

BOARD OF ZONING APPEAL FOR THE  
CITY OF CAMBRIDGE GENERAL HEARING  
JUNE 24, 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

Slater Anderson, Member

Douglas Myers, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:00 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call the meeting to order. And as is our custom, we'll start with the continued cases. And the first one is 9924, 24 Decatur Street. Is there anyone here wishing to be heard on that matter?

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. For the record, James Rafferty on behalf of the applicant. I'm sure as the Chair notes that there's a request --

FROM THE AUDIENCE: We can't hear.

CONSTANTINE ALEXANDER: Okay, there's not much to be heard. No offense to Mr. Rafferty, the case is going to be continuing. If you want to come around here.

ATTORNEY JAMES RAFFERTY: A criticism I rarely hear, Mr. Chair. I'm happy to speak up.

There's a request in the file this evening. The applicant is requesting a further continuance to allow him to explore some other options associated with his pending Variance application. I think given the time anticipated to develop such a plan and have an effective exchange with neighbors, we would look for a period of time post-Labor Day if that fits into the Board's schedule.

CONSTANTINE ALEXANDER: I'm sorry, one second. I'll take testimony but only on the question of continuing. We're not going to get to the merits. Come forward, please, and give your name and address for the stenographer. If you want to come forward, pull your seats around to the right, feel free.

KATHRYN PODGERS: I can stand here and they'll be able to hear me. I used to be a school teacher, so....

CONSTANTINE ALEXANDER: Okay.

KATHRYN PODGERS: My name is Kathy Podgers. I live at 148 Pearl Street, Cambridge. I'm a secondary abutter. My home is immediately next-door to a primary abutter at 144 Pearl Street which abuts the whole length of 24 Decatur Street. I did come and speak to the issue of the continuance at the last hearing, whichever one had been notified, had been postponed so you didn't need to show up. I met with the attorney prior and gave him my phone number and I gave him my neighbor's phone number at 44 Decatur -- Pearl Street and requested that they call us on the phone so we could discuss. I recall -- you recall that I said I would agree to the continuance the last time; that I hoped they put it to good use to communicate

with us. I have received no phone call from the owners or developers of the property.

CONSTANTINE ALEXANDER: That's why they want to continue the case. They haven't had a chance --

KATHRYN PODGERS: Well, they continued it before for this purpose, and all this time has gone by from April until June. That's what, May, June? That's two months, and in two months they haven't found any time to ring me on the telephone. That's my cell phone. So I'm very concerned about another continuance because I have no confidence that they wish to reach out and talk with their immediate abutters or their incidental abutters, secondary.

CONSTANTINE ALEXANDER: Let me point out. Unless they get relief from us, they can't do what I suspect you don't want them to do. So if they continue the case, nothing is going to happen that's going to

adversely affect your position. And they need more time to -- let me finish. They need more time to decide what they're going to do. So I don't know for the life of me understand what's the problem with the further continuance.

KATHRYN PODGERS: I'm not having a problem.

CONSTANTINE ALEXANDER: Okay.

KATHRYN PODGERS: I'm not talking about -- let's not make assumptions what my issue may or may not be. The fact is that I urged them to put the two months' continuance to good use and provided my cell phone number. This is after I was roundly assured by many neighbors on the list and the attorney about what good people they were and how they walked around and talked to everyone, except not apparently to the immediate abutters. So my concern here is further continuances to make plans to do what they have no idea what my

concerns are, because I haven't had an opportunity to raise my concerns either directly with them or with you because we're not allowed to address what our issue are. What my issue is now is they did not put the two month continuance to use, they haven't bothered to call me on will telephone. And you know what, I'm good person. I am someone that's easy to get along with. I'm very reasonable. And I would hope that -- Pat, will you speak? This is Pat.

PAT ARCAND: I will, when it's --

KATHRYN PODGERS: I'm finished as long as she's going to speak. I won't speak on her behalf.

CONSTANTINE ALEXANDER: Okay.

Thank you.

KATHRYN PODGERS: She should speak next. She's at --

CONSTANTINE ALEXANDER: I'm running the meeting, please, not you.

KATHRYN PODGERS: Okay.

CONSTANTINE ALEXANDER: You did raise your hand first. You'll have a chance. Ma'am, please come forward.

PAT ARCAND: Hi, my name is Pat, Arcand and I live at 144 Pearl Street, No. 1. I'm a direct abutter to this project. I have not met or -- I have not met the people that have this project underway. So I can, you know, verify what Miss Podgers has said. So that's one issue. And I realize that they still have time getting this continuance.

My other question is -- and I just have a question. So I haven't met them or heard from them, so that's a problem for me.

My second question -- my question is this is going to be, they asked for a continuance. How will we find out -- I mean, we find out about tonight's meeting by calling around.

CONSTANTINE ALEXANDER: You will

find out in the following way: You will know -- the new date will be set tonight.

PAT ARCAND: Okay.

CONSTANTINE ALEXANDER: So you can tell your neighbors. But the sign that's on the property, that notifies that there's a hearing, the original sign?

PAT ARCAND: Yes.

CONSTANTINE ALEXANDER: They will modify that sign and the new date will be written on the sign. So anyone who walks by and sees the sign will see the sign for the new hearing.

PAT ARCAND: That's great.

(Inaudible comment from  
the audience.)

PAT ARCAND: The sign's not up anymore about the hearing.

CONSTANTINE ALEXANDER: Why?

PAT ARCAND: Because they've been working on construction. So it should be

noted that they need to put up a new sign.

CONSTANTINE ALEXANDER: I know Mr. Rafferty will take note of that and a new sign will go up.

PAT ARCAND: So because there was no sign about this meeting and so people didn't know and we had to make phone calls.

CONSTANTINE ALEXANDER: Thank you.

MARY WELSTEAD: Hello, my name is Mary Welstead, I live at 20 Decatur Street and I'm a direct neighbor of the property.

FROM THE AUDIENCE: Can't hear you.

MARY WELSTEAD: Sorry?

CONSTANTINE ALEXANDER: They're having trouble hearing you. Take the microphone.

MARY WELSTEAD: Does that make a difference?

FROM THE AUDIENCE: Thank you.

MARY WELSTEAD: Mr. Rafferty is asking for a continuance.

CONSTANTINE ALEXANDER: Yes.

MARY WELSTEAD: I want to ask if it's a genuine continuance, because I have an e-mail from Chris and Mary Walsh which says: This is to let you know that we will again be postponing the zoning case for 24 Decatur Street probably until sometime in September. That we thought our plan for the second structure in the back was the best use of the space and in keeping with the character of the block, we have heard the objections put forth by some neighbors and are currently planning how to add to the existing house as many people suggested we do. After we've had an opportunity to explore the possibilities with our architect, we'd be glad to discuss them with you.

It seems to me that they're not asking for continuance, that they're going to come back in September with a totally new plan. If it's continuance, we will, we'll have

notification for hearing, but we won't have details of that plan.

CONSTANTINE ALEXANDER: Yes, you will. Let me explain. Under our rules, if they decide to modify -- by the way, whether they have a continuance or not, but stick with continuance. If they're going to modify their plans with any respect, any material respect, they have to file their new plans with the building office, no later than five p.m. on the Monday before the Thursday hearing. So you'll know the date of the hearing. You'll know if you want to go down, and the office is open until eight o'clock on Mondays. If you want to go down on Monday night or Tuesday or Wednesday, you will be able to get all the details for the plan and you'll have as much information of the hearing that the members of the Board will have.

MARY WELSTEAD: But we won't have as

much that we had for the first hearing where they asked for a continuance. I am arguing that this is a totally separate issue now. It's not a continuance.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, if it assists Mrs. Welstead's concern, she knows well that Mr. and Mrs. Walsh have shared their plans and they're fully committed to doing that. If the Board wanted to make that a condition of the continuance, this whole approach, the communication you're reading is one that was put out by the Walshes to alert as many people as possible through an existing neighborhood network about tonight's hearing. And they would not return here without a full exchange with their neighbors, including Mrs. Welstead showing the plans and soliciting their feedback. And I can say that emphatically, and if the Board wishes to place that as a condition on the continuance,

I know the applicants would willingly accept such a condition.

CONSTANTINE ALEXANDER: Well, I think maybe the only thing we can do through the Board, because I don't want to get into the -- it's a murky area. Is what's your view if we said the plans, the new plans, if there are any, have to be in the file a week earlier than the usual rule, that gives the neighbors ten days or so.

ATTORNEY JAMES RAFFERTY: I would suggest two weeks, Mr. Chairman, to put aside any -- if we had a later date in September, the second meeting in September if that accommodates the Board's schedule, I would have my client to commit to a full two weeks and full notification. I think whatever people might think about these plans, I think the Walshes deserve credit for their efforts and outreach. I know that Miss Welstead is one of the people they've spoken to regularly

about their plans. Before they filed anything with this Board they had communications and conversations about their plans.

CONSTANTINE ALEXANDER: Thank you.

MARY WELSTEAD: I still have a question. Is it a continuance or is it a new application?

CONSTANTINE ALEXANDER: Let's be very clear. What we're doing is continuing the hearing. They have the right up until the time of the hearing to put -- to modify whatever plans. Everybody does, not just these people. Anybody can modify their plans, come up with new ideas in response to neighborhood opposition in response to the change of circumstances. The only requirement they have is they have to get typically any new plans, any changes in the files by the Monday, five p.m. before the Thursday hearing so that the neighborhood and

any other interested citizens of the city have time to go and review the files and be up to speed when we have our hearing on Thursday night. What we're doing is continuing the hearing, that's the continuance. The hearing will consider when we do adjourn, whatever plans that the petitioner wants to bring before us. Maybe it's the plans that you see now and maybe a different set of plans. I suspect it's going to be a modified version of the plans now. You will have two weeks and every one of your neighbors and abutters will have two weeks before that hearing to go to the Building Department office to see what it is they're proposing. I suspect you're going to be hearing from them directly anyway. But even if you did not, you would have two weeks to study, learn, get your questions in line and then when we have our public hearing, you can present your case and ask the questions you

want to ask and give the views you want to express.

MARY WELSTEAD: So we have assurances they will be in the Board's office two weeks before?

CONSTANTINE ALEXANDER: That's what Mr. Rafferty has offered. Thank you.

ATTORNEY JAMES RAFFERTY: And that will be part of the motion when we get to the motion.

CONSTANTINE ALEXANDER: Sir.

SHERIF RICKALLA: It's more of a question. My name is Sherif Rickalla, S-h-e-r-i-f, last name is R-i-c-k-a-l-l-a. It's 32 Decatur Street. If they go ahead with plans without getting approval and -- do things become status quo and they pay a fine or does things have to be erased? Just hypothetically.

CONSTANTINE ALEXANDER: I know. If they go ahead without approval, and what they

do did require approval from our Board, they would be in violation of the law and city would order them to take the structure down.

SHERIF RICKALLA: Take the structure down. That's it. Thank you.

CONSTANTINE ALEXANDER: Sir.

RAJIF MANGLANI: Hello. My name is Rajif Manglani, M-a-n-g-l-a-n-i. My wife Miriam and I live at 15 Valentine Street, apartment 4. I'd like to thank the Board for hearing us tonight. I was one of the objectors to the original plans, and I would just like to ask the Board that besides notification on the sign with the marker or however it was previously noted, and besides notification by the Walshes and their attorney, that in this day and age, to me, it seems like a slight embarrassment that we live in the city, the City of Cambridge that has a great website that continuances are not noted on the City's calendar where the detail

of this meeting are discussed. Specifically if you look at the City's calendar, this continuance is not actually listed as an agenda item on the Board of Zoning Appeals agenda. And I would ask that the Board of Zoning Appeals consider that given the high profile nature of this particular, this particular Petition, this particular Variance request, that the Board make extra efforts to make sure that continuances are listed on the city calendar and the agenda for the Board of Zoning Appeals as with every other case that shows up there.

CONSTANTINE ALEXANDER: Let me just -- fair point. I would point out that the public notice that goes out the first time has on it and it's underscored, continued cases are not advertised but posted in the office board at the city clerk's office, City Hall. Now, as to why we don't put it on the website, that's not -- we don't make that

decision as the Board. That's a city decision. I don't know why. I don't want to get into that tonight. I think your comment's well taken. I'm sure Mr. O'Grady will bring it back to the powers that be in the city and city can consider whether they will do that in the future.

Right now the rules are and they have been for however long, just what I said, that the original sign is posted and that's the only -- and then there's a newspaper advertisement and there's a mailing to the abutters. But thereafter, the cases that are continued, the only notification is to the sign. That's just the way it works.

DOUGLAS MYERS: Mr. Chairman, can the applicant inquire of the Special Services Department by telephone and using the docket number of the case and ask about the scheduling status of the case that way?

CONSTANTINE ALEXANDER: You said

applicant. You meant an abutter.

DOUGLAS MYERS: An abutter or any interested party.

CONSTANTINE ALEXANDER: As far as I know.

RAJIF MANGLANI: And yes, and many of us have used that method.

BRENDAN SULLIVAN: The point taken you raise as a valid point, that technology being what it is today should be a little bit more up to date.

TIM HUGHES: It does say met legal obligations of the city.

BRENDAN SULLIVAN: It's an administrative procedure.

TIM HUGHES: It does seem the legal obligations for the city have been outstripped by technology and they haven't caught up with it yet.

CONSTANTINE ALEXANDER: And so your point's well taken.

TIM HUGHES: Your point's very well taken.

KATHRYN PODGERS: Especially when they don't have the sign up.

CONSTANTINE ALEXANDER: Thank you. I'm sorry, sir, did you have anything else to say?

RAJIF MANGLANI: No, that was it. Thank you very much.

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

(No response.)

CONSTANTINE ALEXANDER: The Chair notes that there is no one else who wishes to speak. Public testimony is closed.

I think a motion is in order to continue the case. Sean, what date do you have?

SEAN O'GRADY: You want the second?

ATTORNEY JAMES RAFFERTY: Second hearing in September.

SEAN O'GRADY: September 30th.

SLATER ANDERSON: This is not heard, right?

TIM HUGHES: This is a case not heard.

SLATER ANDERSON: With the requirement in the motion to have the plans filed let's say two weeks prior to the hearing. Is it two weeks prior to the Monday or two weeks prior to the hearing?

ATTORNEY JAMES RAFFERTY: I was thinking two weeks prior to the hearing.

SLATER ANDERSON: Okay. The question is is it clear that they do not have the option of filing some change a week before the hearing? So whenever gets filed two weeks before is the equivalent of what would be filed on the Monday.

CONSTANTINE ALEXANDER: It's locked in. And if they want to make a change --

SLATER ANDERSON: And the reason I

ask is a neighbor may look at the plans and say -- have an issue and they may think well, why do we file by the Monday before some modification? I just, that issue may -- I just want to be clear how we're going to deal with that.

CONSTANTINE ALEXANDER: There will be a lock down two weeks before the 16th of September and that will be it. And if he wants to change the plans, then we'll have a further continuance.

ATTORNEY JAMES RAFFERTY: There's a long history here with communication. I'm collecting addresses now. The Petitioner is very committed to sharing information.

BRENDAN SULLIVAN: Was the posting sign taken down?

ATTORNEY JAMES RAFFERTY: News to me. I wasn't aware of that. That's an error.

BRENDAN SULLIVAN: Well, I would

make a request that the posting sign remain in effect. Now I know that there is a requirement that it remain two weeks prior to the hearing, but I don't want to get into technicalities here. So I would request to counsel that the posting sign remain posted from now through the hearing date in September.

ATTORNEY JAMES RAFFERTY: My guess is I'm going to have to get one from Ms. Pacheco and get it up next week.

BRENDAN SULLIVAN: Correct. Okay. On your motion.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until seven p.m. on September 30th on the condition that one, a sign advertising the new hearing date of September 30th be posted as soon as practicable. And that all reasonable efforts be used to maintain the sign. So if the sign gets destroyed or vandalized, that

a new sign is put up.

And on the further condition that any plans, anything that changes from what is in our file right now relating to the project, must be in the public file by five p.m. on September 16th so that the public is put on notice. You've got two weeks. If you haven't had communication before, to check out the file. Just to elaborate so there's no misunderstanding and so Mr. Rafferty understands. If the Petitioner during that two-week hiatus has a bright idea and wants to change, we'll continue the case again for another -- until you have another two weeks to see the bright idea that has come up.

All those in favor of the motion say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

(Alexander, Hughes, Sullivan,

Anderson, Myers.)

(7:20 p.m.)

(Sitting Members: Constantine Alexander,  
Tim Hughes, Brendan Sullivan, Slater

Anderson, Douglas Myers.)

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

ATTORNEY JAMES RAFFERTY: Again, James Rafferty, Mr. Chairman, on behalf of the Applicant. Similar to the prior case, a request to continue the case has not yet been heard, so the request would be a similar date. If the date of September 30th has availability, I think that would afford again the opportunity to communicate with abutters.

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

(No response.)

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

This is a case not heard. I think we're ready for a motion.

The Chair moves that this case be continued until seven p.m. on September 30th on the condition that the sign which is still up there, notifying of this hearing, be modified to reflect the new hearing date. And the Chair notes that a waiver of time for decision is already in the file so there's no need for that.

All those in favor of continuing this case say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

(7:25 p.m.)

(Sitting Members: Constantine Alexander,

Tim Hughes, Brendan Sullivan, Slater Anderson, Douglas Myers.)

