.

DEAN MOHSEN MOSTAFVI: Yes.

TIM HUGHES: From residential to academic for institutional use?

ATTORNEY MATTHEW KIEFER: Right.

TIM HUGHES: We've been through this already. All right. So why don't you tell us where we are right now?

DEAN MOHSEN MOSTAFVI: Thank you very much.

TIM HUGHES: Identify yourself for the record, please.

DEAN MOHSEN MOSTAFVI: I am Mohsen Mostafvi, Dean of the Graduate School of Design. Good evening. Thank you very much. I am Mohsen Mostafvi, Dean of the Graduate School of Design at Harvard University. We are pleased to be finally able to continue this hearing on the request to allow institutional use at 9 Ash Street, the Philip

Johnson house. As you are aware, the Zoning case that we are discussing tonight had to pause to allow for the current property owners to pursue a separate Variance process to 9 Ash Street to be subdivided from the neighboring property at 5 Ash Street. That process has now been concluded and the properties are legally separated. So, we are now returning to this case.

I think you'll remember that the Graduate School of Design and Harvard University are primarily interested in this very special house because A, it's architectural significance as one of the first examples of international style residential houses in the country.

And secondly, because of its strong connections to the Graduate School of Design where Philip Johnson was in fact a student and designed this house and was responsible for building it. Our primary objective is the

preservation and restoration of this property. And we feel that this the main basis for our vision of the use of the house, the restoration and preservation. There have been many similar modernist houses across the country that have been lost because of the fact that they really have not been maintained or preserved properly in the past. And the Graduate School of Design is eager to serve this role for this very important Cambridge property.

We believe that because of the unique nature of this property, the original and historic design elements would more than likely be lost if it were to be updated for private use as a residence. We envision our role as a curator of this important source, and we consider this house as part of the GSD's special collections.

We propose to use this property for small events and activities such as seminars

and meetings, research and very occasional overnight use. The house will be used also on an occasional basis for small gatherings which is appropriate in its residential context. We do not envision that this house will serve as an event venue for the university. It is not equipped to serve such a function and its size only allows small gatherings, very small gatherings in fact. We have proposed conditions and commitments that would ensure this compatibility.

The usage described in the letter of commitment is intended to allow Harvard flexibility to use the house slightly more during a few weeks of the year, such as during the commencement period when we may wish to host more activities, but we expect the average use of the house to be far lower.

At our last meeting the Board asked us about two specific things: The first one was to provide additional information to

demonstrate how the proposed use meets the required Variance standards.

And secondly, to work with the neighbors to develop appropriate conditions in response to the community's concerns.

Regarding the first item, our counsel Goulston and Storrs have written a supplemental memorandum submitted to the file that provides additional information on how this case meets the required various standards. And Mr. Matthew Kiefer of Goulston and Storrs has joined us here tonight.

Regarding the second item, we met with neighbors to discuss concerns and suggestions on a number of topics raised at the last hearing. Based on these discussions, we have developed a detailed set of commitments and conditions that respond to these points which were submitted to the Board. We're happy to discuss this in more

detail. We very much appreciate all the time and concentration that the Board and the neighbors have taken to consider this proposal.

Thank you.

TAD HEUER: I didn't see the copy of the proposed conditions. Do you have a copy? Is that submitted to the file?

DOUGLAS MYERS: The same as yours dated October 30th?

ALEXANDRA OFFIONG: Yes.

TIM HUGHES: Questions from the Board?

THOMAS SCOTT: Can I see the commitment letter?

ATTORNEY MATTHEW KIEFER: My name is Matt Kiefer from Goulston and Storrs. A couple of questions. Would it be helpful to the Board, two people are here from the university who were involved in those conditions, they could speak to how they

arrived at them if that would be helpful. And I would be happy to speak to the hardship standard and the Variance standard if that would be helpful. What's the Board's pleasure on either of those?

TIM HUGHES: Personally, I don't need you to speak to the hardship standard. I think that was covered in the first hearing. But, there might be some -- you might elucidate what's different on this new matrix that's attached to this statement that wasn't -- concerns that weren't addressed in the first statement of October 30th. Is there something different in there that you can just express back to us?

ALEXANDRA OFFIONG: That -- the letter, it is the exact same letter.

TIM HUGHES: It is the exact same letter?

ALEXANDRA OFFIONG: Right. There has been no letter other than the October 30th

letter.

TIM HUGHES: So the concerns remain the same.

There's a page attached to that one that I don't seem to have on the original, the chart there. It is the same date, but it's laid out different.

MARY POWER: Do you want me to respond to that a little bit?

ALEXANDRA OFFIONG: Sure.

MARY POWER: My name is Mary Power. I am in the Community Affairs Office at Harvard, and I am happy to talk with you about a number of the conversations we had with the community, including one that I believe followed the last hearing and the directive to develop further conditions.

We heard from our earliest meetings with the community in September a number of questions and concerns about the nature of use and frequency of use. Concerns about

parking, concerns about hours of use. So the matrix that you have been provided with attempts to aggregate our responses that emerged out of a series of conversations. At that point we had met three times with neighbors. There were a number of conversations that followed those meetings which further suggestions were made. They fall into four areas.

The first area has to do with concerns about the building itself. And Harvard's intentions to possibly add a story or make significant modifications. So the first set of restrictions governs our use -- changes to the building itself. And we indicate that we will not add a second floor, which was a specific concern of neighbors. And that we will add the 9 Ash Street building to a protocol that was established in 1986 between Harvard and the city.

The area that I think consumed the most

conversation with community members had to do with use of the building itself. And this is what the Dean had referred to earlier, we have stated all along that our intention is to use the property in a fairly modest way, but we also recognize that since these are conditions that we are expected to abide by for the long term, we wanted to ensure that there is adequate flexibility to accommodate those periods of time where there might be more frequent use. So what we did in response to specific concerns and questions raised by neighbors and suggestions was to set out a schedule of meeting or gathering scales and limit those. And I think the most important thing to mention is that gatherings of significant size, 25 people or more, would occur only six times per year. We recently invited community members to an open house to share again the conditions and talk about the project. And for that meeting, and I think

it had sort of a rather gentle presence in the community, we invited I think there were about 28 people invited to that meeting. So that, for example, would be one of six such meetings during a year.

We were responsive to suggestions about providing parking. We were responsive to suggestions about limiting hours and ensuring that there is adequate clean-up after the meetings.

But the schedule that has been proposed here is something that arrived out of conversations over three meetings with community members in which they specifically asked for more detail about the frequency and the numbers of guests that would be coming. I think one of our --

DEAN MOHSEN MOSTAFAVI: These are subsequent to the discussion that what we had with the Board.

MARY POWER: Well, it's relative to

the evolution, some of them which occurred after our meeting.

And then we also heard that there were concerns about overnight guests. And the community was in fact interested in residential activity, but very concerned about guests that might be at the house for shorter periods of time. So, in response to those concerns, we limited the number of short-term guests to 12. And we further limited the types of activities that those guests could be responsible for. We limited the number -- 12 per year, I'm sorry. We limited the number of guests that they in turn could have at the house.

And finally one of the very helpful suggestions that came up during our most recent meeting, was that the community actually be invited to visit the house. So what we agreed to do is on an annual basis or as frequently as maybe of interest in the

community, hold a gathering that would be -- which would be open to the community.

So I'd be happy to answer any questions about this specific listing of conditions. I want to say that we struggled a little bit particularly in the area of use and frequency because what we wanted to do is be responsive to the very specific suggestions that were offered, and at the same time create a structure that would allow us to have ample flexibility so for those occasional periods during the year when there may be more activity, the beginning of the academic year or at the end of the academic year, that we would be able to have perhaps somewhat more activity in the house, but we've worked hard to define that as a cap. And the regular pattern of use would be infrequent.

TIM HUGHES: How successful were you -- where does the score card stand right now? How many people did you win over that

were complaining? I mean I know on the top of this pile of letters that are new, they haven't been clipped in, there are at least two people that are opposed to it. And I'm sure we'll hear testimony during public testimony. There's a pile of support letters here, too. Maybe you can just give me a thumb nail.

ALEXANDER OFFIONG: I could speak. My name is Alexandra Offiong from Harvard University's planning office. There are a number of letters in the file, and we do want to note that there have been many letters of support that have come in, but most importantly we wanted to know that of the properties that touch the 9 Ash house, we -- all of them are shall have indicated their support for this proposal as is indicated on this map. So that was of interest.

TAD HEUER: What about these folks,

do you know?

MARY POWER: There was a letter with many signatures and I believe in opposition, they had signed that letter probably back a month or so ago. And since then regrettably Mr. Parker has died. And Joan Parker's name was also on that letter.

TAD HEUER: This is the property directly across the street?

ALEXANDRA OFFIONG: Yes.

DEAN MOHSEN MOSTAFAVI: It's actually on the side of the property.

ALEXANDRA OFFIONG: When we did our tally, we have counted that there's 19 letters of support in the file.

DEAN MOHSEN MOSTAFAVI: The entrance is actually on Acacia Street which is directly opposite from the Cronkite Center.

TIM HUGHES: Any questions from the Board?

THOMAS SCOTT: Would the house undergo restoration work immediately or what would be your plan for, you know, restoring the house?

DEAN MOHSEN MOSTAFAVI: We actually have met with Mr. Charles Sullivan as well about this particular property. I think our plan would be to do a survey that establishes initially the benchmark for where the house is right now, because one of the things that's very important with this kind of house is that you don't just start doing restoration work. We aren't really analyzing and documenting exactly what you have. Once we have established that, then I suspect we will engage in drawing up plans that are about to look at the full scope of restoration. Then I suspect what will happen is that we will develop a phasing scheme whereby presumably the first stage of it will be the stage of stabilization. We have to look at the roof,

the structure, the floor system, the glazing and find out what are some of the things that are the material that needs attention. As I'm sure you are aware, these kinds of buildings from the forties, they have specific bathrooms and kitchens that are not very conducive to contemporary use in some way. It's very important for us to make sure we restore those. So it will obviously be a phased plan. But the attempt will be -- the initial stages will be documentation, full drawing of the conservation project and then the first case would be stabilization, and then the subsequent phases would be to try and do the full work over the coming years. I don't assume this is something that will happen immediately, like two-month or three-month period because we obviously need to learn and be very careful about how we conduct this work.

ATTORNEY MATTHEW KIEFER:

Mr. Chairman, if I could just to add one thing before you open it up to public testimony. You know, as Mohsen said, Harvard would be an unusual owner here, excuse me, because their intention is really to conform their use to the nature of the building rather than try to adapt the building, you know, to contemporary single-family house needs the way most single-family owners probably would.

They're very preservation-minded about it, and as Mohsen said, they want to basically return it to use, the study house that it was originally intended to be. If the Board was comfortable in granting the Variance, you could condition that Variance on the kinds of limitations that Alexandra has described.

In some ways you could limit the scope of this use as you could as of right purposes. If it was used by an single-family house by an active family in compliance with Zoning, you know, Home Office occupations are allowed.

The scope of the use would be very fluid and not subject to the Board's control. So, what you've heard here is a plan that the university would be willing to adopt that would, really again, sort of conform the use not only to the nature of the building, but to the nature of this residential neighborhood.

TIM HUGHES: We'll open it up to public testimony. Anybody that wants to be heard on this petition will have to step forward, identify yourself. Anyone that wants to speak in favor of the Variance to change the use?

CHARLES SULLIVAN: Mr. Chairman, I'm Charles Sullivan. I live at 37 Cogswell Avenue in Cambridge. I'm director of the Cambridge Historical Commission and I'm here to speak in favor of Harvard's application.

This is an internationally significant historic building of the modern period that

cannot be protected by normal historic preservation measures. If we were aware that this building in Cambridge was threatened, ordinarily we would go to the City Council, ask them to landmark it and that would be the end of it as far as adverse development might occur. This is a unique structure that is surrounded by a tall wooden opaque wall. The significant features are inside that courtyard. That's outside of the Historical Commission's normal jurisdiction because it's not subject to public view. Harvard has agreed to put this building, which is already on the national register, to put this building subject to a protocol that we've developed with the university since in 1986 that allows the staff of the Historical Commission to review alterations and supervise what that takes place for buildings that are on the national register that are owned by the university.

As some of you may be aware, we've had our run-ins with the university over the years, but over the last couple of decades Harvard has been much more responsible in terms of historic preservation than ever before. I think of Memorial Hall. Think of the Barker Center. Think of any number of buildings in Harvard Yard that have been restored to really impeccable standards whereas 35 years ago when I started here, Harvard felt its buildings were assets to be depreciated and then replaced in the words of one administrator. So the idea now of Harvard buying a building specifically to preserve it for posterity is really quite remarkable in the historical context. And I have every confidence that they mean it. That the conditions are reasonable. That they will treat this building the way that no private owner would be able to treat it because it's simply not suitable for modern family living.

It's quite fragile as buildings of this period are. It was built during a war of scarce materials. It -- I think Philip Johnson would be astonished to know that it was still standing with its original materials. It's going to be a major commitment to restore it. Harvard understands that, and I think that they will follow through on that and will be participating in the project. So I urge you to approve this as being an appropriate use for this building.

TIM HUGHES: Thank you.

CHARLES SULLIVAN: Thank you.

DOUGLAS MYERS: Mr. Sullivan, may I ask a question?

CHARLES SULLIVAN: Sure.

DOUGLAS MYERS: Mr. Sullivan, you mentioned that -- why is it that you couldn't pursue requesting landmark status through the City Council?

CHARLES COUNCIL: Well, we could, but what we'd be gaining jurisdiction over is the exterior of the four walls that you see from the street. There are -- you know, it's for what, 10 or 12 foot high wooden walls with one door. And those are the exterior features that are publically visible which would be all that we would have restriction over.

The significant features of the house are the features that make it similar to the glass house in New Canaan that he designed a few decades later are inside the screen from public view. It's the glass wall, the courtyard, the living rooms, stretched out in a linear way facing courtyard. That feature is invisible from the street. So it's simply not subject to the Commission's jurisdiction even if we were protecting the four walls.

DOUGLAS MYERS: And the Commission under its existing legal authority is not

capable of designing a landmark ordinance that would in effect reach the house behind the walls?

CHARLES SULLIVAN: No. The statute that governs this limits us to elements that are visible from a public way, period. So for the same -- in the same way that we can't regulate the interior of someone's living room, for example, we only regulate what's visible from the street and historic districts and landmarks. And the only way we could legally regulate the interior is if the owner gave us a preservation restriction, a separate private legal document, transfer of those rights. And that I think is unnecessary in this case because of the agreements -- long standing agreements that we already have with Harvard and their commitments to preserve the building.

DOUGLAS MYERS: I've wanted to ask your opinion and your views on one subject

that troubled me as it was clear on the record of the previous hearing. And that is I think it's an important question whether or not this building, the house there is capable of being used as a single-family residence? And you stated that it is not suitable for modern family living. Yet there are several houses in Cambridge with less square footage of living space than is the case at 9 Ash Street. Can you explain your views why not withstanding that fact the house is not suitable for modern family living?

CHARLES SULLIVAN: Yes, certainly. We see that real estate values have grown in Cambridge, and that people who are willing to pay what I think are the inflated values for residential real estate in Cambridge have higher standards than most of us who lived in Cambridge for a long time. When we see houses in this neighborhood change hands and be rehabilitated, they are typically gutted.

They're typically gutted out to the studs and all the interior finish is replaced, the historic character of the house disappears. In this case, this is a house from 1942 that is -- was built of materials that were in short supply at the time, so they skimmed on the materials. The -- I think it's an open question whether the architect whether intended it to be a permanent building. He was living there by himself as a graduate student. It's -- the facilities are minimal by modern standards and it's hard to imagine given real estate trends in Cambridge today for families that can afford to spend the money today that would put up with preserving the fixtures and the features and finishes of 1942.

BRENDAN SULLIVAN: Could it be characterized as a failed experiment?

CHARLES SULLIVAN: I'm sorry?

BRENDAN SULLIVAN: Could it be

characterized as a failed experiment or a failed thesis?

CHARLES SULLIVAN: No, not at all failed. I think it was --

BRENDAN SULLIVAN: I think what I'm hearing is that it has a short shelf life.

CHARLES SULLIVAN: Yes. You know, it was an experimental project. I mean, he's working, you know, in the very early years of the modern movement. He's already 34 years old. He's a grown man. He's come back to study architecture at Harvard. He has a prerequisite for graduation is to work on a practical project, and he has the resources to build his own house -- design and build his own house as a practical project for graduation. He's experimenting. He's experimenting with the materials in a form that very few other architects had worked with beforehand. And with all experiments -- and then of course he's also

designing for himself, for occupancy by a single student. And so, he's not designing a house for a family of four or a house that's going to be saleable on the market. He's designing just to fit his own unique program in its time. And in that respect it, I think it was a huge success in that he -- then when he had to design the glass house in New Canaan, where he took the facade inside courtyard and the complete facade of glass, wraps it around all four sides of the house and only the service core is exposed to view. And that becomes an icon of the modern movement, you know. That house is where he took these ideas and expanded them, developed them again for his own use. And, again, that house is now a museum house owned by The National Trust for Historic Preservation. And the climate of New Canaan and at the time that he died that property would have been scraped bare and subdivided for half a dozen

McMansions before you could, before you could blink. Because, again, he's designing for a concept, he's expressing design ideas that are unique to him that have influence on other architects and clients, but it's unique to him. And so it's not something that is going to be appealing to others in this present time in its context.

TAD HEUER: I have a question just to follow up on that, the glass house in New Canaan. It's correct, I presume you're familiar with the glass house in its state. There's the glass house which everyone knows of. Approximately 40 feet away from the glass house there is an identical structure which is the brick house. Correct?

CHARLES SULLIVAN: Yes.

TAD HEUER: Which is the second bedroom essentially for the glass house. Down the knoll and across the way is a small one room entity that served as his study. Up

at the main road there's the house that was originally on the property which is where he stored the cutlery and the table linens and everything else necessary for an event that would be held in the glass house. And then if I'm also correct, his partner lived up the road in another full-size colonial house because he didn't want to live in the glass house. So, would it be accurate to say that the glass house as a functional entity is only a functional long-term residential entity when supported by appendages such as the study, the guest bedroom, the parlor, the pantry, other elements that are attached to it that make it a viable long-term residential use. And here you're bereft of any of those additional elements except for the glass entity and that makes it less of a residentially usable structure than a glass house in New Canaan does?

CHARLES SULLIVAN: Yes, I agree.

DOUGLAS MYERS: One more question.

CHARLES SULLIVAN: Sure.

DOUGLAS MYERS: I was fortunate and able to take a view of the house at 9 Ash Street with Mr. Hughes who was there at the same time. And I would very much appreciate just following up in the spirit of Mr. Heuer's question, your response to these observations which I formed at the time that I felt the house, although small, was comfortable, charming, had two bathrooms and was adequate, at a wonderful location. The superlatives are unnecessary to describe many of the attractive features. But as a single-family residence for a childless couple or a young couple with no children, to me, although obviously some improvements would have to be made, at least of a modest scale, but simply because of age and deterioration, nonetheless, it seemed to me it was a viable, viable as a single-family

residence in its present form. And I just very much appreciate your response to those observations.

CHARLES SULLIVAN: Well, I think in part those improvements that you see would need to be made would change the character of what is now a distinctive example of this period of construction.

DOUGLAS MYERS: But does that mean the house is not a viable single-family residence in its present form?

