

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING
JULY 22, 2010 7:00 P.M.

in

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Brendan Sullivan, Member

Tad Heuer, Member

Thomas Scott, 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, Brendan Sullivan, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: We're going to start with the continued cases. We'll call the hearing to order. We're going to start with a continued case heard. No, I'm sorry, just a plain old continued case, it's No. 9569, 45 Foster Street. Is there anyone here to speak on behalf of that matter? Or is there anyone here on behalf of the Petitioner?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes that no one is here. The Chair would further note that there's nothing in the record with regard to whether the Petitioner wants to continue the case further, whether he's interested in withdrawing. The Chair

would also note for the record Mr. Curtis, the original Petitioner no longer is the owner of the property. We've been made aware of that through subsequent cases. And the now owner Mr. Greenup has not appeared, and we have no communication from him regarding this matter.

So, we can continue this case one more time. I guess we can't -- or we can hear it on the merits and make a disposition on the case. Again, I remind members of the Board, maybe Mahmood is not that familiar with it. We have had a number of cases involving these premises and we have -- there is a Variance to be granted and we granted a Special Permit several months ago I guess it is now. I don't know what this Variance -- I don't know -- I have no idea what it's going to cover. I didn't read the file. I think the Variance may be covered by what was previously granted.

Anyway, I'm of a mind -- I'm fumbling about -- I'm of the mind that we take this case, call it and dispose of it. And, you know, there's no -- the Petitioner has got the burden of proof. The Petitioner is not here. The Petitioner has not submitted anything that strikes me as persuasive, and I think we can go to a vote whether he meets the requirements for a Variance.

Anyone else feel differently about it?

BRENDAN SULLIVAN: We're not aware of whether or not the posting sign has been changed to reflect today's date?

CONSTANTINE ALEXANDER: That may be true as well.

Do you know? I may ask people in the audience. You live in the neighborhood.

UNIDENTIFIED MALE: I think he did change it.

CONSTANTINE ALEXANDER: For tonight's hearing?

UNIDENTIFIED MALE: Yes.

BRENDAN SULLIVAN: So that then Petitioner, whether it be John or whether it be Chris, is aware that the hearing is tonight.

CONSTANTINE ALEXANDER: My first reaction would be if there were no other people in the audience on this case, I would continue it and hear it later in the evening to give Mr. Greenup an opportunity, if he's going to be the person, to appear. I hate to keep you folks here. But I think we should -- I'm sorry, I think we'll give him until 7:30. We'll move on to other cases. I think that's the only fair thing to do. And if he's not here by 7:30, I think it's time to hear the case.

Other members disagree?

MAHMOOD FIROUZBAKHT: Seems reasonable.

CONSTANTINE ALEXANDER: Okay. By

the way, for this case Mahmood is sitting.
It's a case not heard, and it will be a case
not heard until we get to it.

This case will be recessed until 7:30
p.m.

(Case Recessed.)

(7:05 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will next call case No. 9933, 10 Fawcett Street. Is there anyone here wishing to be heard on this matter? It is T-Mobile Maxton Technology, Inc.

NACINE NORI: For the record, my name is Nacine Nori (phonetic), 52 Ashley Street, Boston, Mass. 02128.

CONSTANTINE ALEXANDER: And you've been here last time, you sat for two other cases, and we had a problem with the contents of the file.

NACINE NORI: Correct.

CONSTANTINE ALEXANDER: And we continued those cases to allow you to meet our standards in terms of what has to be filed. I think this case requires the same relief.

The file is no more complete than the last one. We need photo simulations. We need more detailed plans. We need a more detailed explanation as to why your client meets the requirements of our Zoning By-Law with regard to the various aspects of footnote 49. So we continued your other two cases until when?

NACINE NORI: September.

CONSTANTINE ALEXANDER: September?

NACINE NORI: 13th?

SEAN O'GRADY: I don't know. But we do have a September 16th date.

CONSTANTINE ALEXANDER: That must be the date.

SEAN O'GRADY: There are four cases on there now.

CONSTANTINE ALEXANDER: Continued cases?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: That's going to be another case for the same thing.

That's going to be six continued cases.

That's a bit heavy. That's going to be too much.

What's the next one after that?

SEAN O'GRADY: The next one open is October 14th.

CONSTANTINE ALEXANDER: I'm going to recommend we continue this case until October 14th. The other cases we'll hear.

NACINE NORI: The documents said you're asking FOR were submitted on Monday this passed Monday. The photo simulations.

CONSTANTINE ALEXANDER: I was there on Wednesday and there was nothing in the file.

NACINE NORI: There was engineering put it in there.

SEAN O'GRADY: I don't know. Maybe it fell into the other file, the other 10 Fawcett.

CONSTANTINE ALEXANDER: We have a

cracker jack administrator that makes sure everything gets in the file. Did you personally deliver it?

NACINE NORI: No, one of my colleagues delivered it.

CONSTANTINE ALEXANDER: And your colleague told you they delivered it?

NACINE NORI: Monday at 2:15 p.m.

CONSTANTINE ALEXANDER: I don't know what to tell you. It didn't get into our files.

NACINE NORI: I understand. That's fine.

CONSTANTINE ALEXANDER: What was filed besides photo simulations?

NACINE NORI: The FCC license and I believe -- I think there was a structural that was done that was included in the CDs that we turned in as well.

CONSTANTINE ALEXANDER: Well, if somebody has a copy back at the office, you

can re-file them.

The Chair moves that this case be continued until seven p.m. on October 14th.

MAHMOOD FIROUZBAKHT: This case is what?

CONSTANTINE ALEXANDER: This is a case not heard, case No. 9933. 10 Fawcett Street, but it's T-Mobile. We have another 10 Fawcett Street.

MAHMOOD FIROUZBAKHT: Okay.

CONSTANTINE ALEXANDER: The Chair moves that this case be moved until seven p.m. on October 14th on the condition that -- the Petitioner has already signed a waiver of a time for decision. On the further condition that the sign as posted on the premises, hopefully is modified to reflect the new hearing date.

And you understand what you have to put in the file before then?

All those in favor of continuing on this

basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor.

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

(7:10 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will now call another 10 Fawcett case. 9911, it involves a Clearwireless, LLC. Is there anyone here wishing to be heard on that matter? This is a continued case heard and only four members will be seated. Tom is not sitting on this case because he was not here originally. And for the record give your name.

ATTORNEY ANNE MALONE: My name is Anne Malone of Prince, Lobel on behalf of Clearwire.

CONSTANTINE ALEXANDER: As you know, Ms. Malone, as a case heard we have to have the same five members present. At the time this case started, the fifth member was Doug Myers. He's not here, not available tonight. If we were to go forward tonight,

it's your call, but if you want to go forward tonight with only four members, as you know, and for the record, you have to get a unanimous vote. If you wait until Doug is here, then you only need four out of five. And I trust you recall that this was a somewhat -- you weren't here perhaps, but your colleague will tell you this was somewhat of a controversial case. Our Board members -- there was not a lot of happiness with what we saw the first time around, and so it's somewhat of a contentious case. So I don't know if you want to, given all that background, which you don't have the benefit of, if you really want to go forward with four persons?

ATTORNEY ANNE MALONE: I've been asked to go forward only because right now they're trying to launch the network and so they've asked me to go forward with four tonight.

CONSTANTINE ALEXANDER: That's your client's call. You do want to go forward?

ATTORNEY ANNE MALONE: Yes. And we had this discussion. And I spoke with Sean the other day and they did. I think normally they would not but because of the deadline they're under, they would like to go forward.

TAD HEUER: They recognize that if you don't get four votes, they won't be going forward at all, correct?

CONSTANTINE ALEXANDER: Yes, does your client appreciate that?

TAD HEUER: If you're denied, you're out for two years.

ATTORNEY ANNE MALONE: Yes. And I've had this discussion. And I was told to go forward.

CONSTANTINE ALEXANDER: I think you can tell at least from two members we're surprised at that approach, and I'm not sure your client really appreciates the

consequences going forward. But that's all I can say.

The floor is yours.

ATTORNEY ANNE MALONE: What Clearwire is proposing to do on this site, and, again, I know that we've been here with this site before this Board, and we've been working with the Planning Board on a design to them was acceptable and received a favorable recommendation at the last Planning Board meeting.

CONSTANTINE ALEXANDER: Could you show us the photo simulations? I know they're in the file.

ATTORNEY ANNE MALONE: I have a copy for you.

CONSTANTINE ALEXANDER: We have a bunch here. You want to walk through them for us?

ATTORNEY ANNE MALONE: Sure. To what they're proposing to do here is actually

add only three wireless backhaul dish antennas.

CONSTANTINE ALEXANDER: Only three?

ATTORNEY ANNE MALONE: Yes. They already have antennas installed up there. There's also other carriers with antennas installed up there on the building.

TAD HEUER: How many?

ATTORNEY ANNE MALONE: How many for Clearwire? There's three Sprint antennas and three Clearwire WiMax antennas up there. So six total. Sprint and Clearwire are affiliates so they have six total up there. I believe --

CONSTANTINE ALEXANDER: But your application says you want to add three panel antennas, two wireless backhaul dish antennas, one GPS antenna, and one supporting equipment cabinet. It's a lot more than three. I'm reading from your --

TAD HEUER: Is that three plus two

plus one and the cabinet is something else I presume.

ATTORNEY ANNE MALONE: It's my understanding that the WiMax antennas are already up there. On my plans -- unless that was incorrectly -- I didn't file the application myself, so I --

CONSTANTINE ALEXANDER: Well, the reporting statement which goes back to January 21, 2010, only identifies three backhaul dish antennas. It is possible, I suppose, that between the time you advertised and the time you came before us, and maybe as a result of discussions from the Planning Board, you've modified what you're seeking. You're not seeking as much as it seems to be you were seeking at the outset.

ATTORNEY ANNE MALONE: Yes. Based on my understanding, the plans that I have, and I believe were filed, there's only three dishes that they're proposing. And

everything else is already there. And there's no equipment being added either.

BRENDAN SULLIVAN: I'm just actually looking at existing and proposed.

CONSTANTINE ALEXANDER: I know.

Your written materials deal with things like FCC carrier. You're not in a residential zone district. So we don't have to deal with those issues.

ATTORNEY ANNE MALONE: Right.

CONSTANTINE ALEXANDER: But the big issue of course as always in these cases, is what are you going to do minimize the visual effect with what you're planning to do?

ATTORNEY ANNE MALONE: Right.

CONSTANTINE ALEXANDER: And that's where the photo simulations come in.

ATTORNEY ANNE MALONE: Okay.

And we've worked extensively with the Planning Board on this to try and minimize. I know there was some concern, the general

look of this building, not necessarily our installations, but the whole overall of what was up there. So what we've done is -- and we've discussed with this Board the last time we were here, as well as shortening or making less visible the mounts that the dishes were placed on. Which would ensure that they're hidden in the best possible behind the dish themselves. If you look at photo location 1, you'll see there's one dish proposed on the facade by itself. And you can -- there's no -- they've reduced the size of that mount so that it's hidden behind the dish itself. So it's just the dish and that would be painted to blend in with the building.

CONSTANTINE ALEXANDER: Right.

ATTORNEY ANNE MALONE: And then to the left on photo location 1, again, there is -- the dish was located to the left of those two antennas, sort of to consolidate them together and again with the shorter mounts.

CONSTANTINE ALEXANDER: One of the -- I think Mr. Heuer actually raised this is why do you need pole mounts which really are unsightly? Is there any attempt to put those on a dish in a way that doesn't require quite obtrusive pole mounts?

ATTORNEY ANNE MALONE: There was and what they did was they shortened them so they were the length of the dish instead of having them -- because initially -- I may actually have a copy of the initial photo sims in here. They were long. And the reason I think they're on the pole mounts so that they can be turned slightly if necessary.

CONSTANTINE ALEXANDER: Is there an existing pole mount there now? Yes, there is.

ATTORNEY ANNE MALONE: Yes.

CONSTANTINE ALEXANDER: All you've done is put the dish within the rectangle that's formed by the pole mount as best I can

tell.

ATTORNEY ANNE MALONE: For location 1 they are -- it's to the left of it.

TAD HEUER: It's inside.

CONSTANTINE ALEXANDER: It's inside, within the frame.

TAD HEUER: It's bounded by the two existing vertical antennae.

ATTORNEY ANNE MALONE: What is the date on those photos?

TAD HEUER: 5/3/2010.

ATTORNEY ANNE MALONE: There's a later version of them that should be in the file. They're not in the file?

CONSTANTINE ALEXANDER: No, there isn't. What do you have in front of you?

ATTORNEY ANNE MALONE: I have 6/7/2010.

CONSTANTINE ALEXANDER: Well, if those are the later ones, we're not hearing this case tonight because it's got to be in

our files.

ATTORNEY ANNE MALONE: No, I understand that.

CONSTANTINE ALEXANDER: Brendan, what's the date on yours? The first page.

BRENDAN SULLIVAN: 5/3.

CONSTANTINE ALEXANDER: I've got two in my hand that say 5/3.