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

ATTORNEY ARTHUR KREIGER: Good evening.

CONSTANTINE ALEXANDER: Good evening.

ATTORNEY ARTHUR KREIGER: My name is Art Kreiger from Anderson and Kreiger representing AT&T. This is our third hearing on this matter. I was before you in January with the initial application dated December 7, 2009, which was for a false chimney proposal on the roof of 1558 Mass Ave. At that hearing, one or more Board members expressed the thought that perhaps other designs would work better, including specifically a facade-mounted design, that

is on the wall of the building at the top just below the parapet. We came back with a couple of modifications.

One was, you recall, removing air conditioning units from the well in the back of the building facing the yellow condos up to the roof. And I think that was non-controversial and approved all around.

We came back with the -- on April 26th with a modified or a second amendment addressing various designs on the roof. One was the facade-mounted design, and we submitted photo simulations and the actual plans. We did not withdraw the initial chimney proposal but submitted that as an alternative pursuant to the Board's suggestion, and we were indifferent as between those.

The second one was attaching antennas to the existing chimneys, essentially widening the existing ones. So half of them

might be false, but you would have only existing number of chimneys on the roof. And that was in response to the Board's concern that they didn't want to see a whole proliferation of the chimneys on this and other rooftops. So we looked at that. And that was not feasible for a radio frequency propagation purposes, and that's explained in the April 26th letter.

And the third thing we tried was to conceal the antennas in two false penthouses and that's was aesthetically much worse than any of the others because the penthouses would have to be quite large and close to the edge. And I think the photo sims that we submitted on those which were Exhibit 13 showed that that was really much more intrusive than the false chimneys.

At the hearing on April 29th, the second hearing, my partner Doug Wilkins was here instead of me just to jog your memory. And

the Board, I think, focussed more on alternative sites than on alternative designs on that building. The Board specifically requested that AT&T go back and look at other buildings that might fill the radio frequency gap that we identified. With me tonight are Jobet Mariano our engineer, and Josh Delman site acquisition, and we're going to talk about that issue among others.

The Board wanted us to look at Harvard buildings. Knowing that Harvard and Radcliff Quad had just put up a facility so they might have some interest. The Sheraton Commander and other buildings farther north on Mass. Ave. We also looked at the building between the Sheraton Commander and the church that's on the south side of 1558. So we looked at every building across there. Every large brick building. And we'll show you those.

The Planning Board, I believe you have two letters in the record from them. Initially a recommendation to approve the chimney proposal, and that was back over the winter. And then on April 26th a letter from Liza Paden about the facade proposal. And they didn't like it. I think you recall that. I don't know what the Board thought of facade versus the chimney proposal, but I think you were focussed on that in April as I said in other buildings rather than just other designs.

CONSTANTINE ALEXANDER: I guess it was fair to say we weren't happy with either proposal. We didn't take a vote. There was opposition to the facade proposal once we saw it, and we were still not thrilled with the chimney proposals.

ATTORNEY ARTHUR KREIGER: That's consistent with my understanding.

Here's what we've done. I'm going to

pass in a memo dated June 22nd, a search area memo, that covers nine alternative locations, and just walk through them if I may.

Let me show you where the nine are. I know you know the locations. Can you hear me if I stand up?

CONSTANTINE ALEXANDER: We can.

ATTORNEY ARTHUR KREIGER: Here is 1558 above the Commons. Of course, here's the church. So we looked at the four buildings right here ending at Sheraton Commander. We looked at three buildings up Mass. Ave. on the same side of the street. And we looked at the two Harvard buildings across the street, Pound Hall and the law school building that's under construction. Those are the nine that you will find in this search area memo. Perhaps not in that precise order, but candidate A is One Waterhouse Street, and the answer is -- and

these were ones that would work for RF purposes. And these are pretty much all the buildings that would work for RF purposes, that's for radio frequency purposes. It is possible that buildings down Mass. Ave. below the Sheraton Commander might work. Those are not looked at, but those are also Harvard buildings. Let me dispose of the two Harvard buildings and any other such candidates first. Harvard is are not interested. They have a moratorium, an internal moratorium on wireless facilities because they want to figure out a school-wide, campus-wide solution. So Pound Hall, the law school and any other candidates around the Commons that Harvard owned are not available, not available for lease.

Coming back to page one here, candidate A is One Waterhouse Street. B is the Sheraton Commander, three is Three Concord -- and C is Three Concord, and D is

50 Follen. So, those are the four running across that row between the Commander -- the Sheraton Commander and the church building. And the answer is there was either no response or a negative response. The Sheraton Commander, Mr. Gilsarian (phonetic) was not interested because of his experience on another building. Not with AT&T as far as I know. Other landlords didn't respond or the landlord representatives didn't respond. And if there's no interest in the landlord on the lease, there's nothing AT&T can do about it.

DOUGLAS MYERS: All of your certified letters were dated June 17th? Sometimes you mentioned certified lettering.

ATTORNEY ARTHUR KREIGER: Let me ask Mr. Delman. Josh, do you want to come up here if you want?

JOSHUA DELMAN: Sure.

CONSTANTINE ALEXANDER: Give your

name for the record.

JOSHUA DELMAN: Sure. My name is Joshua Delman from Satellite Communications representing AT&T.

I can submit for the record some of the green cards that were part of the certified letters if that's pleasing to the Board.

DOUGLAS MYERS: No, I just asked the question if whether they were all sent on the 17th.

JOSHUA DELMAN: I don't believe they were. I have the return dates when we received cards back.

ATTORNEY ARTHUR KREIGER: What do you have for One Waterhouse which is candidate A?

CONSTANTINE ALEXANDER: Give me the range of dates you mailed these letters out. The 17th of June you mailed them out?

JOSHUA DELMAN: Some of them, yes, correct.

CONSTANTINE ALEXANDER: Okay.

JOSHUA DELMAN: Since there was no response by telephone or by initial letter, we sent a certified letter out to make sure that they were getting to the right person, that they were signing off on the return slip so they at least had some correspondence in hand.

CONSTANTINE ALEXANDER: The only comment I make is that 17th you mailed -- today is the 24th, one week later. You mailed it the 17th and they maybe gotten it the 20th, certified mail is slower.

JOSHUA DELMAN: Right.

CONSTANTINE ALEXANDER: Today's the 24th. Why are we hearing this case tonight? Why don't we wait a month or two and see whether these people will in fact respond to yours letters.

JOSHUA DELMAN: Well, we have contacted them via phone and via regular mail

and no response. The certified letter generally in my field is the last effort to try and gain some response from the landlord.

ATTORNEY ARTHUR KREIGER: Josh, do you recall when the first contacts with these landlords were?

JOSHUA DELMAN: We began basically the week after our last continuance. In conjunction with RF, we identified the sites to look at based on your feedback. We began to try and contact them, take the shots in the field to identify if they were viable from an RF, a radio frequency perspective and reach out to them.

ATTORNEY ARTHUR KREIGER:  
Candidates E, F, and G are going up Mass. Ave, page -- sorry, 1572, 1580 and 1600. Same answer essentially. Letters sent out after previous contacts. And either no response or negative response.

And then H and I are the two Harvard

buildings on the last pages. We covered those, the Harvard moratorium.

So the answer to the Board's question is AT&T has done a diligent quick search of the neighborhood. First identifying by our characteristics which sites would work. And contacting all the landlords, and you have the results that you see. And so we don't believe there's any facility available that would fill the RF gap where the landlord is interested in leasing it. And I can only -- the only -- the only question I can see about that is the recency of the certified letter, but I think that's answered by what Mr. Delman just described. That there were weeks of communication or attempted communication before that. You know, the Board could say, you know, chase them for another month or give them more time but this is more than we generally have to do as you know. And I think we've done a good faith and

complete search of other possible buildings.

Anything you want to add?

JOSHUA DELMAN: No, I agree with that.

ATTORNEY ARTHUR KREIGER: Okay.  
And that so --

CONSTANTINE ALEXANDER: Before we leave the subject of your diligent search for the sites. Any Board members have questions on this issue yet?

Okay, go ahead.

ATTORNEY ARTHUR KREIGER: So we're back essentially to the initial proposal of the chimneys because neither the Planning Board or this Board liked the facade mount. We didn't like it either for what that's worth. The -- so we're back to the original proposal which of course is still on the table except for the moving of the AC units up to the rooftop. And one of the Board's other questions about that proposal -- I think the

Board wanted to know what the chimneys would actually look like, the false chimneys. And my understanding is that the Board might have had in mind some fiberglass painted installation, something that would look like brick but wasn't going to fool anybody. So we want to show you what we've got. This is what we do.

JOSHUA DELMAN: Sure. If I may, this is an actual piece of the material that would be fabricated for the chimneys itself. So this would be the exterior. The antennas would be actually located behind this material. And this is from a fabricator that specializes in this type of installation. It's a company called Durafiber up in Southern New Hampshire. What we did is take close photographs of the actual brick at 1558 Mass. Ave, sent those to the manufacturer and they matched the sample to some existing material that they had in-house in their

fabricating shop.

TIM HUGHES: Do you have any of those photographs with you?

JOSHUA DELMAN: I do not. But this again is an artist depiction. This is actually fabricated and then an artist actually matches the color of the brick and the mortar.

CONSTANTINE ALEXANDER: What's the nature of the material?

JOSHUA DELMAN: So, this is the actual material. This is all fiberglass.

CONSTANTINE ALEXANDER: It is fiberglass?

JOSHUA DELMAN: Yes. So it's RF friendly. RF travels through this. But we want to emphasize is that it's not a light material. It's actually something that has structure to it. It's not anything that's going to fail in terms of structural capabilities and it does detail mortar and

brick as it does at the site.

DOUGLAS MYERS: Is it durable?

JOSHUA DELMAN: Yes. So these would actually come in panels. They would come in one panel of each side of the chimney itself. So it would be four chimneys that would attach mechanically and encase the antennas that would be behind it.

ATTORNEY ARTHUR KREIGER: There is a cell phone picture from, Jobet's cell phone if you want to look.

TIM HUGHES: I'll look but it might be small.

ATTORNEY ARTHUR KREIGER: It is not actual size, that's true.

TIM HUGHES: When was the last time this went through the laundry?

ATTORNEY ARTHUR KREIGER: That has the wire cap on the top, and that's something that can be done as well if you wanted to actually look like the other chimneys.

TIM HUGHES: It's hard to see it.

ATTORNEY ARTHUR KREIGER: Obviously if you want printed versions of those pictures, that's fine. But this will be matched as closely as possible to the existing chimneys. And it's got the texture that would actually make it look like a chimney. As I said, if you want the wire cap on the top, we can do that, too. Questions about this?

CONSTANTINE ALEXANDER: Questions from members of the Board at this point?

I think there was a third issue that came up at the April hearing.

ATTORNEY ARTHUR KREIGER: Yes.

CONSTANTINE ALEXANDER: About basically the need for this. I think Slater was the one that drove that discussion.

ATTORNEY ARTHUR KREIGER: There are actually two other issues. I'll hold that one for the second. The simpler one was I

think you weren't sure about the photo sims about, the Follen Street photo sims at Sector C.

CONSTANTINE ALEXANDER: Right.

ATTORNEY ARTHUR KREIGER: And the answer is those photo sims are correct as far as we can tell.

JOSHUA DELMAN: Correct. We verified them.

ATTORNEY ARTHUR KREIGER: The Sector C chimneys are ten feet because of the three foot parapet on that side as opposed to the one foot parapet on the other side. So these sectors on Mass. Ave. are six feet. That's not changed since the beginning.

And so the last issue that raised in issue that I understand was the coverage plot. The need for it. And, Jobet, do you want to talk about coverage issues?

JOBET MARIANO: Jobet Mariano, 550 Scituate, S-c-i-t-u-a-t-e Road in

Framingham.

I re-ran the propagation with our new databases. At this time we made and I included the Radcliff campus site that was recently approved here, and there's still a need right here on Mass. Ave. near --

CONSTANTINE ALEXANDER: Just refresh my memory, what's the blue, what's the blue stand for and the green stand for and the other colors?

JOBET MARIANO: The blue stands for in vehicle. The green stands for in building. The yellow stands for on street.

CONSTANTINE ALEXANDER: So in vehicle means you can only get cellphone coverage in the vehicle?

JOBET MARIANO: Yeah, it would be marginal coverage inside the buildings.

CONSTANTINE ALEXANDER: And the green is you have coverage in the buildings?

JOBET MARIANO: Right.

CONSTANTINE ALEXANDER: And that would include obviously the cars, too?

JOBET MARIANO: Yes.

CONSTANTINE ALEXANDER: Okay.

JOBET MARIANO: So we're trying to clean up everything around here in this area, especially around Cambridge Common. And what I ran also propagation with one of the candidates that we looked at which is at 50 Follen Street, and that would fix same thing with the one we're on, we're trying to get on right now.

SLATER ANDERSON: So all of this is the fix for this little hole right here basically?

JOBET MARIANO: Yes.

ATTORNEY ARTHUR KREIGER: And part of, part of that hole, the top part of that hole.

CONSTANTINE ALEXANDER: Part of that hole is residential area? What are the

boundaries of the Common because they don't --

SLATER ANDERSON: This is it right here.

CONSTANTINE ALEXANDER: Yes, you're right.

SLATER ANDERSON: It sure seems the Sheraton Commander would be a real good candidate. They have that big sign on it already.

ATTORNEY ARTHUR KREIGER: He's the one who actually said no.

JOBET MARIANO: We like that, too, but five minutes before we came here.

ATTORNEY ARTHUR KREIGER: Let me just make one other comment actually as partly one of the alternative sites. At the January hearing it was suggested by one of the Board members that we look off Mass. Ave. because you want to preserve visual corridor off Mass. Ave, a block or two off Mass. Ave.

That of course would be more difficult if not impossible because the Ordinance standards it says the surrounding area has to be predominantly non-residential. We think we can meet that standard here, but if we went a block or two off Mass. Ave. to the west, I don't see how we would meet it. So that's how we thought about the response to the Board's suggestion.

So I think those are all the issues you raised last time. And I'll just close by saying I don't expect the Board to be thrilled with this because I know that how strongly you feel about the location and the visual corridor. I think we've done everything possible to make it unobtrusive, and I think if there were a few more chimneys on that building that look like the rest of the chimneys, it would be unobtrusive to the neighborhood and fill the coverage gap. So I would ask for approval of the Special Permit

with whatever specific findings you need to make like surrounding neighborhood that we went through on the other sites with Harvard and MIT and any other Zoning relief that's required.

CONSTANTINE ALEXANDER: Thank you.

ATTORNEY ARTHUR KREIGER: Thank you.

CONSTANTINE ALEXANDER: Questions from members of the Board at this point?

DOUGLAS MYERS: Can you clarify which set of simulations you're actually going forward on?

CONSTANTINE ALEXANDER: That's a good question. I want to get there as well. And also the plans.

ATTORNEY ARTHUR KREIGER: Sure.

CONSTANTINE ALEXANDER: Now because we're back and forth to which set of plans.

BRENDAN SULLIVAN: When these first started coming down before us, there was

obviously cellphones and that was the technology, that was the need and so we satisfied that. But the facility that you're putting in here was well beyond that obviously. Obviously the facilities you're putting in here now are more than voice, it's obviously data, it's the whole range, it's the iphone and everything, that service, whatever is coming on the market now basically.

JOBET MARIANO: That's true.

ATTORNEY ARTHUR KREIGER: The photo simulations were Exhibit 6. That was the chimney.

SLATER ANDERSON: Which letter?

ATTORNEY ARTHUR KREIGER: Well, the exhibits are numbered consecutively into letters. But the answer is it's the first letter. The December 7th letter. So the original photo sims we put in were of the chimneys. The plans then I think are the

ones in the April 26th letter because of the relocation of the AC unit. And that's what I just want to check. Give me a second if I may.

(Discussion held regarding plans.)

ATTORNEY ARTHUR KREIGER: The answer is because of the two sets of plans, I can't point you to one set, but the plans we have for the chimney-mounted air conditioning units also show the facade-mounted antennas. And we're doing -- so we're doing, I guess it's a combination of the two plans really, but it's simple enough to put them together. It's the original plans except for the AC units up on the chimney. And the AC unit -- up on the roof excuse me. And those AC, those plans showing the AC units up there are Exhibit 10 which is part of the second letter. So you may want AT&T to provide a final set of plans that has the AC units up there with the

chimney mounts.

DOUGLAS MYERS: Photo sims are the ones that accompanied the original application?

ATTORNEY ARTHUR KREIGER: That's correct.

DOUGLAS MYERS: The original application in January?

ATTORNEY ARTHUR KREIGER: That's correct. Because moving the AC units doesn't affect the photo sims at all.

CONSTANTINE ALEXANDER: Do we have any plans that show where the air conditioning units, where they are now?

ATTORNEY ARTHUR KREIGER: Yes. Exhibit 10 shows both the facade-mounted antennas and the air conditioning units up on the roof.

CONSTANTINE ALEXANDER: Right, okay. But it's a combination. But the rest of what you want to do with the chimney route

is go back to the original plans submitted in December.

ATTORNEY ARTHUR KREIGER: That's right.

CONSTANTINE ALEXANDER: So December plans plus the air conditioning that's shown on the April plans, whatever it is?