CHARLES SULLIVAN: Well, certainly I can't say that no one would live there. You know, those of us who live in houses that -- many of us live in houses that don't meet modern codes or modern standards and we're happy to be there. But in this case this is a historic building which is untouched since 1942 in any significant way that's -- I'm sorry. That is -- that is deteriorating. That is indeed of some major

work that most owners would not have the patience or the interest to pursue. And there's no way for us to regulate to gain jurisdiction to make sure that they would do things the right way. You know, if you buy a house on Brattle Street in the historic district, many people have, you know, if you drive up and down that street, it's been under constant construction house after house after house for a number of years. Those houses are being substantially gutted from the inside. But on the exterior we can make sure that the original fabric is protected and the work gets done in a historically appropriate manner. This is a similar case in that we could protect those four walls, but we can't protect the glazing, the details of the roof, the interior of the courtyard, the view of that facade. And this is a way in which we can do that. So, I think, yes, people can live there I think quite happily

if they were willing to put up outdated facilities which I think few people are. But the trade-off would be that significant features of the house would be lost.

TAD HEUER: This lot I presume, and this is a question for the Board and also for the record, this is an undersized lot as we have allowed the merger to occur; is that correct? So any structure that would be built on this lot would have to either be in addition or subtraction to the original structure because if that structure were removed, nothing could be built on that lot without relief from this Board. Is that accurate?

SEAN O'GRADY: I have not analyzed that. I couldn't say that.

TAD HEUER: If the lot is undersized and does not meet code, can anything be built on that lot without a Variance?

SEAN O'GRADY: Well, the fact that

the lot's undersized would not prevent development necessarily. That is you could have an undersized lot and still have plenty as-of-right development to a house that exists on it. Whether that's the case in this case, I don't know.

TAD HEUER: But if no structure existed on the lot and the lot was undersized?

SEAN O'GRADY: Then you could build on it, yes. As long as you met all the dimensional rules. The non-conformance of the lot won't prevent you from building something that otherwise conforms dimensionally.

TAD HEUER: I have a practical question about the Historic Ordinance and the jurisdiction of the Commission. Not to be flip because it is somewhat a serious question, would a hole in the fence make a difference?

CHARLES SULLIVAN: No -- well, you

know, this is such a unique house. I mean, there's interior and exterior. It's what's visible from a public way. Our statute says that we have jurisdiction over exterior features that are visible from the public way. So if you cut a hole in the wall, which I would hate to see happen, that would be -- would that be an interior feature that we were looking at or an exterior? I mean, if it were into the courtyard, that's an outdoor space, but you know, there are enough attorneys here that I'm sure we can spend a couple of weeks debating this question about --

TAD HEUER: I mean, my question --

CHARLES SULLIVAN: -- exterior versus interior.

TAD HEUER: My question only being if there were a hole large enough to grant the Commission jurisdiction over the house itself, I suppose my initial thought is to get

to interior what you really need is a roof not necessarily a wall. But in that situation, if this is going from a residential to an institutional use and the purpose of the wall is primarily to prevent someone from looking into your bedroom and there's not going to be anyone necessarily anyone sleeping there, that an acceptable tradeoff might be for a hole in the fence demonstrating symbolically that it's no longer a residence but it's also opened up as an institutional use to some extent, and also has the byproduct of granting the Commission jurisdiction over any interior, interior, in quotation marks, changes inside the wall.

CHARLES SULLIVAN: Well, I would say that if I thought that Harvard or any other owner was going to cut a hole in the wall, we would move to landmark it immediately, because that in itself would detract from the character of the house. If that wall became

a fence that we could see through, pickets evenly spaced that you can see through it, then perhaps that becomes an exterior space. But it destroys the character of Johnson's vision of a private space surrounded by high wall.

DOUGLAS MYERS: In the situation you just mentioned, what would be your authority to try to landmark the house? Didn't you just say that was impossible?

CHARLES SULLIVAN: No, no. I mean we can landmark the house as it stands, but all we gain is jurisdiction over the four exterior walls.

DOUGLAS MYERS: I see.

CHARLES SULLIVAN: The way our ordinance works is that the Historical Commission at any of its monthly meetings can initiate a landmark designation study that protects the house for up to a year while we make a recommendation to City Council. We

haven't done that in this case because Harvard has indicated for quite a long time that they're interested in preserving this house. If -- we certainly would move to landmark it for whatever it's worth if this falls through. But it's not, it's not the most effective way of preserving the house, because most of the significance is inside that wall.

TAD HEUER: And I apologize, this isn't necessarily a question to Mr. Sullivan nor perhaps to anyone sitting at this table, but is there a reason that result cannot be reached, and we had this discussion last time, but I'll post it again, perhaps Mr. Kiefer has a response, cannot be accomplished through either a deed restriction or a historic preservation easement taken by any number of private entities who operate in that capacity? If the goal is preservation of the structure as

it stands now with no changes whatsoever, you can accomplish that through a deed restriction, you can accomplish it through surface advancement easement, you might reduce some value but you might gain it because people would find it more attractive to buy a property they knew couldn't be changed, that would be kept.

CHARLES SULLIVAN: Well, I think the short answer is that takes a willing owner who would be willing to accept a substantial diminution of value of I would expect for the privilege of having the Historical Commission second guessing them on everything he wanted to do.

TAD HEUER: But there doesn't substantially, I mean they exist. And if they exist, there's demand, maybe not this case, but certainly historic preservation --

CHARLES SULLIVAN: But there's always a willing owner who -- there's no way

we can compel someone to give us preservation.

TAD HEUER: Right. And that's why I'm saying that --

ATTORNEY MATTHEW KIEFER: Tax deduction.

TAD HEUER: Right. I mean, there are --

ATTORNEY MATTHEW KIEFER: In a tax deduction. I mean, the theory of the tax code is that it diminishes the value, and, you know, a tax motivated owner --

TAD HEUER: Which is precisely why it's attractive to a tax motivated owner.

ATTORNEY MATTHEW KIEFER: Right, that's an unusual owner. And I suppose one can emerge of your point is if Harvard wasn't in the picture, might another owner emerge who might be willing to do that?

TAD HEUER: Yes.

ATTORNEY MATTHEW KIEFER: I suppose

it's possible, but they're rare. They're rare. And would an owner be willing to pay full market value for it, restrict it voluntarily and take the tax deduction, you know again, it's true that it's possible, but you wouldn't have any assurance that that would occur and I would say those are very unusual owners.

TAD HEUER: I disagree because they do exist in hundreds if not thousands of places across the country. So I'm sure.

ATTORNEY JAMES RAFFERTY: Not with interior restrictions.

TAD HEUER: Not on interior. You can certainly take place a deed restriction on interior. You can place whatever deed restriction you want on the sale of the property. I don't think that anything -- as I said, no one at the table is really prepared to answer that because no one is here representing the current owner.

ATTORNEY JAMES RAFFERTY: That's not true. There is counsel here for the current owner.

TIM HUGHES: Jim, do you want to identify yourself for the record?

ATTORNEY HOWARD GOLDSTEIN: I appeared before this Board several months ago. I'm a special master appointed by the Middlesex Probate Court. Howard Goldstein. I wasn't going to participate, but I certainly won't hide. And so I did appear here several months ago. My role is to just to facilitate the sale of the property in the probate court has ordered it sold.

AUDIENCE MEMBERS: We can't hear anything.

ATTORNEY HOWARD GOLDSTEIN: My duty is to sell the property, and the probate court has ordered it sold. And so, I don't know -- frankly, I haven't thought about what would happen if this particular transaction

doesn't go through. But my mandate is to sell it at the best price.

THOMAS SCOTT: I would look at the house as really a museum piece no different than the Longfellow House or any of the other homes on Brattle Street. This is a house that has a lot of meaning to the architectural community. To have it continued to be used and be, you know, developed or overdeveloped or underdeveloped or abused in some way, I think, is a travesty and, you know, I think the preservation of the house is definitely utmost and --

FEMALE AUDIENCE MEMBER: We're really missing out on all this conversation.

TIM HUGHES: You have to come forward and identify yourself if you want to speak.

ATTORNEY JAMES RAFFERTY: She's commenting it's hard to hear.

FEMALE AUDIENCE MEMBER: I can't

hear.

THOMAS SCOTT: I was just speaking to just the historical value of the house. I'm not, you know, that it was the early 1940's but as it ages, the value of it from an architectural standpoint is going to be tremendous for the architectural students not only from Harvard but from all the architectural schools in the area: MIT, Boston Architectural College. And to let the house kind of get into the wrong set of hands, I think, would be a huge mistake. What they're offering here is to preserve the house, to restore the house, to keep all the quality of the original design features and concept of the house, and I wouldn't classify the house as a failed experiment, but maybe more of a successful -- again, I lost the word. But it really was a success because it was the preamble to the next thought or the next design in that modernist movement that

he was going towards in his career. So I think it's important, it's critical that we try to save it as we have all the other historical homes on Brattle Street and all of the areas of Cambridge. That's just my opinion.

TIM HUGHES: Any other comments from the Board? For people sitting at the table in front of us right now?

TAD HEUER: I have a question that I'm loathed to ask, but I feel like I should ask it. If you're obligated to sell the house, why are we still here eight months later? Is there no one who wants the house other than Harvard?

ATTORNEY HOWARD GOLDSTEIN: When this transaction came to our awareness, it was my job to see that this transaction went through. If it doesn't, then I have to take another step. But so long as this transaction was viable, it did seem to make

the most sense for the community, for the people that I'm authorized to act on behalf.

TAD HEUER: So it was not just an order to sell at any price?

ATTORNEY HOWARD GOLDSTEIN: It's an order to sell it. But I'm allowed to exercise some discretion. And this proposed transaction certainly seems like it makes sense for everybody.

DEAN MOHSEN MOSTAFAVI: There's been a signed purchase and sale agreement.

ATTORNEY HOWARD GOLDSTEIN: There is a signed purchase and sale agreement. This is something that the current owners are interested in doing. And my job is to facilitate that.

TIM HUGHES: Anyone else who wants to speak in favor of the Petitioner's Variance? Come forward, please.

ESTER PULLMAN: Hello. My name is Ester Pullman. I'm a neighbor on Ash Street

Place which is the continuation of Acacia Street. I've lived in my residence since 1977. And my husband and I are both design professionals in the field of graphic design and we were trained at a different university, at Yale at the School of Art and Architecture. When we first came to Cambridge and lived in this neighborhood, I remember students who were lying on the ground trying to peer under the then door which had about a six-inch gap so that you could actually see a portion of the house underneath that door. And that's always informed my attitude towards the house as a unique and very, very interesting -- as you were saying, icon. But I think of it as a work of art, as an artifact that is not just an ordinary house that somebody lives in, but a house that has certain character and qualities from its conception and design. I was not involved early on because I felt the

abutting neighbors were really the ones who would sort of make their wishes known and resolve it one way or the other, but I did go to the recent meeting that was held at the house, and I heard Charles Sullivan speak as he did with you today. And I was very impressed with his reasoning that this is the unique moment to save this house. I have also seen neighbors gutting their houses. I think that the care in which Harvard approaching this project with is impressive. It's extremely responsible and careful and well informed, and I believe that they're in a position, the unique position to preserve this house. I think that the issues of it being compatible with the neighborhood have been essentially resolved by the parties who are negotiating this. And I personally think it would be a marvelous resolution to -- for perpetuity to preserve this house. If this particular sale does not go through

and it is owned by a private owner who is free to do as they want with the physical properties of the finishes and character of the house, it will no longer have the interest for preservation that it presently has. So, I would urge you to think carefully about this opportunity and look on it with interest and favor.

TAD HEUER: Thank you.

SUSAN PAYNE: Good evening. I'm Susan Payne and I live at 3 Ash Street, two houses away from the property being discussed. And in the essence of everyone's time and saving time, I want to say that I agree with everything that Charles Sullivan has said. I agree with your, comments Mr. Scott, and I agree with Ester Pullman, and I think that this is the time to restore and preserve this very valuable architectural piece of property.

Thank you.

TIM HUGHES: Anyone else speaking in favor of the petition?

(No response.)

TIM HUGHES: Is there anyone that would like to speak against the petition? Please come forward and identify yourself, please.

WILLIAM APPLETON: May I do it at the microphone?

TIM HUGHES: Sure. Make yourself comfortable.

WILLIAM APPLETON: Hello. My name is William Appleton. I live on Hawthorn Street, and I don't live next to the house that's being talked about, but I live next to another house that is now owned by Harvard, 15 Hawthorn Street, and I won't go into the history nor get off the subject. I just want to say I'm a little concerned about Mr. Sullivan's framing of his argument. We have holy Philip Johnson and holy architects

versus some crash awful bunch of McMansion people. So there's good and evil in this. The fact of the matter is that the house has been owned by several private owners even before the one selling it who didn't do anything terrible to the house. I know of a Maxine Rolfsky and Renault (phonetic) owned that house for sometime and turned it into a big mansion. I think that as a neighbor, I'm watching -- 25 years ago I went to a meeting like this in which there was a letter that Harvard was going at three percent a year and Cambridge at one percent, and that there would be inevitable conflicts. And so the house next-door to me now belongs to Harvard. The one across the street next to the Lincoln Center has been institutionalized, not by Harvard, but slowly everything is becoming an institution in my neighborhood and I'm concerned about this invasion, loss of tax revenue, etcetera. And so I would be

concerned I think that if there can be variances of zoning, then Mr. Sullivan is a smart guy and can make variance in his historical jurisdiction somehow with a hole in the fence or however it's done so that the next owner cannot desecrate this place, but it doesn't necessarily have to go off the tax rolls and become yet another institution. Thank you.

LINDEY HESS: Good evening. I'm Lindey Hess. I also live at 11 Hawthorn Street. And I just wanted to say that I wanted to respond to your question. I don't believe this house was ever offered to the public. It was listed in a teeny ad in Harvard magazine for one month, but that isn't being offered to the public. So that the public really hasn't had a chance to buy this house.

And just so the history of the house is straight, the people who bought it before the

Tribes were friends of mine so I spent a lot of time in the house and know it well. And actually they got Philip Johnson to come up and work with them on the restoration. The house is certainly liveable. Any couple in retirement or a young couple alone could live there very comfortably. There's no doubt in my mind. And I've spent many happy evenings have dinner there. There was no problem cooking, living, eating. It's quite a charming little house. So I want to make that clear from a personal point of view.

Other than that, I appreciate the fact that Harvard has made an effort to meet with the neighbors, and I understand that when you own a house in perpetuity, you need to have protection for yourself. But having people spend the night there 12 times a year sounds to those who live there like a Lincoln bedroom. And having up to 25 people for parties twice a month is a lot of people for

a very fragile residential neighborhood where the parking is already terrible because of the Mormon church and because of its proximity to the square. So, a house where there will be a lot of festivities and a lot of people coming over really won't be in my mind good for the neighborhood.

Thank you.

TIM HUGHES: Is there anyone else who wants to speak in opposition to the petition?

JUDITH DORTZ: My name is Judith Dortz. Before I begin my comments I do have comments from another neighbor Allen Steiner who lives on 993 Memorial Drive, on the corner of Ash. He said this is what he would like said on his behalf.

I'm categorically opposed to further institution expansion into residential neighborhoods for non-residential purposes. Therefore I'm opposed to the extended use of

this property and transferred to Harvard for that purpose.

I guess you can put that on the record.

We keep talking about the historic value of this house, but unfortunately as I said on my last time before this Board, I've lived there for 25 plus years. I have never seen this house. I've wanted to and I've never seen it. So the fact that it's a valuable piece of property, it's closed to everybody. There's a select few who get to see it and use it and enjoy it. The rest of us are shut out literally. There are other historic houses in the neighborhood: Longfellow for one, and a number of other ones, but they're all visible to the public who can enjoy them. And I guess my sense is that this really is going to be a really very private use house.

The few things have intervened since our last hearing here. One is the design

school is buying up the Jesuit properties in Cambridge. I guess there are four or six properties. And Lesley has bought ETS on Brattle Street. We're beginning to see, as someone just mentioned, the institutional use is encroaching on a very fragile residential neighborhood. That the people who spoke for this property made many assumptions about what a residential owner would do. And I think it's not up to any of us to say that when nothing has been tested. As one woman just mentioned, that friends of hers lived there as a family and residential use, it was very comfortable. So making these assumptions that no one would want it, is I think a little premature. But I do have a map here that I prepared and I would like the Board to look at them. It shows the encroaching institutional use of the property and it keeps going on and on. And you can see what's happening to an already

small neighborhood. We are being really -- the residents are being pushed out. So I do have some comments.

I'm glad we have an opportunity to come before you once more to urge you to work with us in maintaining what is the heart of Cambridge; that it's viable, cohesive neighborhoods. One of the attractive qualities of our city is that it's built on neighborhoods and communities. However, this envious and unique aspect of our city and many cities becoming more and more difficult to maintain due to ongoing development in general and the continuing growth of the many universities in our area. Many times I've stopped at Mount Auburn Street near Holyoke Center by visitors who asked me "Where is Harvard University?" And I can only reply, "You are in it." I do not want to walk out my door one day and be asked the same question and have to respond "You are in it."

I did attend the meetings and the Harvard staff to discuss the proposed conditions under which Harvard might obtain a Zoning Variance. It became clear they were willing to meet any conditions to turn the current residence into institutional use to get the needed and desired Variance. At one meeting, I believe it was Mary Power who said she would discuss some of the these conditions with members of the Zoning Board to see if they would agree to them. I don't know if this meeting occurred. And just for public knowledge, did any of the Harvard people meet with the Board members outside of this meeting?

TIM HUGHES: No, but we can't have meetings like this outside of this meeting. All of our meetings have to be held as open meetings.

JUDITH DORTZ: Great. I'm just checking that out.

We know their intentions are honorable at least for the moment. Plans however do change as do personnel and intentions and with it the neighborhood. My question remains What does it take to maintain a neighborhood? I just read the Accidental Billionaires, the founding of Facebook by Ben Mezrich and I want to share a quote from that book where he discusses student residences in the quad, Radcliffe Quad. In a 20-minute walk there is to Harvard Yard, he continues, and I quote, "The Quad has been part of the university's expansion deep into Cambridge." And this as you can tell by these maps is just another example.

This is all based on the Assessor's office. And it shows how the Half Crown Marsh District is slowly becoming part of the university's expansions deep into Cambridge. Try as I may I cannot understand how Harvard can seek a Zoning Variance for hardship

reasons. I fail to understand the meaning of hardship. If it is to keep an architecturally significant house, as they claim, in place, one that cannot be seen nor appreciated I might add, seeking a landmark status might be a more appropriate route. Their presumption that no one would buy it is not based on any valid information.

(Inaudible) advertisements repeatedly through many sources over a period of time. A good relator makes this happen. This usual and standard procedure and process to sell a house was not applied to 9 Ash Street, yet we hear that no one will buy it. Yet I understand an offer by one of the neighbors was rebuffed.

A very large wealthy corporation to needs to expand and grow in the use of the facility at 9 Ash Street will be part of Harvard's continued growth plan. It will go from three seminars to 25 people a year, to

five seminars seven days a week at the facility, etcetera. From occasional overnight visiting to weekend stays to week long stays.