MAHMOOD FIROUZBAKHT: I have 5/3.

CONSTANTINE ALEXANDER: 5/3.

ATTORNEY ANNE MALONE: I don't know why they're not....

MAHMOOD FIROUZBAKHT: What date are your plans?

ATTORNEY ANNE MALONE: 5/4.

CONSTANTINE ALEXANDER: I think the plans are 5/4.

TAD HEUER: So you have plans that are 5/4 but photo sims that don't reflect your plans?

ATTORNEY ANNE MALONE: No. It's

possible that they just did the photo sims later than the plans were done.

TAD HEUER: The photo sims from June are no different than the ones from May, then we have no problem. But if you have a later photo sim that doesn't match this photo sim that we have, then that suggests that your plan doesn't match the plan we have either, and that's even worse.

ATTORNEY ANNE MALONE: And you have a 5/4 plan?

TAD HEUER: Yes.

ATTORNEY ANNE MALONE: Which is why --

CONSTANTINE ALEXANDER: My question is why would it matter?

TAD HEUER: Like, if 5/4 is the last relevant date of any changes and yours is just a printout with the new date on it, then it doesn't matter. If that photo sim you have from June doesn't match this one, I mean, is

there a way to just --

CONSTANTINE ALEXANDER: Why don't you give me your 6/7 one and we'll look at it right here to see if it's any different than our 5/3.

ATTORNEY ANNE MALONE: The difference is going to be where that dish is.

CONSTANTINE ALEXANDER: That's true. Yes, these are different.

ATTORNEY ANNE MALONE: All right. So we're going to have to end up continuing this one.

CONSTANTINE ALEXANDER: We're going to have to continue the case.

ATTORNEY ANNE MALONE: I don't know what's going on, but I will find out.

CONSTANTINE ALEXANDER: Sorry.

TAD HEUER: I'd also point out that you will then need new plans, because if I'm looking correctly, there's a sheet A-4 on the 5/4/10 plan version 6 that we have, it shows

the backhaul between those two antennae. It's listed as item P between E Sprint CDMA antenna and an E Clearwire antenna on the south elevation.

ATTORNEY ANNE MALONE: So, I will yes. I will make sure that -- the photo sims from 6/7 are correct. And for some reason the plans are not the right date. So I will get those and I will file those before.

CONSTANTINE ALEXANDER: Can we do it on the 14th? I'd like to hear it on the same day that we're getting the same Fawcett Street.

MAHMOOD FIROUZBAKHT: August 14th?

CONSTANTINE ALEXANDER: No, October 14th.

MAHMOOD FIROUZBAKHT: I think we should be fine.

CONSTANTINE ALEXANDER: You should be able to make it?

Tad?

TAD HEUER: That's several months from now?

CONSTANTINE ALEXANDER: About three.

MAHMOOD FIROUZBAKHT: I'm open wide on the 14th.

CONSTANTINE ALEXANDER: The Chair will move that this case be continued again as a case heard on the condition that the Petitioner modify the sign posted on the premises indicating the new hearing date. A waiver of time for decision is already on file with us. And of course I'll just repeat for the record, to the extent that we will get new photo simulations and probably new plans, they must be in the file by five o'clock p.m. on the Monday before.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in

favor. The case is continued.

(Alexander, Sullivan, Heuer,
Firouzbakht.)

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

(7:25 p.m.)

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

SEAN O'GRADY: I just spoke with John Greenup. He thought his meeting was next Thursday. He asked me to ask you to withdraw his case.

UNIDENTIFIED MALE: Does the same thing with the Special Permit that was granted in January.

CONSTANTINE ALEXANDER: The Chair will call case No. 9569, 45 Foster Street. Is there anyone here wishing to be heard on that matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair would note that there's no one here.

The Chair has been advised that the party in interest, Mr. Greenup, I guess as a

successor to Matthew W. Curtis has indicated he wishes to withdraw this petition. So the Chair moves that we accept the offer of withdrawal and that this case be withdrawn. This is 45 Foster Street, No. 9569.

All those in favor of withdrawing this case, say "Aye" accepting the withdrawal.

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case withdrawn. You can go home.

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

(7:25 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9931, 51 Brattle Street.

NACINE NORI: For the record Nacine Nori (phonetic). I reside at 52 Ashley Street, Boston, Mass, 02128.

CONSTANTINE ALEXANDER: The Chair would offer for the record, again, there's nothing in our files; no photo simulations as you were told the last time.

Can we do the 14th of October for this gentleman?

SEAN O'GRADY: Yes.

NACINE NORI: I have a question.

CONSTANTINE ALEXANDER: Go ahead.

NACINE NORI: You said you wanted details in the construction plans. What

kind of details are you looking for?

CONSTANTINE ALEXANDER: I think the plans you have here are sufficient. I haven't studied them closely, but it looked like they should be sufficient. You're not talking about a major amount of work here. I would like you, by the way, to go back to the Planning Board. The Planning Board send us a letter saying we've got four cases, we don't have a clue as to what -- I'm paraphrasing loosely, we don't have a clue what you want to do, but we think it's probably okay. Because you're replacing two cabinets with one. It would be nice if you could show the Planning Board exactly something with more specificity and see if we get a more specific response from them.

NACINE NORI: Sounds good.

CONSTANTINE ALEXANDER: I would urge you to do that.

The Chair moves that this case be

continued as a case not heard until seven p.m. on October 14th on the condition that the Petitioner modify the sign on the premises indicating the new hearing date.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(7:30 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call -- is there anyone here on 11 Linnaean Street by the way? I see you are, okay.

The Chair will call case No. 9956, 11 Linnaean Street. Is there anyone here wishing to be heard on that matter?

UNIDENTIFIED MALE: We're the abutters.

CONSTANTINE ALEXANDER: From the Petitioner? There's no one here.

We're in receipt of a letter from Attorney Paul A. Gargano, G-a-r-g-a-n-o addressed to actually to Maria Pacheco. "This is in regards to Eugene Wang and Jie Liu. Enclosed please find a copy of the

Cambridge Historical Commission scheduled hearing for review at the Petitioner's request for a Special Permit as to a curb cut Humble (sic) -- it's actually Humboldt Street -- on Humble Avenue (sic) in waiver of their rights to create off street parking at 11 Linnaean Street. Notice of the hearing -- that's the Cambridge Historical hearing -- is for July 27th at the Historical Commission. In view of this prerequisite, I would ask that the hearing schedule of July 27th -- he means today July 22nd -- be continued to the first available date following the aforesaid meeting. Thank you for your courtesy and cooperation."

Sir?

TAD HEUER: We scheduled this meeting tonight, am I correct, so we're not to be placed out of time on the automatic theme granted provisions?

CONSTANTINE ALEXANDER: Yes.

TAD HEUER: Have they signed a waiver?

CONSTANTINE ALEXANDER: Truth be known at the time of the hearing last time they had already signed a waiver, it was in the file. We weren't aware of that. So we do have a waiver of time for a decision. But the concern we had was ill-founded as it turned out.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: What date?

SEAN O'GRADY: We're now October 28th.

CONSTANTINE ALEXANDER: This is a case not heard.

The Chair moves that this case be continued until seven p.m. on October 28th, on the condition that the Petitioner modify the sign that's posted on the premises to reflect the new hearing date. A waiver of time for decision having been already on file

with us. And on the further admonition to the Petitioner that we do want to hear from the Historical Commission before we meet again on October 28th. That's the consideration for us.

SEAN O'GRADY: You want them to appear in front of them?

CONSTANTINE ALEXANDER: No, I just want to make sure that they met with Historical, and I'm presuming we'll hear from Historical what they believe is the uses are for the project.

We're happy to recognize you, but we're only going to talk about the continuance, not about the merits of the case. Okay? Come forward and give your name and address.

VIRGINIA MEDBURNS: I'm Virginia Medburns, M-e-d-b-u-r-n-s, Seven Humboldt Street, Cambridge, Mass.

And I have been told that I'm not allowed to, although it's going to affect me

totally, I have -- I'm the abutter and all this is happening right under my bedroom window. I'm told I can't go to the Cambridge Historical meeting?

CONSTANTINE ALEXANDER: Who told you you can't? We don't control the rules of the Cambridge Historical. I'm just curious as to -- sir.

UNIDENTIFIED MALE: Well, we have. Actually, you have not received notice I guess. And the staff informed me that it was a private meeting.

CONSTANTINE ALEXANDER: All I suggest is you speak further to the staff or to the Chairman. It puzzles me that this would not be an open meeting. I don't know the basis why it would not be. But you'll have to deal with the Cambridge Historical Commission.

VIRGINIA MEDBURNS: But when would their -- assuming they're correct. They say

it's a staff meeting and they're calling the Lius in for consultation. So how do I find out what decision is made?

CONSTANTINE ALEXANDER: Well, I see you request a decision, you might want to put it in writing. I hope the Cambridge Historical Commission is well aware of the open meeting law. And that's as far as I'm going to go.

VIRGINIA MEDBURNS: They say the rules have been changed.

CONSTANTINE ALEXANDER: There is a new statute. The statute has not gone the way to making it less open. It's gone the way of making it more open. So I would be puzzled whether that would make a difference. So I probably said more than I should already.

VIRGINIA MEDBURNS: So I have to deal with them directly?

CONSTANTINE ALEXANDER: Yes. That doesn't involve us. My interest and I think

our Board's interest in the Cambridge Historical is we just want hear their views whichever way they come out.

VIRGINIA MEDBURNS: But I do have the right to hear what they've decided?

CONSTANTINE ALEXANDER: I assume at the very least you'll hear it at this hearing in October. And usually they advise us of their views in writing and that gets into the file. So if you went to the public file several days before this hearing, you should be able to see their written communication. But it may come in at four o'clock on the day of the hearing. I just got to warn you. We don't control when we get it.

VIRGINIA MEDBURNS: This could be a problem because it looks like they have misrepresented themselves.

CONSTANTINE ALEXANDER: I wish you well is all I can tell you.

VIRGINIA MEDBURNS: Thank you.

CONSTANTINE ALEXANDER: Did I make the motion yet? I think I did.

BRENDAN SULLIVAN: To continue it till?

CONSTANTINE ALEXANDER: To continue this matter to October 28th at seven p.m. on the condition that the Petitioner modify the sign to reflect the new hearing date.

The Chair noting that a waiver of time for a decision is already in the file. And I was pontificating that we do want to hear from the Cambridge Historical Commission. The Petitioner should be made aware of that.

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

(Aye.)

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

(7:35 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9936, 1100 Mass. Ave. Is there anyone here wishing to be heard on this matter?

For the record.

ATTORNEY ANNE MALONE: For the record, my name is Anne Malone. Prince, Lobel on behalf of Clearwire.

Just to be sure, the date that I filed 6/22/2010 is the plans and the photo sims are 6/23/2010.

CONSTANTINE ALEXANDER: You know, I just realized I'm looking at my agenda, I misspoke before. I said six. It is three. I was reading from the Mass. Ave. one. I apologize.

TAD HEUER: What are the dates on

your plans?

ATTORNEY ANNE MALONE: The plans are 6/22/2010.

TAD HEUER: Not 4/22/2010?

ATTORNEY ANNE MALONE: I'm 100 percent sure that they were filed.

CONSTANTINE ALEXANDER: 6/22?

TAD HEUER: No, this says 4/22.

CONSTANTINE ALEXANDER: That must be the old ones.

ATTORNEY ANNE MALONE: Those are the old ones.

CONSTANTINE ALEXANDER: We have three sets of plans and we do have photo sims in the file. 6/23. Okay.

ATTORNEY ANNE MALONE: Again, I will say briefly Sprint, what they're looking to do is install their WiMax technology at 1100 Mass. Avenue. They currently already -- Sprint currently has antennas on the building, facade-mounted on the

penthouses for their PCS services. So they're looking to add Clearwire -- I mean, WiMax technology to provide the high speed wireless internet access to its customers.

So, at this location what they're looking to do is add three panel -- WiMax panel antennas which would be facade-mounted on the roof, to add one backhaul dish antenna, and one supporting equipment cabinet. I'm sorry, the backhaul dish antenna would also be facade-mounted and painted to match the building. And one supporting equipment cabinet to be located on the steel equipment panel form that's already existing on the rooftop of the building. We actually redesigned the site and worked with the Planning Board on this one.

CONSTANTINE ALEXANDER: I'm going to ask you that question. I'll read a letter from the Planning Board that's in the file that says they made recommendations to you.

And what we see tonight corresponds to the recommendations that they made. In other words, you incorporated their views. They didn't give us a follow up memo. We have a memo, I'll read it into the file, dated May 18th from the Planning Board. It says: Again the Board had no specific recommendations but did discuss with the Applicant a number of modifications that might make installation less intrusive; including relocation of equipment on the building, locating it within the recesses of the existing building features, and the usual recommendation to mount the antennas closer to the building.

And my question to you is: Are those recommendations reflected in the plans of 6/22 and the photo sims of 6/23?

ATTORNEY ANNE MALONE: They are. I actually received from Les Baker (sic) a --

CONSTANTINE ALEXANDER: Barber.