ATTORNEY ARTHUR KREIGER: On Exhibit 10. That's right. You take Exhibit 6. I'm sorry, original plans are not 6. The original plans are 4. And then you stick on the AC units from Exhibit 10. And as I said, of course, if the Board would like a new plan reflecting that, that would be fine.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ARTHUR KREIGER: Do you need to see a copy?

CONSTANTINE ALEXANDER: No, I'm looking for my pen.

I'll take public testimony. Is there anyone here wishing to be heard on this

matter?

(No response).

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard on this matter. Public testimony will be closed.

Questions?

BRENDAN SULLIVAN: No further correspondence has come in.

CONSTANTINE ALEXANDER: That's what I was looking through. I was going to reread into the file the Planning Board letter that commented on the initial application.

ATTORNEY ARTHUR KREIGER: Here it is.

CONSTANTINE ALEXANDER: Again, this is part of the record, but let me refresh everyone's memory because I think we're leaning, I suspect we're leaning back toward the chimney-mount approach. And the letter from the Planning Board, which commented on the plans that we saw in December except for

the air conditioning, which is now shown on the plans that accompanied the face-mount approach. Anyway, the Planning Board says: The Planning Board reviewed the application for this installation and amendment to the proposal. The Planning Board supports the relocation of the air conditioning unit to the middle of the rooftop and to surround the unit with screening to minimize the amount of noise. The Board also supports locating the "antenna chimneys" closer to the parapet edge and making them shorter so as to be less visible from the public street.

And you did do that in your plans that you showed to us.

ATTORNEY ARTHUR KREIGER: Yes.

CONSTANTINE ALEXANDER: You responded to this comment, the plans you submitted to us back in December --

ATTORNEY ARTHUR KREIGER: Correct.

CONSTANTINE ALEXANDER: -- reflect

this.

ATTORNEY ARTHUR KREIGER: And you may recall the sort of one to one ratio, we're able to make them six feet tall and roughly six feet from the edge. If they were farther back, they'd have to be higher. The Planning Board in its second letter of April 26th said again: By mimicking difficult roof features such as chimneys in an orderly way, set back from the edge of the parapet, visual impacts are minimized.

You have that in the record as well.

CONSTANTINE ALEXANDER: Right. What's the Board's pleasure? Comments? Suggestions?

BRENDAN SULLIVAN: I'm still -- I really didn't like it to begin with and it doesn't change my view of it.

CONSTANTINE ALEXANDER: Nothing has been brought to my attention to change the view.

Tim, anything you want to add?

TIM HUGHES: Not now. Not in seriousness, no.

CONSTANTINE ALEXANDER: Slater? Doug?

DOUGLAS MYERS: No, no, I'm unhappy that we're being confronted with a fate of complet. It makes it difficult. It makes it difficult.

CONSTANTINE ALEXANDER: I'll try to frame a motion. Please bear with me as I go along.

The Chair moves that the Board make the following findings:

That the Petitioner is a duly licensed carrier from the FCC.

That the plans that we're talking about, and we will get to them in a second, but the plans involving rooftop faux chimneys, the visual impact of this will be minimized through the use of materials that

in texture and color blend with the materials to which the facilities are attached. And that other steps have been taken to minimize the visual impact by the nature of the location of the rooftop structures to again minimize the impact on surrounding neighborhoods.

That since this proposal is solely to be erected in a residentially-zoned district, we have to make a finding that there was a demonstrated public need for the facility at the location, and the Petitioner has submitted databases or drawings and charts which indicate that there is a need for the facility at this location.

That there are no alternative functioning suitable sites in non-residential locations.

That the character of the prevailing uses in the area are such that although it is a residentially-zoned district, it borders

on areas that are not residential; namely, the Harvard University and even the nearby hotel.

And I move that the Board make the finding that non-residential use is predominate in the vicinity of the proposed facilities location, and that the telecommunication facility is not inconsistent with the character that does prevail in the surrounding neighborhood.

This finding would be made on the basis that I've already indicated that are directly across the street from the building in question, on the grounds of Harvard University, specifically the Harvard Law School. And that the vicinity also includes a very large, not a very large, but a large hotel, the Sheraton Commander. There are other dormitories in the area as well.

And, therefore, we have to make further findings that are required of all Special

Permits. Findings are that the relief being proposed will not cause congestion, hazard or substantial change in established neighborhood character or affect traffic patterns. These facilities are largely maintenance free requiring minimal attendance from people traveling to fix or to upgrade or maintain the nature of the structure.

That development of adjacent uses will not be adversely affected by what is proposed, which are basically rooftop structures.

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

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

The Special Permit would be granted on the following conditions:

That work proceed in accordance with plans submitted by the Petitioner. It's Tab 4 attached to a December 7th letter. Plans have been prepared by Dewberry, Dewberry Goodkind, Inc. And they are dated 11/20/09, except that the plans will be modified to reflect air conditioning units as shown on the plans submitted by the Petitioner as Exhibit 10 attached to an April 26, 2010 letter. These plans were also prepared by Dewberry, Goodkind and these are dated April 22, 2010. So that's one condition.

And on the further condition that the work be consistent when erected with the photo simulations submitted by the Petitioner. There are two sets of photo simulations, and we have meld the two.

One is Exhibit 6 to the December 7, 2009.

ATTORNEY ARTHUR KREIGER: That's all you need, Mr. Chairman. The other photo sims were facade mount.

CONSTANTINE ALEXANDER: Didn't they show also the air conditioning of the roof as well?

ATTORNEY ARTHUR KREIGER: Photo sims from the street? No.

CONSTANTINE ALEXANDER: Thank you. Those photo simulations.

On the further condition that all efforts be taken to minimize additional impact of the faux chimneys by using materials, fiberglass materials which are intended and designed to blend with the brick of the building to the maximum extent possible. Such materials will be consistent with the materials presented to us at this meeting. I guess we can't keep a copy in our files, but I will just reference the materials presented to us at this meeting.

Further, that this visual disguise is being maintained. So due to elements or other damage, if they are damaged, they must be promptly repaired so that at all times that the visual impact to the extent possible is minimized.

And on the last condition that if the equipment is the subject of this motion cease to be used for a period of six months or longer, that they promptly be removed and the building be restored to the maximum extent possible to its prior condition.

Any further conditions?

On the basis of the foregoing, the Chair moves that the Special Permit be granted with the conditions that I've specified.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Three in favor.

(Alexander, Anderson, Hughes.)

Three in favor.

CONSTANTINE ALEXANDER: All those  
Opposed?

(No.)

CONSTANTINE ALEXANDER: Two  
opposed.

(Sullivan, Myers.)

CONSTANTINE ALEXANDER: The motion  
does not carry. The Special Permit is  
denied.

ATTORNEY ARTHUR KREIGER: May I ask  
is there anything that AT&T can do to either  
persuade the remaining Board members about  
what's suitable for this building or further  
search in the neighborhood that would please  
the Board members?

CONSTANTINE ALEXANDER: I'll turn  
the question over to the Board members with  
the caveat that they don't have to respond to  
that question.

ATTORNEY ARTHUR KREIGER: I

understand that.

CONSTANTINE ALEXANDER: But if  
either of you wish to comment.

BRENDAN SULLIVAN: No.

DOUGLAS MYERS: No.

ATTORNEY ARTHUR KREIGER: Thank you  
all for your time.

CONSTANTINE ALEXANDER: Thank you.

(7:55 p.m.)

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

CONSTANTINE ALEXANDER: The Chair calls case 9925, 44 Follen Street. Anyone here wishing to be heard on this matter? Please come forward.

ATTORNEY VINCENT PANICO: Good evening, Mr. Chairman. My name is Vincent Panico. I'm the attorney for the owner Mr. Doug Yoffe to my right. And to my left is Any Nastasi, the architect. And as you recall, we were here before. And we had to tidy up a few things. And initially I

believe the -- I believe there is a letter in the file in which we indicate we withdraw all requested relief for parking.

CONSTANTINE ALEXANDER: And the basis for that is?

ATTORNEY VINCENT PANICO: It's something that the Petitioner would take up with the Building Commissioner.

CONSTANTINE ALEXANDER: Okay. You're going to take it up with him? I thought you had a determination --

ATTORNEY VINCENT PANICO: We had a determination.

CONSTANTINE ALEXANDER: But anyway, that's not before us tonight.

ATTORNEY VINCENT PANICO: There are no parking issues before you tonight.

CONSTANTINE ALEXANDER: Just for the record, what is the Variance now tied to?

ATTORNEY VINCENT PANICO: Converting the single into a two and making

very, very minor changes to the exterior.

CONSTANTINE ALEXANDER: That's the Special Permit parts of the case. So you're just taking the Variance to convert a two-family to a single-family?

ATTORNEY VINCENT PANICO: A single to a two.

CONSTANTINE ALEXANDER: Yes, you're right. The rooming house, so you're right, to a two-family house.

ATTORNEY VINCENT PANICO: Okay. And the other question at our last hearing was how much of it did the Historical approve? And it's kind of a little vague on that. And I believe the file will also now reflect a letter from Historical Commission saying yes, the plans that you have which they have stamped, they are in favor.

CONSTANTINE ALEXANDER: And I will read this into the public record. I just want to confirm, though, that these plans

attached to Mr. Sullivan's letter are before us tonight.

ATTORNEY VINCENT PANICO: Those are the plans.

CONSTANTINE ALEXANDER: And the hardship is? We have special requirements for the zoning relief for the Variance.

ATTORNEY VINCENT PANICO: The hardship is that this is a 5,000 square foot plus building with 16 rooms, and it's just -- the only other alternative the owner had -- briefly the history of the building in the 1940s this -- a Board granted the right for them to have a rooming house or a club.

CONSTANTINE ALEXANDER: A club. The Lincolns Inn.

ATTORNEY VINCENT PANICO: The Lincolns Inn Club. And it was the plague of the neighborhood. And I think you have several letters in the file from neighbors that gushingly approving what we are trying

to do.

CONSTANTINE ALEXANDER: I think those were read in the file already. I'll read them into the file again. Keep going.

ATTORNEY VINCENT PANICO: And a couple years ago, as a matter of fact, the neighbors came before this Board and tried to have the fraternity so-called, just out of there, and the Board had to turn them down because they were properly zoned. Well, by approving the relief we seek, it will take that use out of the neighborhood permanently. Just turn it into a two-family. The release -- and I'll have the architect briefly describe it. Just on the setbacks we're removing the fire escape. If we can just have the plans, I can show it where it is on the....

CONSTANTINE ALEXANDER: Here are the plans.

AMY NASTASI: That's the same.

ATTORNEY VINCENT PANICO: As you face the building on the left-hand side, there is an exit, and on the other side there is also an exit. And the Historical Commission, when we appeared before them, said that's inconsistent with the natural character of the building and they would be in favor if we removed it. And we're removing it and turning it into windows that match the window design for the rest of the building. There is no increase on the FAR unless you consider an overhang on the back stairs as a three-foot overhang. If you consider that in addition to the FAR, there is a slight addition. That's the only thing.

CONSTANTINE ALEXANDER: But I guess someone has determined that that's not an increase in FAR because you're not seeking relief for that, right?

ATTORNEY VINCENT PANICO: That's correct.

CONSTANTINE ALEXANDER: And you haven't been challenged by the Building Department?

ATTORNEY VINCENT PANICO: We have not.

If you want, we can have the architect just describe those stairs and the rear exits.

CONSTANTINE ALEXANDER: Anyone else? Go ahead.

AMY NASTASI: Okay. So, we're having a two-family house, we needed two means of egress. So we have a front means of egress and then a rear that's separated as possible. And we wanted to eliminate the two side egresses which Historic didn't like and they weren't fitting to the building at all. So, the front steps are kind of narrow on the front facing the street. So all I'm suggesting is that we make them wider by their existing five feet wide. I'd like to make

them eight feet wide. Really the same set of steps and a landing coming down to the sidewalk.

And in the back it's a little bit, not -- the grade is lower so we need to have a few more steps coming down. And so I've put in what's required to get to the bottom grade on the first floor. So leaving the first floor, egressing out the back and then getting down like eight, ten stairs, to grade. And then we also are using a basement, and we wanted to have egress out of the basement. So on the basement plan --

CONSTANTINE ALEXANDER: What are you using the basement for, is that going to be living quarters?

AMY NASTASI: It's a recreation room. There's a bathroom down there. There's storage and mechanical.

DOUGLAS YOFFE: The basement was like the barroom. So there was this bar down

there. So, it has eight-foot ceilings. So we're just going to have two egresses out of there.

AMY NASTASI: So, the basement is a little bit lower than the grade. So we have to have three-and-a-half foot exit with the landing and then up three or four steps to grade.

ATTORNEY VINCENT PANICO: This is something that we had discussed with Historical and they approved the whole thing.

AMY NASTASI: And there's also an existing -- another, if you look on the rear elevation or on the SK29.

DOUGLAS YOFFE: Here's the site plan.

TIM HUGHES: The plan shows the back stairs and the entryway drawn.

AMY NASTASI: An elevation?

TIM HUGHES: Yes. That's what I want to look at when you're done with it.

AMY NASTASI: So the plan is on SK29.  
An elevation is SK35.

So, let's see what else was I going to tell you about it? Oh, there is an existing back door on the right side of the building as you're facing it. That is kind of like a short door. So we just want to make it real length and be able to come out and step right out without stepping up on the inside. And then a few steps to grade in the backyard. There's also concrete steps going up to the front of the house. We need to add two more in because we need to lower to get out a normal door height. So we're just going to match those concrete steps to the existing ones.

CONSTANTINE ALEXANDER: Go ahead.

AMY NASTASI: I think do you have any questions?

THOMAS SCOTT: Why do you need both doors out of the basement?

AMY NASTASI: Well, one was already

existing. And the stairs kind of go down there anyway so we kind of wanted to....

THOMAS SCOTT: And the outside stairs?

AMY NASTASI: The -- yeah, the outside stair alongside the building.

THOMAS SCOTT: And then you're adding this?

AMY NASTASI: Right.

THOMAS SCOTT: You're adding this?

AMY NASTASI: Yes.

CONSTANTINE ALEXANDER: Yes, sir?  
Give Tom more time to look.

Anybody else have questions at this point? Continue to look, Tom. I'll just get to the letters that we have in our file and put them into the record.

We have a letter to us from the residents at 50 Follen Street. "To the Board: As a neighbor of 44 Follen Street, I am in full support of the Variance and Special

Permit being petitioned by Mr. Douglas Yoffe, case No. 9925. For many years the Lincoln's Inn has been an eyesore in this residential neighborhood. And the past couple of years during which this building has been vacant, the property has fallen into even more disrepair. The changes proposed by Mr. Yoffe will greatly enhance the appearance of the structure and are likely to increase the property values in the neighborhood."

We have a letter from residents at 36 Follen Street, Christopher B. and James C. Reid. "As owners since 1965 of a single-family home at 36 Follen Street, next-door to 44 Follen Street, heretofore the Lincolns Inn Society, a social club and boarding house primarily for Harvard Law School students, we rejoice at the prospect that this building will not henceforth be used for any similar purpose. We urge you to

grant the appeal to rezone the building for two-family use. We believe that as two townhouses, each with one adjacent parking space, the structure will suit the financial needs of the present owner and the societal needs of the neighborhood."

A letter from Jill Tonelli, T-o-n-e-l-l-i who resides at 1558 Massachusetts Avenue, No. 23. "I am writing to express my staunch support of Doug Yoffe's proposal to change the former Lincolns Inn, a social club, into a two-family residence. I have lived at 1558 Mass. Ave. for 20 years and have attended numerous meetings during this time. To communicate the serious problems (we residents) have had directly associated with having a social club with a liquor license in this residential neighborhood. Most residents in this neighborhood have full-time jobs and need to get up early in the morning. Lincoln's Inn

patrons often came and went with shouting, arguing and bottle breaking through five in the morning. Hearing of a proposal to turn the former social club into a two-family residence has been some of the most encouraging and wonderful news I have heard all year."

And a letter from the resident at 50 Follen Street, No. 412, Elizabeth Conley, C-o-n-l-e-y. "I'm writing again in favor of Douglas Yoffe's new Petition, case No. 9925, of 44 Follen Street. As an abutting neighbor with windows that face 44 Follen, I'm greatly pleased by Mr. Yoffe's plans to restore the property and create two private residential units. The added canopy, landing steps and adjustments to the parking spaces sound fine to me. The whole project promises to be an extremely positive change for our neighborhood after years of neglect by the previous owners and the many problems caused

by the long use of 44 Follen as a drinking club. It's a pleasure to write in support of this petition."

And last we have a letter from Robert H. Giles, G-i-l-e-s who resides at 22 Follen Street. It's actually addressed to the Cambridge Community Development Department, Zoning Board. "Our property 22 Follen Street abuts 44 Follen Street. Doug Yoffe recently purchased the property at 44 Follen Street and plans to renovate the building for two apartments. He has discussed his plans with my wife Nancy and me. I write to express our full support for this project and urge the Zoning Board to approve the changes he is seeking. We believe that renovation of this building for two-family use will be a major improvement to the property and to the neighborhood."

And lastly, we do have a letter from the Cambridge Historical Commission, Charles

Sullivan, dated June 16th. And it says: "I am writing to confirm that I have approved the Proponent's plan for this property which is located in the Old Cambridge Historic District." And the plans he refers to as Mr. Panico pointed out are the plans before us tonight.

Questions about the correspondence?  
Other members of the Board, questions? I'll open it up to public testimony.