I sit on a neighborhood board and part of the public hearings and know that any hearing board is faced with difficult decisions and ultimately must decide who or what is best served by the decision they make. For many there's no value to the neighborhood, the community or to the city with Harvard's conversion of a residential property for institutional use. The value is Harvard's alone. Please weigh or comments carefully in realizing that to permitting the residents into institutional use would be a long-term and permanent decision that effects our entire community and city. If Variance is approved, I feel the Zoning Board is sending the message that neighborhoods have little voice when up

against a large institution.

That is my comments. And I'd like them entered as the record. They might already be in there from a previous time.

TIM HUGHES: There anyone else that would like to speak in opposition? Step forward, please.

WILLA BODMAN: Good evening. My name is Willa Bodman. I live at 18 Ash Street and I speak on behalf of myself and my husband and two of our five 21-year-old children. We have five kids. I have a lot of teenagers -- I'm a high school teacher so we have kids coming over to the house a lot. Our neighbors have three children. Across the street are three little children. We play in Ash Street Place. The kids kick ball there. I really feel --

DOUGLAS MYERS: Can you move the microphone away a little?

WILLA BODMAN: Not quite so loud?

I really feel we live in a residential neighborhood. My kids and their friends say oh, we really want to live here when we're older. This is so great. One of the boys I teach says that to me several times. I would like that to be a possibility for them. I would like our neighborhood and Ash Street to stay a residential -- nice, cozy residential area that it is with a lot of varied houses. Each house on the street is of a different style. We have a Federalist across the street. Ours is a mish-mash of things, originally a little farm house. It was windmill lane. We have a rich history here on Ash Street that we're all quite aware of. The poet lives right next to us. There's a plaque on his house. There's the tulip garden across the street, gets admirers that come by and appear or look at their tulips and they peer across the wall at our Auburn garden. We really take pride in our

neighborhood, and I don't think someone that would move to that house would actually neglect it. They would feel proud that they're in a -- on a street that has a lot of varied architectural styles, and I do believe they would keep it up. We're very proud of our street and we'd like to keep it a residence. And I do feel that there have been several houses in the neighborhood that have been purchased as of late by Harvard. And I just hope that one day in the future I don't walk down here, down to Ash Street and see, you know, the writing department, architectural school and different departments on houses as plaques on many of the different houses.

So, I feel really quite strongly about trying to sell the house as a residential property. I don't think that people are going to be on purpose not do something. I think they will have a pride and want to keep

up with it. Everybody on the street will be looking and seeing what they will do to this house. So, that's how my husband who wasn't able to make it, and myself feel about this.

Thank you very much and thanks for having us all speak to you.

TAD HEUER: Thanks.

Anyone else?

RICHARD DE NEUFVILLE: Good evening. Thank you. I'm here --

TIM HUGHES: Could you identify yourself, please?

RICHARD DE NEUFVILLE: Yes. I'm Richard de Neufville from 10 Acacia Street and I'm here in two ways: First to present a --

TIM HUGHES: You're going to have to spell your last name.

RICHARD DE NEUFVILLE: Oh. It's written down here so I'll give it to you later on.

On behalf of Steven Blacklow and Barbara Binata (phonetic) who have sent you a letter I believe but there are extra copies in case you don't have them.

TIM HUGHES: There is one in the file.

RICHARD DE NEUFVILLE: And he asked me to summarize his views and I'll present my own.

But his views basically are that there is no hardship. It's a requirement for the hearing and acceptance of a Variance to change it, and there is no particular Variance on this because this house is perfectly suitable for the -- for residential use. It has been that way and it can continue to be that way.

Secondly, it has not been advertised at all. The first thing the neighbors ever heard about this property being transferred was when we saw a notice of a petition about

it. The advertisement that appeared in the in-house alumnae magazine is to advertising like going up in whispering in your closet. And it basically was not advertising at all.

There have been comments about the returning it to its -- Harvard returning it to its intended use. I don't see how turning it into a seminar for lots of people at various times is anything like a residential use.

Finally according to his letter, he is talking about the care with which it will be and the promises are made. The unfortunate part about that is that all of us know in Cambridge about the promises that have been made in Allston and what hasn't been able to do. And that is that -- and we are also aware of the way that the Harvard does not in fact maintain its properties nearby the Repertory Theatre property, for example, is in constant neglect and is in fact has been restored

thanks to the gift of a local resident who paid for it because Harvard wasn't doing it itself. So that's I think the summary of their opposition to it. And they close by saying that we hope that the Board of Zoning Appeals shares their opinion and chooses to deny the university's request for institutional use Variance. Thank you.

For myself I have some short presentation. And it basically is that 9 Ash Street is in fact not a difficult residence, but is almost self-evidently ideal for empty nesters and such. And there's no evidence that it cannot continue to be an attractive residence. Therefore, there's no sustainable case for hardship in any continued residential zoning. Harvard's petition to change it to institutional should be denied because there's not a proper basis for it. And Cambridge should protect the neighborhood from Harvard's acquisition

program. As somebody has already mentioned, this is now a third house with about 150 yards that Harvard has acquired or intends to acquire. One has just been acquired on Hawthorn Street down the street.

Ash Street itself is longstanding -- the house itself is a longstanding residence. It has been continually used as a residence for two-thirds of a century. The current owner used it as a Home Office supposedly. That's between him and the IRS, but it's still a residential property. Itself it is almost ideal for empty nesters. It's a highly attractive location, close to Harvard Square. It's got two car off street parking, a most desirable and acceptable feature in the neighborhood. No steps or staircases. It's accessible in the way practically nothing else is. Very desirable. It's -- it has easy access for all the

groceries that you might want to take in. There's about five steps from the back of your car to the kitchen. It's on a large private garden. Another unique and highly desirable feature. It's low maintenance, as the garden has been paved over. In fact, a change created largely from the current owner from its original character.

In short it's a trophy house due to its unique providence and history. The claim to this house is not highly desirable as a resident is really not doing justice to its honor. It's not a failed experiment. It's a very successful experiment for the kind of person that would be doing that for a family such as living there, the Knowltons before the Tribes.

The claim that Ash Street is not saleable as residence is no evidence. There's been no visible effort to sell the property. There's no marketing campaign for

it, no credible advertising. What we're faced with, I think, is Harvard seems to think that it can establish hardship by saying so internally. When I discussed this Variance with the owner, Harvard Professor Tribe, he told me that I fixed it all up with Drew. Meaning the President at Harvard Drew Faust. The Dean has also spoken of special talks with the Faust and Tribe in China. It is not Harvard's role to put in a fix to decide whether this is a hardship or not. The claim must be established if there's a justification for hearing this petition or Variance. There is no hardship. There's none that's been demonstrated.

So in short, my feeling is, and I'm speaking also on behalf of my wife Virginia Lyons is that 9 Ash Street is an excellent residence for the right persons. There is no hardship, and there's no sustainable basis for a Variance. And the request for special

consideration should be denied. I hope that the Board will protect our residential neighborhood.

Thank you very much.

TIM HUGHES: Is there anyone else who wants to speak in opposition to the petition?

(No response.)

TIM HUGHES: Seeing no one, I'll close public testimony. I want to read one more letter that is a letter in opposition. I want to read that into the file. It's very short and I'll give the Petitioners a chance to respond.

This is from Bruce and Granell Scott, 8 Ash Street Place. It's addressed to Mr. Alexander and members of the Board. "As near abutters and owners of 20 years of 8 Ash Street Place, we urge that the institutional use Variance not be granted for 9 Ash Street. We treasure the neighborhood and its

residential character and share the range of concerns expressed eloquently by Steven Blacklow, Barbara Binata in their letters of October 23rd and 31st as well as those expressed by Willa and Taylor Bodman on August 5th and November 1st. Please help us retain the residential quality of our neighborhood."

There are several other letters in opposition in the file, but there was public testimony to go along with them, so I'm not going to read those. By several I mean six.

Would you like to respond to this?

ATTORNEY MATTHEW KIEFER:

Mr. Chairman, I'm Matt Kiefer. Maybe a couple of points to make and then happy to answer questions if there are any questions the Board feels were raised by the testimony that you would like some more detail on.

We've heard that the current owners didn't make sufficient effort to sell the

property. I'm not sure where to go with that. You know, our view is that hardship exists and it's not connected to efforts to sell the property. As you know, hardship is not connected to the owner. Hardship is about the property itself, the nature of the land and building. And it exists, if it does exist, it exists regardless of who might own the property and how the property might be marketed or how widely it might be marketed.

There's been talk about how inaccessible the property's been. Harvard would --

TIM HUGHES: Before you go on to that, since you brought up the hardship thing, and you say if it does exist, you're maintaining that it does exist. Can you speak specifically to what you see the hardship in this case is?

ATTORNEY MATTHEW KIEFER: Sure, happy to do that.

As the Board knows, hardship is -- it's sort of shorthand for there's really two tests in the Zoning Code for granting a Variance. This idea -- the Variances have been around as long as zoning's been around. There's always been a Variance provision in the Zoning Enabling Act. And the current one's been there since 1958, unchanged since 1958. There are lots of cases that construe it. So there is a lot of, a lot of basis for determining what constitutes grounds for a Variance.

Hardship, the word hardship is really shorthand for are there peculiar circumstances about the land or the building that make it difficult to use in compliance with Zoning? That's sort of what hardship means. And secondly, can the relief be granted without substantial harm to the public?

And so with regard to the first standard

it is a peculiar house. It is -- it seems to us there are unique characteristics about this house that have been described to the Board, including in particular by Charlie Sullivan. They are particular to this house and not common to the neighborhood or the Zoning District. The shape of the house, the materials that were used in the house, it's a slab on grade. It has no basement. It has no attic. It has no hallways. It has no storage. It was made of maybe not exactly makeshift materials, but materials that are now deteriorating. It lacks comfort, year-round comfort. It would need substantial work to be used for single-family residential purposes. And, you know, the courts they talk about hardship, it doesn't mean that it's impossible. It doesn't even mean that it is extremely difficult. It's just that substantial hardship means more than trivial. Courts use hardship to mean

difficulty. And substantial means more than slight or trivial. So the question is not could it conceivably be used for single-family purposes? It could conceivably be used for single-family purposes. The question is does that impose some non-trivial difficulty? And we believe it does. And it particularly does if you're concerned about the historic importance of the building. It would be a significant challenge to make it suitable for single-family use and still respect its historic character. Something that the university is prepared to do.

TAD HEUER: Two questions: First, I guess I agree with your definition of hardship roughly. Doesn't that definition -- isn't that held to a higher standard or don't we have an obligation to hold it to a higher standard when we're looking at the use variance rather than a

dimensional variance? So, if you were coming in looking for a dormers on a house? Yes, it's the same standard, but the courts have also said that institutional use variances are supposed to be granted sparingly because essentially we're trying to avoid spot zoning which we're not doing with a dimensional variance where we're just allowing for additional, you know, ten feet to add a porch or 30 feet to add a dormer. Isn't there a distinction that we have to keep in mind that even in the normal -- it's almost hardship plus, isn't it?

ATTORNEY MATTHEW KIEFER: Sort of. Courts do you construe use variances more strictly. A lot of it, though, has to do with the second part of that test which is substantial harm to the public. And there's kind of a presumption in a lot of the cases that a use variance is more likely to be -- to cause harm of the kind that Zoning is intended

to protect. We've worked very hard here to craft conditions that will avoid that result. That was Harvard's express intention in meeting with the neighbors and crafting these conditions which they're willing to live with, which would really conform the character of their use to the nature of the neighborhood they're in to avoid the kind of harm that a use variance often entails. And the ones that are really strictly construed are industrial uses in residential districts that are really going to compromise the residential character of the neighborhood. We believe this will not. We believe it's really going to be -- the use is going to be almost indistinguishable from the use of other houses in the neighborhood that with large families or active families that with home occupations, home offices -- it is, it's not of that nature so as to really compromise the residential character of the

neighborhood.

TAD HEUER: So would it be accurate to say that you've attempted to craft the institutional use for limitation that matches the intensity of what would be expected from a residential use?

ATTORNEY MATTHEW KIEFER: As nearly as possible. I think you've heard Mohsen say their intention is almost returning it to being the study house that the architect intended it to be originally. And while it's true it won't be open to the public, there was also getting a little off the subject of hardship here for a moment, there was some criticism about the house not being open to the public. It would be open to the public more often than if Harvard owned it than if it was a private residence. I'm not sure it's a criteria for hardship. It's not. But it certainly answers the substantial harm test. There are also cases you probably

know, that say that in weighing the harm, you should also weigh the benefit. There's a hospital case, Faulkner Hospital case in the City of Boston that said, The public benefits of the use should be weighed in the balance of determining harm. And Harvard is going to provide a benefit here that a private homeowner would not in terms of curating the house basically as a part of its -- as Mohsen described it, as part of the collection of the GSD and making it available not only for events but they're willing to make it available to the public, you know, on scheduled occasions so that it would, it would be able to serve a benefit that it wouldn't in the hands of a private owner.

TAD HEUER: On the point you've been making about the historic value, we had this discussion at length in the first hearing we had. I love a permanent de-barker as much as anyone, but could you get me to a point where

you can say that historic value, plot historic value is an element of hardship that we can consider?

ATTORNEY MATTHEW KIEFER: Well, I think you can find hardship without -- it doesn't turn on the historic value. It's a difficult house to use in compliance with Zoning. There is -- there are non-trivial difficulties involved in that for anybody. And, you know, it helps the case that it's historic and that Harvard would in weighing in the balance that, you know, you're weighing as a Board, that Harvard will in fact infer a benefit by making this historic house -- by preserving it and making it available, that helps. But I think the hardship is there with or without the historic nature of the house.

BRENDAN SULLIVAN: So to give you another word historic, I would substitute that for significant. It is a significant

house. But I mean to use the word historic, I think starts to put it into another realm. And its appeal is somewhat narrow as opposed to the general population. You know, in going through -- and I guess I'm having a hard time getting over the hardship. I can't cross that hurdle. And I keep, you know, going back to -- and I read through all of this and some of the case law and some of the cases that you cited -- I don't know if you cited it or whoever. But it was not helpful because some of the cases that are cited have nothing in common with this particular locus. We're talking about a pork chop shaped lot. We're talking about a medical building in a residential area. You know, *Mendoza versus Licensing Board of Fall River*, the Court said: Although all Variances are unusual forms of relief from Zoning requirements, use variances should be particularly extraordinary because they inherently

undermined the local Zoning Ordinances division of uses." The primary function of the Ordinance when it was Zoning is division of uses obviously. And then all of the other dimensional stuff sort of came after that. So this is really sort of sacred ground to push that line forward.

And then hardship is not being reasonably able to use the property for the purposes or in the manner allowed by the municipal zoning requirements due to circumstances particularly affecting that property. And that was Cavanaugh versus Detuami (phonetic). And, you know, unique circumstances that are not economically feasible. I'm not convinced that the house cannot be used as a single-family residence. And we've heard that it's unusable, that, the you know, the Tribes have not used it. The Tribes bought it in what, 1989? So that from the forties up to 1989 it was used as a

single-family residence. Professor Tribe decided not to use it as a single-family house, he decided to use it as an office. That doesn't make it not usable.

Is there going to be some expense involved in bringing it up to a habitable state? Yes, possibly. Because it has been neglected for this last number of years. But I can't get over that hardship and why we should allow this use variance. Because, again, that's what pulls at the very heart of Zoning.

ATTORNEY MATTHEW KIEFER: Right. Well, it is certainly true that use variances are, you know, closely watched by reviewing courts. You know, just a couple of observations.

You have a judgment to make. You've got, you know, discretion to determine whether you think enough hardship exists. The cases out there are guidance to you in

exercising your discretion. But the Zoning Code is intended to accommodate exceptions. That's why the Variance standard is there. It recognizes that there's no set of rules that's so perfect that you never need to vary from them. And so the question is, is this a reason to vary from the rules? The circumstances have to be unusual clearly. And every case is different, and the facts of every case are different. So it's very difficult to find another case that's exactly like yours. It always is. There is a case out of Wareham about a church that is very similar that where a Variance, a use variance was granted because the church was impractical, it was difficult to use in compliance with Zoning. It -- you know --

BRENDAN SULLIVAN: But that church had never been used as a residence.

ATTORNEY MATTHEW KIEFER: That's true. It was used as a church.

BRENDAN SULLIVAN: Again, in going through some of the case law.

ATTORNEY MATTHEW KIEFER: Yes.

BRENDAN SULLIVAN: This structure had been used as a residence. It could have been used as a residence. Professor Tribe chose not to use it as a residence.

ATTORNEY MATTHEW KIEFER: Right. I don't think you have to find that it's impossible --

BRENDAN SULLIVAN: I can't get the correlation at all.

ATTORNEY MATTHEW KIEFER: Well, I guess I would just say that you don't have to find that it's impossible, just that it's difficult. You're not required -- we wouldn't argue, I wouldn't assert that you are required to grant this Variance. That if the case that it is absolutely impossible to use in compliance with Zoning, and you are there for compelled to grant the use

variance, we believe that grounds exist to support a finding of hardship because it's difficult to use as a single-family house. And that degree of difficulty is similar to the degree of difficulty in these other cases. The facts are different, but the degree of difficulty is very similar to many of these other cases.

BRENDAN SULLIVAN: We'll agree to disagree.

DOUGLAS MYERS: But I mean aren't the facts in fact quite different in most of the cases you cite? For example, the Wareham case, where the land on the opposite side of Route 6 was zoned commercial, contained a warehouse in a business district. And isn't that a completely different -- the facts in terms of whether something is difficult or not difficult, it seems to me that case is clearly distinguishable on the facts.

ATTORNEY MATTHEW KIEFER: The facts

of all these cases are very different from each other, and yet, you know, the courts have upheld the Variances in all of them. You know what, it's also a little bit of a myth that there are about as many cases that uphold Variances than cases that overturn them. They're very specific to their facts. Very hard to generalize about them. I would say from your point of view they're just guidance. You have a judgment to make about whether you think there's enough difficulty. You know, these are just guideposts, and they're all different from each other and they're all different from our case. We think the amount of difficulty in our case is similar to the amount of difficulty in these other cases even though the facts are very different. You know, regulatory constraints have been the cause of difficulty, oddly shaped lots, soil conditions, the structural condition of

buildings. Those all have been facts that have supported a finding of hardship. And, you know, again to -- you've heard a lot of testimony about the value of this house. You're in a position through, you know, your action to exercise your discretion in a way that is going to preserve an important resource. Whether you consider it historic -- I don't know if historic is the right word, maybe it's too recent to think of it as historic. It's culturally important. And your action will allow it to be preserved. It's not clear that that would be possible any other way. And it seems to us that ought to weigh in the balance in exercising your discretion here.

TAD HEUER: To what extent, if any, does it matter that Harvard is the purchaser?

ATTORNEY MATTHEW KIEFER: I'm not sure I understand.

TAD HEUER: Does it matter at all

that Harvard has the resources if it wished to make this, you know, if Harvard decided this was the be all and end all, and that it was going to put in \$15 million to make this house pristine and keep it as a residence. It could be. Does that matter that Harvard has an ability to do it?

ATTORNEY MATTHEW KIEFER: From a hardship point of view?

TAD HEUER: Yes.

ATTORNEY MATTHEW KIEFER: No, it doesn't matter. You know, from a hardship point of view, hardship is not personal to the petitioner. It relates to the land. So, the fact that Harvard has adequate resources to undertake a very careful rehabilitation is not relevant to hardship.