ATTORNEY ANNE MALONE: -- from the Planning Board that they are recommending that this design was -- I have a copy in the file I can grab after.

CONSTANTINE ALEXANDER: It's your representation that you have something that the planning Board has expressed in writing to you that they have approved --

ATTORNEY ANNE MALONE: Yes, yes.

And so, I can go through the photo sims if that's the easiest way to do it. And just sort of background of where we were with them. When we initially proposed this there were two dishes, and we eliminated one of them to sort of make less clutter, A.

And then B, we relocated a lot of the antennas. Sort of if you look at -- I'll start with that location. If you look at photo location B, there's --

CONSTANTINE ALEXANDER: The second one in?

ATTORNEY ANNE MALONE: Yes. The second location.

The concern with the Planning Board was having a clutter from that view, because that was coming from Harvard Square, going towards Harvard Square. Sort of where the building goes like this in a V, that was the most visible. So what we worked with them to do is try and move the antennas back from there to the other side of the building. So, it will start --

CONSTANTINE ALEXANDER: So coming from Harvard Square there's just one new antenna?

ATTORNEY ANNE MALONE: Right. And that's to the side. And we had worked with them to sort of move it back as far as possible and get it back -- to avoid any clutter kind of in that V because that was what was more prominent than anything. So there's one antenna that would be located in that

location, and that's facade-mounted as close to the building as possible. And we worked to make sure we could do that.

Photo location C, the proposed conditions is a -- there's one panel antenna on the side, the penthouse, mounted on the corner there. And then the dish is mounted on the other side on the corner of that penthouse, so that side of the penthouse. And then I'm sorry, I'll switch back to photo location A. And that shows the addition of two -- we relocated this. So there's an additional antenna there and then....

(Discussion).

ANOOP JAIKUMAR: We removed this one.

ATTORNEY ANNE MALONE: So there's a new antenna there and then one of the antennas is here, right?

ANOOP JAIKUMAR: Yes. To accommodate two antennas, we relocated one

more closer to the edge.

ATTORNEY ANNE MALONE: To the edge of the building. So they were moved back to make it less cluttered.

CONSTANTINE ALEXANDER: And you need every piece of this equipment? I mean, my first reaction is that I commend you for improving the skies of these antenna. But you have an awful lot of equipment on a very visible building. That's the trouble. There's only so much you can do. You've done it I suspect. But unless you can reduce the amount of equipment.

ATTORNEY ANNE MALONE: I mean we have. We had two dishes in there and we worked it so we were able to use one. So, you know, we did it as best we can to eliminate and only use what was necessary. And just the three panel antennas and then the one dish and the one equipment cabinet which is located (inaudible). So we're doing our

best to sort of blend it in and keep everything close together where it is but that there isn't anything new. And with the Planning Board the real big concern was the V in the building, that I showed you on photo location B. And we did several site walks and had been back and forth with them trying to do what we could to make sure we didn't have -- very limited equipment in that area because that was sort of the most prominent part of the building that we all agreed on and talked about.

CONSTANTINE ALEXANDER: You're going to use materials that are in texture and color that will blend with the building itself?

ATTORNEY ANNE MALONE: Yes.

BRENDAN SULLIVAN: Anne, you're representing Clearwire?

ATTORNEY ANNE MALONE: Yes.

BRENDAN SULLIVAN: Now it's not a

carrier. What phone or what telecom do you represent or is it?

ATTORNEY ANNE MALONE: Clearwire is an affiliate of Sprint, but they are providing high speed wireless internet accesses instead of the phone services.

BRENDAN SULLIVAN: Okay. So there are two?

ATTORNEY ANNE MALONE: Right. They have their own.

BRENDAN SULLIVAN: So Sprint is obviously a mobile phone. And the Sprint feature and all that other stuff.

ATTORNEY ANNE MALONE: Correct.

BRENDAN SULLIVAN: And Clearwire does all the other communication stuff; data and all the other stuff and high speed.

ATTORNEY ANNE MALONE: Right.

BRENDAN SULLIVAN: So, it is Sprint. So Sprint is basically the only carrier on that building?

ATTORNEY ANNE MALONE: Right.

BRENDAN SULLIVAN: That we know of.
There will be no other --

ATTORNEY ANNE MALONE: Yes.

CONSTANTINE ALEXANDER: And this building is not located in a residentially zoned district?

ATTORNEY ANNE MALONE: It is not, no. It's in a Business B.

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

TAD HEUER: So you have one panel that's facade-mounted, and you have another one that's pipe-mounted; is that right?

ATTORNEY ANNE MALONE: No. It's the one that looks like a pipe mount, that's already there. It's just being moved slightly over so that we could put the Clearwire antenna next to it and keep it further back on the building. If you look at A-1 on the plans, there's a dotted line on the

equipment layout on the right side. You'll see it says new location of the existing Sprint antenna. And it's literally been moved over just about a foot so there's a separation between the new antenna and it allows us to put it on that side of the penthouse.

TAD HEUER: So I'm looking at photo location A. I'm looking at existing conditions, I see two antenna. I'm looking at proposed conditions, I see four antenna and one of them is clearly a pipe mount that's new. Am I not looking at something correctly?

The second from the right or third from the left is a non-existing existing antenna that I'm proposed conditions are undoubtedly pipe mounted.

(Discussion).

ATTORNEY ANNE MALONE: So it's just the angle that you're looking at it from.

ANOOP JAIKUMAR: All are pipe mounts. You can not do facade really. You have to do the pipe to do it. All the existing antenna are also pipe mount.

ATTORNEY ANNE MALONE: So the mounts are the same as what's up there?

ANOOP JAIKUMAR: Yes.

ATTORNEY ANNE MALONE: And the reason is (inaudible.)

ANOOP JAIKUMAR: Yes.

TAD HEUER: So I'm looking at -- so is that -- that's the one -- so I'm looking at the same antenna on A and B; is that correct?

ATTORNEY ANNE MALONE: I think I was explaining it wrong. Those are both new antennas. And they look the same if you look at them front on but because one is from the side and one is from the front, it looks like they're different, but they're actually mounted the same. So if you saw that angle

from that, if you were looking directly on that, it would look like this one (indicating).

TAD HEUER: So if I'm looking at photo location B, the new antenna is pipe mounted, but the way it is angled on the pipe makes it look like, in this photo simulation only and perhaps from that angle, that it's flush with the facade but it is in practice not, right?

ANOOP JAIKUMAR: Yes.

ATTORNEY ANNE MALONE: How far off? Six inches off.

ANOOP JAIKUMAR: They are six, ten inches off because we cannot really put it on the facade. That's not possible, because you need to get in particular that direction you might have to move slightly. So that can not really touch the wall of the building.

ATTORNEY ANNE MALONE: And we actually have worked with the Planning Board

on this as well because initially they were 12 inches off the side and we pushed them back on the side and we still were able to get the angle that was necessary to use the signals. And that's why we did -- we pushed them back as much as we could as possible.

TAD HEUER: So does pipe mounting allow you to get closer to the facade on photo simulation B, the other antenna in that same facade which does not appear to be pipe mounted or am I just looking at it incorrectly?

ATTORNEY ANNE MALONE: Photo location B.

TAD HEUER: The one you're going to add is on the far left.

ATTORNEY ANNE MALONE: Right.

TAD HEUER: To the immediate right of that there's an existing antenna.

ATTORNEY ANNE MALONE: Yes.

TAD HEUER: How is that mounted?

ANOOP JAIKUMAR: That's also pipe mount. It's just a pipe is more close to the antenna and the edges are coming out. The bracket is coming out of the wall, and then there's a pipe and then -- so you see those brackets. They use either bracketing coming out of the wall and then there's a pipe which is --

TAD HEUER: Is there a reason it has to be on a pipe and not top and bottom bracketed with the joint that allows it to rotate freely?

ANOOP JAIKUMAR: I mean, they need -- well, they can -- I mean, I don't know if there's a bracket available.

TAD HEUER: How much does this thing weigh roughly?

ANOOP JAIKUMAR: Like around ten pounds.

TAD HEUER: Ten pounds? I'm not one of the contractors here, but I'm fairly

certain there are thousands of things I can buy in a hardware store that will hold up ten pounds. Does that seem unreasonable?

ATTORNEY ANNE MALONE: It has to do with the anchor, right?

ANOOP JAIKUMAR: You want something, the brackets coming out and then you have a sliding bracket that would rotate?

TAD HEUER: I have a bracket that has a hole in the bottom, a bracket that has a hole in the top. You stick your antenna onto the hole, onto the hole. Antenna rotates within that hole like this and there's no pipe.

CONSTANTINE ALEXANDER: What do you mean, manually rotate it or power?

ANOOP JAIKUMAR: No, manually you have to rotate.

TAD HEUER: I presume that's how you manually rotate something on the pipe.

CONSTANTINE ALEXANDER: How do you do you it now?

ANOOP JAIKUMAR: On the pipe these brackets come out of the pipe and then the pipe --

CONSTANTINE ALEXANDER: So a technician. If you want to move the location, somebody would have to go up on the roof and twist it?

ANOOP JAIKUMAR: Yes.

CONSTANTINE ALEXANDER: Okay.

TAD HEUER: Is there a reason that this, you hear from us all the time to try to minimize the impact on a building. And this building in particular, and in other cases, you've heard that we're trying to minimize the impact of the pipe mount which is essentially an additional item stuck up there that serves no purpose except to hold up an antenna. My question is merely if we're trying to reduce clutter on top of our buildings, seeing as I presume looking at your coverage proposed map, this is not the

last of these that we're going to get. I'm betting, just a rough guess, we're going to get another 15 from Clearwire alone. That as these are going to proliferate, I'm kind of at a loss as to -- unless there's a really good technological reason, why antenna cannot be placed in a less obtrusive mounting system.

ANOOP JAIKUMAR: I think the antenna -- the ones you're talking about are usually the built-in mount that comes and then, you know, the two mounts put together but I'm not sure about it. I'm just guessing.

TAD HEUER: A built-in mount.

ANOOP JAIKUMAR: Yeah, the antenna usually -- the antenna manufacturer they make those built-in mounts and then the bracket comes out, and then the two bracket put together --

CONSTANTINE ALEXANDER: One piece of equipment is what you're saying?

ANOOP JAIKUMAR: So the antenna bracket needed to be [align] and then you combine those two bracket that can rotate. But I don't know this antenna manufacturer makes those or not, I'm not sure.

TAD HEUER: You represent Clearwire?

ANOOP JAIKUMAR: Yes.

TAD HEUER: Clearwire is a massive national, international consumer of antenna technology and you're telling me that you're limited?

ATTORNEY ANNE MALONE: I'm sure there was a reason that we had them as close as possible because we needed the angles.

ANOOP JAIKUMAR: No, eliminate the pipe.

ATTORNEY ANNE MALONE: I'm talking about our proposed ones.

ANOOP JAIKUMAR: (Inaudible, cross talking.)

BRENDAN SULLIVAN: Tad, if you look at S-1 is that what you're trying to minimize?

TAD HEUER: I think part of my larger question is that we see a lot of these attempts that the Planning Board asks to minimize impact and we ask to minimize impact, and the response seems automatically or perhaps understandably to reduce the size of whatever the structure is somehow. As the Board is familiar, I've suggested in the past, that is not always the case to make something less obtrusive, you make it smaller. In some situations, and I'm thinking particularly on 1815 Massachusetts Avenue, the Lesley building and perhaps here as well, there would seem to be, or I would at least like to see an option where it is an attempt not to just match it to the color of the building, which in my mind is valuable but pretty feeble constellation to the Board, concession to the Board, but rather something

that would actually fit with the architecture of the building. Maybe that means making it a bit bigger. Maybe it means instead of having your pipe exposed, means you have a covering that covers the pipe. So while it may look a bit more solid, it's less intrusive because it's not visually cluttering. The antenna itself clutters because you have a bracket, you have a pipe, you have an antenna. Something that minimizes that doesn't necessarily mean making it smaller or pulling it to the building. Although it's valuable, it may mean literally minimizing the visual impact. Someone is less likely to look up and say that's an antenna, that's more what we want regardless of what how you get to it.

ANOOP JAIKUMAR: You know, the pipe is more close to the antenna, so I don't know if we're going to eliminate much of the visual because antenna has to come out six inches out of the wall. And then the pipe is more

attached on the back of the antenna. So even though you rotate it, so when you look from the far, pipe is very, very less visible. Because that will be the last part. If you see that's how in the photo sims, that's why you don't see some of the angles, you don't see the pipe, but it's there.

BRENDAN SULLIVAN: I think what we're not so necessarily convinced, we're looking for a stealth installation and these things are not so stealthy. And that what comes before us seems to be the easiest solution that will get you what you want. We're not sure if it's the only solution or the best solution or the best installation.

CONSTANTINE ALEXANDER: Best with respect to the City of Cambridge. Not just best -- that's what this is all about. Not what's best for you. It's also what's best for the City of Cambridge.

ATTORNEY ANNE MALONE: So you think

if eliminating the pipe visually do you think that's sort of what you're seeing mostly here?