Anyone wishing to be heard on this matter.

(No response.)

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

Any further discussion or we ready for a vote? We have to take two votes, one for a Variance and the other a Special Permit, one of which you were speaking to called the Special Permit, which is the relocation of windows and doors.

Okay. The Chair moves that we 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 will be left only with the non-conforming boarding house/drinking club use, and that would be a hardship because that would not be a financially appropriate for this property. The hardship is owing to circumstances relating to the shape of the lot and the nature of the structure. It isn't actually an odd shape lot with unusual parking, parking, however, that is legal primarily, it's non-conforming.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating for the intent or purpose of this Ordinance. In fact, if we grant the relief, we will be

furthering the purposes of our Zoning Ordinance in that we will be restoring residential use to a residentially zoned neighborhood and eliminating a use that is inconsistent with this residential neighborhood; namely, the boarding house, drinking club that has been there for many, many, years.

So on the basis of the foregoing findings, the Chair moves that we grant a Variance to allow the Petitioner to convert this structure to a two-family structure.

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

(Aye.)

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

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

CONSTANTINE ALEXANDER: Now we have to turn to the second vote which is the

Special Permit which relates to the doors and windows as you've outlined for us.

The Chair moves that we make the following findings:

That if we allow this relocation as proposed by the Petitioner of stairs, windows and doors, that it would not cause congestion, hazard or substantial change in established neighborhood character or have traffic impact. In fact, what will be done we will be making it more historically correct structure in an area that's already a residential district.

That there will be no congestion, hazard or substantial change to the established neighborhood character. The nature of the changes speak for themselves as to why this is the case.

That the continued operation of adjacent uses as permitted in the Ordinance would not be adversely affected. In fact, as

we've heard from a number of neighbors, it would be beneficially affected by what is being proposed.

That no nuisance or hazard will be created to the detriment of the health, safety or welfare of the occupants. Again, what we're doing, if anything, eliminating a nuisance or hazard.

And that the proposal would not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purpose of this Ordinance. Again, what we're talking about is restoring a residential structure to what it should have been and eliminating the social club.

The Special Permit would be granted on the condition that the work proceed in accordance with plans, elevations and drawings submitted by the Petitioner which are attached to a letter from Charles Sullivan dated June 16th. And I'm going to

initial just that cover page. But it's these plans, those are the plans you showed us.

AMY NASTASI: Yes.

CONSTANTINE ALEXANDER: On the basis of the foregoing, I make a motion that we grant the Special Permit.

All those in favor, say "Aye."

(Aye.)

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

(8:15 p.m.)

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

CONSTANTINE ALEXANDER: The Chair now calls case No. 9946, 150 Mount Auburn Street. Is there anyone here wishing to be heard on this matter? Please come forward.

JASON PARILLO: Good evening. I'm Jason Parillo, P-a-r-i-l-l-o with Back Bay Sign, 425 Riverside Avenue, Medford, Mass.

STEVEN DARWIN: And I am Steven Darwin, owner Darwins Limited 148-150 Mount Auburn Street.

JASON PARILLO: All right. So we're here tonight to petition the Board to

allow a four signs where two signs are permitted in a residential neighborhood. Basically in essence the proposal is to install two wall signs and two small blade signs. The two, the two wall signs can be basically permitted without needing a Variance. Really what we're here for are these two really small blade signs. This proposal went before the Historical Commission in the Half Crown Marsh and it was approved. There were three members of the community that showed up and they also were in favor of the proposal. There's an existing non-conforming internally illuminated large blade sign that would be taken down and replaced by these signs.

CONSTANTINE ALEXANDER: The good news is, from my perspective, is that horrible sign that's there will come down.

JASON PARILLO: Yes.

CONSTANTINE ALEXANDER: However,

why do you need two projecting signs? I understand the wall signs, and they make sense. Everyone knows where Darwins is. It's a compliment to you and your business. And it's not a street that has any kind of protruding signs. And I guess I don't understand that the hardship to you, why -- and we have to make a finding on hardship to grant you relief. What is the hardship that requires you to have a protruding sign?

STEVEN DARWIN: I can't say that I can argue a case for hardship. However, I -- there are -- there is a protruding sign further down the road. I believe it's for the Sovereign Bank and that was on the Fed Ex -- in the Fed Ex building.

CONSTANTINE ALEXANDER: That's way down.

STEVEN DARWIN: No, no, that's only one block down.

CONSTANTINE ALEXANDER: I know the area, but I don't see the sign down.

STEVEN DARWIN: Just further down on the left-hand side going towards Harvard Square. The Fed-Ex, the Sovereign Bank, those were part of the new post office structure. I think the idea of this came just more of an aesthetic pleasing. I had come back from England last year and I just noticed a lot of those Ye Old sort of shop signs. My wife and I thought that you -- actually the reason we used our surname Darwins and used the limited at the end was to sort of bring in an English feeling towards the neighborhood which seemed to go along with the Harvard University. In conjunction with the fact that there are protruding signs further down the road and in many spots in and around Harvard Square doesn't seem to be that different. And as a matter of fact, I think the flat signs that

go against the building, I mean, they're certainly more attractive than the Bush Beer sign that's hanging there now. But I think if you look at that, that rendering right there without the projections, the projections just add, you know, frankly a touch of class. And in, you know, as you just stated, there's really no reason. I mean, everybody knows where the store is. There's really no reason for us to, you know, my wife and I to have, you know, the financial obligation to take down the Bush Beer sign and spend the money that we're doing to do this. We're actually, we're doing it because we just think it's more in line with the neighborhood as it's changed over years, and we think it's just -- dependence just make it a little classier.

CONSTANTINE ALEXANDER: This is truly a hypothetical question. If you were to say you can't have the two protruding

signs, you can put the two signs, a wall signs up as a matter of right. And if you wished, to continue the current sign on non-conforming sign, am I correct on that? Is that right, Sean?

Suppose we just -- and this is again hypothetical. We say no, to the Variance for the protruding signs. They can construct the two wall signs as a matter of right?

SEAN O'GRADY: Well, I don't know that.

CONSTANTINE ALEXANDER: Okay. They need relief even for the wall signs you think would be the case?

SEAN O'GRADY: To tell you the truth --

JASON PARILLO: You have less --

CONSTANTINE ALEXANDER: You have ten foot of signage, right? I don't have a break down of it.

JASON PARILLO: I think we're okay

because of what Les Barber worked on with Community Development, I believe the two wall signs can be approved without needing a Variance.

CONSTANTINE ALEXANDER: The projecting signs.

SEAN O'GRADY: Can I take a look at it?

DOUGLAS MYERS: How far, just a different aspect of the different question, how far from the wall will the two protruding signs actually protrude in toto? I see there's 18, 18 inches.

JASON PARILLO: It would be like 20 inches.

DOUGLAS MYERS: 20 inches.

JASON PARILLO: Yeah, I mean they're very small. They're really kind of like a decorative, you know, aspect. And I think they also will grab a couple more eyes, you know, walking down the street, you know, a

wall sign, you know, can only really be sign from the street or on an angle.

DOUGLAS MYERS: And to what extent will they be power operate?

JASON PARILLO: They're totally natural illumination. They're not internally illuminated or externally illuminated.

DOUGLAS MYERS: This is a confession of my ignorance then what I see in the file about power LED --

JASON PARILLO: That has to do with the wall signs have externally illuminated lights that shine directly on the wall signs. That subject came up with Historical, and we addressed it. They're very low voltage and there's, there will be no direct light visible. The light just shines directly onto those wall signs. Then like I said, the projecting signs are totally natural illumination only. No external

illumination on those at all.

SEAN O'GRADY: It doesn't appear that it would be. It says on the second proposed wall sign, it says permitted as sign accessory to the establishment if the existing projecting sign is removed.

CONSTANTINE ALEXANDER: Okay. Questions at this point from members of the Board?

TAD HEUER: Do you use the stylized element logo, that would be on these projecting blade signs in any other branding capacity for Darwin's?

STEVEN DARWIN: If you're referring to coffee cups, you know, things like that. Yes, for perhaps paper bags in the future, things like that. Website development.

TAD HEUER: And I guess part of -- I think I share the Chairman's confusion to a certain extent, largely thinking something along the line Maestro Keith Lockhart told

his orchestra that was so subtle, I didn't hear it. These seem to be so subtle, small using a stylized element, not necessarily identifying Darwins for someone who doesn't know it's there. And I'd say there's a small little filigree item sticking up from the wall. And I guess I'm kind of trying to get a sense of what the value is added of these small filigree items. Quite frankly, I would perhaps prefer something that was a bit larger as a blade sign that was not internally illuminated like the Bush Beer sign as opposed to something that seems so tiny that it doesn't really serve the purpose that you want to serve, but gets us into a situation of approving a blade sign that we might not want to approve.

STEVEN DARWIN: Fair point. I would, I would counter that for instance the Nike logo developed over time. Developed into people's consciousness. I think this

is a logo that we developed about six years ago now. I think for the local regular community people do identify with that logo. It certainly is being used on a lot of our merchandise. We sell a large number now of merchandise cups that have that logo on it. And people keep snapping up. We get comments all the time that people love our logo. They love it for the simplicity and the artistic feel that it has. I think that the more that logo is out and is present, the more it does lodge into people's minds just as with all, all advertising.

JASON PARILLO: I also have something to add about the two signs. There are two entrances also to this business. So, you know, they also, you know, in that practical sense market the entrances.

TAD HEUER: Has anyone ever missed the entrance to Darwins?

STEVEN DARWIN: As a matter of fact,

people walk down there and they take a double take all the time, especially tourists. We have a lot of tourists that come down from Harvard Square. They literally -- they miss it, they miss the place because they don't see it. There's nothing there grabbing them that there's some sort of artistic store. And I sort of, I view Darwins as sort of an artistic sort of environment. It's different from many other operations, and people are coming down there looking for it. And I think that these blade signs would automatically say to somebody in their mind oh, there's something different, there's something creative here, there's something artistic and we need to explore it and it brings people out of the square and down into our community.

TAD HEUER: Is there a reason or had you considered a single blade sign -- I mean, I lived in England for a long time, I don't

remember seeing very small signs, but you do see pub type signs all the time, you know, about two feet or three feet. So you get six square feet sign projecting, non-illuminated. That -- I'm doing my math based on what I remember seeing would kind of still put you under the sub-20 foot range that you have available; is that right? Did you say you are you're coming in at 17?

JASON PARILLO: I think we have to come in under 10.

CONSTANTINE ALEXANDER: Under 10. And your combined signage for all four signs is 27 feet according to your application.

JASON PARILLO: I think it's only 17.

TAD HEUER: Right, that's my question.

CONSTANTINE ALEXANDER: Oh, sorry. Okay, 17.

TAD HEUER: And if you're coming in

at 17, less the three feet, that gets you down to 14, plus six gets you back to 20.

CONSTANTINE ALEXANDER: No, you're right. That's right. There's 17. The current sign is 21 feet. That's right.

TAD HEUER: I mean I'm just wondering whether a single, perhaps larger sign in a strange way that while I understand less is more in some situations but wouldn't more be more?

STEVEN DARWIN: Well, not in this case. It goes back to what Jason was referring to, that it's also unique in the fact that we have two entrances. And these signs mark sort of mark the territory of the two entrances that we have.

CONSTANTINE ALEXANDER: How far apart would the signs -- the entrances are not far apart as I recall.

JASON PARILLO: Well, the store, there's four bays and the first sign would,

you know, be on the first pier of the building. And then the second sign would be -- and this is if you're I guess if you're walking, you know, away from Harvard Square, you would be on the fourth pier of the building. Because it is a pretty wide -- it is quite a wide space, and that's that was part of the idea here of having, you know, two sets of signs and kind of book end.

STEVEN DARWIN: Trying to bring some cohesiveness together.

DOUGLAS MYERS: Suppose I mean one, you mentioned about the signs in that, in your little commercial block there as being similar to the signs in the post office block further down the street although that part of the street is a kind of large cohesive kind of massive commercial block establishment and yours is freestanding directly proximate to a residential neighborhood. So with that background, what would you say if the other

stores, how would you feel in the other stores in your commercial block were to come before us and ask also for projecting signs, one or two in excess of what the Ordinance might permit? Would you be concerned about clutter or detracting from your interests?

STEVEN DARWIN: In all honesty, if they were tasteful, I think that in that case more is better. Because there are other businesses that are right across Brewer Street, and I think that the -- that a little bit more acts as a very catching element towards, you know, pedestrians that are in Harvard Square saying oh, there's more down here. What is down here? And then they get down here and they discover oh, wow, there's the river. Or there's the park further down. I mean, I think it's a win/win. I could go back to -- I mean, I'm a resident of Inman Square, and I remember 20 years ago when East Coast Grill was the first really nice

restaurant in Inman Square, and that was great. But when there was all of a sudden two or three more restaurants then all of a sudden Inman Square became a destination. So I would argue on that ground that it's a good thing.

TAD HEUER: Can I just ask on the difficulty in tourists finding it, are you saying that with a 27 square foot illuminated -- internally illuminated sign people still miss it. If that's true, why would they see it more easily with small non-illuminated signs?

STEVEN DARWIN: Quite honestly because they mistake us for a liquor store.

JASON PARILLO: All you see is Bush.

CONSTANTINE ALEXANDER: You see Bush.

STEVEN DARWIN: And honestly when -- the history on this is when my wife and I opened this business, we were

27-years-old and we were dirt poor. We didn't have money for a new sign. And frankly at that time rent control was still alive and well in Cambridge. And it was literally -- we polled people when they came into the business, and it was a 50/50 poling that people didn't want us to take down the Bush sign. And then there were new residents that did. But people used it as a landmark for directions, you know, things like that. You know, the times have changed there. And, you know, my wife and I now have the disposable income to make this change. This whole thing is more of an artistic thing that we're trying to bring to the neighborhood. It's really not about developing Darwins more so. I mean it is what it is. We're just trying to get rid of the eyesore and we're trying to do something that's aesthetically pleasing and eye catching.

CONSTANTINE ALEXANDER: What about

your other Darwins? Darwins on Cambridge Street?

STEVEN DARWIN: Yes, sir.

CONSTANTINE ALEXANDER: Are you going to put a protruding sign there as well?

STEVEN DARWIN: No. But this store is also shrouded by trees. And there's a new tree that's growing in front of where this sign is going to be. It was just planted. So in all honesty, given time, the flat signage against the walls of the building aren't going to be that visible. Whereas, the block of the Skindarian's (phonetic) building on Cambridge Street is wide open. There's no trees. Everybody can see the signs.

CONSTANTINE ALEXANDER: Other questions from members of the Board?

I'll open to public testimony.

Is there anyone wishing to be heard on this matter.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. My name is James Rafferty. I live at 40 Larch Road which is in a westerly direction as the property values decline heading out of Harvard Square. But I want to just say that I'm a regular customer of this store. And this store is a neighborhood treasure. And the Proponent, as I understand it, has a sign package that makes the signage on the building more conforming by granting the Variance than is currently the case. And I would disagree with Mr. Darwin who makes a great sandwich, but not as good a lawyer, that there is a hardship here, and it is directly related to the fact that this is a two-storefront complex, and they have two very unique flavors. The entrance in the corner is where you go in to get sandwiches, and it's clogged all the time, particularly around noontime. There's a cafe next-door,

very elegant. All the pedestrian traffic coming from the west misses the fact that they can enter that door. I know it because I'm in that door all the time. And I have demonstrative evidence to prove the frequency with which I frequent the place. But I have to tell you that it is 80 percent walk-in traffic. People who use it love it. And if this was a separate business next-door, you'd want them to have that. These blade signs are just what the city's pushing if you -- as we're speaking, there is an Ordinance Committee hearing next week over revisions to the sign ordinance. There are meetings scheduled all over the Cambridge about making retail succeed whether you're in East Cambridge, Central Square. We've got blank storefronts. Strategies about how to get -- and not to get more cellphone stores or banks but to get homegrown -- I'm doing a project in East Cambridge now and they would

love Mr. Darwin to come down and do there what he did on Cambridge Street and what he's done here, he's created this community. There are two distinct entrances, and I do think the public will benefit at the overall aesthetic is really improved greatly by this proposal. So I don't generally speak in a personal capacity because I usually get paid to speak. But in this case, I have to say --

STEVEN DARWIN: That was going to be my next question.

ATTORNEY JAMES RAFFERTY: Sometimes people pay me more to stop talking. I just want to say as a nearby resident, that this proposal -- and that Bush sign -- I know Mr. Darwin thought it was as iconic as the Citgo sign. It never did much for me. But the fact that it goes away and these two very -- and now that's got a lot of money, his taste has improved, these are very discrete signs. And they do have -- they're so well

scaled for that street. And this is a sweet little commercial block that the city should be supporting and making succeed. I know what a success he is. I know how popular he is in the neighborhood. There's no one here with any reservations about this stuff. I won't take up anymore time, but I do think there's a hardship here that should be noted based on the two-store concept.

CONSTANTINE ALEXANDER: Is there anyone else wishing to be heard?

(No response.)

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

There is a letter in the file from the Petitioner as noted from the Historical Commission. Actually a Half Crown Marsh Conservation District approving the proposed signs.

I'll close public testimony.

Comments, questions, from members of

the Board.