TAD HEUER: So if this were a smaller institution, that's said we've come into this, it's been oh, I don't know -- we received it as a bequest and now we just

happen to have it. We don't know what to do with it. We'd love to turn it into an institutional use because we need a small seminar room, but we just don't have the cash to go through it, that that's our hardship, that would be a legally factually identical situation in your interpretation; is that right?

ATTORNEY MATTHEW KIEFER: Well, yeah, I mean I guess I would say Harvard's -- the Petitioner's financial circumstances aren't important in that judgment. It's the degree of difficulty and it can be financial difficulty that --

DOUGLAS MYERS: Did you say are or are not?

ATTORNEY MATTHEW KIEFER: Are not. They're not important. The hardship, you know, it's not personal to the Petitioner. It relates to the property itself. So, the, you know, the degree of difficulty here in

turning this house into a house that's suitable for single-family purposes, would be born by any, any petitioner. And their financial capability is not relevant.

DEAN MOHSEN MOSTAFAVI: If I can make one or two small points not related to the technicalities, but just one thing that Mr. Sullivan said with regards to the question of significance versus historic. Just from the perspective of an academic, I do want to underscore the importance of this house. Everybody is going to disagree or have different opinions in terms of what they value. What kind of architecture, what style of architecture? But I think this is now fully-established that this is a building of enormous significance, and actually the work of Philip Johnson has enormous historical significance. It has sufficient time, in my opinion, has lapsed for us to evaluate that the interrelationship between

this as the first experiment and its relationship to the glass house, merits this to be actually a building of historic value. So that's one point.

The other thing that I would like to underscore from the GSD's perspective is that the -- this relates to the point of the benefits that I think Mr. Kiefer was mentioning. We are very much aware of the fact that we would like this house as an artifact. As an artifact to be preserved, so this I think for our purposes, is a very important fact that the building itself will be preserved. It's a slightly different discussion to its use conversations that you're having. But I think what we are -- what we are proposing to undertake in terms of the conservation of the house from an architectural point of view, again, and relating to the importance of values that exist within that discipline are important

and I think it should be, it should be stated that this is not simply something that is insignificant in terms of what could potentially happen to this house.

TAD HEUER: So if that's true, I mean we're talking about a use variance, not use variance, nothing requires Harvard if they want to purchase this house and use it as an artifact to use it at all. The museum, the Fogg Museum goes and they say I'd like to bid \$25 million on a painting and that painting goes into storage perhaps for 20 years and they take it out and they show it on every other Sunday. Harvard paid that amount of money for an artifact because it's an artifact not because it's a residential use. You don't need --

DEAN MOHSEN MOSTAFAVI: I respectfully disagree. I think that we have an ethical responsibility towards our constituency. Our constituency being as I

think Mr. Scott said, is a group of people who are the group of architects, educators, students in other places, people who appreciate and value these things.

Therefore, it is not something that we treat as part of my private possession. We feel that we want to be the curators and guardians of this and we would like to share it. It's completely dissimilar to the idea of a private individual buying any one painting and putting it in their safe. In this particular case I think this is an artifact that it's process of restoration, the manner of our care, all of those things are part and parcel of the things that we believe in and we want to share whether it's with students or the Cambridge community or with the wider world of architectural enthusiasts, architects and historians.

TAD HEUER: Well, then why can't you just show it off? Why can't it be a very

expensive beautiful, valuable bauble?

DEAN MOHSEN MOSTAFAVI: It has to do with the reasonableness. You know, I as a dean, I have to make certain decisions that have some dimension of reasonableness, and the reasonableness of this is that we want to preserve it. At the same time I cannot -- I'm not in a position to buy a house and lock the door and throw the key away. I also feel that I have certain ethical responsibilities to be reasonable in terms of the degree to which this potential gift can be shared with other people. And I think it's in that sharing that we run into the question under all the discussions that we're having.

TAD HEUER: All right.

THOMAS SCOTT: But it's a house. I mean, the way you share it is you use it. And you use it for functions. You use it, you know, to, you know, to just expound on the values of it and in terms of its significance.

BRENDAN SULLIVAN: Couldn't you buy it, couldn't you have an individual, two individuals who live there and it become a living artifact that then, you know, you could still have your -- you can still show it off or something like that, but that it actually is in a use that it was intended for as in residence and not --

DEAN MOHSEN MOSTAFAVI: And in my --

BRENDAN SULLIVAN: And I don't mean to be little bit by saying classroom.

DEAN MOHSEN MOSTAFAVI: Believe me, we do not have any intention of using this place as a classroom, quote, classroom. We see this as a house and we want to preserve it as a house. I think this is very important.

I think from a personal perspective I would say that Mr. Sullivan discussed the condition of the house and the materials of the house. If we were lucky enough to be

granted permission, we would attempt to preserve the house, but actually the materials, we're not going to try and have a situation where I think suddenly this house becomes hundred percent robust. I think we have to acknowledge that there is some, some condition of fragility that goes hand in hand with this house. This is not like a house that we might build today. Therefore, that fragility means that the way that the house used also has to be used under special circumstances. If you go and use or visit the Frank Lloyd Wright House, they ask you put, you know, white socks on, to be careful how many times you're using it. And therefore I am personally -- these things have not been worked out. But I'm personally conscious of the fact that the degree of use will actually need to be something that needs to be thought about in terms of its relationship to preservation. You cannot

treat this thing like some robust concrete structure that you can utilize it in enormity fashion as you may any other house. So I think this fragility is something that raises certain questions for me in terms of the idea of constant use in the same way.

ALEXANDRA OFFIONG: I'd just like to add one thing. The idea was is there a potential of keeping it as a residential use but using it, for example, for occasional institutional uses. We don't feel like that is consistent with Zoning and that would be a way disingenuous and that is why we are pursuing this. And if the building were -- if the house were actually used as a residential use, it would be inappropriate for us to have an occasional scholar come to look at the house. That really is a private function we see. And so we don't feel that to name it as a residential use is not really consistent with how it would be used, even

though there could be occasional overnight guest for example.

TIM HUGHES: I notice that you have your hand up, but the time for public testimony has been closed. I'll entertain a question but I won't entertain any speeches.

Any more questions from the Board? Any more comments or questions from the Board?

DOUGLAS MYERS: Are we going to have a chance for discussion?

TIM HUGHES: Absolutely. I have a bunch of letters here I have to read into the record.

From James Ackerman, Arthur Kingsley Porter, professor of fine arts emeritus, Harvard University. "I write to support the request of the Graduate School of Design at Harvard." And that's all you're getting out of that one.

From Jacqueline Baba (phonetic).
University Committee on Human Rights

Studies, also a letter in favor.

From Werner Solars (phonetic), 9 Wyman Road, Cambridge, Mass. "I'm writing in support of the proposed change in use from residential to institutional ownership of the house at 9 Ash Street. Many such changes may be problematic because they threaten to transform the historically grown residential neighborhood into an area interlaced with such enterprises as computer companies, dental offices or funeral parlors. The change proposed here would have the opposite effect. It would actually help to preserve one of the earliest works of the important architect Philip Johnson who went on to have a remarkable career. The institution requesting the change is the Harvard School of Design, and this change would actually make possible the preservation of this extraordinarily important house and keep it safe from any This Old House style

transformation that individual ownership might bring about in the future. As a Cambridge resident who lives close to the Johnson House and walks by Ash Street almost daily, I would be delighted to see the City Council vote in favor of the motion at hand." Unfortunately we're not the City Council.

Tooney Hamlin Howe (phonetic), 19 Brattle Street. "As an abutting neighbor of 92 Brattle Street and also owner an owner of the nearby property at 8 Acacia Street, I wish to confirm my delight to have this historic and unique property owned by Harvard University as a study house for the architectural and design department. Deeded to Harvard it would be maintained as a historic structure and frankly augment the real estate values and aesthetics of this residential and academic neighborhood. Harvard has done a fine job with their Cronkite Center and welcomes neighbors."

Meg Costa, 121 Brattle Street. "I'm writing in support of the Harvard Graduate School of Design's initiative to use the Philip Johnson house on Ash Street as a place for design students to hold seminars. I can think of no better or more appropriate feature for the building and would be delighted if it were to be approved by your Board. I'm quite sure that if Mr. Johnson were here, he would love to see this happen. Finally, I believe the GSD as a body dedicated to design education is the ideal custodian for a building of such historic significance." We've got both words in that one, historic and significant. "I have faith that they will be excellent neighbors and will take good care of this site now and in perpetuity, freeing the city to direct its attention on resources to other important matters."

Irse Gauchet (phonetic). That's a

guess. "I live at 154 Brattle Street and I'm also an alumnus and former professor of architecture at Harvard. For the last 20 years I have been deemed the College of Architecture and Design at the New Jersey Institute of Technology. The Philip Johnson house is an important building. It seems highly appropriate to have this structure accessible to architecture students and Harvard faculty as a study object. It is also a suitable facility for intimate meetings and seminars. The limited size will ensure that only a handful of people can use the Johnson House at any one time. It should have no negative impact on the neighborhood. I'm strongly in favor in allowing an exception to the present zoning so that the Johnson House becomes accessible to generations of future architects and their teachers."

I'm going to do the short one first.

I'm gearing up to the other one. Ann Howley (phonetic) at 154 Brattle Street writing to support the application by Harvard College for Zoning Variance for the Philip Johnson House. She says much of what you've already heard so I'm not going to read the whole thing.

And William Trusload (phonetic) at 4 Hawthorn Street. "I'm writing as a resident of the block in Cambridge in which the house in the above zoning matter is located. My wife and I live in the one of the two units comprising the Henry Vassal House, an historic house located at the corner of Brattle Street and Hawthorn Street in Cambridge. The house at 9 Ash Street is located at the diagonally opposite corner from us in a small block defined by Brattle, Hawthorn, Acacia and Ash Streets. Because of proximity we have good reason to be very interested in what goes on at 9 Ash Street.

I'm writing to express our support for what we understand to be the proposed institutional use of the Philip Johnson House at 9 Ash Street. Namely, used by the Harvard Graduate School of Design for such things as occasional small meetings, study seminar purposes and for occasional occupancy by scholars. Because of its extremely small size, the potential uses of this house are very limited. There are two pieces of personal background information that inform this letter." And if you're interested and the background information, it will be on file at the office. And that's the part and parcel of the letters in support -- of the new letters of support I should say.

Discussion from the Board.

DOUGLAS MYERS: One preliminary question, really two preliminary I believe. First of all, the hour is late. We've spent a lot of time doing this. I am really

reluctant to say that I want to discuss the conditions at this point.

Although -- because I feel that would take a lot of time. So I know at the last meeting Mr. Heuer raised a procedural question of whether or not we have to vote on everything together or whether there's a way of structuring the vote so that we don't have to discuss possible modifications and conditions now and then get that tangled up with a vote on approval. I just raise that question as something the Chairman may want to consider at some point.

TIM HUGHES: Well, I mean I think that all we have in terms of documentation to hinge the commitment on the graduate school of design and what they've said would be the uses of this is this letter of October 30th. And that could be in a motion, that could be -- what's the word I'm looking for? Well anyway.

TAD HEUER: Used by reference?

TIM HUGHES: It could be referenced in the motion. That this commitment letter is the Bible, if you will, of what the uses will look like at this location. Is there something more you would need?

DOUGLAS MYERS: Yes, if the Board were to approve this, I would really want to discuss the conditions further with an aim to restricting them in some respect of what I believe would be the interest of the neighborhood. And if that is something I should discuss now and ask the Board to act on now as modifying the conditions as presented by Harvard, I will do so although I really am reluctant to draw out this discussion on that subject.

TIM HUGHES: Well, I think that if --

BRENDAN SULLIVAN: Four people would have to agree to get to that point.

DOUGLAS MYERS: Okay.

BRENDAN SULLIVAN: I haven't gotten to that point on discussions on conditions.

DOUGLAS MYERS: Okay.

TIM HUGHES: I think what Brendan's saying is that unless there's four people who are willing to discuss it, the possibility of passing this thing then we shouldn't bother discussing it, right?

DOUGLAS MYERS: That's fine.

TIM HUGHES: If there's three people and we need to convince somebody or two people and two people want to talk about -- I mean, I don't see how we can get around talking about the conditions. If Doug's vote is going to be predicated on certain amendments to the commitment letter, then we need to talk about it.

TAD HEUER: I agree.

BRENDAN SULLIVAN: That's fine.

DOUGLAS MYERS: I don't want to

waste time and I certainly don't want to appear to be a nuisance here or hypocritical. I mean, I guess if I were to suggest improvement of the condition, doesn't mean I would vote for the approval. I don't want to take all the Board's time in discussing conditions which I would then encourage a vote against if you understand what I'm saying.

TIM HUGHES: I guess I don't understand why we would discuss it if amendments were made to it and you still wouldn't vote it.

DOUGLAS MYERS: Let's postpone that discussion.

TIM HUGHES: I don't think there's going to be a postponement.

DOUGLAS MYERS: Okay.

BRENDAN SULLIVAN: Yes, I mean I just can't get over the hardship hurdle at all. So I cannot support the Variance.

TIM HUGHES: Tom's already made some thoughts clear on this. Do you have anything else to say?

THOMAS SCOTT: During public testimony it didn't seem like any of the people who spoke talked about the conditions, at least to me. I don't recall anybody saying that they read them over and agreed to them or didn't agree to them. Did you hear one way or the other?

TIM HUGHES: I didn't hear anybody that spoke in favor of it say that they agreed to the conditions specifically. But I did hear testimony that all the abutters on a map that she showed us that's colored in had agreed.

THOMAS SCOTT: Had agreed to the conditions?

ALEXANDRA OFFIONG: Yes.

THOMAS SCOTT: Had the conditions been circulated to all those, even those in

opposition?

ALEXANDRA OFFIONG: We have, we have an extensive e-mail list that we've been keeping people informed. And these were sent out last fall. We reissued them about a month ago. We handed them out at the open house. So I think everyone's had ample opportunity to read and review.

TIM HUGHES: Consequently, I didn't hear the people that spoke in opposition speaking specifically to conditions either.

THOMAS SCOTT: No.

TIM HUGHES: They talked about the more specifically maintaining the residential character and they talked about Harvard University encroaching as an institution a lot, but not specifically that this -- that this house, if it was owned by the GSD, would be a problem. I didn't hear that tonight. I mean, there was probably some testimony earlier. I'm in favor of the

petition. But, you know, it's like I don't want to waste any more time if it's going to down in flames, you know? I said it at the last meeting and I haven't changed my position even though I've heard some different things. I still think the Graduate School of Design is the best trustee for this piece of property.

THOMAS SCOTT: I'm in favor of it.

TAD HEUER: I'm in favor of it, too. And I actually will spend a bit of time because I think it's useful and perhaps that maybe I can persuade my fellow Board member to my left. I think Harvard does have a hardship here because it's not a situation where we have a property that could be used as a residence as we think of residences usually when we're looking at Variances that we're granting. Here it has all the constituent elements of a house and, therefore, is a house and it's a reason you

would want to preserve it as a house. I don't believe that it necessarily is a home in that something that someone can use in a four-season way. It doesn't have a basement. It doesn't have storage. It doesn't have an attic. It's a very uniquely shaped structure on an undersized lot. It's not something that would be built today. It would certainly not meet code in certain ways. I think the fact that it could be used as a structure to be lived in for temporary periods of time in the contemporary society, doesn't necessarily mean that it's something that could be lived in permanently nor that anyone would wish to live in it to the extent that it is right now as essentially a museum piece. I think liveability is an issue. I think the analogy to the New Canaan situation is apt. In New Canaan you have essentially a house that's been divided into six or seven structures. The rooms are placed distinct

from one another, but the house is the collective of those seven structures. Here we just have the one structure, the glass portion of it. And I think that makes it distinguishable from something that could be used as a home as opposed to a constituent elements of a house.

I agree, you know, the fact that Harvard's the buyer and Professor Tribe has elected for whatever reason to engage in Harvard and only Harvard his right and their right. I don't think that Professor Tribe is under any obligation to find a private use purchaser if he doesn't wish to find one. And I don't think that Harvard should be held to a standard of reverse hardship. In fact they have enough money to restore it and use it as a residence, essentially take a loss on it because they can. I think the standard is as particularly set forth, that if there is a hardship regardless of who the owner is,

whether it's financial or the shape and size of the lot, who that owner is, that owner could be is essentially material to our legal position as a Board.

I would point out that all the block abutters, the members who are the owners on the block are in support of it. I think that's important. That's something we usually pay significant attention to. I think the fact that the Variance be granted on conditions that would attempt to approximate as closely as possible the residential character and the use of the structure while not being a nominally residential use anymore is important. I think that intent is to not derogate from the purpose of the Ordinance. I think the way the Ordinance was originally structured, it was an attempt to keep encroachment of industrial from residential. For example, we don't want the stone mason next to the

apartment building.

Here we have something that is compatible. It's a residential structure and it's not being changed as a structure. What's being changed is the use of it. And if the use of it is going to be similar to the greatest extent possible as a residential use, I think that the integrity of the district is not being harmed in that respect.

I also would point out to the Board that just last month we did grant a Variance to a residentially-zoned property for a retail cafe use in a structure that was residential. We did it because we felt there was a hardship to the viability of the use of a that residential structure as a residence in that location. And I think that a very similar analogy could be drawn to this situation. So, for all those reasons I think that Harvard does have a real financial hardship and I'm in favor of granting this Variance.

DOUGLAS MYERS: I think the Board ought to act with extreme caution when it's asked to approve a use Variance in a residential community. I think that the ultimate question for us to determine the question of hardship is whether or not this house is viable as a long-term single-family residence. And I think that while there is considerable evidence, some in dispute, I don't think even Mr. Charles Sullivan himself denied that it was viable and can be used. And before we disregard that and try to find grounds for a hardship on a case that I think is a very thin hardship case, I think we have to consider the implications of changing the use, and I think that we have to consider the effect of the conditions as presented by the applicant in terms of their impact on the community. These are not insignificant conditions. They contemplate a degree of use that will undoubtedly have

affects on the community.

I do think that the hardship case is thin. I really cannot agree that the shape of this house as a structure is such as to give rise to grounds for a Variance. And I also think that questions of its design and materials are not persuasive to me on those grounds.

So, what we're being asked to do here really, I think, is to act as -- to preserve a property of architectural significance, under circumstances where due to highly unusual circumstances the Historical Commission is not in a position to act. And this area is -- if we were to, I think, grant this Variance on the grounds of hardship, we would -- simply because we wanted to preserve an object of undoubted architectural significance, we would open arguments for use Variances based on any number of houses in the vicinity that are built by distinguished

architects; Peabody and Sterns, Henry van Brunt, H.H. Richardson, Hugh Stubbins. Slightly further away, Dean Louise Cert. I think the Board could be faced with institutional acquisition of these houses if we simply act on the basis of a desire to preserve objects of architectural significance. I believe we, the community and the public expects us to follow the Ordinance. And I think the case under the Ordinance is insufficient so I would vote against it.

TIM HUGHES: And there you have it.

I'm going to have to make a motion in the positive. I have to -- I respectfully disagree with Doug and Brendan about the hardship. I think that there's -- the way that this hardship is phrased it doesn't -- you don't have to find hardship with everything here. You don't have to find hardship with soil conditions and shape and

topography of the land and the supported structures. It can be just one thing. And I think the hardship here is the shape of this building, not just the shape it's in. But the fact that it is of historical significance is a hardship. It's -- that's the thing that we're trying to preserve here. And I, you know, you know, maybe we would set us up for institutional acclimation for a lot of the other buildings in the neighborhood, I don't know. But this particular building I think is its own hardship. That it's a historically significant architectural piece in a neighborhood that it doesn't look like it belongs. And I, you know, but I can't -- I mean, I'll make the motion and watch it go down. What else are you going to do?