TAD HEUER: I mean --

ATTORNEY ANNE MALONE: And I know that's what brought it up. Is it possible for us to do --

BRENDAN SULLIVAN: It's a very crude basic installation that you would think -- and, again, I'm sure that engineering says this is what works for the least amount of money and it gets us to the finish line. And yet there's no architectural division of Clearwire that says well, you know, we can make it look -- they're not really interested in making it look neat and clean and unobtrusive and stealthy. And they just want to get boom, throw it up there and turn it on and it works.

ATTORNEY ANNE MALONE: I

certainly -- I'm happy to work with the Board. And, you know, we have worked with the Planning Board significantly. And, you know, it's in our best interest obviously to do something that's beneficial to the City of Cambridge and that would be more comfortable aesthetically. I was of the understanding that was the mount made, but you think it's possible they can do it without the pipe?

ANOOP JAIKUMAR: I mean, I haven't seen with these antenna. I haven't seen it.

TAD HEUER: If it cannot be done, if you come back and say we have talked to all the engineers, maybe you want to talk to an architect and they say you can't do it. You've got to have an ugly pipe up there and that's the price you pay for the fact that I can sit here and read my e-mail on my Blackberry. If that's true, at the end of the day, that's just your best case. But, in hearing that they're -- and I freely admit,

I'm not a mechanical engineer and I'm not a structural engineer, but the fact that I've seen on children's toys that can pivot on two brackets, suggests to me a major national company that assumes vast quantities of antenna which has at least some power not to just purchase from the market, but to set the market and certainly has the power to speak to its suppliers to say that they want a different antenna could they please make it or try a prototype. That unless I can see that that can't be done, I'm increasingly loathed as Mr. Sullivan has said, to accept the cheapest, easiest way to get coverage. We are not here just to allow coverage. If that were true, we'd have a special coverage board that says if you can show me green on this map, then you're good to go. That's not our ambit here I don't think. And I speak for just myself. And I think I'm speaking for other members of the Board. I'd like to see

the more in-depth attempt to find a way to make these things stealthy. To make them not visibly intrusive. There are going to be limits to that because these buildings aren't built for these, they're clearly appendages. I'm thinking of buildings, for instance, at the intersection of Tremont Street and Park Street in Boston, there's a 7/11. They figured out a way to put antennas above a pediment there in a way that is acceptably unobtrusive. Unless you were looking there and point them out, you can see them. That's not the case here. There are ways to do it on buildings. Some buildings are just going to be harder than others. But I just don't see the -- I appreciate the efforts you've gone through to minimize the number of antennas here. I think I'm trying to put you to the next stage of now you've got numbers can we have something that's less intrusive?

CONSTANTINE ALEXANDER: Just a

brief PS to I think Mr. Heuer's comments. This is simply, particularly for this building. This is a very visible building as you come down Mass. Ave. that whatever you put on there it just blinds out at you. So, though I might, speaking only for myself, and be willing to accept the pipe mounts on other buildings. I am troubled by -- I'd like to see it go one more step, one more mile to see if you can come up with something even less obtrusive. You've made progress so far. And if you can't, as Mr. Heuer said, come back and tell us you can't and tell us why you can't by the way. Not just tell us. I want to be persuaded. But I think --

BRENDAN SULLIVAN: And you know, you can almost take these photo sims for 1100 Mass. Ave. and put the ones for Fawcett Street next to it and you get the same push back from us.

TAD HEUER: Yes. And I think the

flip side, and I know I'm being perhaps unduly harsh and you happen to be the people sitting in front of me, I guarantee I'll give the same speech to the next people. But to the extent that you do come up with something that is more stealthy than is a standard panel mount, you have a number of applications coming before us, it will be to your benefit if you were able to come up with something, even though the time invested on this particular building may seem to be extensive, to be able to roll that out and say do you remember what we did on 1100 Mass. Ave. we're proposing the same type of installation here that we've worked with our engineers, our architects, whatever to adapt that model. It will, if you find one of those models, it will undoubtedly smooth your path of future applications that I'm sure will be in front of us to make.

ATTORNEY ANNE MALONE: We'll go back

and we'll see what we can do with the mounts.

CONSTANTINE ALEXANDER: So this will be a continued case as a case heard so we need all five of us. First of all, what's the date, the first date that's available?

SEAN O'GRADY: First date available is now October 28th.

CONSTANTINE ALEXANDER: I assume that will give you enough time to do what you have to do?

ATTORNEY ANNE MALONE: Yes.

CONSTANTINE ALEXANDER: And I would suggest if you do come back with something different, I urge you to go back to the Planning Board.

ANOOP JAIKUMAR: What our target launch for the market I think is end of this year. So that, you know, like two months' time. I mean, is there any possibility you can give us a conditional approval and we can show you something that --

CONSTANTINE ALEXANDER: No.

TAD HEUER: No. Sorry.

CONSTANTINE ALEXANDER: That's a fair question, but that's not our practice. So, if we heard you on the 28th, and we will hear you, and it's up or down, and if it's an up and we grant you relief, I would think that would give you enough time to launch by the first of the year if that's what your goal is.

ANOOP JAIKUMAR: October, the last quarter of the year.

CONSTANTINE ALEXANDER: Last quarter goes until December 31st.

ANOOP JAIKUMAR: Yeah. But I think it's October. They launch it like in October some day. I'm not sure.

CONSTANTINE ALEXANDER: Well, you may have --

BRENDAN SULLIVAN: More impetus for them to come up with something.

CONSTANTINE ALEXANDER: Yes. I

would be willing to try to squeeze it in on an earlier hearing, maybe only by two weeks, but I don't think it serves anyone's interest to do that. You're not going to improve your time to market and it will put a burden on us to have a very long agenda that night. So I think we should stick with the 28th.

So can everybody make the 28th?

(All agreed).

CONSTANTINE ALEXANDER: The Chair moves that this case be continued as a case heard until seven p.m. on October 28th on the condition that the Petitioner modify the signs, two new signs on the premises to reflect the new hearing date.

The Chair noting for the record that we already have a waiver of time for a decision on file. And I don't have to repeat, you know, five p.m. the Monday before?

ATTORNEY ANNE MALONE: Yes.

CONSTANTINE ALEXANDER: All those

in favor of continuing the case on this basis,
please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor. Case continued.

SEAN O'GRADY: Gus, on the
Clearwireless's first, the 10 Fawcett
Street?

CONSTANTINE ALEXANDER: Yes.

SEAN O'GRADY: Did you mean to hear
that or was that not heard tonight?

CONSTANTINE ALEXANDER: Ten
Fawcett, Clearwireless is already a case
heard.

SEAN O'GRADY: Was it heard tonight?

CONSTANTINE ALEXANDER: No.

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

(8:00 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9960, 67 Jay Street. Is there anyone here wishing to be heard on this matter? Please come forward.

Is anyone here who wants to hear this case if they're sitting in the back, I know the acoustics are not good in this room, please come forward.

WILLIAM HUBNER: Do you want this for yourselves or the audience?

CONSTANTINE ALEXANDER: Certainly for us. And if people from the audience want to see it, they can come forward. Okay, for the record, please give your name and address whoever is going to speak.

WILLIAM HUBNER: William Hubner, 55 Goldstar Road, Cambridge, Massachusetts. I'm the architect helping David and Michael

renovate this home for their use.

CONSTANTINE ALEXANDER: And you're here seeking a Variance?

WILLIAM HUBNER: Yes.

CONSTANTINE ALEXANDER: And why don't you tell us exactly what you're seeking a Variance from? Why what you want to do doesn't comply with our Zoning By-Law?

WILLIAM HUBNER: Okay. Michael actually -- I'm sorry, David actually filled out the application, but I'll paraphrase it.

CONSTANTINE ALEXANDER: That's fine.

WILLIAM HUBNER: It's an existing non-conforming lot. You have a site plan in your packet.

CONSTANTINE ALEXANDER: Yes, we do.

WILLIAM HUBNER: And there's an existing structure on the property.

CONSTANTINE ALEXANDER:
Non-conforming.

WILLIAM HUBNER: It's non-conforming, correct. The nature of the site, the size of the lot, setbacks, street frontages, several factors all of which make it a non-conforming lot.

CONSTANTINE ALEXANDER: Right.

WILLIAM HUBNER: What we're proposing to do, except for one little area which I'll explain in just a moment, does not affect the footprint whatsoever on the house but to merely add a third level. It's currently a two-story home with a flat roof. We're proposing to add a third story. The height change will be approximately 11 feet when it's all done.

CONSTANTINE ALEXANDER: But you will still be within our Zoning By-Laws. You don't need a height variance at all.

WILLIAM HUBNER: That's right.

CONSTANTINE ALEXANDER: But you have setback issues?

WILLIAM HUBNER: That's right.

CONSTANTINE ALEXANDER: Aren't you getting closer to the setbacks?

WILLIAM HUBNER: We're not. Yeah, we're not. On the site, if you look at the property on the site, on the north side of the property, we have the greatest amount of space approximately -- I'll tell you exactly, I'm sorry. On the north side of the property where we have 21.6 feet of setback for the side yard, we're proposing to put a two foot by five foot bump which is for a chimney basically. That's the only place that we're affecting the footprint at all. The existing air lock or foyer is existing. The steps are existing. The walkway is existing. All that stuff is existing. We're also are proposing on the north side of the property where we have the 22.6 feet, to put a wood frame deck with a pergola, open frame pergola decorative element on it. The

property surrounded more or less by triple deckers and we'll create a little open space in the yard.

CONSTANTINE ALEXANDER: How close will that deck be to the lot line?

WILLIAM HUBNER: When it's all done, the deck would be 11.4.

CONSTANTINE ALEXANDER: And that does not comply with the Zoning By-Law? Am I right? I don't have the file in front of me. I'm just saying, am I right?

WILLIAM HUBNER: I don't believe that is an issue, but -- I'm sorry. It is an issue.

CONSTANTINE ALEXANDER: You have a non-conforming structure?

WILLIAM HUBNER: Correct.

CONSTANTINE ALEXANDER: It has the setback issues?

WILLIAM HUBNER: Correct.

CONSTANTINE ALEXANDER: You want to

invade the setback even further to put an open air deck?

WILLIAM HUBNER: Correct.

CONSTANTINE ALEXANDER: And I thought I saw in the plans a hot tub.

WILLIAM HUBNER: That will be on the deck, yeah.

CONSTANTINE ALEXANDER: On the deck.

WILLIAM HUBNER: In the deck. So an open air deck with a hot tub set in it.

TAD HEUER: But you would be intruding on the rear setback, right?

WILLIAM HUBNER: We would be extending the line.

TAD HEUER: Which is an intrusion?

DAVID RING: So, there's a brick building really on the property line that -- so it's --

TAD HEUER: Is it yours?

WILLIAM HUBNER: Yeah.

DAVID RING: I think it's actually over into our property.

TAD HEUER: But it still intrudes into the --

WILLIAM HUBNER: Correct.

TAD HEUER: -- the rear setback that's drawn from the setback in towards the property line.

WILLIAM HUBNER: Yeah, we would be extending the line, the existing back line along the line of the structure. The additional 10.2 feet for the open air deck.

CONSTANTINE ALEXANDER: But I guess my initial reaction and not to be combative about it, is you're going to be very close to the lot line in a very tight area neighborhood, and you're going to put a hot tub? I mean a hot tub, I have no objection to hot tubs but all in the proper place and the proper time.

WILLIAM HUBNER: Yeah.

CONSTANTINE ALEXANDER: I mean, the privacy issues have got to be substantial both for you using the hot tub and the people next-door.

DAVID RING: We're flexible on that.

CONSTANTINE ALEXANDER: I'm sorry.

DAVID RING: We're flexible.

CONSTANTINE ALEXANDER: You're flexible.

WILLIAM HUBNER: What David meant before as it turns out, it's not on their property, but that's right, there's a cinder block garage structure directly behind them on the neighboring property behind, that our deck actually extends to the length of that. So as far as that neighbor, the neighbor directly behind them, they will not be able to see the deck because their own garage is in the way of it.

DAVID RING: We have a picture of it.

CONSTANTINE ALEXANDER: Visual with

a hot tub and people using it there's also a noise factor, too.

WILLIAM HUBNER: Well, it's a yard as well. And it is their yard. They would be utilizing the yard whether it's a deck -- the hot tub is a separate issue of course, but whether it's a deck or whether it's a yard, it's a bit of yard they have at the property. But yes, we are asking for that permission.

TAD HEUER: You said 11.4 at one point.

WILLIAM HUBNER: Yes.

TAD HEUER: That's your right side setback?

WILLIAM HUBNER: Correct.

TAD HEUER: So you're dimensional form says a 19, 6 right side setback. Is that wrong?

WILLIAM HUBNER: That might be the front. Like I said I didn't actually fill

out the --

TAD HEUER: It says right.

DAVID RING: It is 19.

TAD HEUER: Front says 21.2 and that doesn't change, and it seems right because that's front.

WILLIAM HUBNER: Sorry, David. I'm not sure where that number came from.