BRENDAN SULLIVAN: I'm one who is not totally enamored with signs because I think that there's too much of it and it tends to shout at you. And in reviewing this proposal, I'm saying well, okay, why couldn't they go back to one? And yet -- and go back to Steve's comments and also Mr. Rafferty's comments, that I think that the proposal is scaled well. And that it actually has a nice form and also a very specific function at the two entrances. I do go into Darwins. I don't go obviously as much as Mr. Rafferty, and there is both evidence of that from both parts.

CONSTANTINE ALEXANDER: We'll take judicial notice of that fact.

BRENDAN SULLIVAN: But at any rate I think that it is scaled well and I think it does have a function for the two signs. So I would support it.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard or should we go to a motion?

TIM HUGHES: I agree. I think it's scaled well. I think it's a win/win. We get rid a sign that's just not aesthetic quality in favor of something that's much more scaled to the building and we do get a more conforming situation. It's still non-conforming, but it's less non-conforming than it was. It's not illuminated and it's ten square feet smaller overall. So I'm certainly in favor of it.

CONSTANTINE ALEXANDER: Ready to make a motion or anyone else wish to speak?

DOUGLAS MYERS: I've asked my questions and I'm comfortable with the answer I'm perfectly willing to support the motion.

TAD HEUER: I think my concerns were correlated because I wanted to make sure this stylized element is something that is going

to be into Darwin's persona --

STEVEN DARWIN: It is part of our long term objective, yes.

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

That a literal enforcement of our Zoning Ordinance would involve a substantial hardship to the Petitioner. Such hardship being an inability to sufficiently identify the business as being operated on the premises and, therefore, could cause an adversely affect to the Petitioner's business. That the hardship is owing to circumstances relating to the shape of the building; namely, the two storefronts, two entrances which are confusing particularly -- well, they're confusing depending on the direction you're coming from.

And that a desirable relief may be

granted without substantial detriment to the public good or will not nullify or substantially derogate to the intent or purpose of this Ordinance. In fact, what the Petitioner is proposing will improve the aesthetics of the area by removing a current non-conforming sign.

That the signs that are being proposed will fulfill a function consistent the operation of the business of the Petitioner. Further granting efforts that they are consistent because of their scale with the neighborhood in which the signs appear.

And that there is support from the Cambridge Historical Commission of the Mid-Crown Historical Board that has authority over this project.

The Variance would be granted on the condition that the Petitioner proceed with the four signs in accordance with the plan, single page as presented to this Board,

initialed by the Chair.

And on the further condition that in connection with erecting these signs that the existing non-conforming sign be removed.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(8:40 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9947, 40 Kirkland Street, 42 Kirkland Street, 20 Sumner Road and 7 Kirkland Road. Is there anyone here wishing to be heard on this matter? Please come forward.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board.

For the record, James Rafferty on behalf of the Applicant, for the Society of Jesus of New England. Seated to my right is Father Richard Roos, R-o-o-s. Father Roos is coordinating the moving and construction activities for his religious order.

This is an application dealing with an issue that the Board encounters with some regularity, the Doctrine of Merger of the Society of Jesus, better known as the Jesuits, own four properties identified in the Petition. And they came into their ownership in various times throughout the 1970s all from different owners. The Petition seeks to restore the historic lot lines to these properties which would allow the Petitioner to then sell the properties to individual buyers. The Jesuits are relocating, regretfully leaving the City of Cambridge where they've had a long presence and a number of our houses around the city,

and are moving in the fall over to the City of Brighton and adjacent to the Boston College campus and the Western School of Theology. So as a result, the properties are being sold. And there's one of the elements of a contract that the Jesuits have entered into. They are here seeking to be able to subdivide them for purposes of granting them to be simple to the buyers.

CONSTANTINE ALEXANDER: As I understand it, the subdivision plans if granted or if we grant you the relief you want, we'd have five lots, obviously with five structures.

ATTORNEY JAMES RAFFERTY: Excuse me, four.

CONSTANTINE ALEXANDER: You're right, four. Three of the four are in terms of lot size, would be conforming lots.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: There are

more than required. You have one non-conforming.

ATTORNEY JAMES RAFFERTY: That's correct.

CONSTANTINE ALEXANDER: Just a question: Why do you need relief for all four? Since you can do two, the ones that don't abut the non-conforming lot, can't you just sell them off without any -- even if it's a merger you can unmerge because you have a lot of sufficient size. Usually the merger problem is you have a non-conforming lot and size merges with a conforming lot, you have one lot.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: We have that issue here.

CONSTANTINE ALEXANDER: Yeah. You have five, you have a bigger lot right here.

ATTORNEY JAMES RAFFERTY: We have

four lots in total.

CONSTANTINE ALEXANDER: Well, why don't you just sell off two on Sumner Road and Kirkland Street?

ATTORNEY JAMES RAFFERTY: Well, what's really driving this is the Kirkland Road parcel, which is a single-family house, admittedly an undersized lot as is every other lot and Kirkland Road. The intention is, and the buyer's here for that property to be sold and renovated as a single-family dwelling. And there's no ability to convey only that portion, only the seven -- you couldn't -- that's what the merger -- that's the problem with the merger.

CONSTANTINE ALEXANDER: No, no, I understand that. But why can't you take the Sumner Road which does not apply, does not touch on the lot that's too small. Why can't that be sold off without any zoning relief from us? You would peel off this very big

merged lot, a lot of sufficient size from our Zoning Law. You only need relief because of the fact that you have as one lot the house on Kirkland Road which is undersized, it's merged with the lot next-door to it which is one of the Kirkland Street lots.

ATTORNEY JAMES RAFFERTY: It's merged with all four lots.

CONSTANTINE ALEXANDER: It is.

ATTORNEY JAMES RAFFERTY: The merger doesn't stop. So we have 30,000 square foot of lot area. And when you do the GFA -- I mean, the FAR currently is at a 0.69 for the entire lot. So we've got, we've got a combined lot. I mean, the lots were all separately created.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: The Jesuits applied them. So we've got this issue now where the Zoning says that's a single 30,000 square foot lot, so we don't

have any independent ability to sell Seven Kirkland Road. We can't create a 5,000 square -- we can't create a 3,000 --

CONSTANTINE ALEXANDER: I understand Kirkland Road. Why can't you sell off Sumner Sumner Road?

ATTORNEY JAMES RAFFERTY: Because when I take the lot area away, I make the other two lots even more non-conforming, because while the FAR today is at 0.69, if I sell off Sumner, if they were to sell off Sumner, create a new lot, then the lot area would go down further and it would exacerbate the FAR violation for the remaining properties. Now you'd have three properties sharing -- Sumner has a very -- Sumner has a very small footprint. It's probably the smallest the houses there. It's only got 2700 square foot footprint. So, you couldn't do it. You couldn't -- to make a conforming lot -- I mean, I agree with it. Theoretically you

could make a conforming lot out of -- the only one that's conforming is the Sumner, so the other two aren't. So if the interest was only in selling 20 Sumner, I think you're correct. Then you can probably fashion a lot where you could create an independent lot for 20 Sumner, but they're not selling one, they're selling all four. So the only-as-of-right peel off that I can figure out here is for 20 Sumner, because its footprint -- because the other three lots you can't get there. So, the point being is we should as-of-right 20 and then ask for subdivision on the other three, it seemed a little --

CONSTANTINE ALEXANDER: Well, it just minimizes the amount of relief you're seeking.

ATTORNEY JAMES RAFFERTY: Well, the relief, I mean it's interesting about the relief because there's really no relief

sought for 20 Sumner. 20 Sumner when it's done, I mean it's in the Petition, but 20 Sumner when it's done, will only have an FAR of 0.33 in a district with a 0.5 FAR. So it's the biggest the lots. So....

CONSTANTINE ALEXANDER: You've answered my question. On the other lot, I guess the other Sumner -- well, I guess it's Kirkland you have other issues. You don't have sufficient lot size but you wouldn't have FAR. You would be non-conforming.

ATTORNEY JAMES RAFFERTY: I would be going from 0.69 to a higher. I'd be creating zoning violations -- that's the purpose of the request to effectuate conveyancing on a sale. As I said, the properties have all -- were required at different times from different sellers. The intention is to be able to do it without having to create a --

CONSTANTINE ALEXANDER: And the hardship is?

ATTORNEY JAMES RAFFERTY: The hardship is directly related to the Doctrine of Merger and the fact that through consequences are unintended now that the seller is now faced with a single lot which has resulted in a situation where the ability to create separate ownership of these lots has been lost. It's particularly acute with Kirkland Road. There's -- the buyer of that property is here tonight. As I said, he intends to use it as a single-family residence. It's returning, it's currently institutional use. The granting of the relief will allow that property to go back to a conforming use by allowing it to be owned independently and fee simple as a single-family structure like all the others on that road.

CONSTANTINE ALEXANDER: I guess I would quarrel with you a little bit, but I'll put forth an alternative proposition of

support. All merger cases are inadvertent. You get nowhere the fact that this happened inadvertently. And my concern is and we have a memo from the Legal Department in connection with the Hurley Street case that we've had before, that the Doctrine of Merger is alive and well in Cambridge. It is something that the city wants to promote. There's nothing in our Zoning By-Law that overrides the Doctrine of Merger which supports such that the communities can do. So, you know, the arguments you're putting forth doesn't necessarily persuade me. What does persuade me is the fact that you've got five lots with five structures on it. I keep saying five, you're right, it's four. Thank you. Four lots with four structures on them. It's not a case where you have a lot with a structure and an adjoining lot that's merged that has no structure. And now if we unmerge the lots, we may be faced with the creation

of a second structure. Here we're just restoring the status quo and which is what you want to do. And that to me is more appealing in terms of what the hardship is. But as I said, I personally get nowhere with the notion of inadvertence.

ATTORNEY JAMES RAFFERTY: Well, if possible I would like to strike my earlier arguments and substitute the comments you made.

You know, it's an interesting concept. And I was talking to a member of the audience which has an issue as well. The concept of merger, if you examine it, really goes to undeveloped lots in the municipal interest in merger, and a lot of these lots are in Cape Cod, these places, when the minimum lot size changes, you have lots that become non-conforming and merger is there. There isn't a case law to be found on merger where there are structures on the lots.

CONSTANTINE ALEXANDER: That's the point I was trying to make.

ATTORNEY JAMES RAFFERTY: And that's what distinguishes these cases. And secondarily, there are some subdivision cases where we're actually coming in and creating new lots that have no historical basis for whatever reason. And that is not the case. So, when I say inadvertent, what I'm saying is the meets and bounds on these lots are what they've been for hundreds of years and they're only together by virtue of a form of ownership. But I agree with you. I do think some day the issue, because if you read all the cases in that case on Hurley Street, it does appear that it's an open question. There isn't a case law about merger. If you have a single-family house and another single-family house and you own one and then you acquire the other one, what's the municipal interest in having that treated

as -- what land use policy is that?

CONSTANTINE ALEXANDER: You go to a point that I would like to make as well. And this whole merger situation in Cambridge cries out for a legislative solution. There should be something in our Zoning By-Law that deals with a Doctrine of Merger, allows us to unmerge subject to certain criteria pursuant to a Special Permit. Right now we have only the Variance. And the Variance is a very blunt instrument to be used for unmerging properties. Better still the City Council -- use your influence, Mr. Rafferty, to get us something that deals with merger so that we can make really a better judgment on each case that comes before us. We get a lot of mergers.

ATTORNEY JAMES RAFFERTY: I agree. And if you are prepared to run on that platform, I would support you. But I think it's a very legitimate issue. I think there

may be some talk because it has -- there are -- I've had cases, you know, the parents live next-door, you die, you inherit the house. You own it for a year or two and now you go to sell it. I had a case in North Cambridge. What do you mean I need a Variance to go -- to get the lot merged. That isn't what merger -- if you look at the case, that isn't the intention that there isn't any -- and we talk about it all the time. What's the municipal interest in having that building conveyed as a condo versus being conveyed as a two-family house. I would welcome such a dialogue. And sometimes the Planning Board will take suggestions on issues that should be looked as they do zoning review. I think this is definitely one that is worthy of that type of attention.

TIM HUGHES: Since Mr. Rafferty is going to have free legal advice tonight, I have a question. It doesn't relate

specifically to this case, but if the idea of merger is to bring lots into conformance that were non-conforming lots, why do conforming lots automatically merge?

ATTORNEY JAMES RAFFERTY: Well, they don't. So if you, the only time --

TIM HUGHES: But in this case at least one conforming lot merged with these other lots.

ATTORNEY JAMES RAFFERTY: Because the other lot needed the lot area. So, that's why it happened. But if prior to the acquisition of 20 they get subdivided.

TIM HUGHES: The two conforming lots of common ownership don't automatically merge?

ATTORNEY JAMES RAFFERTY: That's right. The merger occurs when you're short on area or over on FAR, you're correct. Som if you did have two single-family houses of 5,000 square feet and they met the FAR, they

would not merge. No, that is true.

TAD HEUER: While it would certainly destroy the historical lot lines, there seems to be a huge amount of area here which is Pine 42 extending into 20 where the parking area is for 20. So that north/south sweep that's -- currently has an -- I have it marked as asphalt walkway. Is there not any reason to move certain historical boundary lines in order to make each of the resulting lots more conforming? Wouldn't that be preferable to simply returning to status quo ante because that's where they used to be? I mean, for instance moving the lot line between 40 and 42 towards 42 would seem to give 40 more space and limit part of their setback problem, or alternatively running a dog leg off of the back of 42 to give to Seven Kirkland Road and provide it with additional lot area. I mean, it may not be pretty, but wouldn't that come at least nominally closer to the intent of the

Zoning Ordinance to give each of these structures a more appropriate lot area?

ATTORNEY JAMES RAFFERTY: Well, with all due respect, I'm not sure to agree that's the intent here. I mean to gerrymander lots in a development pattern that's inconsistent with the entire neighborhood of streetscape, I haven't seen that set forth as a blend policy objective. You can do that. I mean, one could do that, but that would lend itself to all types of creativity that might create other problems. And that 20 Sumner is a deep lot, but there's -- by the time the structures are non-conforming or at least I believe that is in terms of its front setback. So I -- sure there is a way where you could, where you could allot, where you could apportion more lot area to other properties, but to what benefit? I don't, I'm not sure.

TIM HUGHES: Unless you could

actually bring both of those lots or all four of those lots into conformance by redrawing the line, I don't really see the point. Just to make them more conforming doesn't seem to make any sense to me. If you can make them conforming by redrawing a lot line, I can see that. But just splitting the difference, so you know, so that they each have less of a proportion of non-conforming, what's the point? Why not go with the historical lot lines?

ATTORNEY JAMES RAFFERTY: Think about fences and back yards and layouts. I mean there is a certain symmetry to a right angle in some of these lot lines that's typically the case.

CONSTANTINE ALEXANDER: The general sense if it ain't broke, don't fix it.

TAD HEUER: It is broke.

TIM HUGHES: It's broke.

CONSTANTINE ALEXANDER: Well, the

broke is the merger but not the historical lot lines I think if you take away the merger issue. You have lots there that have been there before. We just have a zoning overlay of this constant merger. I'd like to keep the lot lines where they were before if we we're going to grant relief.

DOUGLAS MYERS: Mr. Chairman, I have a question on a different subject if I may distract the Board from the subject of merger.

You wrote a letter dated June 21st, sketching out a ten-foot driveway in an easement area, and I just had a question with regard to the other survey plans in the file. Most of them show that driveway and easement area, but for one it was marked BZA with the docket number 9947 did not show that driveway and easement area. Could you say what was the purpose of your letter in that sketch?

ATTORNEY JAMES RAFFERTY: The

purpose of my letter was that in reviewing the subdivision plan, it was noted that the surveyor had provided for an easement to allow for access here, and I didn't think the easement went far enough. And so I made a notation as to -- spoke to the surveyor. I got the PDF, mindful of the Monday deadline, filed it, that easement change. So the plan here, the original plan didn't contain the easement. The plan filed on Monday had the easement, but it wasn't a stamped plan. The stamped plan arrived yesterday and I added that to the file. But the easement, the extension of the easement was created by me on Monday.

DOUGLAS MYERS: So you, in fact your letter of the 21st and the little sketch accompanying the letter is in your opinion the only document in the file that accurately reflects the full extent of the easement?

ATTORNEY JAMES RAFFERTY: No, no.

This does, too.

CONSTANTINE ALEXANDER: No.

That's like a first draft, but it has all the details of what the plan is going to show. He got it in the file in time and now he's elaborated on it formally through this subdivision.

DOUGLAS MYERS: I see.

ATTORNEY JAMES RAFFERTY: Right.

It's just -- I took the distance between the two, to Mr. Myers' point, is this area right here where it says driveway easement was done in hand on the Monday one. It's now set forth in the plan itself.

DOUGLAS MYERS: Fine.

TAD HEUER: I have a similar question. Is 42 Kirkland Street the dominant tenant on either of those easements? Or Both? Can you just go over quickly who the dominant inservients are for each of these easements?

ATTORNEY JAMES RAFFERTY: Sure. 42 Kirkland's benefitted by an easement across 40 Kirkland because as you can see, 42 Kirkland doesn't have access to its parking spaces without crossing across the property of 40 and the property of 20.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: So that is the benefitted lot. It has the benefit.

Conversely the 40 and the 20, the 40 Kirkland is burdened by the lot because 42 will now be able to come across. And similarly 20 is burdened by a lot that will allow 42 at some point to come across 40 and onto 20 to get to those four parking spaces.