ATTORNEY MATTHEW KIEFER: Can I make one comment about Mr. Myers here? I'll be very brief.

On your finding of hardship you said that you thought the case was thin. Thin is enough for you to exercise your discretion. In other words, the hardship doesn't -- the house doesn't have to be unusable. It doesn't have to be extreme. The courts use words like unsuitable, economically infeasible, unreasonable. That's enough. It doesn't have to be a thick case. A thin case is enough. So, if you want to exercise your -- you have the discretion to make a determination here, but you seem concerned that somehow in doing it here you're going to open the door to future cases that you're not going to like. And I would just observe these are very particular circumstances with this house. It's a very unusual house. You're making a determination here with regard to this house. It doesn't require you to make that determination. If H.H, Richardson House may be very suitable for

residential use just because it was designed by H.H. Richardson, you don't have to determine that a famous architect is unsuitable for residential use.

DOUGLAS MYERS: I would exercise my discretion.

ATTORNEY MATTHEW KIEFER: I urge you to think about whether a thin case is enough to act in a way that will ensure the preservation of this resource.

ALEXANDRA OFFIONG: And one more point. We know that there are many significant houses in Cambridge architectural wise. But the one different point about this house is that the wall that surrounds this house, the nine-foot privacy fence, is unique and is the reason why the house cannot be protected through the regular mechanisms of preservation. So this, that is a different character of this house.

ATTORNEY MATTHEW KIEFER: If I could

also, Mr. Sullivan, you mentioned that you were not able to get there on hardship. And I just thought before you make a motion and put this to a vote, if there's an opportunity to have any further dialogue about that, if there's some particular aspect of this that troubles you, that we might be able to discuss.

BRENDAN SULLIVAN: Well, I mean I've read the pleadings and, you know, I have other things that I draw on. And I put more weight to that than some of the pleadings that I've read in your submittal. So, I just haven't gotten over that threshold, that hurdle.

ATTORNEY MATTHEW KIEFER: When you say the things that you've read, you mean, the decision that you quoted from earlier on the use variance? Or what was it?

BRENDAN SULLIVAN: Yes, some of the language of the Court. You know, going back to the pleadings here, the memorandum that

was submitted and I really don't see the correlation between the cases that were cited and the circumstances here where we have an existing residential building and, you know, courts have found that use variances can be granted where it's not economically feasible for a house to be used for the intended purposes which is allowed in the zone. And I'm not convinced that it cannot be reasonably used for the purposes for which it was intended. And that is in compliance with the Ordinance.

ATTORNEY MATTHEW KIEFER: Right.

So, the testimony --

BRENDAN SULLIVAN: Which sort of comes down to dollars and cents. In other words, economically feasible then it comes down to money. Well, how much money is it going to take to bring it up to a liveable level? And you add that to the purchase price and then you say well, it becomes, you

know, not economically feasible. Well, my retort to that is then the purchase price is too high. I mean, the property itself -- I think the house is assessed at \$115,000.

DOUGLAS MYERS: I guess, Mr. Chairman, I think the Board -- each Board member has stated his position, elaborated for reasons on the record for positions that we believe. And I think it's unseemly for the applicant to categorize Board members.

ATTORNEY MATTHEW KIEFER: That's certainly not my intention. I want to draw out the discussion to see if there were any additional readings of the cases or any other information that might help the Board make a decision.

ALEXANDRA OFFIONG: I just want to remind the Board of one more point. This house is in very deteriorated condition. There has been significant water infiltration. There are some structural

questions about the house. And the house -- whoever buys the house will need to invest a lot of money. If it is a private owner that purchases this house, we know that they're going to be making a significant investment into this house and it's -- the opportunity that they could very well, if they're not motivated by preservation, make some significant changes to the house. So I would like you to keep that in mind.

MARY POWER: I'd like to speak very briefly as well to the interest and understanding of the conditions. And one of the things we have struggled with is a way to effectively express what the Dean had stated, which is the intention of our use is to use it in a way that it's closely as possible that resembles the patterns of residential activity. While at the same time providing adequate flexibility to accommodate the patterns of institutional calendars. So

that we achieve what the Dean has stated, but articulate it crisply to address the very specific concerns and suggestions that were raised. I would like to say if there is a suggestion on behalf of the Board as to how we might accomplish that more effectively, we would be very interested in pursuing that.

TIM HUGHES: I just want to say one last thing. I did walk through the house with Doug. And I have to say this house situated in this neighborhood, for anybody to use this as a residence, I don't think you're going to find more than five people in the country that could spend that kind of money to buy it, preserve it and live in what is essentially a one-bedroom apartment. I mean, no -- I mean, you'd have to be really dedicated to this kind of architecture and preserve this thing in a way that an institution like the Graduate School of Design is for you to do that. And I think the

probability of finding a homeowner that's going to be do that, creates this hardship. It's almost impossible to find somebody that's going to spend that kind of money to maintain this house.

ALEXANDRA OFFIONG: I just have one more point.

TIM HUGHES: You had one more point one more point ago. Let's not belabor this. I'm going to make the motion.

The Chair would move that a Variance be granted for a change of use variance at 9 Ash Street. A literal enforcement of the provisions of this Ordinance would involve a substantial hardship, financial or otherwise, to the petitioner or the appellant for the following reasons:

The restoration and maintenance of this historic structure would only be viable and indeed would only be accomplished if the building could come under the stewardship of

Harvard's Graduate School of Design and be used for the institutional uses outlined in their commitment letter dated October 30, 2009.

The hardship is owing to the following circumstances relating to the soil conditions, shape or topography of such land or structures especially affecting such land or structures but not affecting generally the Zoning District in which it is located for the following reasons:

The structure of is of unique historical significance, not only in the Zoning District, but in the city as a whole and beyond. It is an undersized residence compared to the district in which it is located, and as such presents substantial difficulty in finding an owner with the commitment to restore or even preserve the significant structure. And its historical preservation is dependant upon the

trusteeship of an owner with the attitude and commitment of someone like the Graduate School of Design.

Desirability relief maybe granted without either substantial detriment to the public good for the following reasons:

The petitioner is committed to a level of use that does not substantially exceed the impact of a residential building.

And relief may be granted without nullifying or substantially derogating from the intent or purposes of this Ordinance for the following reasons:

The house, although designated as institutional, would be maintained in the character of a single-family residence. Am I leaving anything out?

All those in favor of granting the Variance?

(Aye.)

TIM HUGHES: That's three in favor.

(Hughes, Scott, Heuer.)

TIM HUGHES: And two against. The
Variance fails. The petition fails.

(Sullivan, Myers Opposed.)

(Discussion off the record.)

(9:25 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: 10 Fawcett Street. We're going to continue case 9911. Both Brendan and Mahmood were not here when we started to hear that case. We're going to continue to July 8th if you're available.

MAHMOOD FIROUZBAKHT: Not available.

CONSTANTINE ALEXANDER: Another date.

SEAN O'GRADY: July 22nd.

CONSTANTINE ALEXANDER: The Chair will make a motion that this case be continued until seven p.m. on July 22nd. A notice a waiver of time for reaching a decision is already on file since it's a case heard. And the case will be continued on the condition that the petitioner once again modify the

sign to indicate the new hearing date.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(9:25 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case 9876, 136 Fayerweather. Anyone here wish to be heard on that matter?

Please come forward. Are you the petitioner?

FEMALE AUDIENCE MEMBER: I'm a neighbor.

CONSTANTINE ALEXANDER: You'll have an opportunity. The irony of ironies, the last case was all about whether we should tear a house down, and you're coming before us saying you want to tear a house down.

SCOTT KENT: We would like to, my name is Scott Kent and I live at 152 Vassar Lane and I'm a coowner of 136 Fayerweather Street. I have additional copies. You may want that.

CONSTANTINE ALEXANDER: You don't have the additional copy of the dimensional form, do you?

Okay. Just to put this case in a little bit of perspective and to move it along. You're here before us before. You want to tear down a two-family house and build a single-family house. You need Zoning relief. The Board members had some problems with the plans you had before us, and you went back and redesigned the new plans right here.

SCOTT KENT: Yes. And I apologize for the last time. I think what we had was a misunderstanding of one of the initial statements I made about the square footage of the house.

CONSTANTINE ALEXANDER: Yes, I noticed that.

SCOTT KENT: And so what we -- well, it wasn't -- I think the dimensional form was consistent with what with what we were -- but

my initial statement we were not adding square footage to the house. There had been multiple applications to the Historic Commission and then we were here once. The last meeting with Historic was actually a requirement of the design where we added dormers that were more in keeping with what they like to see, and so those dormers actually added square footage to the shell of the house. That was last time.

So this time what you're seeing is we're maintaining those dormers for the most part. It will add square footage to the top floor, but we've deleted some structure and some square footage from the rest of the property so that the overall square footage of what we're proposing is less than what exists now.

CONSTANTINE ALEXANDER: By 14 feet.

SCOTT KENT: By -- oh, the difference between 80 and 66. A little more than that. Yeah, so 14, you're right.

CONSTANTINE ALEXANDER: I'm sorry.
14 feet.

BRENDAN SULLIVAN: That explains
the discrepancy between the two dimensional
forms and the existing square footage?

SCOTT KENT: The -- oh, well we've
got a change in existing square footage
because we were actually able to get into the
attic to measure our five foot of headroom,
which we had estimated prior to our BZA
meeting. We had estimated where the five
foot line was. We now know it's 13 foot, six
wide up on that top floor. That is the
existing number changed based on us able to
get into the attic.

CONSTANTINE ALEXANDER: You're
standing behind the number that's in the new
dimensional form which is 2,880 feet.

SCOTT KENT: Correct.

CONSTANTINE ALEXANDER: Okay.
What struck me is troublesome was your new

number shows you're going to decrease the non-conforming FAR while the old number said you were going to increase the amount of non-conformance. That's a little bit of alarm bells at least in my head.

SCOTT KENT: Sure.

CONSTANTINE ALEXANDER: But you're here before us tonight, assuring us you haven't jury rigged the numbers. This is the right number.

SCOTT KENT: Yeah, and we'd be glad -- if a condition is necessary to impose a final determinant by an independent architect or something like that.

CONSTANTINE ALEXANDER: No. The burden is on you. If we approve it tonight, it's on this form, and if you misrepresent it to us, it's not the right square footage, your Variance will be useless.

MAHMOOD FIROUZBAKHT: So in effect you had over-estimated the five foot --

CONSTANTINE ALEXANDER:

Underestimated.

MAHMOOD FIROUZBAKHT:

Underestimated.

SCOTT KENT: There's more attic room than we originally thought. An older drawing shows about an eleven-and-a-half foot width and we have 13-and-a-half-foot width.

CONSTANTINE ALEXANDER: Where do you stand with Historical? I don't see anything in the file from Historical.

SCOTT KENT: We have actually passed the six-month period of moratorium on any demolition. So my understanding is that anything that happens here, now that we're into May is no longer technically within -- does not need to go back for their review because it would be a review under Historic. Although I think our design is in keeping with the last design which was what

we submitted last time, and it's largely about the dormers, the articulation of a lot of the term details, window massing. That's fairly consistent if you look in the file of, I believe, earlier iterations.

TAD HEUER: Is that accurate that Historic's six-month demolition order is not told by the Petitioner's own waiver of our time to vote on it?

CONSTANTINE ALEXANDER: I have no idea.

TAD HEUER: At which -- and so if we had voted at the time, and the Petitioner had voluntarily waived, it would have been subject. And now we're outside the subject we're not subject to it?

CONSTANTINE ALEXANDER: It doesn't sound right to me. But I honestly don't know the answer to that.

SCOTT KENT: The last time I talked to Sarah Burkes I had inquired as to whether

the last hearing would have -- if it required a design change, if it would require us going back to her. She indicated not. So we're now further along in terms of time.

CONSTANTINE ALEXANDER: Sean, can I ask you a question? We have a question here about the continuing involvement of Historical with regard to this case. And the Petitioner has represented that the six-month period has now run so that Historical is no longer a factor. That they're free to demolish. And the question is, it seems odd that that should be the case, and the case before us should be continued for six months. Is that your understanding as well?

SEAN O'GRADY: That's my understanding, but I can't, I can't profess to be really knowledgeable in that area. But that is my anecdotal understanding.

CONSTANTINE ALEXANDER: That's not

the case. Let's just say we're all under misapprehension and we were to grant you relief tonight, you're still going to have a problem with Historical.

SEAN O'GRADY: Charlie Sullivan is still in the hall. I can grab him if you like.

CONSTANTINE ALEXANDER: Get him back here. I think you would like to know as well. While we're waiting for Mr. Sullivan, is there anything else you want to talk to us about?

SCOTT KENT: Really it's a matter of --

CONSTANTINE ALEXANDER: What about parking? Where are you going to be on parking?

SCOTT KENT: So the massing of the building, we're proposing to completely reconstruct similar footprint. And while we were at it, while this structure is down, it

seems to make sense to us to try to bring the parking more into conformity. So the property has no parking at the moment as a two-family. We would propose to shift the footprint of the structure from a six-foot which is what the survey shows, to ten feet.

SEAN O'GRADY: I'm sorry, I hate to interrupt but Mr. Sullivan was on his way out.

CONSTANTINE ALEXANDER: I'm sorry. Hold that. Mr. Sullivan, we had a question for you. I'm not sure you recall. This is Fayerweather Street.

CHARLES SULLIVAN: Yes.

CONSTANTINE ALEXANDER: And we were told tonight that Historical no longer has any involvement in this because six months has run with regards to the demolition order. Is that true? I mean, because the case has been -- nothing has happened because it's been before us and it's been continued. But

we're wondering if that should not toll the six-month period from your Commission's perspective.

CHARLES SULLIVAN: Well, we toll cases for litigation for sure, and I'm not sure this circumstance has come up before. When the -- in an ordinary case when a six months' delay expires, the owner is free to go ahead and demolish, but not until he has all his permits lined up and is ready to build the project, the replacement project. That's a policy or -- not a policy, but an aspect of the Ordinance that is intended to prevent vacant lots. Speculative demolition just creates a vacant lot. So I think in this particular case, he's -- the six months goes and if you approve it, then he can get his building permit and we'll actually sign the demolition permit. But he couldn't get a demolition permit on the last day of the six months. If you turned him down, it

stands until he gets his replacement project permitted. Okay?

CONSTANTINE ALEXANDER: Thank you. I'm sorry to bring you back.

CHARLES SULLIVAN: Glad I was out there.

CONSTANTINE ALEXANDER: So are we. Sorry, go back to parking.

SCOTT KENT: The impetus here, we certainly have Zoning rights to rebuild this piece by piece as long as -- my understanding, I believe, it's at any given time as long as a substantial amount of the building is not taken down. It doesn't constitute demolition. It's often done you can replace, you know, every cell of the body of the house. And that's what is required here because the structure, every piece of wood in the superstructure is either twisted, not so much rotted, but just completely been twisted out of shape over a long period of time. And

that not being the main reason we're coming before the Board. The main reason being that the soil conditions require a substantial heavily engineered subsurface structure.

CONSTANTINE ALEXANDER: That justifies why you want to tear the building down.

SCOTT KENT: I'm just backing up -- yeah.

CONSTANTINE ALEXANDER: And I think the next question Mr. Sullivan raised the last time you were before us, okay, now you have vacant land. Why can't you build a conforming structure, single-family structure on this lot? Why do you need relief from us? Why should we grant you relief under these circumstances?

SCOTT KENT: Well, I believe that the Ordinance and this process of going before the Board allows for conditions that necessitate Variances for special conditions

and hardships, and I believe very clearly because of the geology under this building and the nature of this building, that it's almost condemnable building.

TAD HEUER: That's a hardship in a situation of I have wetlands on this corner of my lot and wetlands here. And the only place I can put my building is against the lot line. So we would say well, normally we don't allow you to put something against the lot line. But here you can't put it in the middle of the lot because you've got wetlands and it's illegal to build there. So we're going to let you build right up against the lot line even though we don't usually do it because the soil conditions have precluded you from building where you should be building according to the Ordinance.

Here you have a situation where your soil conditions are bad, but if they're bad, I take it throughout the lot, you're going to

have to stabilize by building a new foundation and a sub-foundation and driving down into it. But once you've done that, you can put a building exactly where you want it to be, dead center in the lot, and you can be at the right FAR. So why can't you do that? I understand why soil conditions come into it, but once you've got your level lot, you can build a conforming structure on it, right?

SCOTT KENT: Yes. And you can do that in almost any lot in Cambridge. And people ask for Variances from dimensional relief for a specific reasons that the Board might find reasonable.

TAD HEUER: Right. So that's a dimensional problem. That's not a soil condition problem. Soil conditions means I've got to put it on a specific part of my lot where I can't build it otherwise. You're not really here on soil conditions issue.

You're here on a dimensional issue. If it's a dimensional issue, then the question has to be why can't you build at the appropriate FAR? Am I --

CONSTANTINE ALEXANDER: That's the question. You've asked it much better than I've asked it. That's the point. You can build a single-family house on this lot that would be smaller by definition, but it can conform and less FAR. It would conform to the Zoning law.

SCOTT KENT: Right.

CONSTANTINE ALEXANDER: So you've got to convince us why we should allow you to build something that the Zoning law does not allow you to build on this lot. A building that is, quote, unquote, is too big. I guess that's what I haven't heard. I didn't hear it the last time.

SCOTT KENT: I think the economics are really driving. You know, it's not

any --

CONSTANTINE ALEXANDER: That's okay. But let's talk about that. You're saying to justify your building anything on this lot, you've got to build a building this big. Otherwise building that would be smaller and conforming is economically not feasible?

SCOTT KENT: It could be feasible if the market were different. If the prices of the properties transact at were different, yes. But, you know, it's just facing a reality of this market, this property is at a market value. It requires an exorbitant amount to return it to a liveable state. And so doing so, and then ending up with a property that is essentially maybe 40 percent less salable square footage is not economically viable.

TAD HEUER: That's because you overpaid for the property, right?

SCOTT KENT: That's only because this property needs a lot of work to return it to a liveable state.

TAD HEUER: That doesn't make any sense. Because if that's really true, then the price should have been factored into the fact that it has to come down and you can only build a 0.5 on it. And someone says it's a million dollar house. You say, it may be to you if you can keep it standing. But we all know you can't. It has to come down, and when it goes back up, it has to be a 0.5 which means it's only a \$350,000 house because that's how much we're going to pay you for it.

SCOTT KENT: Okay.

TAD HEUER: Right?

SCOTT KENT: Maybe. But I mean, I think that -- I think the Ordinance should allow folks to reconstruct a house in essentially in the same footprint which is a distressed property which is really up light.

It's a nice habitation for rodents at this time. But if the Board feels that reconstructing the house to a higher aesthetic level, at least according to the Historic Commission, that can now be a liveable residence is an unreasonable request -- the house is there, you know. We can build this house. This is what we can build by right. This is a dormer, for example, that we're allowed to build by right. We're requesting what we think is a reasonable and we believe we have a hardship. I don't know really, I'm dumbfounded.

CONSTANTINE ALEXANDER: You have to point it out, it's in the file anyway. You're going to maintain the exact same footprint of the existing building?