TAD HEUER: Does it include the deck?

WILLIAM HUBNER: It's the depth of the deck, so maybe it was just semantics.

TAD HEUER: It can't be semantics, because setbacks in feet right side.

WILLIAM HUBNER: Okay, sorry.

TAD HEUER: Existing 21, 6. Requested 19, 6. Where does 19, 6 come from?

WILLIAM HUBNER: Well, I see a number but 11.4 is what it should say. Sorry.

TAD HEUER: And that puts you in

violation of the right side setback because the right side setback requirement represents 12.7.

WILLIAM HUBNER: David.

DAVID RING: Right. No, we know the deck is the only thing, I think, that we're doing that requires -- that would require a Variance normally. I think the other things that we're doing don't really require a Variance if the house wasn't non-conforming.

CONSTANTINE ALEXANDER: You know, I think to the extent if you're intruding into a setback and you're adding another story as you propose to do, that in and of itself, say it's in the same plane as the first two stories, it requires zoning relief. Because you're increasing your intrusion. Apart from the deck, just a third story increases -- it's a further intrusion into the setback.

DAVID RING: Right. I meant I think

the zoning is that it can't be higher than 35 feet. So we're not trying -- we're not going above --

CONSTANTINE ALEXANDER: No, no, no. I know that. You're not going over 35 feet. But just going up on the plane, not going over 35 feet, if you're already in the setback, going up requires further relief from this Board. You need a Variance. You can't go up.

DAVID RING: Well, that's why we're here.

CONSTANTINE ALEXANDER: Yes, but the point you've got a deck, intrusion to the setback. You also have the third floor, a first story, the new story you want to put also needs a Variance because it intrudes into the setback.

DAVID RING: Right. And I guess Bill didn't really talk about it, but this house is about 120 years old. It's tiny.

CONSTANTINE ALEXANDER: 1100 feet according to your application. Nominal I think.

DAVID RING: Yes.

WILLIAM HUBNER: Exactly. And the neighborhood, as we discussed in the application, it's a neighborhood of triple deckers, two and a half story structures. So we feel that this is a reasonable request because it conforms with the character of the neighborhood and it's part of an overall investment of restoration and improvement to the property overall.

CONSTANTINE ALEXANDER: Have you spoken to the neighbors about this project?

DAVID RING: We spoke to most of the neighbors, but on the right side it's -- I don't know who the owner is. It's a triple decker property. Behind us, that one is under -- being built or renovated. The person Nick is here, he's directly in front

of us.

CONSTANTINE ALEXANDER: I suspect we'll hear from Nick.

DAVID RING: The other people said it's fine but they're on vacation to Cuba.

CONSTANTINE ALEXANDER: Last I knew there were no letters or petitions in the file from anybody. So we don't know whether if people are opposed or supported. But you have made some effort to reach out to the neighborhood?

MICHAEL LANGLOIS: Yes.

CONSTANTINE ALEXANDER: Okay. That's what I wanted to get on the record.

Anything further or are we going to take questions from members of the Board and then public testimony?

WILLIAM HUBNER: I'll answer questions from the Board, please.

CONSTANTINE ALEXANDER: Questions from the Board?

I have a serious question about the deck and the hot tub, I'll be very clear about that.

WILLIAM HUBNER: Okay.

CONSTANTINE ALEXANDER: I understand the need for going up another story. I think the impact of the intrusion of the privacy of the neighborhood is minimal and there's a definite need given the size of your structure. But, when you have an undersized lot, height to the setbacks and you want to put a hot tub and a deck, an open air deck, it's just to me creates privacy issues. But that's -- I haven't made up my mind yet. But I've got tell you -- -

DAVID RING: Well, if we just got rid of the hot tub but still had the deck?

MICHAEL LANGLOIS: Can I also comment on the deck?

CONSTANTINE ALEXANDER: Yes.

MICHAEL LANGLOIS: One of the things

we're going to need to do in the renovation is create a second egress. Because right now there's only one egress. And the second egress would actually be on the side.

CONSTANTINE ALEXANDER: You're going to have a door and the steps. The trouble with the deck, again, I'm not trying to prejudge this, again, is that people congregate on decks.

How big is the deck by the way.

WILLIAM HUBNER: It is 10.2 feet by the 19.2 feet.

CONSTANTINE ALEXANDER: That's a big size deck. So you could have a party out there and the neighbors --

DAVID RING: Can I add just one thing?

CONSTANTINE ALEXANDER: Sure.

DAVID RING: Well, you can't really tell from the picture, but essentially the triple decker that would be closest to it,

they, the decks are all literally on the property line. So that's -- and it's --

CONSTANTINE ALEXANDER: Their deck's are on the property line?

DAVID RING: Yes.

CONSTANTINE ALEXANDER: Your deck's going to be very close to that property line?

DAVID RING: And it's all like Harvard students. So every time we've been there, so far there's been people on the deck to begin with. So I don't think this is like something --

CONSTANTINE ALEXANDER: You're going to have dueling decks.

DAVID RING: Right. But it's not like it's like moving into like putting a deck into like in a monastery. It's a place where people are already out there.

WILLIAM HUBNER: It got lost in the general mumble of it.

MICHAEL LANGLOIS: We're also going

to put a privacy wall on that side as high as reasonably so that we have some privacy.

DAVID RING: It's got a high fence already but it's chain link. So we'd ideally like to replace it with one that's just wood.

TIM HUGHES: This deck is just an extension of walking out your first floor, right?

DAVID RING: Right.

TIM HUGHES: So basically it's just raising your backyard a few feet.

WILLIAM HUBNER: Side yard, yeah, that's right.

TIM HUGHES: You could use the side yard to congregate and throw a party without the deck. So the deck doesn't really, you know, it doesn't really make it any more of a likely place to have a party.

WILLIAM HUBNER: That was my point earlier. The hot tub aside, yeah, it's a gathering place.

TIM HUGHES: Hot tub aside.

WILLIAM HUBNER: Yes. And, you know -- yeah. And if I understand correctly, I got the -- if we were actually to reduce the length and width by a foot or so, then it actually would conform, we have an extension across the back.

TIM HUGHES: It would conform in one but you still have --

WILLIAM HUBNER: Yeah, and about ten feet. It's slightly limited functioning, but if we didn't do the deck, we probably just have a simple landing down in the yard and have a terrace.

CONSTANTINE ALEXANDER: Any other questions at this point from members of the Board or should I open it up to public testimony?

TAD HEUER: I'm just, excuse me if I'm just not getting it. Can you articulate for me exactly what you need us to do?

Because I admit that I don't understand that from your application. Some things that you've listed that you're going to do but I don't think you need our relief.

WILLIAM HUBNER: Some of the things listed we do not. I believe what we're here for is because of the non-conforming nature of the structure, and because we're proposing to go straight up, we need your approval to do that because it's a non-conforming condition. That would be one condition.

The other is because of the deck, the extension of it to the north because we're extending a deck structure, extending that back line would need relief from the back yard setback and because of the depth of the side yard setbacks. So it's three points; additional height which is not -- doesn't require permission because we're staying below the limit but non-conforming aspect of it. So I believe those are the three points.

DAVID RING: I don't think the third one is the fireplace.

WILLIAM HUBNER: But I don't think we need permission for that.

TAD HEUER: That's what I'm trying to get to. Just what you need for us to do for you.

WILLIAM HUBNER: I don't think we need the fireplace. It's not going far enough over or far enough back to be an issue I believe.

TAD HEUER: So there's a notation about the bulkhead, that's none of our concern, correct?

WILLIAM HUBNER: I don't believe so.

TAD HEUER: So technically you are looking for rear setback relief that will allow you to increase the massing to create a third story to the extent that that massing intrudes into the rear yard setback?

WILLIAM HUBNER: Correct.

TAD HEUER: You need rear yard relief, rear yard setback relief for the deck to the extent the deck intrudes into the rear yard setback, and you need right yard relief because the deck intrudes into the right yard setback?

WILLIAM HUBNER: That's right.

CONSTANTINE ALEXANDER: And all of that is shown in your plans?

WILLIAM HUBNER: Yes. And we do indeed have, in addition to my plans, architectural plans, we have a certified plot plan created by an engineer. Keenan Survey I believe. So that's part of the record as well.

TAD HEUER: And then you have no FAR problem because you have enough space to allow you to add the floor area on the third floor.

DAVID RING: Right.

TAD HEUER: And the deck.

DAVID RING: It's 2790 square feet, and I think the house could be up to 2100 square feet. It's only going to be 1600 square feet even with the third floor.

CONSTANTINE ALEXANDER: The deck wouldn't create that.

TAD HEUER: Right. And the pergola trellis is going to be constructed in a way that it doesn't constitute a structure under our by-laws?

WILLIAM HUBNER: That's the intention.

TAD HEUER: Correct?

WILLIAM HUBNER: Correct.

MICHAEL LANGLOIS: Just a couple columns that we can string a hammock.

CONSTANTINE ALEXANDER: Let me open this up to public testimony at this point.

Anyone here wishing to be heard on this matter?

NICK SPENCE: I just have a concern.

CONSTANTINE ALEXANDER: Sir, you have come forward, please, and give your name and address to the stenographer.

NICK SPENCE: Nick Spence, 69 Jay Street, Cambridge, Mass.

CONSTANTINE ALEXANDER: You're the house in front?

NICK SPENCE: Yes.

CONSTANTINE ALEXANDER: Colorful house.

NICK SPENCE: My only concern is sunlight, that's all.

CONSTANTINE ALEXANDER: Sunlight?

NICK SPENCE: Sunlight, yes.

CONSTANTINE ALEXANDER: I know what sunlight is.

NICK SPENCE: Right now it's not a problem. In the winter I would like to know if there's an extra story on the roof, whether it's going to --

CONSTANTINE ALEXANDER: Well, I

would assume it's going to have some impact on your sunlight.

NICK SPENCE: Well, it's going to have some impact but I don't want to be in shadow 24 hours because I was in the back of the house, I had an apartment on the north side of the house and it's dark. It's dark.

CONSTANTINE ALEXANDER: You want to respond to the impact? Have you taken into account the impact?

MICHAEL LANGLOIS: We actually took Nick and had him see the plans and talked to our architect about it before.

NICK SPENCE: It was just....

CONSTANTINE ALEXANDER: Does that answer your question to your satisfaction?

NICK SPENCE: Sort of kind of. But I'm still just like....

DAVID RING: Well, actually there is --

THOMAS SCOTT: You can perform a sun

study. The architect can perform a sun study.

WILLIAM HUBNER: Which I have agreed to do.

THOMAS SCOTT: Okay. But it hasn't been done?

DAVID RING: There is one thing on -- basically on the dividing line between our properties, there are two giant trees, and I don't know if they're maple or whatever.

NICK SPENCE: They're deciduous.

DAVID RING: But they basically cover the entire yard and I think --

NICK SPENCE: That's great in the summer. In the winter you need the sunlight.

DAVID RING: Okay. Because I was going to say literally we called the house like -- we zoned escargot because it's millions of snails everywhere because there's --

TAD HEUER: That block the sunlight?

DAVID RING: Because the trees block so much sunlight.

CONSTANTINE ALEXANDER: So some parts of the year --

NICK SPENCE: The sun block the sunlight -- I mean, the trees block the sunlight in the summer which is a great thing. This is what you want. In the winter when the leaves fall off the trees, you want to get the sun on the house.

MICHAEL LANGLOIS: Well, it depends on which side of the fence you're on because what we've noticed is that the floor -- the ground is extremely spongy, and every time we go to check the mail, there's half eaten letters in there because the snails have been eating it and that's because there's too much sunlight. I mean, too much shade. So I mean, I think --

DAVID RING: I mean, it's almost like a swamp honestly.

CONSTANTINE ALEXANDER: Well, you've heard. Yes, they're putting this third story on. Will it impact your sunlight?

NICK SPENCE: I don't know if it will or if it won't. That's all I'm concerned about. That's my only concern. The rest of it is brilliant.

CONSTANTINE ALEXANDER: It will impact your sunlight on your property. To what extent and what time of the year, none of us know.

DAVID RING: And well, actually one other thing, by us renovating that property in which is frankly delapidated. And I mean, but --

NICK SPENCE: My house is delapidated. It's way better than mine.

MICHAEL LANGLOIS: Is that the concern that it's going to make your house look worse?

NICK SPENCE: No, no, no, it's not my concern. My only concern is sunlight, that's purely it.

CONSTANTINE ALEXANDER: We've established for the record there will be sunlight impact on your premises, but not to the extent -- I haven't heard you say it -- jump up and down and say I'm going to be living in shadows.

NICK SPENCE: I don't know if I will.

BRENDAN SULLIVAN: But a sun study will do that.

CONSTANTINE ALEXANDER: Yes, but we don't have a sun study tonight. I'm not disposed to this being a case heard until those sunlight studies are obtained. We continued enough cases tonight. I haven't heard a really conclusive strong objection. I mean, I think you can assume it's going to have an impact. But anyway, if the Board wants to continue the case as a case heard on

the condition that a sun study be obtained and submitted, if that's the Board's pleasure, I would support that.