TAD HEUER: And 40 and 20 have reciprocal easements as to each other based on the portion that they don't control; is that right? Is 20 benefitted by the driveway on 40?

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: And vice versa which will allow everyone to continue to access this parking area behind?

ATTORNEY JAMES RAFFERTY: I don't think 40 would need to because I think 40 can get in and get its spaces.

TAD HEUER: So the 40 spaces are only these ones that are next to the item marked to the item marked?

ATTORNEY JAMES RAFFERTY: Yes.

TAD HEUER: 40 doesn't have any easement rights to spaces behind 20?

ATTORNEY JAMES RAFFERTY: That's right.

TAD HEUER: All right.

CONSTANTINE ALEXANDER: Further questions?

Anyone wishing to be heard on this matter, please raise your hand.

(No response.)

CONSTANTINE ALEXANDER: The Chair

notes no one wishes to be heard. I'm sorry.  
Ma'am, my apologize please come forward.

JEAN GIBSON: Hi. My name is Jean Gibson. I'm the home owner at No. 10 Kirkland Road which is directly across the street from Seven Kirkland Road. Of course we're very interested in the fate of all of these parcels, but particularly Seven Kirkland Road. And our understanding is that the proposed use for that property is as a single-family, and I would like to ask that that use be made a contingency of the Variance.

CONSTANTINE ALEXANDER: Well, they're not seeking any relief from the use requirements of our Zoning By-Law. Just dealing with a technical restoration of the original lot lines. Whatever they can legally use for a use before, they can still be able to do it were we to grant relief. We're not changing the rules on this. This

is a residentially zoned district I believe. So whatever is permitted in a residential district, will be permitted for this structure if we grant the relief. Nothing's going to change. But it could change, but if it changes it will be because it's allowed as of right under our Zoning By-Law or a new owner would have to come back before us and seek relief. So I'm not -- I'm stumbling about, but what I'm saying to you is nothing should change that concerns you're raising by virtue of the relief being sought tonight.

JEAN GIBSON: So it cannot be made a condition of the Variance?

CONSTANTINE ALEXANDER: It can't be made into an apartment house or a Lincoln's Inn, a social drinking club without coming back before us. The owner would have to come back before us to seek a Variance to allow that kind of use, and you would be notified and you would deal with that. But in a

residential district you can usually have, if you meet certain requirements, a two-family house as well as a single-family house. And I don't know whether this property could be made into a two-family house as a matter of right. But if they could, that could happen. If they can't, and someone wanted to make a two-family house, they'd have to come back before us and seek a separate Variance. Have I answered your question?

JEAN GIBSON: I think so. Thank you.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard?

(No response).

CONSTANTINE ALEXANDER: The Chair notes no one else wishes to be heard. And I think I've indicated there's nothing in the file. No letters or other communications.

Comments or questions from members of the Board?

TIM HUGHES: I'm good with it.

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

That a literal enforcement of the provisions of our Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the Petitioner would be saddled with a single lot containing four single-family structures which would be very difficult from a -- the hardship being the inability to dispose of or otherwise use the property would be adversely affected by this unusual conglomeration of structures.

That the hardship is relating to the shape of the lots. I mean, and the size of the lot that has been created by virtue of this common law notion of merger. That that merger doctrine having taken four separate legal either non-conforming or conforming lots and making it into one large lot that is

effectively all non-conforming.

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

We can grant this relief because all that is being asked is to restore the situation to what it was before these properties were acquired one by one by the Petitioner. We're going back to four lots all having single-family structures. Three of those lots having a minimum lot size that conform to our Zoning By-Law.

On the basis of these findings the Chair moves that a Variance be granted to the Petitioner on the condition that the subdivision of the lot, the undoing of the merger, be in accordance with a plan, a subdivision plan submitted by the Petitioner dated 4/14/10, initialed by the Chair, and prepared by, or at least has a signature of

R.E. Cameron and Associates Land Surveyors  
and Civil Engineers.

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

(Aye.)

ATTORNEY JAMES RAFFERTY:

Mr. Chair, on the motion, there were several  
references to four single-family structures.  
I don't believe that would accurately  
describe the other three structures.

CONSTANTINE ALEXANDER: They're not  
single-family?

ATTORNEY JAMES RAFFERTY: Well,  
they were six families and they've been used  
as housing.

CONSTANTINE ALEXANDER: Okay.  
Residential structures.

ATTORNEY JAMES RAFFERTY: They're  
structures.

CONSTANTINE ALEXANDER: They're  
residential structures obviously?

ATTORNEY JAMES RAFFERTY: They are. I don't know that they're accurately described as single-family.

CONSTANTINE ALEXANDER: Thank you. The motion will be so modified.

The vote, we'll take it again with that modification. All those in favor of granting the Variance on the basis so moved, say "Aye."

(Aye.)

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

(9:05 p.m.)

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

CONSTANTINE ALEXANDER: The Chair next is going to call two cases that we know are going to continue. If there's anyone here with regard to them, I want to get them out of the way so you can go home.

The case is No. 9951, 23 St. Mary Road. Is there anyone here wishing to be heard on this matter? You've got to come forward and identify who you are.

KIMBALL HULL: Hull, H-u-l-l, Kim, K-i-m. And I'm the owner of the 23 St. Mary Road with the Petitioner for a request for a Variance. Our architect is out of town. I think he supplied a letter, and if we can have a continuance so he can return to help us present this for you, that would be great.

CONSTANTINE ALEXANDER: Sure.

You have signed a waiver in the file. That's fine, we're favorably disposed to a continuance so it's not a problem.

KIMBALL HULL: Okay.

CONSTANTINE ALEXANDER: What date would we be continuing it to, Sean?

SEAN O'GRADY: August 12th.

CONSTANTINE ALEXANDER: Does that work for you?

KIMBALL HULL: I believe it does, yeah. There's nothing in July?

SEAN O'GRADY: I saved the earliest spot for you.

KIMBALL HULL: We'll take it then.  
Thank you very much.

CONSTANTINE ALEXANDER: Let's take  
a vote. I think you know where the vote is  
going to go.

The Chair moves that this case be  
continued until seven p.m. on August 12th on  
the condition that the sign that you have on  
the property right now that advertises this  
hearing, take your magic marker, go there and  
cross out today's date and put August 12th  
there and maintain that sign between now and  
until August 12th.

The Chair would further note that a  
waiver for time of decision is already in the  
file.

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

(Aye.)

(Alexander: Hughes, Sullivan,  
Heuer Myers.)

KIMBALL HULL: What I don't know with my architect out of town, what his schedule is.

CONSTANTINE ALEXANDER: That's fine. I'll let you know if he can't you'll come back on August 12th and we're going to have to pick a new date.

(9:05 p.m.)

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

CONSTANTINE ALEXANDER: And the Chair will call case No. 9953, Six Berkeley Place. Is there anyone here wishing to be heard on this matter?

(No response).

CONSTANTINE ALEXANDER: The Chair notes that the sign that's required to be posted by the Petitioner advertising this hearing was not timely posted, and as a

result, it cannot consider this case at this time. The Petitioner has been notified of that and has been apprised of the fact that the sign requirements have to be complied with before we'll hear the case.

So we're going to continue this case to what date, Sean?

SEAN O'GRADY: This will be September 16th.

CONSTANTINE ALEXANDER: September 16th.

The Chair moves that this case be continued until seven p.m. on September 16th on the condition that the Petitioner duly and timely post a notice for the hearing, and that notice should reflect a new hearing date of September 16th.

The Chair further notes that the waiver of time for rendering a decision is in the files. This will be a case not heard as was the case before.

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

(Aye.)

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

(9:10 p.m.)

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

CONSTANTINE ALEXANDER: We'll now call case No. 9948, Nine Sibley Court. Is there anyone here wishing to be heard in that matter?

ADAM SEITCHIK: Yes, my name is Adam Seitchik. I'm the owner of Nine Sibley Court.

CONSTANTINE ALEXANDER: This is the third time you're before us.

ADAM SEITCHIK: Yes.

CONSTANTINE ALEXANDER: And have a real difficulty here. Why when you came before us the last time did you not seek a Variance this time? I mean, why are we having a third case and why are we seeing the relief that you want for this property in pieces?

ADAM SEITCHIK: That's a good question. When the building permit was first -- the permits were first put in, you might remember that we had an earlier design that had gone through the neighborhood conservation district commission and had come to you and had been approved. That's the first time we were here. And that design was -- that decision of your committee was appeal. And we were informed by the lawyer that it would take a year or two before that would be resolved, and we couldn't financially wait.

So we came up with a second design. And the goal of the second design was to have it be as of right and not have to come in front of you at all. And when the design was reviewed by Sean's group, Ranjit wasn't in town. He had to leave. Ranjit said he wanted to actually leave the case, but he was out of town so Sean looked at it. And Sean said I think there are two things that may need relief:

One is a Special Permit for the windows. And this roof covering may also need relief. It's a judgment call. I can't say that it doesn't. When Ranjit gets back, you know, can you certainly talk to him.

We meanwhile went through the Special Permit of the windows and actually over a period of a number of weeks I was waiting for Jim Rafferty our lawyer to have that discussion with Ranjit. And I kept waiting and waiting, and it just wasn't happening

with Jim. So I finally said to Jim, look, I'm going to -- I'll just pursue this on my own because you don't seem to be making progress. I finally called a meeting with Ranjit. He sat down and he determined that he agreed with Sean, that this did need relief and that's why I'm here today.

CONSTANTINE ALEXANDER: I won't beat up on you much more. It would have been nice when you came before us with the Special Permit you had put us on notice that you might be coming back to us with a Variance depending on your conversations with Ranjit. Then we would have known -- we would have had a better picture when we grant the Special Permit of the total consequences. But all right.

ADAM SEITCHIK: I wish Mr. Rafferty was here to explain why we did what we did. He's not representing us any longer.

CONSTANTINE ALEXANDER: You don't anticipate a fourth appearance before us?

ADAM SEITCHIK: No.

TIM HUGHES: Unless he buys another piece of property.

CONSTANTINE ALEXANDER: Yes, I meant with regard to this property. Thank you.

ADAM SEITCHIK: The project of the building has been proceeding in terms of the construction is well underway.

CONSTANTINE ALEXANDER: And specifically why do you need zoning relief? You're asking for a Variance because?

ADAM SEITCHIK: Yeah, well, you might remember the property is a very shallow property and it's got a 10 or 15-foot front setback depending on how you interpret the zoning. And then a 24-foot setback. And it only has 38 feet of depth. So it's not a buildable lot as of right. And we were -- there's an existing set of entrance steps that have no roof covering on top of

them. So the roof covering creates FAR which we have room for, so we're not asking for relief on an FAR basis. And we were hoping that that roof covers would be considered a projecting eave or it would be considered construction over an existing first floor, and that's why it was a grey area as to whether it needed zoning relief. But it needs zoning relief because it's essentially new construction.

CONSTANTINE ALEXANDER: It extends into the rear setback.

ADAM SEITCHIK: It extends into the rear setback.

Now, in terms of the setbacks, the rear setback is Shaler Lane which is Harvard University housing. And Harvard has never expressed an opinion one way or another about anything we've done.

So, the hardship comes from the misshape of the lot. I don't think that the

roof covering really has any impact on anyone. Arguably I guess Harvard can argue it has an impact on them, otherwise I think it's just an aesthetic element that we come in from the rain and we don't think it has any --

CONSTANTINE ALEXANDER: Questions from members of the Board?

Anyone here wishing to be heard on this matter?

(No response).

CONSTANTINE ALEXANDER: The Chair notes no one wishes a desire to speak.

I don't recall seeing any letters in the file one way or the other.

Further discussion by members of the Board or we ready for a vote?

TIM HUGHES: I'm good with it.

BRENDAN SULLIVAN: There should be something from Historical.

CONSTANTINE ALEXANDER: Say that

again?

BRENDAN SULLIVAN: There should be some correspondence from Historical.

ADAM SEITCHIK: When the broader project was approved, it included this covering and it wasn't approved on the conservation --

CONSTANTINE ALEXANDER: That's true, but Mr. Sullivan's comments -- I mean, technically you do have support for what you want tonight from Historical by virtue of their approval of your earlier plans. And that's well worth noting for the record, that there is approval from the Historical Commission because the property is located in the Half Crown Marsh Neighborhood Conservation District. And reading from the Cambridge Historical Commission memo, it says, the application, that's your application, was approved. And that application is the one that has the roof

overhang.

ADAM SEITCHIK: That's right.

TAD HEUER: Is that also the application included in the dormer?

ADAM SEITCHIK: Yeah, with the windows.

TAD HEUER: Right, non-dormitory. So this plan that we're initialing, just for the purpose of inspectional and compliance, contains all of these prints up until now and would include the relief you're asking for tonight. So they can just look at this plan --

ADAM SEITCHIK: Right.

TAD HEUER: -- for clarifying both elements of your relief?

ADAM SEITCHIK: That's correct.

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

That a literal enforcement of the

provisions of our Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that he would be left with an entrance without any protection from the elements, and would adversely affect the inhabitability of the structure. That the hardship is owing to the shape of the lot. We've had many in the cases before, an unusually shaped lot and also unusual in terms of the size. As a result, almost any kind of construction, it's a non-conforming structure that requires zoning relief of one sort or another.

And that relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this Ordinance. In fact, what is proposed is a very modest intrusion into a rear yard setback.

That the party most affected by the rear yard setback, Harvard University, expressed

no opposition to the proposal.

And it is to the benefit of the community to improve the use of structures by sheltering people who enter the structure from the elements.

That the project also has the approval of the Cambridge Historical Commission.

On the basis of these foregoing findings, the Chair moves that a Variance be granted to the Petitioner on the condition that the work proceed in accordance with the plans submitted by the Petitioner. They are number A1 and A2. The first page which has been initialed by the Chair. And they were prepared by Spacecraft Architecture and bear the most recent date of January 8, 2010.

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

(Aye.)

(Alexander, Hughes, Sullivan,

Heuer, Myers.)

CONSTANTINE ALEXANDER: Good-bye.

ADAM SEITCHIK: I hope not to see you again. Thanks.

(9:20 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9949, 31 Crescent Street. Is there anyone here wishing to be heard on this matter?

STEVEN BEAUCHER: Steven Beaucher from Beaucher and Lea Architecture. I'm here with Lindsay, Lindsay Politi, P-o-l-i-t-i and her husband Jason Politi. They're the homeowners at 21 Crescent Street.

I'm the architect for the project here.

The basic proposal, this is 31 Crescent Street (indicating). This is the existing condition photographs (indicating). The proposal is to relocate the front door here (indicating), as well as an open stoop and stairway that would be within a -- within the minimum front yard setback. And the hardship is without this, it limits their ability to provide street front surveillance from their front door as well as security for -- they have a young child, and as they grow into this home, this is their home for -- that they've been developing over the years, they moved in in 2007, this would limit that. And the hardship is because of -- it's due to the fact that that is within the 10 foot front yard setback.

CONSTANTINE ALEXANDER: As I understand it, the structure right now is non-conforming in a number of respects and

you're basically, if you will, shifting the non-conformance. You're not increasing the amount of non-conformance, you're just shifting it.

STEVEN BEAUCHER: Right.

CONSTANTINE ALEXANDER: So, you're now going to have the front entrance on the street. When you walk in the door, you walk into what? I know it's in the plans.

STEVEN BEAUCHER: Historically that was a porch.

LINDSAY POLITI: Our house was a mirror image of the neighbors house. And historically it was a porch. And then it was closed in to be a bedroom on the first floor to make it a two-bedroom unit instead of a one-bedroom unit.

CONSTANTINE ALEXANDER: But you're not going to walk directly into living quarters? I'm wondering if the bigger issue you have is like the case before --

LINDSAY POLITI: No, no.

JASON POLITI: We're going to turn that into an entryway so it will be nice.

LINDSAY POLITI: Sort of a walk in.

STEVEN BEAUCHER: Right now the stair as located, it comes off of the stair on the side so it's a little odd.

CONSTANTINE ALEXANDER: Any other things you want to present to us?

STEVEN BEAUCHER: No. Questions, please.

CONSTANTINE ALEXANDER: Questions from members of the Board?

Anyone here wishing to be heard on this matter?

(No response.)

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

I don't think there's any communications one way or the other in the file. Have you talked to your neighbors?

JASON POLITI: We have, yeah. They're really happy about it. Actually the neighbors on each side they think it makes more sense. It's more logical to set it up with an entry right up front instead of being set back from the street --

CONSTANTINE ALEXANDER: Not that you needed to do this, but you didn't get anything in writing from them, did you?

JASON POLITI: No.

LINDSAY POLITI: No.

CONSTANTINE ALEXANDER: No, it's not your fault. But your representation to us is that you spoke to at least some of the affected neighbors and they're in support?

JASON POLITI: Yes.

LINDSAY POLITI: They've seen what we've planned to do and were happy with it.

TAD HEUER: I have a question on C-2 of your supporting statement and it may be just a missing comment. So you say the work

is on the current deck and the stairs, less than 10 feet from the building, less than four foot high which is allowed to be within the yard setback per Article 5, Section 5.24.2. What's the allowed to be in the -- for clarity.

STEVEN BEAUCHER: My understanding is an uncovered deck less than 10 feet from the buildings's face lower than four feet from grade is allowed by right but --

TAD HEUER: So if that's true, how can that be a hardship as you say in B where the hardship is owing from the fact that it's cited within a zoning district in the front yard minimum of 10 feet?