SCOTT KENT: Less in fact. Less. Yes, we're making -- this is a projection. It's a two-story will remain. There's some other projection on the front of the house

what I call the front, the Fayerweather side, that's being removed thus the square footage being net less than what is --

BRENDAN SULLIVAN: The house is coming forward too, I think, is it not, Scott?

SCOTT KENT: The house would be coming toward the corner yes, at least four feet.

BRENDAN SULLIVAN: And that's to accommodate a parking space?

SCOTT KENT: Yes. Now, we would, we could also entertain not moving the house but we actually think it enhances and increases the non-conformity as well, so....

CONSTANTINE ALEXANDER: To me that's --

BRENDAN SULLIVAN: If you're going to go through this whole exercise and not provide an off-street parking, it's an exercise in futility. Then you're hitting the bad spot of a bad market. But again,

markets tend to fluctuate, too. You know, this house will be there forever.

Do you have the dimensional form?

CONSTANTINE ALEXANDER: The new one or the old one?

BRENDAN SULLIVAN: The new one I guess. Thanks.

CONSTANTINE ALEXANDER: I know there's at least one neighbor here. Does anyone have any further questions before I open it to public testimony?

MAHMOOD FIROUZBAKHT: For my sake can we walk through the areas of relief that you're requesting are?

CONSTANTINE ALEXANDER: Yes, I can help you with that.

MAHMOOD FIROUZBAKHT: With all the changes in the project, I sort of want to make sure --

CONSTANTINE ALEXANDER: From looking at your application, you can tell me

if I'm right or wrong. You have an FAR issue.

SCOTT KENT: Yes.

CONSTANTINE ALEXANDER: The District only allows a max of 0.5 and they want to go to 0.84. In fact, the current structure is 0.85. That's the point he was making earlier. Slight reducing the FAR but it's not conforming.

The other issue is a rear setback. And that is -- you're supposed to have 15 feet. Right now it's 9.4 feet, so it's non-conforming, and they've got to get it a little closer because they have to go to six feet. They have a rear setback issue and FAR issue. Am I right?

SCOTT KENT: You're right.

MAHMOOD FIROUZBAKHT: Is that rear setback because of the stairs, that's setback violation?

SCOTT KENT: Well, I believe if we're referring to the same thing that we're

talking about the setback facing Seville?

CONSTANTINE ALEXANDER: It's a corner lot. The rear setback.

SCOTT KENT: They're all kind of fronts and sides.

MAHMOOD FIROUZBAKHT: So what I'm looking at, this corner is the problem?

SCOTT KENT: Yes.

MAHMOOD FIROUZBAKHT: Okay.

SCOTT KENT: The side where we have the main entrance should be conforming and also the parking space itself is conforming.

MAHMOOD FIROUZBAKHT: So where you're abutting your neighbor back here, you're conforming there?

SCOTT KENT: Yes.

CONSTANTINE ALEXANDER: And the reason you have that corner problem, again, is because of the parking -- to get the parking back there.

SCOTT KENT: Yes, sliding the house

forward.

MAHMOOD FIROUZBAKHT: So the structure is forward.

CONSTANTINE ALEXANDER: And that touches the corner.

MAHMOOD FIROUZBAKHT: So in effect the setback issue is at a corner where we typically would be concerned about light, air, proximity to abutters, you don't necessarily really have that problem there because it's just, you're very close to that street corner.

SCOTT KENT: Yeah, and if it matters, there is a large -- I don't know what they call it, a traffic calming almost as big as a small park that's been built that's a buffer.

CONSTANTINE ALEXANDER: Is that city owned?

SCOTT KENT: Yes.

CONSTANTINE ALEXANDER: There's a

park right in front of it. A green area, green space.

You have a very unusually shaped lot. Besides soil conditions, you have a lot that's a corner lot, not a classic corner lot, semi-circular. And you've got a special conditions because in terms of the impact of setbacks, you're intruding on a setback near a large green area.

SCOTT KENT: Yes.

CONSTANTINE ALEXANDER: It's not like it's a house nearby. It's a park.

SCOTT KENT: And I might also -- if it matters very much, we're increasing the overall green space by virtue of eliminating the bay that was here and the various paved areas. And so that increases slightly on landscaping even with the parking space.

MAHMOOD FIROUZBAKHT: Thank you.

CONSTANTINE ALEXANDER: Brendan, do you have any questions? Questions?

TIM HUGHES: No.

CONSTANTINE ALEXANDER: Okay.

I'll open it up to public testimony.

Anyone wishing to be heard on this matter? Please come forward and give us your name and address.

ELLEN ARONSON: Okay. My name is Ellen Aronson. I live at 121 Fayerweather Street, which is across the street and it's two houses over.

CONSTANTINE ALEXANDER: You say right across the street, can you show us on here?

ELLEN ARONSON: Sure.

CONSTANTINE ALEXANDER: Here's Fayerweather?

ELLEN ARONSON: Yes.

CONSTANTINE ALEXANDER: You say across the street and two houses over?

ELLEN ARONSON: Yes.

CONSTANTINE ALEXANDER: Up here

let's say?

ELLEN ARONSON: Yes.

CONSTANTINE ALEXANDER: Okay.

ELLEN ARONSON: Yes. And I am here tonight and I appreciate being heard.

I'm a bit concerned because the builder of the house which is Copley Design, I think. Are you a partner? Because I'm a bit unclear.

CONSTANTINE ALEXANDER: That's not relevant to us.

ELLEN ARONSON: Okay. Well, if you don't mind, I want to bring that up because the developer has built other houses in the neighborhood, and that poses a bit of a concern if this were built in a similar fashion.

One of the things that I wanted to check and ask is that first of all, that the footprint of the house at least be consistent and conform with the rest of the houses in the

neighborhood, and that the front door face the street. Because there was another house that was built by this developer where the front door was pushed off to the side and a large fence placed around it to essentially form like a compound on the street.

CONSTANTINE ALEXANDER: Here's the plans.

ELLEN ARONSON: Okay.

CONSTANTINE ALEXANDER: And if I read it right, the front entry sort of faces the circle by Granville Road and it goes over to Fayerweather, right?

ELLEN ARONSON: I see. And where was the parking that you're proposing?

SCOTT KENT: The parking is off of Fayerweather. And we have actually changed the front door, the functional front door to make it off to the parking.

ELLEN ARONSON: So you no longer have the front door on Fayerweather Street?

SCOTT KENT: Right.

ELLEN ARONSON: Okay, that's where I have an issue as a neighbor because -- I'm sorry, I just wanted to show you, for example, this is the house in question on Fayerweather Street. And as you can see, it's extremely exposed and it's significant, you know, house on the neighborhood. Because it is on the corner. And I have another picture as well. And I can pass this around. I just wanted to give you a sense of -- if I can just pass that around. And, you know, it's a neighborhood of two-family houses for the most part. And personally I don't have an issue with it becoming a single. But what I do have an issue is with is a house like the other one that was built by this developer which is on Vassal Lane. And as you can see, the front entrance was shifted, and there's a very large fence around it and it essentially is cut off from the rest of the street. And also

the -- I don't think you can see it on this picture. Oh, here there's another one here of Vassal Lane. The other houses they built where the vents are facing the street. It's really unattractive. And I just think it's very unfriendly. And so I just feel that I would love to see the front door be where it was or facing Fayerweather Street if it's a house on Fayerweather Street. This is the house on Vassal Lane.

CONSTANTINE ALEXANDER: Here's your proposed site plan. Where's the front door going to be?

SCOTT KENT: It's going to be next to the parking space.

CONSTANTINE ALEXANDER: Show me.

SCOTT KENT: Right here.

CONSTANTINE ALEXANDER: Right here? That's going to be the front door?

SCOTT KENT: That's going to be the usable door.

CONSTANTINE ALEXANDER: What's this?

SCOTT KENT: There was going to be a door there. It was eliminated.

TAD HEUER: So if I'm looking at the --

SCOTT KENT: If you see the elevations.

TAD HEUER: That's A-7; is that right?

SCOTT KENT: Correct.

TAD HEUER: A-7 is the front of the house?

SCOTT KENT: That's the corner of the house. That's facing the corner.

TAD HEUER: What most people would deem to be the front, right?

SCOTT KENT: Which is most publicly visible side, yes.

TAD HEUER: Right. I'll call it the front.

CONSTANTINE ALEXANDER: I'll call it the front, too.

SCOTT KENT: So that door was eliminated and felt it was not actually going to be used. And in the scheme that came before the Board prior as a formal entrance.

CONSTANTINE ALEXANDER: So the only way into the house is going to be through the parking lot?

SCOTT KENT: There's a second door which is central to the yard that's created off of Granville. That area here. Now, elimination of this will create a -- one of the few semi-private parts in there will be landscaping steps here and two egresses. Anyway, but I can --

TAD HEUER: So which one is that, that's A-5?

SCOTT KENT: That is A-6.

TAD HEUER: There's a door on A-6?

SCOTT KENT: Yes.

TAD HEUER: Oh.

SCOTT KENT: It's a patio door.

TIM HUGHES: That's a door? It looks like a window.

CONSTANTINE ALEXANDER: Raise the landscape landing. It does look like a window.

BRENDAN SULLIVAN: Facing Seville Street on the site plan, covered entry landing.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: What's the function of that?

SCOTT KENT: Well, it had a door in it. It's basically, at this point it's got a half bath and a fireplace next to it.

BRENDAN SULLIVAN: But it says entry landing.

SCOTT KENT: That should be -- that's a graphical --

CONSTANTINE ALEXANDER: You know

our rules. You're supposed to come before us with the final plans.

SCOTT KENT: These are the final plans.

CONSTANTINE ALEXANDER: Except your final plans shows a covered entry landing that's not a covered entry.

SCOTT KENT: I apologize that can be construed as -- excuse me.

CONSTANTINE ALEXANDER: What else is not as shown on this plan? Nothing else?

SCOTT KENT: Not that I'm aware of.

ELLEN ARONSON: I guess just my last comments and I don't want to be difficult because I do support, you know, progress and the renovation of this house. I think it needs it. But my biggest concern is putting a large fence like the one on Vassal Lane around this house, because it will really cut down the visibility on this corner. Because it's very well used by people. And I know

that fencing doesn't really come under Zoning, however, since one is asking for a Variance here, I feel that as a neighbor, that that should be taken into consideration and that there be a fence no higher than four feet. I think that anything higher will completely change the character of the neighborhood, the street, and essentially create a compound on this corner.

CONSTANTINE ALEXANDER: And safety issues. If the fence were high enough, it might increase safety issues. If the fence were too high.

ELLEN ARONSON: Yes, absolutely. And in fact, the developer of this house also built and renovated -- well, they tore down a house on Chilton Street and rebuilt that. And the fences were too high and then one of the neighbors made a very strong plea to bring it down and he did. I forget his name, the other developer. You weren't involved in

that.

SCOTT KENT: I was involved in that.
I can comment on that.

ELLEN ARONSON: Okay.

SCOTT KENT: I'm unaware that the Chilton Street had any fences over too high. It's a basically a low fence in the front. There's a six-foot stockade fence on the other private yard side. And I just wanted to say with regard to the house that you see photographs of the green house at 150 Vassal Lane, that was custom designed for the homeowners and the entrance as well to their taste. The design -- original design on the building permit has a four-foot front fence. They opted for a taller fence because Vassal Lane -- Alpine Street basically dead ends into Vassal. They were getting headlights from the cars.

CONSTANTINE ALEXANDER: The issue for us is this property.

SCOTT KENT: Anyway, we would be glad to restrict the fence.

CONSTANTINE ALEXANDER: What are your plans for fencing along the street from Fayerweather?

SCOTT KENT: Ideally what we would have is this three and a half to four foot stockade fence on all sides except for what we would like to do is start with the abutter --

BRENDAN SULLIVAN: I will opt for no fence. Because I think that it is a critical --

CONSTANTINE ALEXANDER: Well, we haven't got there. We haven't gotten there yet.

BRENDAN SULLIVAN: -- corner.

SCOTT KENT: We think that some fencing can be a complement to a property demarcation, you know. But in any case we felt that this area here where there was an

attempt to create a patio, some privacy from a very busy corner, that a property owner might like a taller fence in that location which would be maximum amount to build which I believe is six foot in this area, and elsewhere lower because it doesn't, as I would agree, it doesn't serve anyone's interest to feel like you're in a penned-in area especially with the property proposed to move closer to the corner. We would have no problem with the lower fence.

BRENDAN SULLIVAN: And I would have a problem with any fence. So, I would not support what's before us if there is going to be any fence.

CONSTANTINE ALEXANDER: I take it by that you're not only a fence, but high bushes, too? You can put a row of very high bushes and have the same effect of the fence. You want nothing extending more than -- well --

BRENDAN SULLIVAN: Yes, right.

CONSTANTINE ALEXANDER: Nothing.

BRENDAN SULLIVAN: I think it's a critical juncture of three streets. It's open now and it should remain open.

CONSTANTINE ALEXANDER: What about the --

BRENDAN SULLIVAN: And what they're asking is the house comes forward.

CONSTANTINE ALEXANDER: What about the area of the fence that he's proposing? A small part of Granville Road.

BRENDAN SULLIVAN: No.

CONSTANTINE ALEXANDER: No fence period.

BRENDAN SULLIVAN: No.

CONSTANTINE ALEXANDER: Okay. I'm sorry, Ma'am, we've been going back and forth. Do you have anything you want to add?

ELLEN ARONSON: I just wanted to express my concern just because it's a highly residential neighborhood with a lot of foot

traffic and bicycles and young children in the neighborhood. And I do think that a high fence would pose a hazard. So that's my No. 1 concern. And that's all. So thank you very much for the opportunity to present this.

CONSTANTINE ALEXANDER: You're welcome. Thank you for coming down.

ELLEN ARONSON: I can add this.

CONSTANTINE ALEXANDER: We'll put that in the file.

ELLEN ARONSON: Thank you.

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

(No response.)

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

Further comments or questions from members of the Board?

I would say I support Brendan entirely. I think this is -- given its location, there

are all kinds of reasons why we don't want fences of any sort blocking this property. I think in particular since you're asking us permission to do this and to move the house forward, which brings it closer to the street, I would be concerned. A large fence or a large set of bushes all along this property line would really be detrimental to the neighborhood. So, I would support granting the Variance because otherwise you're only building the same non-conforming structure in terms of dimensions as you have now essentially. So I can sympathize with that. And you are going to put parking on the lot. That's another plus. But I think the quid pro quo is a fencing issue. That's where I come up.

Anyone else?

MAHMOOD FIROUZBAKHT: Can we -- what are the reasons for the opposition of fencing?

CONSTANTINE ALEXANDER: I think it just -- well, Brendan can express his view.

BRENDAN SULLIVAN: It's like a gated community. It becomes a private area. Yes, it's an amenity. But I think that there is a tradeoff here, and I think that is a very critical juncture of three streets coming together that would enhance a walled effect which I would not want to see. The house is coming forward. We're granting them some relief to build a larger structure. And by putting a fence around there, only adds to this mass.

MAHMOOD FIROUZBAKHT: Is that something that could be addressed through the material of a particular fence and the height? I guess I'm just kind of wondering out loud.

BRENDAN SULLIVAN: I'll tell you what's happening. We have granted Variances to a number of residences. One in particular

that really spikes my craw is the corner of Fayerweather and Huron Avenue where we granted a Variance many years ago and then they built this high fence. So now you've got to come down and peer out onto Huron Avenue for -- and again, because we don't have any control over fences, they can do as of right. And there's an awful lot of as-of-right fences that go right around and to me it looks horrible. And again Vassal Lane which is somewhat narrow, when that, and it was a fairly nice development I think as far as the structure was concerned, and then they ruined it by putting a fence up. And again this is sort of like this is our space, this is our, you know, whatever it may be patio and stuff like that. And I don't think it's friendly at all. And it's just -- it enhances all this massing where there was none before.

MAHMOOD FIROUZBAKHT: Right.

SCOTT KENT: Should I suggest that where the Board might consider yet a height restriction even, and a type of fence so that there's real sense of transparency whether it's picket or iron balusters not exceeding 42 inches at any point? You know, I just -- the sense of the property I think can be defined and complimentary way.

CONSTANTINE ALEXANDER: Well, I am sympathetic to something that's not even four feet, two feet or so. You have demarcation if someone walking the dog, the dog doesn't walk on the person's property. Four feet strikes me as even as too high. But I can be sympathetic to a very low fence. You guys have anything to say?

TIM HUGHES: I don't specifically hate fences. I specifically hate that cheesy looking stockade fence that you --

CONSTANTINE ALEXANDER: I don't think we should get into that.

TIM HUGHES: That. I hate that kind of fence.

CONSTANTINE ALEXANDER: Yes, that's terrible.

TIM HUGHES: But I think a fence that doesn't block a lot of vision and a lot of light can be tastefully done.

CONSTANTINE ALEXANDER: Anything to add?

TAD HEUER: I don't really care one way or the other about fencing. My concern is you turned the back of the building into another building that I get a sense at least from these photographs having looked at the site, it's got eight feet from the new front door and stuck a parking space right in the middle of it, right? You switched the front door to the back.

SCOTT KENT: Well, the current location of where we proposed is I would say not exactly, but within two to three feet of

the current shared door to this.

TAD HEUER: Right.

SCOTT KENT: And there are three doors to this house.

TAD HEUER: Right.

SCOTT KENT: That one to us seems to be the most obviously daily used.

TAD HEUER: Right.

SCOTT KENT: We -- I -- there was a reason why there was a door within this which didn't get revised. And that is because it's the most formal facade as a front.

TAD HEUER: Right.

SCOTT KENT: And if the Board -- if it felt strongly about it, we can amend that plot plan within the structure. Return that door, probably it won't get used but, you know, it may enhance the elevation to a certain extent I would admit.

TAD HEUER: My position would be that it's a prominent corner for all the

reasons that Brendan has raised in terms of like with the visibility of fencing. It's a house on the corner and probably the building is reversed. I mean, essentially in my view you've turned the building around. You've made it as you described it, the most functional door, and I would agree with that. And I think people coming out of their car don't want to walk all the way around the house to walk in. But, you know, to me, that does almost as much as that fence does to that structure to say this is an unwelcoming -- we have this big lot around us, but we don't want to interact with it at all. It just happens to be in the way of the house to the street. I think turning it around and having a front door where I presume there's always been a front door until now, would be the most appropriate use -- the most appropriate placement for a door even if it's pure ceremonial and non-functional for daily use,

reading the house in that way is really the most appropriate configuration to have an actual door there as opposed to whatever it is, a covered en --

CONSTANTINE ALEXANDER: Covered entree landing.

TAD HEUER: Well, no, if you look at the actual elevation, it's a covered bump-out and a flew. I have to say when I looked at this, I just presumed this could not have possibly been this side that was visible on three streets. It looks like the kind of thing that you add your bump-out back garden bathroom into and then you stick a fireplace because that's where it's utilitary to do so. A lot about this house is utilitarian and there's a lot I don't really like about it, but there's only so much I can do but that's where I think I let that go.

CONSTANTINE ALEXANDER: Members of the Board? Want to make any further

conditions that the plans be modified to require that there be a door where there's now a marked covered entry landing?

TAD HEUER: Well, there's no need to do that really. Just say it conforms with the plan on page C-2.

TIM HUGHES: That doesn't conform to the elevation on page five.