MICHAEL LANGLOIS: Can I add one more thing about the structure? The new floor is actually being renovated so that we're going to be putting many, many more windows in it. So that although it may not be -- I'm not an architect, the sun may not come right through, but it's actually I think going to give more of an appearance of it being open than you would think just from saying it's a third floor. And then in fact it's still lower than the triple deckers that surround us and it will actually be smaller and I think less intrusive.

NICK SPENCE: I'm surrounded by triple deckers. There's one to the north.

MICHAEL LANGLOIS: There's one to --
(Side discussion.)

CONSTANTINE ALEXANDER: First of

all, the stenographer needs to be able to take down what you're saying. You can have your colloquy outside the hearing.

WILLIAM HUBNER: I tried to assure Nick that indeed there will be -- there's always an impact of the sun by making the structure larger. The nature of the footprint of the structure, the distance from his house, it's my professional opinion it will be a negligible impact, especially considering the impact like the trees. Because even when it's wintertime, they still have mass and bulk and they won't do much. And I would even question whether even a sun study for 365 days a year were done, if in the density of this neighborhood the heights of this structures around it, would it be fair to not allow this client to, since we're not looking for any height variation to actually exercise that right anyway. So I just -- that's my point.

CONSTANTINE ALEXANDER: Thank you.

WILLIAM HUBNER: And I will do a sun study for him.

CONSTANTINE ALEXANDER: Thank you.
Any further comments?

NICK SPENCE: I don't want to be a pain, you know, I encourage, you know, but at the same time I don't want to go okay, everything's cool, groovy and then in the middle of winter suddenly I'm --

CONSTANTINE ALEXANDER: We're the ones that make the decision whether everything is cool or groovy, don't worry about that. We want to hear your views. I'm not trying to be flip.

NICK SPENCE: I just don't want to turn around in the middle of the winter and go it's dark all day long. That's all. That's my only concern.

CONSTANTINE ALEXANDER: We hear you. Okay.

NICK SPENCE: Everything else is cool.

CONSTANTINE ALEXANDER: Thank you, sir.

Anyone else wishing to be heard on this matter?

(No response).

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

Any letters in the file?

TAD HEUER: No.

CONSTANTINE ALEXANDER: None?
Okay. Before I cut off -- I'm closing public testimony so you're all through.

You got anything you want to add to what was said so far?

Questions or comments from members of the Board?

Is there a sentiment you want to continue this case to require that sun studies be made and be made available to us

or not? Not hearing any....

BRENDAN SULLIVAN: I just can't make a value judgment as to whether or not it's going to have an adverse impact or not without it.

TAD HEUER: I'd agree but I'm not also sure that it matters. The reason I say that is because if they're coming under the 35-foot limit, it's essentially height by right issue. And presumably they could do a form of addition that would allow them not to intrude into the setback by building into their side yard for instance. Instead of going up, go over. But if they could go by right into the height, I'm not sure that the intrusion other than the rear yard setback would be an issue. So I'm very sympathetic of the concerns. I'm not sure technically if we can go around it because we have the rear yard setback issue to deal with, I'm not sure it's substantively --

CONSTANTINE ALEXANDER: I think it's apples and oranges thing. If they were seeking a height variance, I would be very much in sympathy with the notion of getting a sun study. But they're not. They're building something that is within the height limits of our Zoning Ordinance. It just happens to be close to the lot line. That close to the lot line doesn't impact the shade that's going to be created to the other property. So, you know, whether it shades or not, we should be worried about, I think, with regard to rear yard setbacks, creating any privacy issues, any safety issues. And sun studies would not speak to that. That's why I'm not in favor of requiring sun studies.

Other members? You want sun studies or not?

TIM HUGHES: No.

THOMAS SCOTT: I'm okay.

CONSTANTINE ALEXANDER: Brendan.

BRENDAN SULLIVAN: It's one of those things. Where it would be nice to have, it's not fatal.

THOMAS SCOTT: Can the rear deck be built in such a manner that it doesn't encroach on the rear yard setback or the right yard setback?

TAD HEUER: I mean, is it, so you're --

BRENDAN SULLIVAN: The rear of the house --

TAD HEUER: If we're at 12, 7 allowed. And as proposed would be to 11, 4. If you were to cut the size of the deck by one foot, three, that would bring you in conformance with the right yard setback and eliminate one reason for us to grant you additional relief. Would that be amenable?

TIM HUGHES: The deck would end up being what, 17, 11 or something like that?

DAVID RING: The deck itself. No,

it would be about nine feet -- eight foot, ten width.

TIM HUGHES: Oh, that's --

WILLIAM HUBNER: Yeah, we'll go from the right side and out the rear in this case.

BRENDAN SULLIVAN: It's the height off grade to the top of the deck to the deck.

WILLIAM HUBNER: It is 35 inches.

CONSTANTINE ALEXANDER: Do I understand that you've withdrawn your request for the hot tub?

DAVID RING: If that will help us get approval we could.

CONSTANTINE ALEXANDER: It would help with me.

MICHAEL LANGLOIS: I think we may have given the Board a misunderstanding of the type of people we are with the hot tub. We're not going to be having --

CONSTANTINE ALEXANDER: We don't want to go there. We're not going there.

BRENDAN SULLIVAN: Well, actually the hot tub they could do as of right.

TIM HUGHES: We don't have to give them a hot tub.

BRENDAN SULLIVAN: If it's not shown in the drawing, and they put the deck in then they can --

CONSTANTINE ALEXANDER: Except that they have shown it to us and they are intruding in the setbacks even with going up. So, I am still troubled by the notion that having told us about it, as you should, I think you should, allowing a hot tub in that close proximity to the lot line is not desirable. We can put it to a vote with the hot tub in and see.

THOMAS SCOTT: Is the hot tub screened? It's screened, right?

WILLIAM HUBNER: Well, yes. First of all, as I mentioned previously, there's a ten foot, two inch high block garage. We are

intending, though, it shows up on the plans, that we have an opaque, open air but opaque fence or screen around -- across the back so they don't look at that concrete garage. And along the side about a third of the length of the deck in order to create a screen for it.

THOMAS SCOTT: But the screen's going to be there either way, whether the hot tub's there or not.

WILLIAM HUBNER: I think so.

THOMAS SCOTT: You're doing that for anesthetic reasons to dress up --

WILLIAM HUBNER: Yes. It creates a place where they can actually sit to have a cup of tea. And if the kids at Harvard stay up all night and are still going at it, they can sit there quietly.

DAVID RING: And also when we, we're faced with two options because the house is so small, it was either just make a two-story addition instead of the deck or go up. And

in talking to the people on -- in the zoning office, they strongly encouraged us not to do the two-story addition in place of the deck. So -- but we would have been fine doing that instead. But, because the house is so narrow, the idea was if we added a deck, then we would at least give the illusion that it's --

CONSTANTINE ALEXANDER: I don't think the deck is any more an issue. I think the deck is particularly if you're going to modify it as suggested, so you're not going to intrude into the setback. The question is whether in connection with the other relief you're seeking, you brought to our attention that you also want to put a hot tub out there. And whether that's enough to tip the balance against us granting you relief or not.

DAVID RING: Well, to be honest with you, we can't afford to do the hot tub right now. I mean, we actually probably can't

afford to do the deck right now either.

WILLIAM HUBNER: We'd like permission.

CONSTANTINE ALEXANDER: Let me make a motion with the deck with the hot tub. The deck as modified for our discussions and see where we go from there. Ready?

BRENDAN SULLIVAN: Sure.

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

That with respect to the relief being sought, that a literal enforcement of the provisions of the orders would involve a substantial hardship to the Petitioner. Such hardship being that the Petitioner now occupies a very small structure, non-conforming, and that the ability to really enjoy the house and to make it fully inhabitable and usable is limited given the current circumstances. So there is a

hardship to the Petitioner without being able to increase the living space in the structure.

That the hardship is owing to circumstances relating to the shape of the lot and the structure. This being a non-conforming lot in a non-conforming structure.

And that relief may be granted without substantial detriment to the public good. In fact, that what is being proposed will increase the quality of this house and the housing stock in the city.

And that there is, with the exception of one abutter who has a question, there is no neighborhood opposition to the project.

On the basis of foregoing, a Variance would be granted on the condition that the work proceed in accordance with -- it has a footprint as shown on a certified plot plan submitted by the Petitioner. It's dated

June 11, 2010. It's been initialed by the Chair.

And the further condition that the work proceed in accordance with plans submitted by the Petitioner. There are 1, 2, 3, 4, 5, 6, 7, 8, 9 pages. The first page of which has been initialed by the Chair.

On the further condition that the work proceed in accordance with these plans except that the deck area be revised so as not to intrude into the setbacks which require a reduction in the size of the deck as we discussed at this hearing.

On the further condition that with respect to the deck that you put screening that would minimize the visual impact of the deck on neighboring premises, but otherwise that the work would proceed in accordance with the plans that you submitted showing the hot tub.

BRENDAN SULLIVAN: Can we put a

number on the deck size wise? We're reducing it.

CONSTANTINE ALEXANDER: I said reduce it to a point.

BRENDAN SULLIVAN: If we could come up with a number.

CONSTANTINE ALEXANDER: It's now 19.2 by 10. And okay, we're going to reduce it by about a foot or two as I recall?

TAD HEUER: A foot, three.

CONSTANTINE ALEXANDER: That would come off the 19, 2. No, ten, three.

TAD HEUER: This is the right one.

CONSTANTINE ALEXANDER: So that the deck would be nine feet, two by nine, nine feet?

WILLIAM HUBNER: Yes.

BRENDAN SULLIVAN: Okay. Good.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor. Variance granted.

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

(8:35 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9961, 1815 Massachusetts Avenue. Is there anyone here wishing to be heard on this matter?

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. For the record, James Rafferty on behalf of the applicant Bourbon Lesley, LLC. Seated to my right is Mr. Bosco Munga. First name B-o-s-c-o. Second name M-u-n-g-a. And to Mr. Munga's right is Gahima Munga, G-a-h-i-m-a.

CONSTANTINE ALEXANDER: You make me feel good.

ATTORNEY JAMES RAFFERTY: All right. Gahima is wearing the T-shirt of the

operation so we asked him to sit here.

Bourbon Coffee is pleased to be opening their second, or hoping to open their second cafe in the United States at this location. Within the past year Bourbon has opened an establishment in Washington, DC. They are currently under development in Union Square. And our hope is that we wouldn't lose out to New York and they would get theirs open up there.

CONSTANTINE ALEXANDER: Wasn't there talk of you opening in the old Marino's Restaurant?

ATTORNEY JAMES RAFFERTY: There was. There was. In fact, there was a transaction there, but it was a much bigger space. It was 11,000 square feet. And that lease was amicably terminated. And this location, which is in University Hall at Lesley, the former Sears Building, I know the Board is quite familiar with the building.

The space itself has been vacant for more than two years, a reflection of some of the challenges of trying to find good retail in this environment. Bourbon Coffee is a very interesting and unique concept.

It is very much a cafe, although it does fall within the parameters of our definition of fast food. But it has 60 seats. It will offer breakfast, lunch, stay open late at night. And there's a full menu. It's not really the typical in and out quick for coffee. Each customer has their coffee individually ground. So when you order your cup of coffee, it takes just a little bit longer than some of the more fast oriented places. And that's consistent with the whole approach that Bourbon takes. My first thought when I heard about Bourbon Coffee, I thought it was a shot of Jack Daniels in your coffee.

But I since learned, one of the

interesting things about my job, I learned Bourbon is a coffee bean. And Mr. Munga is from Rwanda, and this whole concept is about they're more -- their mission is beyond the sale of coffee. Their mission is really to fight rural poverty, to allow for fair trade and greater prices given to coffee growers. It has its origins in his home country. It's been successful for several years, and he's very excited about Cambridge for a variety of reasons as you might imagine. But he's been very excited about Cambridge. Did begin to look -- did more than look actually, again, a little renovation at the Marino site, but between the change in the economy and the cost of that construction in that space had to alter the plans slightly.

CONSTANTINE ALEXANDER: How many seats?

ATTORNEY JAMES RAFFERTY: There are 60 seats.

CONSTANTINE ALEXANDER: And all on inside or will some be on the sidewalk?

ATTORNEY JAMES RAFFERTY: At the moment they're all inside, but there is a process through the License Commission that they could petition. But given the time frame and how long, I'm thinking that would be next year. There's a process with the City Council to petition for the sidewalk seating. So, the cafe use as you know, is an allowed use. It just so happens that the fast food requires a Special Permit. And 11.30 lays out the criteria. And I would suggest that this site is generally quite responsive to that criteria. And this use in particular is even more so.

I know we always struggle sometimes with the notion of fulfilling a need for such a service in the neighborhood. The person laughing is the person we worry about with that question.

CONSTANTINE ALEXANDER: Depends where the neighborhood is.