STEVEN BEAUCHER: It's a question I posed to this and on other projects and we've been referred to treat it as a Variance.

SEAN O'GRADY: I missed the beginning of the conversation.

TAD HEUER: Well, it's either a

violation or it's not. And the suggestion is that they've been instructed to put it in a form it's both a violation and not a violation. It's not a violation, they shouldn't be here. If it is a violation, they shouldn't say it isn't.

SEAN O'GRADY: Which piece are we speaking of?

TAD HEUER: We are speaking about 10 feet -- location of A, uncovered deck and stairs less than 10 feet from the building and less than four feet high in the front yard setback.

STEVEN BEAUCHER: This comes out of and, Sean, I don't know if you recall, there was a separate project distinct from this, exact similar thing, new deck and porch within the setback. And I was, I was instructed through the builder who had gone to ISD at the counter from Sean that that would be required for -- that we would need

a Variance for that. That was a different contractor.

SEAN O'GRADY: I think the piece that's missing is it depends -- the wall that it's coming off of itself cannot be in the setback.

STEVEN BEAUCHER: Okay.

SEAN O'GRADY: So it seems like you can use the rule, but sometimes you can't and sometimes you can.

STEVEN BEAUCHER: That's the differentiation here?

SEAN O'GRADY: Yes.

STEVEN BEAUCHER: So the front wall itself is within the 10 foot setback, therefore, we are seeking relief.

TAD HEUER: So B is an accurate statement?

STEVEN BEAUCHER: Correct.

TAD HEUER: C-2 is not --

STEVEN BEAUCHER: Not applicable.

TAD HEUER: -- applicable. Okay. But at the end of the day you do need a Variance, you do have to be here?

STEVEN BEAUCHER: Yes. Sean has verified that.

CONSTANTINE ALEXANDER: Questions? Any further questions from members of the Board?

TAD HEUER: I have another one. Was there any reason that you decided not to open it up back as a porch? I mean, you already have a significant massing in front of the building. You're looking to bring it even closer to the street with the stairway, albeit it uncovered. The images that you show of your neighboring houses are not massed toward the street there, open portion. Was there any thought about making this an open porch as well or putting more glass in it?

STEVEN BEAUCHER: Are you speaking

to the homeowners on that?

LINDSAY POLITI: I don't understand the question, do you?

JASON POLITI: Yeah, opening up -- the after you go in the door you have that be a porch.

LINDSAY POLITI: Basically take the whole thing down?

JASON POLITI: I think we -- I don't know, to me I'd rather have it as closed space there, you know.

LINDSAY POLITI: And I guess sort of just the expense and time that it would take to basically undue what someone else has already done. And I guess -- I guess we just sort of figured it would be a huge undertaking because now inside the porch there it won't be -- what needs to be the porch, they're hardwood floors, they're plastered walls, there's electrical. I think would be a lot to undue it. It would be very nice to have

a front porch, but it's just, it's just not feasible.

STEVEN BEAUCHER: It was not part of the project I was engaged to design. We were only proposing a stoop and steps.

LINDSAY POLITI: And this was I guess more design to eliminate what's just minor problem, people just can't find our front door. We didn't realize until we started moving in. On Halloween people can't find our house. And delivery people calling on the cell phone wondering how to get in the house and I have to go find them. And this is what occurred to us.

CONSTANTINE ALEXANDER: Further questions, Tad?

TAD HEUER: No.

CONSTANTINE ALEXANDER: Ready to make a motion?

We have two petitions before us on this property. One is a Variance and another

is a Special Permit. So I'll deal with the contrary Variance first.

The Chair moves that the Variance being sought is to add a new deck and stairs and a new front door on the front of an existing building and also remove existing deck and stairs at side of house.

The Chair moves that we make the following findings:

That a literal enforcement of the provisions of our Ordinance would involve a substantial hardship to the Petitioner. Such hardship being the nature of the architecture of the building with a side entrance that is not conducive to identification of the occupants of the structure or the address of the structure. And also impedes the ability to the surveillance of street activity from the front door of the house. That the hardship is owing to circumstances relating to

basically the shape of the structure. It was a non-conforming structure so that any modification, particularly with regard to the front of the house, requires 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 relief being sought would bring this structure into greater aesthetic conformity with other structures in the neighborhood. It would improve really the inhabitability of the structure by improving the entranceway into the structure.

That the relief being sought does not increase the nature of the non-conformance. If you will, it shifts non-conformance to what it is now to what you would like to do. And that it has been represented to us that there is no neighborhood opposition, and in

fact there is no expressed neighborhood opposition in our files.

On the basis of all the foregoing, the Chair moves that the Variance be granted to the Petitioner on the condition that the work proceed in accordance with the plans. These are the plans right?

STEVEN BEAUCHER: Yes, sir.

CONSTANTINE ALEXANDER: You're not going to modify them? Plans submitted by the Petitioner. They're numbered X1.00, D1.00 and A1.00, three pages. The first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Myers.)

CONSTANTINE ALEXANDER: One

opposed.

TAD HEUER: Opposed.

CONSTANTINE ALEXANDER: The Variance is granted. Don't go yet, you need one more vote.

LINDSAY POLITI: Sorry.

CONSTANTINE ALEXANDER: You need one more vote.

Further, there is a petition for a Special Permit to allow the Petitioner to replace existing window with new door and replace existing door with new window. It's part and parcel of the construction for which we just granted the Variance.

The Chair moves that we make the following findings:

That what is being proposed with regard to relocation of windows and doors will not cause congestion, hazard or substantial change in established neighborhood character, or impact patterns of access or

egress. In fact, it would impact, but in a beneficial way, and that access would be now directly on the street rather to the side of the house to the street.

That the continued operation of adjacent uses would not be adversely affected.

In that regard the Chair would note that there is no neighborhood opposition to the propositional.

That no nuisance or hazard would be created to the detriment of the health, safety or welfare of the occupants or the citizens of the city. In fact, if anything, hazard would be reduced by having a more beneficial front entrance on the street itself.

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

Ordinance.

As the Chair has previously noted, this in fact would bring this structure in better aesthetic conformity with the immediate neighborhood.

On the basis of all the foregoing, the Chair moves that a Special Permit be granted to the Petitioner on the grounds that the work proceed in accordance with the plans submitted by the Petitioner, prepared by Beaucher, B-e-a-u-c-h-e-r and Lea, L-e-a submitted with the petition. They're numbered X1.00, D1.00 and A1.00. The first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan,

Heuer, Myers.)

(9:30 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9950, 1033 Mass. Avenue. Is there anyone here wishing to be heard on this matter? Please come forward.

KEN LEITNER: Mr. Chairman, Board members, my name is Ken Leitner, L-e-i-t-n-e-r representing Farah

Enterprises concerning 1033 Massachusetts Avenue. Farah Enterprises is a franchisee of Dominoes Pizza and they're looking for a Special Permit under 4.35 and 11.31 to put a Dominoes Pizza in the commercial space known as 1033 Mass. Ave. Just take an overview of what they do.

It's at Harvard Square. They've scheduled the site for quite sometime. Their business plan is to do 40 percent walk-in business and deliveries. They don't have any plan, in fact, they have to change their national advertising campaign to have people come in, drive in and pick up pizza. They're going to deliver, and they hope to have walk-in customers in the Harvard Square neighborhood.

The general, it's a fairly dense neighborhood. They have four parking spaces in the rear of the property, and that's for the delivery drivers. Deliveries are not

going to be made out of Mass. Ave. They're going to be coming out the parking lot in the rear. There's a rear door.

CONSTANTINE ALEXANDER: So those four spots in the rear would be reserved for your drivers?

MOHAMED SISAI: Yes.

CONSTANTINE ALEXANDER: It would not be available to public patrons of your restaurant.

MOHAMED SISAI: Just the front.

CONSTANTINE ALEXANDER: They use street parking?

MOHAMED SISAI: Yes.

CONSTANTINE ALEXANDER: Okay. And what about food delivery, where would the deliveries be made? In the parking lot in the back or are you going to double park on Mass. Ave?

MOHAMED SISAI: Hopefully be made in the back of the parking lot.

CONSTANTINE ALEXANDER: Hopefully.  
When you say hopefully --

MOHAMED SISAI: Yeah, you know, I mean we can ask Dominoes to bring like the small truck than the big truck. They do that I mean in case there's inconvenience for the neighborhood.

CONSTANTINE ALEXANDER: We're talking, as you know, a congested part of Mass. Ave. and seeing a big truck double parked in front of your building is going to cause --

MOHAMED SISAI: Well, usually they deliver after midnight, early.

CONSTANTINE ALEXANDER: Oh, really?

MOHAMED SISAI: Yes. They do that three times.

CONSTANTINE ALEXANDER: And what are going to be the hours of operation for your restaurant if we were to grant you relief?

KEN LEITNER: Under the lease they're allowed to operate eleven a.m. to two a.m. Monday through Saturday, and eleven a.m. to one a.m. on Sunday.

CONSTANTINE ALEXANDER: That's what you're proposing to do?

KEN LEITNER: Yes.

DOUGLAS MYERS: Can you repeat that?

CONSTANTINE ALEXANDER: Eleven to two.

KEN LEITNER: Eleven to two.

CONSTANTINE ALEXANDER: Except on Sunday, eleven to one.

DOUGLAS MYERS: Eleven to two six days a week.

KEN LEITNER: Six days a week.

CONSTANTINE ALEXANDER: Those are late hours particularly for this area that can cause other kinds of problems for the neighborhood. Do you have other kinds of residential structures across the street?

Should we be concerned about traffic and noise at one in the morning as people are coming by?

MOHAMED SISAI: We won't make any noise. It's a simple operation. Just pick up the order from the store, go to the car.

CONSTANTINE ALEXANDER: Forty percent of the traffic is going to be walk in.

MOHAMED SISAI: Not late night. We hope that it's in the afternoon. People who's passing by.

TAD HEUER: Presumably the 40 percent that's not walk-in is delivery, correct?

KEN LEITNER: Delivery.

TAD HEUER: What is either your opinion or part of the national franchise generally suggest for immediate urban areas for having perhaps two sets of hours; one set of hours which is open at the counter for walk-ins and the other side that allows you

to continue making product for delivery out until two a.m. is that --

MOHAMED SISAI: Yeah, we have some of these Special Permit in other cities. I mean have it Somerville which we do that.

TAD HEUER: Where it's a limited time for the walk in but then you can continue to make it at night?

MOHAMED SISAI: Right.

TAD HEUER: Is that something you would consider at this location?

KEN LEITNER: Absolutely.

BRENDAN SULLIVAN: This has to go before Licensing.

DOUGLAS MYERS: That would be my -- what is the status of your application to the Licensing Commission in terms of hours of operation? You will be applying there after.

KEN LEITNER: After, yes.

BRENDAN SULLIVAN: So they would set

the hours of operation.

KEN LEITNER: Yes.

DOUGLAS MYERS: Are you aware at this point of any restrictions under Cambridge Ordinances on deliveries made at midnight or one o'clock or before seven in the morning?

TAD HEUER: You're speaking of deliveries to the store?

DOUGLAS MYERS: Deliveries to the store of merchandise.

KEN LEITNER: Presently he operates a site at One Broadway which if he receives the zoning, he'll probably put all of it, efforts into that and terminate the lease there. But hours of operation are similar.

MOHAMED SISAI: Eleven to two.

CONSTANTINE ALEXANDER: A little different though in One Broadway area than this area in Cambridge.

KEN LEITNER: It is different.

CONSTANTINE ALEXANDER: But I say as Mr. Sullivan and others pointing out that's another Board to pass on. But it wouldn't surprise me if your hours are restricted somewhat.

KEN LEITNER: As he stated, in Somerville he has deliveries until right before two but he closes down the counter at midnight.

DOUGLAS MYERS: What are the other nearest Dominoes? You've mentioned one at Kendall Square.

KEN LEITNER: Yes.

DOUGLAS MYERS: Which you operate.

MOHAMED SISAI: Yes.

DOUGLAS MYERS: What are the others that are most geographically closest to the proposed site at 1033 Mass. Ave?

MOHAMED SISAI: One Broadway and Somerville in Davis Square.

DOUGLAS MYERS: The Somerville one

is in Davis Square?

MOHAMED SISAI: Yes.

BRENDAN SULLIVAN: Which can absorb late operations. This may not be so absorbant of that.

TIM HUGHES: We're talking about a strip where there's a liquor store, a restaurant and bar.

CONSTANTINE ALEXANDER: There's a neighborhood. The neighborhood --

TIM HUGHES: In that same black, right?

BRENDAN SULLIVAN: It's the building.

TIM HUGHES: The Cellar is there. They need stores because Panini is gone and the Friendly Eating Place is gone.

CONSTANTINE ALEXANDER: And all the furniture stores are closing.

BRENDAN SULLIVAN: I mean it screams for some pizza or something.

TIM HUGHES: Pizza. I can hear it screaming pizza.

KEN LEITNER: It's a furniture store that it's going into it.

CONSTANTINE ALEXANDER: What kind of -- I didn't see anything in your plans about what this place is going to look externally from the streetscape. What are you going to see in terms -- the usual Dominoes logo and colors and signs?

MOHAMED SISAI: Yes, whatever the city allows us.

BRENDAN SULLIVAN: Now we're if on that.

KEN LEITNER: The signage is going to be conforming.

CONSTANTINE ALEXANDER: Well, as you said, if you're going to put signage that's not conforming, you have to come before us.

KEN LEITNER: The signage will be

conforming to the by-law.

CONSTANTINE ALEXANDER: What I'm trying to get at is I hate to see you come back a couple months for relief for a sign if we grant you relief tonight for the Dominoes. I'm not going to be, particularly speaking only for myself, not too happy about signage relief. So, if you want to get signage relief from this Board, it should be tonight.

MOHAMED SISAI: Usually the Dominoes, they use clear channels of just the --

CONSTANTINE ALEXANDER: The size requirements and all that?

MOHAMED SISAI: Yes.

CONSTANTINE ALEXANDER: Just simply saying you better comply with the as a matter of right with the signage.

KEN LEITNER: The signage on Broadway complies as a matter of right.

CONSTANTINE ALEXANDER: As I

recall, I don't recall you coming back before us.

TAD HEUER: And is there any internally illuminated signage or is it all externally?

MOHAMED SISAI: Just a couple of on the windows, that's it.

TAD HEUER: Okay.

MOHAMED SISAI: And just neon signs, small ones.

DOUGLAS MYERS: You stated that in your business plan you expect 40 percent of your patrons to be walk in. What's the basis for your determining that?

MOHAMED SISAI: The people who pass by over there. I mean, and the student who lives in the dorms over there.

DOUGLAS MYERS: Why would it be 40 percent rather than 30 percent or 60 percent?

MOHAMED SISAI: Just an estimate. Goal.

CONSTANTINE ALEXANDER: It's a goal.

KEN LEITNER: There are about 23,000 people that are in the square during the day who are non-residents.

CONSTANTINE ALEXANDER: Dominoes doesn't encourage walk ins.

MOHAMED SISAI: No, they change.

CONSTANTINE ALEXANDER: They are changing?

MOHAMED SISAI: Yes.

TAD HEUER: There's a new pizza. Haven't you seen the ads?

CONSTANTINE ALEXANDER: I've seen it but I have not tried this pizza.

TIM HUGHES: If we grant this permit, is there any chance you can change the name? Sorry.

DOUGLAS MYERS: The fact that you have 16, you plan for 16 interior seats and 16 exterior seats, that's a considerable

change from your business plan for One Broadway, isn't it?

MOHAMED SISAI: Yes. Okay. Just that Harvard, they ask me if we want to put outside seating and we said yes. Okay, the One Broadway we have 13 seat right now, so we added three more. So based on that business right now we need more seating.

CONSTANTINE ALEXANDER: Is it a matter of right you can put the amount of outdoor seating that you show in your plans?

KEN LEITNER: That would be tied with the (inaudible) also.

CONSTANTINE ALEXANDER: There's a pretty wide sidewalk.

KEN LEITNER: It's a private.

TAD HEUER: It's set back.

CONSTANTINE ALEXANDER: You're right.

KEN LEITNER: It's a public sidewalk is in front of it.

CONSTANTINE ALEXANDER: Further questions from members of the Board?

Anyone here wishing to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: No one's expressed that they'd like to be heard on this.

TAD HEUER: The relief is on the waiver. Is there a waiver for parking that you need?

CONSTANTINE ALEXANDER: They're a fast food enterprise as defined in our Zoning Ordinance and that requires a Special Permit with the findings.

TAD HEUER: Right, but in terms of the number of seats that they're allowed to have, is that tied to the parking?

CONSTANTINE ALEXANDER: How does that work on fast food restaurants?

SEAN O'GRADY: The fast food Special

Permit actually actively folds the parking into the Special Permit.

TAD HEUER: So we wouldn't be granting whatever parking is there as an element of the Special Permit because they could have zero parking and that would be granted by Special Permit, they could have a football field and that would be granted by Special Permit?

SEAN O'GRADY: Yes. The fast food requires a Special Permit and it's just parking is part and parcel and it's up to you to decide well, was there too many seats given the amount of parking and the situation.

TAD HEUER: Right.

CONSTANTINE ALEXANDER: Public testimony has been closed. There is nothing in the file at least the last I looked commenting on this.

There's a question from Traffic and Parking but it's not relevant to what we're

doing tonight.