TAD HEUER: I understand that.

SCOTT KENT: Put the language in that we have to put a three-foot door in and that with the current window elevations we could do that.

CONSTANTINE ALEXANDER: I would like to see a plan. I would like to see some plans before I do that. I just don't want to do that on the elevations.

If it's the Board's desire that we see that --

TAD HEUER: It's my preference. For me it's almost a deal breaker.

TIM HUGHES: I do feel like -- I agree with Tad. It feels like the house is turning its back on the street.

CONSTANTINE ALEXANDER: It is. I don't understand why you don't have a front door and a back door, frankly. The back door is in the parking lot, and people who live in the house will drive in the parking lot and go to the back door, and then the front door is for the mailman and the guests and the like. The house is turned around.

MAHMOOD FIROUZBAKHT: I would like to have a door there maintaining the integrity of what was there before.

BRENDAN SULLIVAN: I missed the point I thought the front door was there. Because I saw covered entry. And I said oh, so, it's going back where it was now. Actually there were two entree ways to the house, were there not? The one on Fayerweather, was that upstairs?

SCOTT KENT: Currently?

BRENDAN SULLIVAN: Yes.

SCOTT KENT: Currently there are three doors on the house. There's a shared --

BRENDAN SULLIVAN: So Seville is downstairs and Fayerweather is upstairs?

SCOTT KENT: There's a door -- actually the door off of Seville is yeah, for the second floor, correct. And there's a shared entrance, what we show one is the parking space and one that's a first floor entrance off of Fayerweather.

MAHMOOD FIROUZBAKHT: To the extent that we have interested folks in the audience here, neighbors, that's one of the comments that we perceived from the folks in the neighborhood. So I kind of do think it makes sense for it to be a condition of a Variance we grant.

CONSTANTINE ALEXANDER: You want to

do a condition or just -- or do you want to see the actual plans?

MAHMOOD FIROUZBAKHT: I think we've had this discussion before.

SCOTT KENT: Because we do have in the last set of drawings, that -- part of that drawing is what you want I believe.

CONSTANTINE ALEXANDER: Which, A-7?

SCOTT KENT: I think it's still A-7 on the older set. On the set that was the last time of the hearing. Was it March?

CONSTANTINE ALEXANDER: The old one?

SCOTT KENT: Yes, I think that door was there.

TAD HEUER: It says October 27th.

CONSTANTINE ALEXANDER: These are the new ones. Page four.

SCOTT KENT: The new ones.

TAD HEUER: I have February 8th.

SCOTT KENT: Okay. February 8th.

TAD HEUER: That?

SCOTT KENT: Yes, that's it. That would be the door and the covered landing.

CONSTANTINE ALEXANDER: If we grant the relief that the door be inconsistent with that drawing, otherwise the project is consistent with these plans and subject to the further condition of the absence of the fence. And I would suggest, subject to my fellow Board members' consideration to allow a small fence around it, I think it's impossible to say no fence at all now that I think about it. Something that shows a border. But something that certainly doesn't block.

BRENDAN SULLIVAN: We can go from no and what was proposed and maybe I can be pulled back to small. But how do you define small?

CONSTANTINE ALEXANDER: Two feet.

TAD HEUER: How high is two feet?

MAHMOOD FIROUZBAKHT: What's there now? It looks a three-foot chain link fence which to me looks appropriate for that property. That height.

TAD HEUER: Maybe about here.

CONSTANTINE ALEXANDER: I'll go with the flow. I don't want a big stockade fence. If you want three feet or four feet.

MAHMOOD FIROUZBAKHT: I think the key is transparent. It would be three feet, or something like that, and between two and three feet and would be --

SCOTT KENT: Not to be solid?

MAHMOOD FIROUZBAKHT: Right.

SCOTT KENT: As long as we don't have to put a chain link fence back up.

CONSTANTINE ALEXANDER: Brendan, three feet, non-solid fence. No higher than three feet, non-solid.

BRENDAN SULLIVAN: Yes. Is he going to go back and redesign this project or

not?

CONSTANTINE ALEXANDER: No.

BRENDAN SULLIVAN: We're going to substitute that for --

CONSTANTINE ALEXANDER: Right. You can't -- if you want to modify this, if we approve this, you're going to have to come back before us.

SCOTT KENT: Modify the door?

CONSTANTINE ALEXANDER: The door.

SCOTT KENT: No. The rest of the drawings said --

CONSTANTINE ALEXANDER: Everything which you submitted now except for this.

SEAN O'GRADY: That's a seamless swap, the floor plans all match?

TAD HEUER: Do we care about the floor plans for your purposes?

SEAN O'GRADY: I just want to make sure I can swap the one.

SCOTT KENT: The change to

accommodate that door.

TIM HUGHES: The piece off to the left.

SCOTT KENT: There's a bay that we've taken out. But if the Board is making reference to this.

SEAN O'GRADY: You've got different dormers.

TIM HUGHES: That's not it.

SEAN O'GRADY: What am I comparing this with? I just want to make sure it's a seamless swap.

TAD HEUER: So instead of, just here. Instead of that block, that block. Entree way. Instead of this being a windowed bump-out, this is going to be --

CONSTANTINE ALEXANDER: These plans -- the new plans, except that. Yes. What you just circled.

SEAN O'GRADY: Good enough.

CONSTANTINE ALEXANDER: That's okay

from your perspective?

SEAN O'GRADY: As long as I understand what we're doing.

CONSTANTINE ALEXANDER: Sir, this is it.

TIM HUGHES: It's going to be the weirdest half bath I've ever seen.

SCOTT KENT: I mean, it's a better looking building. You know, I will comment I've been before the Board for Historic Commission. It sometimes helps me to make the case to the developer.

CONSTANTINE ALEXANDER: What about the dimensional form?

MAHMOOD FIROUZBAKHT: You have it right there.

CONSTANTINE ALEXANDER: I'm ready to make a motion.

The Chair moves that the Board make the following findings:

That a literal enforcement of the

provisions of the Ordinance would involve a substantial hardship to the petitioner. The hardship being that he has a structure that is in substantial disrepair due to soil conditions, and that as a result the structure is not economically feasible. And to a certain extent, not even inhabitable or could not be habitable.

That the hardship is owing to circumstances relating both to the soil conditions and the shape of the lot. So it's a very unusual lot. It's semi-circular around a corner.

And that the 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.

In fact what the petitioner is proposing to do is to create a new structure that is no more non-conforming than the old

structure.

That this structure will provide single-family housing to the community. And subject to the conditions -- and there is no detriment to the intent of our Zoning Bylaw if the following conditions are adhered to:

Namely that the work proceed in accordance with the plans submitted by the petitioner dated May 4, 2010. They're numbered CS, Z1, Z2, Z3, EX-1, EX-2, A-0, A-1, A-2, A-3, A-4, A-5, A-6, A-7 and A-8 and initialed by the Chair.

Except to the extent that the A-7 must conform with the A-7 of the plans submitted by the petitioner dated February 8, 2010, and have been circled and initialed by Mr. O'Grady. These modified plans relate to a front door and covered entry. So that there will be a front door facing the street at what's basically Seville Street.

And on the further condition that with

regard to the property line that abuts all streets, that there be no fence higher than three feet.

BRENDAN SULLIVAN: 36 inches.

CONSTANTINE ALEXANDER: And that the fencing be manmade materials or landscaping or plantings, be such that it's not a solid wall, but that there is visible through it. It's either you can see through slots of a picket fence or if there's bushes, they're sufficiently spaced so you can see through them.

BRENDAN SULLIVAN: That the pickets be no larger than two-inches-by-two-inches. And that the spacing be no greater than two inches between.

CONSTANTINE ALEXANDER: Okay.

MAHMOOD FIROUZBAKHT: No less than two inches?

BRENDAN SULLIVAN: No greater than two inches.

TAD HEUER: The pickets themselves be no greater than --

BRENDAN SULLIVAN: Two inches.

TAD HEUER: The spacing be no less than.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: The pickets be no greater than two inches wide.

CONSTANTINE ALEXANDER: And the spacing be can be no less than two inches. You don't want them too close together.

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

ELLEN ARONSON: May I ask a question? You said the front door would be on Seville, but it's on Fayerweather I believe.

CONSTANTINE ALEXANDER: It looks like this plan it would be facing Seville. I say it faces Seville.

ELLEN ARONSON: On Fayerweather?

CONSTANTINE ALEXANDER: No.

ELLEN ARONSON: So the front door is no longer on Fayerweather?

CONSTANTINE ALEXANDER: There will be a door on Fayerweather Street off the parking lot which might be functionally the front door, but there will be an addition -- it looks like a front door on the house facing Seville Street. So the house has the appearance of fronting on Seville Street.

ELLEN ARONSON: I see. I didn't realize that. I thought the whole -- I thought the house was on Fayerweather that -- it's 136 Fayerweather and that the front door is on Fayerweather. I didn't realize it was being turned around.

TAD HEUER: It's where the existing door is on Seville Street that faces Seville Street on the long side of the house. There's a door on the Fayerweather on the

short side.

ELLEN ARONSON: Okay.

TAD HEUER: That door is being removed.

SCOTT KENT: Multiple streets. Multiple front door.

MAHMOOD FIROUZBAKHT: This is it.

ELLEN ARONSON: It just doesn't feel like 136 Fayerweather.

BRENDAN SULLIVAN: The mailing address is different than the actual function.

CONSTANTINE ALEXANDER: All those in favor. I made the motion. Anybody wish to amend it? All those in favor of granting the Variance on the basis so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The Variance is granted.

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

(10:20 p.m.)

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

CONSTANTINE ALEXANDER: We'll get to our regular agenda. The Chair will call case No. 9928, 84 Grozier Road. Anyone here wishing to be heard on that?

You wish a Variance to build an addition?

JEFFREY FISHBEIN: Yes, that is correct.

CONSTANTINE ALEXANDER: And the reason you need a Variance is that you have an FAR issue. Get this on the record.

JEFFREY FISHBEIN: We have an FAR issue.

CONSTANTINE ALEXANDER: You're 0.75 in a 0,5 district and you want to go from 0.75 to 0.78, so a light increase.

JEFFREY FISHBEIN: It's slight

increase, yes.

CONSTANTINE ALEXANDER: No setback issues. You're all set.

JEFFREY FISHBEIN: The existing building, the existing structure has one non-conforming corner on the side yard, but the proposed addition is configured such that there are no issues with setback. My name is Jeffrey Fishbein, I'm an architect for the petitioner. And that's F-i-s-h-b-e-i-n. And the petitioners are Luisa Buchanan and Jay Scheide.

CONSTANTINE ALEXANDER: You want the addition because you needed additional living space. And usually the living space is another bathroom or another bedroom, or in your case you need space for a piano.

JEFFREY FISHBEIN: Yes, the petitioner is a pianist and there's no space within the house due to the existing rooms and ceiling height. It's very restricted. As

you can see, the piano fits physically within the space, but I mean Luisa can describe that sort of hardship better than I could.

LUISA BUCHANAN: Yes, I do recordings. And my piano is where I practice the recording in particular. I cannot use a recorder to tape myself to practice because the ceiling in the room, it's -- the piano's too big for the room. And so I would like very much to have a space where I can go and practice and tape myself and prepare myself to continue my profession. I cannot do and tape myself and practice. So, for instance, when I go to last time, I did a recording I tried to and the engineer told me I cannot hear you because I've been trying so hard to practice in my home. I need to have this space more importantly, the acoustical ambience beans to do this.

BRENDAN SULLIVAN: You bought the house four years ago?

LUISA BUCHANAN: Yes.

BRENDAN SULLIVAN: And where --

LUISA BUCHANAN: I was doing recordings in Germany and practicing. I now I would like to just practice and prepare myself, because my next project is huge for one thing. I would like to do (inaudible). I need to have this.

BRENDAN SULLIVAN: But when you bought the house, were there not obvious limitations to it?

LUISA BUCHANAN: That was my mistake. I must say --

BRENDAN SULLIVAN: You're talking as if you were talking in a telephone. Just bring it a little closer to you.

LUISA BUCHANAN: I did not realize I'm not an artistician. I just know what I know, and the piano was very loud. We tried every sort of thing, but it's just architecturally the sound bounces off the

windows and I could not do it. So I've been keeping the lid down and practicing very little. And I really, I don't want to have to travel to practice. It's my home. I'd like to develop my practice skills and get ready in my home.

TAD HEUER: So right now I presume that you've had someone come to look at your plan now; is that right?

JEFFREY FISHBEIN: Yes.

TAD HEUER: Is that difficult?

JEFFREY FISHBEIN: Is it difficult?

TAD HEUER: Yes, to get someone to come in.

JEFFREY FISHBEIN: No, no.

It's -- I mean, the ceiling heights and just the general shape of the space is an improvement. I mean, we can also adjust the -- use it, depending on the finishes within the room, we can provide for further adjustment. But it provides for a lot of

flexibility right now with the size of the space and the ceiling height. One of the things that we've done is we're actually reducing -- we're demolishing 175 square feet of the existing structure. So the addition looks larger than -- because as you can see, the offset between 0.75 and 0.78.

CONSTANTINE ALEXANDER: The total increase is about 140 feet.

JEFFREY FISHBEIN: It's still 140 feet of relief we're seeking, that's correct. Because currently in -- one part of the basement is being demolished. Whereas this is zoning here right now, it's at two stories. It's basement and first floor and now it's just one story in the addition.

TAD HEUER: And your basement's going to be under seven feet is that why?

JEFFREY FISHBEIN: Yeah, it's not habitable at all. It's not one of those basements that's like six-foot, eight and

we're using a technicality. I have a section if you'd like to see it. I think it's four foot. It's literally a crawl space. It's four-foot, three or four-foot, four. It's right here. Because currently the basement goes through to this edge, and this is a full floor here. So it becomes a four-foot, five inch space.

TAD HEUER: Right.

I guess my question is if it wasn't difficult to get a acoustician to come in when you're looking at house to buy them? Couldn't you have asked a acoustician to come in when you're looking at houses tos buy them?

LUISA BUCHANAN: No.

TAD HEUER: Isn't that one of the things you want?

LUISA BUCHANAN: No. It did not occur to me. Actually, the house looked very big and I thought, all right, good, it's big enough for a piano.

TAD HEUER: Okay. A tape measure could have told you that, right?

LUISA BUCHANAN: The piano it fits. I'm concerned with the acoustics. You can --

TAD HEUER: Right. So you know you have a room this big. Okay, the piano will fit, but, you know, this is really important to me because it's not just my kids who play the piano, it's my job. Don't you spend the whatever it is 300 bucks to have acoustician to come in and say if you put a piano in here, it's going to sound terrible.

LUISA BUCHANAN: They told me that after the fact. But all I need is the height. It wouldn't --

CONSTANTINE ALEXANDER: I think my observation is that we have people come before us all the time seeking additional additions, dormers usually to put another bathroom in. They buy the house, they know

the bathroom is not big enough. They want the house. They buy it. They live in it and they say gee, I'd like to have a bigger bathroom and we grant relief. And when people leave, that dormer or if that's what it was, stays forever. To me I don't see any difference between that case and this case. In your case it's not a bathroom, it's a room that you're going to put a piano in. It's a modest addition to the size of the house. It creates no other Zoning issues. It does make the house more habitable for the current inhabitant.

LUISA BUCHANAN: And some for him, too. But I can practice.

CONSTANTINE ALEXANDER: I'm not troubled by the relief. I think the people immediately react, frankly, to the fact that well, why should we allow you to put an addition on to put a piano in? You don't have to respond. That's a rhetorical question.

But the point is it's more space for someone who is using the house. And as I said, you can compare it to the bathroom or the extra bedroom. It's someone decided after living in the house for a while that they needed this additional space, and if the space doesn't create too much harm to the neighborhood, to our Zoning laws, I don't see why we shouldn't grant relief. I'm in favor of relief.

I think, by the way, you talked to your neighbors. Any opposition? No. I have letters.

CONSTANTINE ALEXANDER: I see hands being raised.

JEFFREY FISHBEIN: We have some letters in favor.

CONSTANTINE ALEXANDER: You have letters in favor.

JEFFREY FISHBEIN: From direct abutters. I'm not saying there's no -- I don't know these abutters. But these are

from direct abutters.

CONSTANTINE ALEXANDER: I'll read them in due course. I did see a hand up.

Do you want to speak on this matter? Please come forward.

BRENDAN SULLIVAN: It's now public comment, is that correct?

CONSTANTINE ALEXANDER: Yes.

JAMES MCGLENNON: Yes, hello. My name is James McGlennon.

CONSTANTINE ALEXANDER: You're the most direct affected by the addition?

JAMES MCGLENNON: To be honest I never seen any details of the plan or anything like that.

LUISA BUCHANAN: I have put the sign.

CONSTANTINE ALEXANDER: Here is the plan here.

JAMES MCGLENNON: Thanks. I've never seen them before. I'd like to get some

time to look at it though.

CONSTANTINE ALEXANDER: These were in the public file.

JAMES MCGLENNON: Oh, really?

SUSAN MCGLENNON: I'm Susan McGlennon and I'm his wife. We're very neighborly. We just don't want a decision made on something we don't know. On the paper that was sent, not the one that you guys sent, that the city sent it just --

CONSTANTINE ALEXANDER: Let me make a suggestion. You haven't seen it before. We'll recess this case. Take the next case, and it will give you -- while we're doing the other case, you take a look at these plans and then we can resume this case.

JOHN SCHEIDE: Tonight?

CONSTANTINE ALEXANDER: Tonight.

BRENDAN SULLIVAN: Go into the other room.

CONSTANTINE ALEXANDER: Why don't

you all go and explain things to them.

(Case Recessed.)

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(10:30 p.m.)

(Sitting Members: Constantine Alexander,

Tim Hughes, Brendan Sullivan, Tad Heuer, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9929, 95 Irving Street. For the record, give your name and address.

NIMA YADOLLAHPOUR: Nima Yadollahpour. We had this same exact project presented to you a couple years ago, 2008, and we had Historical approval and then you guys approved it and timing felt, you know, around fall of 2008 with the whole, you know, everything that happened with the economy, the client decided to put the project on hold. And so we lost the, you know, the six months that we had. So essentially we're just coming back with the same exact project. Nothing's changed. In fact, the drawings you have were the same exact ones that I gave you last time.

CONSTANTINE ALEXANDER: These?

NIMA YADOLLAHPOUR: Yes. And,

again, just asking for --

CONSTANTINE ALEXANDER: Sean, why didn't we see the other file? This is the first time I knew we had approved this once before.

SEAN O'GRADY: It should be here.

CONSTANTINE ALEXANDER: Make sure Maria when she puts the files, we get that file as well.

SEAN O'GRADY: That's common practice. I'm not sure why that didn't happen.

CONSTANTINE ALEXANDER: Okay.

NIMA YADOLLAHPOUR: So we had the presentation today for the Commission last month and we got that approved.

CONSTANTINE ALEXANDER: And the same plans?

NIMA YADOLLAHPOUR: Same everything.

TAD HEUER: And it's in the rear?

NIMA YADOLLAHPOUR: That's right.

TAD HEUER: It's not visible from the street.

NIMA YADOLLAHPOUR: Yes. It's 105 square foot mudroom addition to the rear. The FAR goes from 0.540 to 0.546.

CONSTANTINE ALEXANDER: In a 0.5 district. You're only slightly over right now and you're going to go slightly, slightly over.