ATTORNEY JAMES RAFFERTY: But it also depends on how one defines need. But I would say that this is no -- this is not your father's coffee shop. This is no mere cup of coffee. Bourbon Coffee is, for the reasons I stated and for with Mr. Munga would be happy to go on to give you a full explanation. But the decor, the ambience, there's a cultural component to this. There's an educational component, an awareness around coffee growing and the impact that the coffee agriculture has on a place like Rwanda. It's obviously in a building that has lots of students. It has office users. It has a close residential neighborhood and within 400 feet of the rapid transit station. So, the anticipation, expectation is that there will be a heavy amount of walk-in trade, but there also happens to be 100 plus parking lot

behind the building in which patrons of the coffee shop would have access to.

Lesley as you may be aware, has recently been engaged in extensive community outreach around redevelopment of the Art Institute of Boston coming to that location. One of the issues that arose in that was the commitment, Lesley's commitment to maintain retail in that building. One of the issues is retail that doesn't merely serve the Lesley community, a bookstore or something that's very oriented to the students. This use is very consistent with that commitment. It will be a neighborhood resource. It will be a place that will attract patrons far beyond the Lesley community. And that's certainly the intention of the operator. And Lesley was mindful of that when they selected and agreed to this location. So for those reasons we would ask the Board to --

CONSTANTINE ALEXANDER: Let's just

check off some of the things that we have to specifically deal with.

You're going to utilize biodegradable materials in packaging the food, and the utensils and other items provided?

ATTORNEY JAMES RAFFERTY: Yes, he will.

CONSTANTINE ALEXANDER: I assume that's consistent with your overall philosophy?

ATTORNEY JAMES RAFFERTY: Sustainability is a key component. No Styrofoam. All biodegradable. Limited, very limited delivery. I was surprised to learn the coffee actually arrives by UPS. It doesn't have heavy delivery orientation as well. It's very fresh. I don't know if you'd like -- I bet Mr. Munga would love to give you a one-minute story of this whole concept if you had the time.

CONSTANTINE ALEXANDER: I do. I

don't know about other Board members.

ATTORNEY JAMES RAFFERTY: I think it does speak to some of the criteria.

CONSTANTINE ALEXANDER: Sure.

BOSCO MUNGA: Thank you very much. For the record, my name is Bosco Munga. And it is true coffee has a very small footprint. We roast out (inaudible), and the point of why we move from Marino's is our understanding of the American market was different, that transportation and logistics are pretty easy if you don't have particularly roast on-site, and we can do it from a distance and still bring in the coffee. And the freshness of our coffee to unlock its flavor is actually key to making a good cup of coffee. And doing it manually rather than pushing a button, as you would find in our competitors, is the market is moving itself away from that. And so we, we roast just what we need on a weekly basis or a by-weekly basis, and it's

delivered very fresh. And it is, we grind it per cup based on what you like. And our clientele there and in similar locations in Cambridge area that do that and they're quite successful. So it is a business model that is picking up.

What is for us, what is different is we try to actually work with the clientele. And the first one is the neighborhood where we place ourselves by generating the right ambience, creating the lounge sense of the place and being mindful of community-oriented activities within the area we believe is going to be the beginning of our association with where we place our location.

Secondly, the fact that we have a development agenda which is an agenda to try to include the neighborhood and the county that we live in to be able to sense issues that may be important to them and important to the

life that we wish to be about. And -- but the first one is always the coffee shop has to sustain itself by what it delivers. You know, by the right ambience, by the right coffee, the right quality, the way we offer our customer service. So we're very mindful of the fact that we are business. But then we count it into the fact that we will have events. We will be able to bring into the neighborhood like-minded ideas. For instance, right now we've been working with the Avalon MBA Program in Rwanda to be able to help us to professionalize some of our approach working with the farmer. Now that would be an obvious place for them to come for their meetings, to come for their findings, to be able to present it to others. That may be one example.

And lastly, the fact that this particular business model is we are working to see if we can use it to alleviate rural

poverty. What if we could take what the farmer grows and help him to improve the quality and work with him in a sustainable way and give him the dignity that he can -- or her the dignity to do that and connect them to the world market? And do it without any charity involved? And to be able to connect buyer and seller in a way that actually they sense each other. If we find that we've done that, if you Google us, you'll find that the experiment is working well. It started in Rwanda, and in Washington, DC it's working well. And we feel that this particular community will be very receptive to that. We're very excited if we're given the opportunity.

CONSTANTINE ALEXANDER: What are the hours of operation?

ATTORNEY JAMES RAFFERTY:
Expectation is six o'clock. There's a Bally's health club in the building that

opens at 5:30. As a result, they're thinking six o'clock in the morning. And currently I think the expectation is around ten o'clock closing. We would expect to work those out with the License Commission as we get closer to the issues around operation.

BRENDAN SULLIVAN: What time does the building close basically?

ATTORNEY JAMES RAFFERTY: Mr. Smith.

GEORGE SMITH: The mall generally closes --

ATTORNEY JAMES RAFFERTY: I'm sorry, this is George.

GEORGE SMITH: -- about ten o'clock. We actually shut the doors and lock it.

ATTORNEY JAMES RAFFERTY: George, give your name.

GEORGE SMITH: George Smith, Lesley University, director of operations and campus planning.

So we -- the mall actually shuts down at ten o'clock, but we have several stores in there that stay open later. But we normally lock and close the doors to the mall at midnight every night.

CONSTANTINE ALEXANDER: That wouldn't affect of course -- there's no entrance from inside the mall into this coffee shop, is there?

GEORGE SMITH: There is.

CONSTANTINE ALEXANDER: There is? That would not be available after ten o'clock at night except for those people already in the building?

GEORGE SMITH: Yes.

CONSTANTINE ALEXANDER: And waste receptacles? I'll check off a couple more things.

ATTORNEY JAMES RAFFERTY: Right. We reviewed these with Mr. Munga. Waste receptacles strategically placed at all

exits to prevent trash. Lesley has a program where everyday their custodial staff police the sidewalk in front of the entire building. So they are established. There are a couple of food uses in the building. A couple restaurants. And so they do have experience. Deliveries are accommodated on-site in the rear of the building through established loading docks. So, the impact on traffic is minimal. The likelihood of double parked cars in that location I think is fairly remote. And certainly we'll be complying with all the requirements associated with the handling of food.

CONSTANTINE ALEXANDER: And the facility's being accessible to handicap and disabled persons at street level so there should be no issues there.

Questions from members of the Board at this point?

TIM HUGHES: I have an observation.

CONSTANTINE ALEXANDER: By all means.

TIM HUGHES: First of all, just to clarify, Jack Daniels is not a bourbon. And while it is a corn liquor, it doesn't fall into the geographical area where it can enjoy that Appalachian.

CONSTANTINE ALEXANDER: You stand corrected.

ATTORNEY JAMES RAFFERTY: I would always defer to Mr. Hughes on matters of amber colored liquors.

TIM HUGHES: I don't see how an art school can be successful without a coffee shop.

CONSTANTINE ALEXANDER: Fair point. I'll open it up to public testimony. Anyone wishing to be heard on the matter? Sir?

(Discussion held off the record.)

CONSTANTINE ALEXANDER: Sir.

JOHN HOWARD: My name is John Howard. I live at Eight Cogswell Avenue in North Cambridge, and I am president of the Porter Square Neighbors Association.

I'm speaking -- I did have the opportunity for just one day to poll by e-mail the members of the association. And three issues came up, all of which came out positive for this. We're going to support this.

Three issues it brings: No. 1 were hours and the possible use of the sidewalk which you've mentioned. That's really, I believe, a License Commission issue.

The second was a question which always seems to rise, is it a chain? And I think the people had raised that question were quite satisfied when they read the description of Bourbon Coffee mode of operation even though it is in some sense a chain.

And the third question that was raised was is there sufficient demand to support yet

another coffee shop amongst the many other coffee shops up and down Mass. Ave. and Porter Square? And several of our members pointed out that when they go to sit at, for example, Porter Square Books, three-quarters of the time they can't find a place to sit. So, clearly there is enough demand.

So all of those three issues that were raised were resolved positively. And so I think not only I, but I could say with one day's worth of e-mail the association supports this.

CONSTANTINE ALEXANDER: Thank you very much.

Anyone else wishing to be heard on this matter?

(No response.)

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

Is there anything in the file? There wasn't the last I looked. Any letters or

anything?

TAD HEUER: I was just astonished that Mr. Rafferty had to be identified by a driver's license to the Notary Mr. Hope. Mr. Hope I would hope that he would have a more intimate connection on a daily basis with the partners of the firm.

ATTORNEY JAMES RAFFERTY: That is an impressive examination of the document.

CONSTANTINE ALEXANDER: We do a thorough job.

Ready for a vote? Okay. We've got a lot of things to cover here. This is a Special Permit to open a fast order food establishment. The Chair moves that this Board make the following findings:

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

streets.

It is given, the nature of the neighborhood, and the nature of the proposed cafe, it will be foot traffic mainly. People using the cafe and, therefore, parking issues will not be a serious problem.

Further note that one, there is public transportation nearby so people don't have to drive to get to your cafe. And further, to the extent they do need to drive, there is a parking lot in the rear of the structure which has ample parking. So parking should not be an issue.

You submitted to us written materials which are in the files, which established that the physical design of the establishment will be compatible with and sensitive to the visual and physical characteristics of the other buildings, public spaces and uses in the particular location.

That this establishment fulfills a need

for such a service in the Porter Square neighborhood. And the establishment will attract persons primarily from walk-in trade. I think I covered that already. It's the nature of a coffee shop, really, a neighborhood coffee shop.

That you have represented to us that you will use to the greatest extent feasible, biodegradable materials in the packaging of your food. And the utensils and other items provided for consumption.

That you represented to us as well that there be a convenient, suitable and well marked waste receptacles to encourage patrons to dispose of their waste. And this is further supported by the fact the building itself is owned by Lesley College, which has experience in removing waste given the fact that there are other restaurant uses in this structure itself.

And that the establishment will comply

in terms of egress and ingress with the rules and laws dealing with handicap and disabled persons.

We're further required to make additional findings for a Special Permit which I will now turn to. Some of these are going to be duplicates of what I've already covered but I have to check them off anyway.

That the proposed establishment will not cause congestion, hazard or substantial change in established neighborhood character.

That the continued operation of adjacent uses will not be adversely affected by the coffee shop. I'm sorry, your establishment. To minimize it as to be just a coffee shop, it's more than that.

The fact that you will enhance the adjacent uses by providing a necessary service to the neighborhood.

That no nuisance or hazard will be

created to the detriment of the health, safety or welfare of the occupant or the citizens of the city.

And that the proposed use would not impair the integrity of the district or otherwise derogate from the intent and purpose of this Ordinance. In fact, you will be providing once again with a necessary and useful addition to a vibrant commercial neighborhood, and that the local neighborhood association, the Porter Square Neighbors.

JOHN HOWARD: Neighborhood Association.

CONSTANTINE ALEXANDER: Have advised that they are in support. The neighborhood association is in support.

So based upon all of these findings, the Chair moves that we grant a Special Permit to allow the Petitioner to operate a fast order establishment at 1815 Massachusetts Avenue.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

ATTORNEY JAMES RAFFERTY: Thank you very much.

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

(8:55 p.m.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9962, 122 First Street. Is there anyone here wishing to be heard on that matter?

Good evening. For the record, give us your name and address to the stenographer, please.

LOAN HUYNH: My name is Loan Huynh, 122 First Street in Cambridge.

DR. ABDUL WAHEED: My name is Doctor Abdul Waheed. I live in Quincy, Massachusetts, 505 Washington Street.

DR. ROOZBEH KASHEFI: My name is Doctor Roozbeh Kashefi. I live in Braintree, 550 Liberty Street.

DR. SAEED KASHEFI: My name is Saeed Kashefi, I live at 165 Pleasant Street in

Cambridge.

CONSTANTINE ALEXANDER: Okay. And you're here before us because you're seeking a Variance. Give a little more detail, please.

DR. ABDUL WAHEED: Sure. Allow us to introduce ourselves to you folks.

CONSTANTINE ALEXANDER: Sure.

DR. ABDUL WAHEED: We were trained by the Brigham and Women's Hospital. We were trained with Mass. General Hospital as well. And we started a practice about three years ago in Quincy, Massachusetts, because we realize there's a significant need in terms of people with MassHealth and on Neighborhood Healthcare that they have an access issue with getting dental care. There's two reasons why there's an access issue.

The first reason is a lack of education in reaching out to that community. And the second reason is there's a lack of facilities

that are available to treat this sort of patients that we face every day. 80 percent of world pathologies fall upon 20 percent of the population.

As we've developed our practice in Quincy, after three years, we realize that we're still seeing a good amount of people coming from all sorts of neighborhoods because they're unable to see a provider that will provide them with the standard of care that they need. In particular, recently with the budget crisis MassHealth Dental had been precisely almost completely eliminated. As a consequence, many more providers have dropped. They decided no longer provide coverage to this segment of the population.