These are the plans that you're going to --

KEN LEITNER: Yes, they are.

CONSTANTINE ALEXANDER: Ready for a vote? Okay. As the Petitioner points out under our Zoning By-Law for a fast order food establishment which you are, by virtue of that's how it's defined in our Zoning By-Laws, addresses even not just chains, McDonald's the world, but any pizza operation. So I want to make that clear. We have to make the following findings:

That the operation of the establishment will not create traffic problems, reduce available parking, threaten public safety in the streets or sidewalks or encourage or produce double parking on the adjacent public streets.

You represented to us that you, I would point out that you're locating this

restaurant in an area that has substantial pedestrian traffic. It's not the kind of an operation or a neighborhood that people would be driving to to pick up pizza. And in fact, your business plan is such that you will drive the pizza to them to the extent people don't walk in the front door.

There is going to be issues with regard to double parking on the streets or threatening the public safety in view of the hours of operation, but I guess it's not -- well, I would say we can, from our perspective, from a zoning perspective, I think we can say that condition -- I would propose we make a finding that condition has been satisfied and leave other Boards to make their determination.

We're not going to encourage or produce double parking on the adjacent streets because it's been represented to us as a condition of our decision that the delivery

of goods to your store will be done during non-business hours and will be through the use of off-street parking that's part of your property you're renting.

TAD HEUER: Non-business hours might be difficult if their business hours are actually what they've told us.

CONSTANTINE ALEXANDER:  
Non-business hours for the City of Cambridge. Their business hours, but typical Cambridge business hours.

TIM HUGHES: They're not opening until eleven in the morning. Certainly deliveries can be done before eleven in the morning.

TAD HEUER: I'm just going on his statement in his other location it would come in after midnight. So it may be up to your drivers rather than you. I don't know how much control you have over when your deliveries are or not made.

MOHAMED SISAI: We can request it.

TAD HEUER: You can make a request?  
Okay.

CONSTANTINE ALEXANDER: That's why  
I put it in there.

That we find that the physical design, including color and use of materials, will be compatible with and sensitive to the visual and physical characteristics of other buildings, public spaces and uses in the particular location. We are all familiar with basically the physical design and color and use of materials for Domino Pizza operations. And put it in the negative. I don't think they're inconsistent with the visual and physical characteristics of other buildings in this particular location.

The establishment fulfills a need for such a service in the neighborhood. I will say and just as the Chair, I don't regard this as Harvard Square. I know you've said it as

such. If it were Harvard Square and the Board has heard me at nauseam, I would deny you the Special Permit because I don't think there's a need in Harvard Square for another fast food, fast order food establishment. But I regard this outside of Harvard Square and it is a neighborhood that could use additional eating areas. So I think, and I think other members of the Board will find that you meet this finding as well.

That you will attract patrons primarily from walk-in trade as opposed to automobile or drive in or automobile trade. I would point out that it's not necessarily you're going to primarily attract walk-in trade but it's primarily walk-in trade plus deliveries from the premises. You're not going to be primarily attracting people who are going to drive up and double park and pick up a Dominos Pizza.

And the issue we didn't cover. We have

to make a finding that you're going to utilize biodegradable materials and packaging of foods and utensils and other items. What are you going to do about your materials in terms of biodegradability? The materials you use, plastic and the like? Does dominoes have a corporate policy?

MOHAMED SISAI: It's all paper.

CONSTANTINE ALEXANDER: Say it again.

MOHAMED SISAI: It's all paper. We don't have plastic.

CONSTANTINE ALEXANDER: Okay. So there will be well -- there will be convenience suitable and well-marked waste receptacles?

MOHAMED SISAI: Yes. We will have a dumpster in the back and we're going to put it in the front, too.

CONSTANTINE ALEXANDER: In the front inside?

MOHAMED SISAI: Inside, yes.

CONSTANTINE ALEXANDER: Inside.

And will your premises comply with all state and local requirements regarding the handicapped and disabled persons?

MOHAMED SISAI: Yes.

CONSTANTINE ALEXANDER: As a result, this is street level so no steps.

MOHAMED SISAI: Yes.

KEN LEITNER: It has two handicapped accessible bathrooms.

CONSTANTINE ALEXANDER: Okay.

On what I've recited are various findings that I propose the Board make to justify the granting of the Special Permit to Section 11.31. And we're required to make further findings to grant Special Permits and we'll go through those as well.

I move that we make the following findings:

That what you're proposing will not

cause congestion, hazard or substantial change in established neighborhood character or impact patterns of access or egress or traffic generated in the neighborhood. And for the reasons I've touched upon earlier, I think we can make that finding.

That continued operation or development of adjacent uses will not be adversely affected by what you're proposing. In fact, you will bring more foot traffic to the area, and establish one more eating place that will serve the neighborhood.

That no nuisance or hazard would be created to the detriment health, safety and/or welfare of the occupants. I'm not endorsing the Dominoes Pizza, but I think we can say there would be no nuisance or hazard to the detriment of the health of the community.

And that what you're proposing would not impair the integrity of the district or

adjoining district or otherwise derogate the intent or purpose of this Ordinance. Pizza operations including Dominoes are a fact of life and are consistent with this generally commercial area.

So on the basis of all of the foregoing, the Chair moves that a Special Permit be granted to the Petitioner on the condition that the work proceed in accordance with these plans. And these are the final plans?

KEN LEITNER: Yes.

CONSTANTINE ALEXANDER: Okay. The plans submitted by the Petitioner. They are two pages, numbered A101, and the other one has no numbers, so I'll initial both. Anyway, they are February 23, 2010. These plans include outdoor seating as well as indoor seating.

On the further condition also that the Petitioner use biodegradable materials in the operation of business in that extent

feasible, and you take commercially reasonable efforts to make sure that all waste is deposited and receptacles in the structure and to the extent not, and is discarded on the street you take responsibility for keeping the streetscape clean.

Anything further? Any further conditions?

On the basis of the foregoing, we grant the Special Permit subject to the conditions I just enumerated. All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(9:50 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will now call case No. 9952, 980 Memorial Drive. Is there anyone here wishing to be heard on this matter? The floor is yours.

WALTER ADAMS: My name is Walter Adams, I'm here on behalf of John Sabbag who is the Petitioner who is on the behalf of Society of Saint John the Evangelist Monastery located at 980 Memorial Drive. Being members of the Board of Appeals you're probably aware of what is really a hidden little monastery in the heart of Harvard Square in the shadows of the Charles Hotel and the Kennedy School of Government. We are here today requesting relief to be allowed to make some very modest additions to our property that we will explain to you in order to accommodate significant alteration to this building which has existed for I think, parts of it for 75 years, and parts of it for over 100 years. And the brothers are undertaking a systems upgrade and alterations to make the building accessible.

With me tonight in addition to John Sabbag is the architect Bill Hammer and three

of the brothers, Brother Geoffrey who is sitting next to me here. Brother Robert, and Brother Kevin.

The monastery is a home of 22 brothers who reside there, and it is also of course has a sanctuary that is open to the public all the time. And with that I think I'm going to ask Bill to -- excuse me. I think I'm going to ask Geoffrey to describe what their goals are for the work that's to be done.

GEOFFREY TRISTRAM: Thank you. Good evening. My name is Brother Geoffrey Tristram and I'm a superior of the monastery. You may like to know that we were founded from an Episcopalian order. We were founded in in England at the beginning of the 19th century, and we've been in Memorial Drive since the 1920s. And it's very beautiful historic buildings. And our ministry really is first and foremost we pray. So we offer -- we have a place which is silent, and we also offer our

monastery as a sanctuary for many, many people throughout the year who come and stay in our guest house. And we hear all the time from people locally how much they appreciate our presence. And people come from all around the country to be with us. And it's an extraordinary place to live because we have a Memorial Drive with all the noise outside. You come inside the monastery, you really enter this beautiful place of silence and sanctuary and it's a lovely place.

Over the past few years we've become more and more aware of some of the constraints which we have mostly to do with space. We really haven't got much space there at all. We're also very concerned that we built, you know, at a time when accessibility for handicap wasn't really an issue, and we're very, very concerned about that. So that's another thing that we really want to address. And so we have over the past few years

considered actually leaving that site and moving out, out of Cambridge, but partly through what people have said to us and our own sense of our likeness of being there we do feel very much that we want to stay right in the heart of the city and in Cambridge. And so we would be looking at ways to make that possible. And what we're really asking this evening is to, is to for you to consider our plans to do a modest amount of in-filling to give us a little bit more space primarily for our library. And we've never had the space really for a proper library. It was never completed, the plans. And we'd love to be able to do that. The other area which -- let me explain, another area of concern for us is our service area which is a terribly dangerous place. We get very worried when people make deliveries. There's a kind of a somewhat spiral staircase that goes down and it's very, very dangerous. And we would love

to do something to make that safe for those who come down to make deliveries. So those are the areas really with which we'd like to ask for a Variance this evening.

CONSTANTINE ALEXANDER: Thank you.

GEOFFREY TRISTRAM: Thank you very much.

WALTER ADAMS: Bill, why don't you describe exactly the extent -- I might describe as Bill's getting up there, that the total square footage of the facility is roughly 37,000 square feet.

CONSTANTINE ALEXANDER: Now?

WALTER ADAMS: Right now. We're asking to be able to add about 750 square feet in total to the building.

CONSTANTINE ALEXANDER: And your problem is where that 750 is going to go?

WALTER ADAMS: That's exactly what our problem is.

WILLIAM HAMMER: Let me give you a

quick overview of the project on the building. As Geoffrey explained, the building is actually divided into three sections. This is the guest house or the Saint Francis House. And this was the originally monastery that was back in the 1920s.

CONSTANTINE ALEXANDER: And to the left, I'm looking to the left of it, are the apartment houses?

WILLIAM HAMMER: Yes. The Charles Hotel is right here (indicating).

TAD HEUER: On the right?

WILLIAM HAMMER: Correct, on the right.

In about 1935 the chapel was built and the enclosure which is really where the brothers live. That's the monastery. And it was designed by Ralph Adams Cram. You're familiar with him, very famous architect. And this actually funded him and was a big

supporter of this project. So it's got a lot, a lot of history and it's a wonderful, amazing building. And what we are doing and in addition to the things that Geoffrey mentioned is of course the building hasn't been touched in 75 years. So as soon as we start touching it, we're going to have all the HVAC systems and plumbing and fire alarms.

The two areas that we're asking for relief are actually back here (indicating). This area here is an in-fill -- actually, I want to show you this one here. This is the back. This is what faces University Green. And this is a recess on the upper two floors. And we're going to fill those in and just bring it out flush with the existing wall. And those two floors will constitute the new library that the brothers have been looking for.

In addition, this is the service entry. And right now it servers come to the end of

University Road, they come in and it's true the actual entrance that exists now which actually is just smaller than this. It's very dangerous. It's a curve, very difficult stair and everything that comes into this monastery. There's a kitchen which services the brothers of the guest house, all the food, all the waste, everything comes in and out of this, so if you actually look at the plan in front of you, you can see we put in a straight stair with a conveyor belt just to get materials up and down. And that was the main purpose for doing that.

This is just an addition -- we're not asking, you know, this conforms. But this is an addition to add a lift so that people with wheelchairs can get into the chapel. I don't know if any of you have been in the chapel, it's one the most beautiful -- it's a gem. It's an architectural gem. So we really

spent a lot of time being very sensitive on how to do that. That's the kind of overall.

CONSTANTINE ALEXANDER: And your zoning issue is because that rear wall is too close to the lot line.

WILLIAM HAMMER: Yes.

CONSTANTINE ALEXANDER: Going up if you will. You're not getting any closer than you are to the lot line and more mass on the lot line?

WALTER ADAMS: Yes, on our submission, Walter Adams, there's a zero lot line which is actually right here (indicating). This portion is back about five feet. And we will be maintaining that setback. We won't make it less, but because it will now be three stories high rather than a single story high, it is in fact an extension of the non-conforming.

CONSTANTINE ALEXANDER: And the -- your neighbor, the University Green

apartments?

WILLIAM HAMMER: The apartments are actually. Let me go back here. We have -- if you look at this site plan, this is the area where we're adding two stories (indicating). This is University Green here (indicating). The office building is kind of right across if it.

CONSTANTINE ALEXANDER: And that's a parking lot in between?

WALTER ADAMS: Yes, a large parking lot that belongs to the office buildings.

WILLIAM HAMMER: And this, the reason we showed you this picture here, this is actually the view from University Green. Those two stories are going to be completely obstructed.

CONSTANTINE ALEXANDER: And I take it you have no opposition from anybody at University Green or the occupants of the building?

WILLIAM HAMMER: We had a public meeting. We invited all the neighbors back at the end of April, explained our plans. Admittedly there was some concern. We sent the memo out to all the neighbors to explain it, and we showed them this picture and that. And there's some concern, we have some mechanical equipment up on the roof that's very, very quiet. We did a lot of research and we sent them the sound levels from that. Which in fact, at the steps where this was taken, the sound would be less than the conversation that we're having now. 40 decibels.

TAD HEUER: What's the material you're going to be using to match the existing?

WILLIAM HAMMER: Yes, we're going to match the stucco. On the upper -- let's raise this one again. We've been, we've spent a tremendous amount of time being very

thoughtful about the historic character of the building. That's one of the mandates that we've had from the abutters. So this area here is gonna match the stucco adjacent. Of course, the service area will match the adjacent brick.

WILLIAM ADAMS: So in summary, we feel like it would be a substantial hardship if we were not able to carry out the alterations to be able to modernize the building and to be able to provide much needed common space for the brothers that would be the in-fill, and also to be able to provide a safer service entrance. It is only being ever so slightly enlarged, but it was -- allowing us that enlargement allows us to straighten out that set of stairs that connects in from the back of the building. That the uniqueness of the lot is that the structure was constructed prior to zoning. That it is up against the rear lot line

already. So we don't have any room there to expand beyond this one space. That, it's not clearly shown here, but the green space in the front is extraordinary, and I think you have a name for it.

WILLIAM HAMMER: This is a -- no on the other side.

WALTER ADAMS: The Cloisture is an enclosed green space that would be a crime to put building in there. And that it's clear that the modest amount of the addition will not derogate from the intent of the Zoning Ordinance and that which is of course to protect adjacent properties, allow natural ventilation of light which would still be able to get there. And it's certainly well within keeping with the intent of the Zoning Ordinance and we ask that you approve our request.

CONSTANTINE ALEXANDER: Did you not have to go before Historical Commission?

WALTER ADAMS: We have -- if you note, they did not require a hearing. On the application you'll see that Mr. Sullivan signed off approving the --

WILLIAM HAMMER: We're actually not in the historic district which is amazing me. I've been talking to Charlie throughout the whole project.

WALTER ADAMS: You have a copy. That's my copy. And he signed off on it and the building is on the National Register of Historical lists.

CONSTANTINE ALEXANDER: He signed off as a no hearing required. He didn't approve it.

WALTER ADAMS: Right. He's supporting -- we shared what we're doing and he's certainly supporting.

CONSTANTINE ALEXANDER: He's not opposing the support?

WALTER ADAMS: I don't see him here.

CONSTANTINE ALEXANDER: Questions from members of the Board at this point?

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

(No response.)

CONSTANTINE ALEXANDER: The Chair notes that no one wishes to be heard so I'll close public testimony.

As is indicated we have nothing -- I will now indicate there is nothing in the file. There is no letters from the abutters or the like. And we've been advised that Historical Commission has no approval is required for this project.

So, questions, comments from members of the Board?

BRENDAN SULLIVAN: Well, I think the building is an asset, is a gem, and I think that the presence of the brothers are an asset and a gem also in the community. So whatever we can do to make life easier for them and to

enhance their function.

CONSTANTINE ALEXANDER: Well said.

TAD HEUER: I think we have cases that come before us asking for this amount of relief for buildings on lots one-eighth of this size. This is truly minor and insignificant relief that's being requested.

CONSTANTINE ALEXANDER: I think you can see which way the wind's blowing.

TIM HUGHES: Let's blow, all right?

CONSTANTINE ALEXANDER: I'm trying to get there. Everybody's talking.

Ready for a motion? Yes, you are. I know you are.

TIM HUGHES: Yes, I am.

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

That a literal enforcement of the provisions would involve a substantial hardship to the Petitioner. Such hardship

being that the Petitioner would not be able to modernize and make better use of this historically significant and important structure.

That the hardship is owing to circumstances relating to the fact that this is a non-conforming structure and it is an unusual structure. And certainly an architecturally significant structure that's special to this property and not generally.

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.

In fact, granting the relief would facilitate the ability of the society to use the property and maintain their presence in Cambridge which is all to the public good.

That the relief being sought is very modest in nature. There is no further

intrusion into setbacks.

That there has been no neighborhood opposition or comment or even negative commentary.

And that preserving the Society in the City of Cambridge in a structure as fine as this one certainly is what zoning is all about.

On the basis of this, the Chair moves that a Variance be granted on the condition that the work proceed in accordance with the plans submitted by the Petitioner. And they're elaborate. They're numbered A-100, 101, 102, 103, 104, A-301, 302, 303. I guess that's it. The first page of which, the A-100 page has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(Whereupon, at 10:10 p.m., the  
meeting adjourned.)

**C E R T I F I C A T E**

**COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.**

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

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 5th day of July 2010.

---

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

My Commission Expires:  
April 23, 2015

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