NIMA YADOLLAHPOUR: Correct. And you won't be able to see this from really the front of the -- either the side for that matter, because you would see it from, I can't remember what the name of the street is but the back side.

CONSTANTINE ALEXANDER: Francis Avenue.

NIMA YADOLLAHPOUR: Francis, that's correct.

TAD HEUER: And then you're just

turning where the height of the mudroom intersects a window, that's just turning into a (inaudible).

NIMA YADOLLAHPOUR: Yes. Which is -- good memory. It's a good -- it's a full window right now in the bathroom.

TAD HEUER: Right.

NIMA YADOLLAHPOUR: So that would accommodate the newer addition.

CONSTANTINE ALEXANDER: And I assume you've heard nothing from neighbors objecting? There's nothing in the file one way or another.

NIMA YADOLLAHPOUR: No, there was an agreement between my client and the neighbors with any sort of landscaping concerns they might have had. But, yeah, there's been no complaints.

CONSTANTINE ALEXANDER: The Chair will note for the record that there is a Certificate of Approval from the Historical

Commission approving the application based on the plans that are being submitted to us tonight.

The Chair would further note that there's no one in the audience, therefore, there's no need for public comment.

Questions, comments from members of the Board? Ready for a motion?

The Chair moves that the 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 being the need for a mudroom function that is missing from the home.

That the hardship is owing to circumstances relating to the fact that this is a non-conforming structure. And, therefore, any addition or modification or addition to the structure would require Zoning relief.

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 our Ordinance. In that regard the Chair would note that the project had been received a Certificate of Approval from the Historical Commission. That there is no indication of neighborhood opposition.

That in fact this Board granted a Variance on the basis of the very same plans approximately two years ago, but that this Variance has lapsed.

On the basis of the foregoing findings the Chair moves that the Board grant the Variance to the petitioner on the condition that work proceed in accordance with the plans submitted by the petitioner, prepared by O-N-Y Architects. They are 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, pages first page of which has been initialed by the Chair.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Variance
granted.

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

(10:40 p.m.)

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

CONSTANTINE ALEXANDER: We have four cases to continue. Why don't we take them one after the other.

I'll start with the first one, case No -- we have a waiver of notice for all of these, Sean?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: The Chair calls case No. 9930, 678 Massachusetts Avenue. The Chair notes that this petitioner failed to make the posting of signs as required by our Zoning By-Law. And as a result the case could not be heard tonight. The petitioner has been advised of this. The petitioner has requested a continuance to comply with our Zoning requirements and signed a waiver for time for decision.

On that basis, the Chair moves that this case be continued to --

SEAN O'GRADY: July 8th.

CONSTANTINE ALEXANDER: To seven p.m. on July 8th, on the condition that the petitioner post a sign as required and modify on that sign that the time for the hearing to be July 8th.

TAD HEUER: I have a question about this. Seeing as -- and I understand that we're on 678 Mass. Ave. case, but we have 10 Fawcett Street coming up. We're also going to hear a different petitioner on the 22nd. Does it make sense to have both of those, 10 Fawcett Street to be before us simultaneously.

CONSTANTINE ALEXANDER: I think it's a wonderful idea. We should continue that to July 22nd.

TAD HEUER: We're putting the same one on two different nights.

CONSTANTINE ALEXANDER: That's the petitioner's problem.

SEAN O'GRADY: We have to.

CONSTANTINE ALEXANDER: We're back on Mass. Ave. All those in favor of continuing the case on that basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(10:40 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call Case No. 9931, 51 Brattle Street. There is a failure to post a sign as required by our Zoning Ordinance. As a result, we cannot hear the case tonight so the petitioner has been so advised and we're going to continue the case to a different date to allow the petitioner to now comply with our Zoning requirements with respect to posting a sign.

That the petitioner has signed a waiver of time to render our decision. To what time should we continue this case? July 8th.

SEAN O'GRADY: Brattle Street we want to do to the 22nd.

CONSTANTINE ALEXANDER: We're going to have room for the two on the 22nd?

SEAN O'GRADY: Two of them on the 8th and two on the 22nd.

CONSTANTINE ALEXANDER: Okay, so Canal Park go back to the 8th?

SEAN O'GRADY: Yes, there's a reason for that.

CONSTANTINE ALEXANDER: The case be continued until seven p.m. on July 22nd on the condition that the petitioner modify -- when the sign is posted, modify the time for the hearing on the sign to reflect the hearing will be on July 22nd.

MAHMOOD FIROUZBAKHT: To the extent that I sit for the whole night on the 22nd, I'll have to then disclose that Maxton Technology is a former client.

CONSTANTINE ALEXANDER: I would think that -- did you work on that?

MAHMOOD FIROUZBAKHT: I did.

CONSTANTINE ALEXANDER: Do you feel that disqualifies you?

MAHMOOD FIROUZBAKHT: Not in my mind to the extent --

CONSTANTINE ALEXANDER: Well, I'm just questioning you whether you want to recuse yourself. I'm not suggesting you should.

MAHMOOD FIROUZBAKHT: I mean for the -- I don't think there's any issue on my end. But to the extent that I want to just bring that --

CONSTANTINE ALEXANDER: We'll disclose that, or if anyone in the audience, including the petitioner then you'll have to recuse yourself and disclose.

MAHMOOD FIROUZBAKHT: For the sake of not causing problems the night of staffing wise. If I'm sitting for the whole night, you know, I just want to bring that up.

SEAN O'GRADY: If you -- yes, I mean if you don't want to sit that night.

TAD HEUER: He has to for the other

10 Fawcett case.

MAHMOOD FIROUZBAKHT: I could sit for the continued case and we can deal with that I guess then.

CONSTANTINE ALEXANDER: We can deal with it then. I guess if you do make a disclosure and someone objects, then we're -- I guess we'll only have four members.

MAHMOOD FIROUZBAKHT: We'll have someone on hand then maybe.

CONSTANTINE ALEXANDER: The bullpen.

MAHMOOD FIROUZBAKHT: Exactly. Typically if I'm sitting on the continued case, I'll sit for the whole night.

BRENDAN SULLIVAN: They're no longer a client. Was that termination sort of benign, not confrontational?

MAHMOOD FIROUZBAKHT: I think you'll get a sense as to why there was -- the relationship didn't continue.

CONSTANTINE ALEXANDER: The reason I mention it, in all seriousness, I wonder if you mind when you make the disclosure.

MAHMOOD FIROUZBAKHT: Right. And given how these things work with the tech side, they probably wouldn't even know. I would think.

BRENDAN SULLIVAN: So many levels.

CONSTANTINE ALEXANDER: If you're comfortable sitting, I'm fine. And disclosure is definitely necessary and we'll play it out. If someone objects, then you'll have to recuse yourself.

MAHMOOD FIROUZBAKHT: That's fine.

CONSTANTINE ALEXANDER: Anyway. Back to the motion to continue this one to July 22nd. All those in favor say "Aye."

(Aye.)

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

(10:40 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call 9932, 10 Canal Park. The petitioner failed to post a sign for this case, and as a result we cannot hear the case. We have to continue the case until such time as the petitioner does comply with our sign posting requirements under our Zoning Ordinance. So the Chair will continue this case until July 8th.

SEAN O'GRADY: Yes, July 8th.

CONSTANTINE ALEXANDER: Okay. The Chair will further note that the petitioner has been advised the fact of a failure to post a sign. They have signed a waiver of the time for rendering a decision and is now aware that of its responsibilities with regard to sign

posting.

So the Chair moves that this case be continued until seven p.m. on July 8th on the condition that the petitioner, when the sign is posted, modify the sign to reflect that the hearing date will be July 8th.

All those in favor, say "Aye."

(Aye.)

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

(10:40 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9933, 10 Fawcett Street. The petitioner failed to make the necessary sign position as required by the Zoning Ordinance and as a result we cannot hear this case tonight. The petitioner has been so advised. The petitioner has requested a continuance to allow it to comply with our sign posting requirements.

The Chair would move that this case be continued until seven p.m. on July 22nd on the condition that the petitioner, when the sign is posted, modify the sign to reflect that the hearing will be on July 22nd.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor.

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

(10:45 p.m.)

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

CONSTANTINE ALEXANDER: We're back to 84 Grozier Street. You people ready? I need my plans back at some point.

NIMA YADOLLAHPOUR: This is identical to the one that you had if that's not yours.

CONSTANTINE ALEXANDER: Why don't we at this stage start a public comment as Brendan pointed out. Now that you've had a chance to look at the plans, do you want to speak to us?

JAMES MCGLENNON: I'm not sure if you're aware, but in addition to the room, you realize there's a major deck going on top of this room.

CONSTANTINE ALEXANDER: Yes, it's

on the plans.

JAMES MCGLENNON: That overlooks our property directly. We don't have that today. That's additional overlook that affects our privacy. I realize there are other homes that have current overlooks. The good news for me is that most of those people, in particular the guy who directly overlooks us, is an older gentleman, he's never there, right? So if he was, it would be nothing I could do about it. I would prefer not to increase the number of overlook areas into our backyard.

CONSTANTINE ALEXANDER: The purpose of your addition is for the piano, would you agree to eliminate what I'll call the roof deck, it's not a roof deck.

LUISA BUCHANAN: I really don't care.

CONSTANTINE ALEXANDER: I think in terms of good neighborly --

JOHN SCHEIDE: Is it really okay with you?

LUISA BUCHANAN: I don't care. I was shocked to find out that people were worried about it.

CONSTANTINE ALEXANDER: Don't be.

LUISA BUCHANAN: And I guess so.

NIMA YADOLLAHPOUR: Can you show the Board which is your property?

JAMES MCGLENNON: It's directly behind it.

NIMA YADOLLAHPOUR: So their property is here. It's about, it's 45 feet from the edge of the proposed addition. Their property line.

CONSTANTINE ALEXANDER: Still.

NIMA YADOLLAHPOUR: I'm not saying that it does not overlook the property. This is higher than this fence. And then, you know, they have a very deep lot. And all of these other properties overlook them much

more directly than we do or would.

TAD HEUER: So you're at 149; is that right?

JOHN SCHEIDE: Yes, 149.

SUSAN MCGLENNON: Yes, we are at 149.

CONSTANTINE ALEXANDER: You said you had a suggestion?

LUISA BUCHANAN: Yes, why don't I put a bunch of trees or whatever in the backyard?

CONSTANTINE ALEXANDER: That's a good faith and a good solution, but the problem with that, the trees don't get maintained, not you. But they can come down. You're asking for relief from us, I'm just speaking for myself. The other members can speak for themselves. You're asking for relief. You have a neighbor -- you have neighborhood support, but the neighbor most affected has got a specific problem that's

not related to the relief you want to obtain, at least I didn't think until now, this isn't about getting a roof deck?

LUISA BUCHANAN: No, it isn't.

CONSTANTINE ALEXANDER: It's about getting a room for your piano.

LUISA BUCHANAN: Exactly.

CONSTANTINE ALEXANDER: I think a good neighborly suggestion would be to eliminate your deck on your addition. I mean, I would support your petition with that change and I cannot -- I'm only one of five.

SUSAN MCGLENNON: I have a question for you just because I'm new to this. Did it -- like, does the Zoning, this is just for the building. But all the other things that go with the building, that's they have to go through other processes, correct?

CONSTANTINE ALEXANDER: Whatever other permits that are required. Electrical, plumbing or whatever. I

think -- we don't touch that. That's not us.

SUSAN MCGLENNON: I'm just wondering.

CONSTANTINE ALEXANDER: Any other permits required, they have to obtain those. Relief from us, if we grant it, just allows them to build. But they have to build in accordance with all the other requirements, the state building code and the Cambridge codes.

SUSAN MCGLENNON: Thank you.

MAHMOOD FIROUZBAKHT: One question. What efforts were taken to sort of notify the neighbors, including your abutting neighbors in the back?

LUISA BUCHANAN: I didn't know about them. All my neighbors came to the house. I invited them one at a time to the house. And Jeffrey build a model which we have in the dining room, and they all came to see it. And they express whatever opinion they had. And

they gave me letters of support.

MAHMOOD FIROUZBAKHT: Were these neighbors informed to come over to the house and look at the plans?

LUISA BUCHANAN: I didn't know.

JOHN SCHEIDE: We just went to the people next-door and put the sign as per the city requiring to putting the sign.

LUISA BUCHANAN: Yes, I thought that was fine.

MAHMOOD FIROUZBAKHT: I guess that makes things a little bit difficult.

JOHN SCHEIDE: Also it was in the paper I understand. It's in the Chronicle?

CONSTANTINE ALEXANDER: And the mailing is made to abutters and abutters of abutters. You must have received a mailing, right?

JAMES MCGLENNON: We received your mailing that's why we're here.

JOHN SCHEIDE: Within 500 feet or so

from the property, or something like that?

CONSTANTINE ALEXANDER: I think
it's 300 feet.

JOHN SCHEIDE: Okay.

MAHMOOD FIROUZBAKHT: This is one of
those situations where --

TAD HEUER: They are direct
abutters.

MAHMOOD FIROUZBAKHT: They are.
This conversation perhaps if it happened
before tonight --

LUISA BUCHANAN: I didn't know them.

MAHMOOD FIROUZBAKHT: But you know
they're abutters.

NIMA YADOLLAHPOUR: Yes, point
taken. I mean, obviously we all -- we try
and engage as early in the process as
possible.

JOHN SCHEIDE: When you're on
another street, it's hard to get to know each
other.

CONSTANTINE ALEXANDER: Yes, but the point being -- hope never get back before us. These people are going to be the most directly affected by what you're doing.

LUISA BUCHANAN: I didn't realize that.

CONSTANTINE ALEXANDER: Anybody you're going to talk to, you talk to them.

MAHMOOD FIROUZBAKHT: Particularly with respect to a roof deck, it does look over their property. To the extent I think any of us reasonably would be concerned. So I would concur with the Chair's sort of take that, I would be comfortable moving forward with this petition minus the roof deck.

SUSAN MCGLENNON: Another question I have. The timeline of the building, does that ever come in when you're --

CONSTANTINE ALEXANDER: That's not our involvement. You can ask them.

SUSAN MCGLENNON: Okay, I didn't

know if that was done down on the records that I didn't go look at.

TAD HEUER: Timeline?

SUSAN MCGLENNON: Like how long the a project is supposed to go on.

TAD HEUER: They can approve it for a certain period of time in which to build and once they commence within that period of time they have to rest reasonably to completion.

CONSTANTINE ALEXANDER: They have to start within a year. If we grant them a Variance tonight, they have one year. One year to start the construction. But before, if we grant the Variance it takes a couple of weeks for it to be written up. An appeal period for people who want to appeal to the Board. And at that point assuming we granted a Variance, nobody has taken any court appeal, then they would come down with the Variance in hand, go to the Building Department and get a building permit and

whatever permits they need to obtain. When they get the Building Permit, they have to proceed in a reasonable basis to complete the project. When the project is completed, I assume the building inspector comes in and checks it out and issues a certificate of occupancy. That's all basically a private process between them and the city, although you have a right as a citizen to, I assume, inspect the records to find out if there are any problems or whether the building permit and the Variance conditions are being complied with.

LUISA YADOLLAHPOUR: Can I ask a question? If I look out the window and I see someone changing, is it my obligation as a neighbor to say please put a blind up? I mean, she just told me that. I'm shocked. I just don't know what to do.

CONSTANTINE ALEXANDER: We're going down the wrong road. We started this case

off as a need for a room for your piano.

LUISA BUCHANAN: She scared me that's all.

CONSTANTINE ALEXANDER: This is not relevant to the piano. All of a sudden you're fighting it. It leads me to believe what's this all about. That maybe it's not a piano, you want a roof deck.

NIMA YADOLLAHPOUR: The client never -- that was never actually part of the program. I added that to try to preserve as much open private space as possible.

CONSTANTINE ALEXANDER: Now you know. Let's move on to a vote.

NIMA YADOLLAHPOUR: I agree.

CONSTANTINE ALEXANDER: You know the neighbor's objection. You know our views. And so, unless people are -- I don't mean to railroad this, but it's eleven o'clock.

MAHMOOD FIROUZBAKHT: Railroad it.

CONSTANTINE ALEXANDER: I just for the record the Chair, I just got to do this. The Chair will note that there is a letter in the file from Theresa Feloney, F-e-l-o-n-e-y at 80 Grozier Road, four. "I have reviewed the proposed changes by my neighbors to their property at 84 Grozier Road, Cambridge, and they meet with my approval."

And then there is a similar letter. It says: "To whom it may concern: I have reviewed the proposed changes to their property by my neighbors at 84 Grozier Road and they might with my approval." One is signed by the resident at 80 Grozier Road. One is signed by the resident at 80 Grozier Road. And one signed by the resident at 86 Grozier Road.

SUSAN MCGLENNON: Does resident mean homeowner?

CONSTANTINE ALEXANDER: I'm sorry. Enough. I mean, these are the letters we

have. I'm not going to get into whether they own the home, they rent it, whether they live there, whether they're fictitious.

SUSAN MCGLENNON: All I asked you that does resident mean homeowner, that's all I asked you. You don't know?

CONSTANTINE ALEXANDER: I don't know. I read you what I know.

SUSAN MCGLENNON: Right.

CONSTANTINE ALEXANDER: And I'm not sure whether it makes a difference whether it's a homeowner or a renter, they have a right to express their opinions.

SUSAN MCGLENNON: Absolutely.

CONSTANTINE ALEXANDER: The Chair moves that the 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 being that the petitioner as a

professional musician where the spouse is also a musician, needs additional space for a piano to further her occupation as a pianist.

That the hardship is owing to circumstances relating to the shape of the lot. It is a lot more narrow than typical of a neighborhood. And that it is a lot with a substantial background, rear yard. And as otherwise a non-conforming structure so that any relief being sought would require Zoning relief.

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

The Chair would note that the relief being sought, the increase in FAR is very slight. That it has support of a number of neighbors in the neighborhood.

That it makes the structure usable for

the current inhabitant and will provide additional living space for the future inhabitants of the property.

On the basis of the foregoing, the Variance would be granted on the condition that the work proceed in accordance with the plans submitted by the petitioner prepared by Jeffrey Fishbein Architect. They are numbered S1, E1, A1, A1.1, A1.2, A2.0, A3.0, A 3.1, A3.2, and the first page of which has been initialed by the Chair provided that the extent the plans show a what might be characterized as a roof deck on the top of the proposed addition, that this roof deck be eliminated. It being the intent that there be the top of the structure of the addition -- top of the addition not be used for a living space or recreational space, but rather just simply be a roof to the addition being constructed.

All those in favor of granting the

Variance on that basis, say "Aye."

SEAN O'GRADY: Gus, how do you want to -- I assume there's a door to the deck.

THOMAS SCOTT: There is a door. I was going to bring that up.

NIMA YADOLLAHPOUR: The resolution is simple in that case because that door -- there's an existing window in that location, and the only modification to the rear facade at that level was to turn that window into a door. So it would remain -- we should say that the door will be eliminated and the existing fenestration to the second floor is to remain as is.

CONSTANTINE ALEXANDER: That's right. Got that? I think that's sufficient for everybody else?

TAD HEUER: Yes.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor.

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

(Meeting Adjourned at 11:00 p.m.)

C E R T I F I C A T E**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

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

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

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

IN WITNESS WHEREOF, I have hereunto set
my hand this 28th day of May 2010.

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

My Commission Expires:
April 23, 2015

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