We were seeing a large segment of population coming from Cambridge to see us. All the way from Cambridge to see us in Quincy. In particular due to our affiliation with the Brigham Women's

Hospital and Mass. General, we're seeing a lot of patients that were prechemotherapy patients, precardiac transplant patients, post-radiation transplant, post-radiation patients that were unable to find a resource that will both accept their insurance, and at the same time provide them with the quality of care that they need. So we've decided to establish a practice down on 122 First Street.

If you're aware of that neighborhood, that -- the building in particular that we have decided to occupy is currently being occupied by IBM which is actually taking a phased approach to move out of the building. So the particular space that we're occupying has been empty for the past 20 years. We face John's Mattress Discounters which is also an empty facility. The particular component of this space that attracted us was the fact that it had one side facing First Street and the

other side facing Cambridge Place. The side that's facing Cambridge Place is the particular area that we're applying for a Variance for. It has five retail windows. These are retail windows.

CONSTANTINE ALEXANDER: All five just face Cambridge Place?

DR. ABDUL WAHEED: All five facing Cambridge Place, and they're retail windows. That means they are three feet in depth, 200 inches in width. They serve no purpose besides to promote a particular product.

Our concept is not to promote Colgate, Crest, Oral-B or anything like that. We have served -- I served the Brookside Community Health in the past five years. I've been involved in public health. I want to create an oral health pavilion. A pavilion with five windows that promote the importance of oral health and the types of treatment that are available. For example, when one

particular window I'd like to promote oral cancer. Every one minute a person dies in the United States of oropharyngeal cancer. And yet nobody screens for these things. The ear, nose, and throat doctor goes all the way to the back of your throat. The primary physician stops right at your lips. The dentist is responsible to search these things out. But yet not all of us are doing this. This is a very, very new concept.

So as a consequence, we need facilities and resources to promote such concepts.

Diabetes. That's one -- that's the No. 3 to No. 2 killer of Americans. But yet nobody knows the relationship between periodontal disease and diabetes. If you're a diabetic, your periodontal disease could get worse. And if you have periodontal disease, you have a poor control of your glycemic index which would promote further illness and poor control which is one of the

factors that are increasing our healthcare budget every single year.

This is the tip of the iceberg. With the oral health pavilion what we're saying is we would like to have monitors placed not selling Colgate, Crest or Oral-B, but to promote these concepts.

We were able to, through some funding because of our concept, through the dental companies, they were able to give us significant concessions in this educational software that we'll show.

CONSTANTINE ALEXANDER: This is not software you developed yourself?

DR. ABDUL WAHEED: No, it isn't.

CONSTANTINE ALEXANDER: It is packaged?

DR. ABDUL WAHEED: It is packaged, yes.

CONSTANTINE ALEXANDER: No. 1.

DR. ABDUL WAHEED: Yes.

CONSTANTINE ALEXANDER: No. 2, would it be running 24 hours a day?

DR. ABDUL WAHEED: It will absolutely not. It will only be running during business hours.

CONSTANTINE ALEXANDER: When is that?

DR. ABDUL WAHEED: Our business hours are eight a.m. to eight p.m. And the reasons why we have this -- it's seven days a week. The reason we have this hour is the working community are not always available to come in.

CONSTANTINE ALEXANDER: Why do you need five windows? Why not two windows or one window?

DR. ABDUL WAHEED: We broke down the concepts that we really want to focus on. For example, geriatric care. I cannot tell you how much information there is that the geriatric population needs to understand.

Pediatric care.

CONSTANTINE ALEXANDER: So one window would be for geriatric?

DR. ABDUL WAHEED: Yes.

CONSTANTINE ALEXANDER: And the same video that goes over and over again for 12 hours a day?

DR. ABDUL WAHEED: It is tremendous.

CONSTANTINE ALEXANDER: Answer my question.

DR. ABDUL WAHEED: Not the same video. Absolutely not. Each video segment rotates on a two-hour cycle. So, it is the same information, but it is being repeated on a two-hour cycle and not consistent with the same thing over and over again.

CONSTANTINE ALEXANDER: We're going to see what people are going to see are 12 hours a day, five different windows and constant video stream?

DR. ABDUL WAHEED: Yes.

CONSTANTINE ALEXANDER: Over time will repeat itself. And that's what it is. And it's in color?

DR. ABDUL WAHEED: Yes.

CONSTANTINE ALEXANDER: And the size of these videos as put in these what you've given us in the file?

DR. ABDUL WAHEED: Absolutely.

CONSTANTINE ALEXANDER:
That's exactly what --

DR. ABDUL WAHEED: That's exactly. And there are no moving parts. That's the part that we're violating essentially. There's no moving parts. These are video screens showing videos, but there's no physical mechanical moving parts in these retail windows.

CONSTANTINE ALEXANDER: The impact to the street is going to be screens, images keep moving about.

DR. ABDUL WAHEED: I would say there

are impacts, but from my perspective they're more of a public service rather than, you know, a product promotion.

CONSTANTINE ALEXANDER: And, again, you need all five windows going 12 hours a day?

DR. ABDUL WAHEED: I think to be effective that is what I'm seeking. Because like I said, there's no place in the world where retail windows are being used for public health purpose and I believe that's what we're serving.

THOMAS SCOTT: Is there sound associated with them?

DR. ABDUL WAHEED: Absolutely not. We actually have closed captioning so that we can provide access to as diverse of a population as possible. We're planning on doing it in English and doing it in Spanish.

THOMAS SCOTT: What are the other three areas? You mentioned geriatric and

pediatric.

DR. ABDUL WAHEED: Geriatric, pediatric, systemic care, overall systemic care. The relationship between oral care and systemic care, and also we are actually promoting access for the disabled. So we actually want that population to be aware that they can seek care in this facility.

CONSTANTINE ALEXANDER: Access to the disabled persons aren't aware they need dental care?

DR. ABDUL WAHEED: You would be amazed how often I get a call, you know, I have X -- so and so disability, you know, X number of dentists are not able to see me because of a systemic problems and I have access issues. We have very, very large opportunities so that we're able to actually serve this kind of community.

CONSTANTINE ALEXANDER: Okay. I don't want to -- I don't see the connection

between that and the video you're going to show in the window. The video in the window is not, you said you're not advertising. You said it's going to be educational for people. People or whoever sees those videos is going to say, my goodness, I'm disabled, I need to get periodontal care. That doesn't mean they're going to come to -- the idea is well I've got to go walk in the front door and have you do it.

DR. ABDUL WAHEED: I'll give you an example. For example, if you're a disabled patient and you've got manual dexterity disabilities. If you have manual dexterity disabilities, it's actually prohibited from you to arriving at the kind of oral care that you would like to have. So the question is is an electric toothbrush good for you? The question for you and me, it's just a vanity item. The research shows it plays no difference to an average person whether they

use Oral-B or regular toothbrush. But the research also shows, and these are some of the videos that would focus on these topics, the research shows that for someone with manual dexterity, an electric toothbrush actually makes a difference. While on the other hand for you and me it doesn't make a difference. So we have videos that focus on those concepts that are very important to that segment of the population.

TAD HEUER: What else are you planning on having in these windows? You say they're retail windows. They don't open in the facility?

DR. ABDUL WAHEED: That's correct.

TAD HEUER: They're shadow boxes, right?

DR. ABDUL WAHEED: Yes.

TAD HEUER: So, what you've presented us, you've shown us just the proposed image size and various sizes for

these moving screens.

DR. ABDUL WAHEED: Yes.

TAD HEUER: What else would take up the rest of your window?

DR. ABDUL WAHEED: We've actually placed curtains in there so that we -- right now because it's been vacant for over 20 years, there's a lot of dust, dirt and the walls are falling apart. So to improve the aesthetics of the neighborhood, we decided to put some curtains in the back. We put some foam letters in there. And the foam letters state that it doesn't say Lux Dental, come to us. It says oral health is part of total health, that's what it says.

TAD HEUER: So will you have, and I'm thinking of other type of shadow box installations, one comes that to mind is actually the one for Colonial Drugstore in Harvard Square where they have a shadow box that has various items and advertisements,

not saying necessarily advertisements, but are you planning on more than just a TV screen in this window or are you planning still displays and other types of things? Where someone is standing there watching this video and they get bored and they switch to a still display, or are you hoping that someone will be so enraptured as they're coming out of Best Buy and they cross the street and start watching a dental video?

DR. ABDUL WAHEED: With the economy being the way it is and the fact that we're seriously focusing, you know, MassHealth, and, you know, our budget is very much limited. To start off, we're simply going to have a middle window with just one television screen in it because we can't afford -- we aspire to be able to do more, but for right now that's what we can do. But for the other windows we're simply going to have a poster that says don't forget to get your oral cancer

screening or of course something like that until we can move on further. And of course, our goal ultimately is to serve the community. If after developing this one window, we're finding ourselves to be more of a nuisance rather than a service, I would be the first one to want to take that down rather than -- but like I said, this is a concept that is here to promote health and not to sell a product.

CONSTANTINE ALEXANDER: Okay.

Further questions?

Anyone here wishing to be heard on this matter? Sir, come forward please and give us your name and address.

LELAND CHEUNG: My name is Leland Cheung. I'm a City Councillor here in Cambridge. Thanks for having me. My notes here. Address is 101 Hampshire Street. I don't typically make a habit of coming down.

CONSTANTINE ALEXANDER: This is the

first time.

LELAND CHEUNG: And the reason I'm here tonight is just because I think this is a unique case, and I've had some history with this part of the area and I just wanted to share that with the Board.

Like as was mentioned, this area, on this particular location on First Street has been unoccupied for 20 years. And as a representative of the City, one of the biggest issues I'm hearing about in this particular area is can we bring more life to First Street? How do you we get more stores and retail and stuff there because it's dead for the most part. So, I'm really excited that somebody is moving into this location. I'm also very excited about that we have in this -- you know, Lux Dental moving in. I got to know them a while ago when this, we were lobbying the State House to try to prevent the cuts of MassHealth, MassHealth dental care.

And so I know that, you know, people don't make a ton of money. This is really something that you have to go out of your way to public service and community service in order to see these, see this kind of assurance. So I know that this is a company that's not just interested in making a profit or being flash or putting advertising inside. They're very dedicated to educating the public. They're very dedicated to promoting oral health. They're very dedicated to serving the community through their specialty in the field. And because of the, because of that and because of the fact they want to put educational videos in the stream, because of the fact the rest of First Street, you know, you're facing the Galleria Mall on the left side, you want to try to reflect on this, I actually think what they're -- the video that they're talking about putting there is going to bring more life and just

make the place seem more alive than an aesthetic black curtain with nothing going on. That's one thing.

I think the other thing I looked into, I think 7.15 (a) and you all know this a lot better than I do, but the statute as I read it, seems very ambiguous. And I would read it to imply more to, you know, like a neon thing that's moving and rotating around. Not a static screen that's showing video within it. So I don't think -- I would not read the intent of the prohibition of 7.15 (a) to prohibit the kind of thing they're talking about.

And so, yeah, I think that the -- and typically I think the interior is not considered a sign. I don't consider it a sign ordinance to be considered a sign. It's not talking about Lux Dental. It's talking about educating the public, educating the people that are walking -- a lot of people

walking from Lechmere Station to the Galleria Mall and back and forth. It's actually I think a good place to try and do some public outreach.

So, I think for those reasons I just wanted to come down and express my support for the company. I'm really glad to have them on First Street and coming to Cambridge. And just respectfully request that the Board approve their petition.

CONSTANTINE ALEXANDER: Thank you. Thank you for taking the time to come down.

BRENDAN SULLIVAN: I want to differentiate that what you're proposing in these windows is a monitor, television screen, not a message board?

DR. ABDUL WAHEED: No, it is a monitor. It's a television screen. It is not a message board.

BRENDAN SULLIVAN: Okay. Because what I have fears of is the Channel 2 message

boards. I don't know if you're familiar with that at all down the Mass. Pike and it is --

CONSTANTINE ALEXANDER: Oh, that?

BRENDAN SULLIVAN: Yes. It's awful. And it's just -- I would not want to see that type of message board with the constant changing, you know, multicolored. You know, it's one thing during the day, but in the wintertime, three-thirty, four o'clock in the afternoon, it changes the character of that streetscape tremendously to have five different things going on, five different windows at street level.

CONSTANTINE ALEXANDER: I think your point's well taken. I think when we get to making the motion, I'm going to be clear that it cannot be a message board, that it has to be a television monitor. Beyond that issue I'm not sure what else we can do in terms of relief.

NICK POPUANO: I have a question and

comment. Nick Popuano (phonetic), Ten Rogers Street.

I guess the question that I have is this going to create any traffic or congestion in, you know, in the area?

Second of all as a business, because it is a business, what kind of precedent does it set for the other businesses? So what if, you know, somebody else wanted to do something similar? Would we create a neighborhood where this sort of thing is going on? And I understand yes, you know, this is a service as well, but on the other hand, you know, there are multiple dentists. There's a gynecologist. There are plenty of health professionals here that may want to do the same thing. Do we open the door that they want to do the same thing?

CONSTANTINE ALEXANDER: Well, the same thing would be videos in retail windows that do not advertise the business that's

there but rather provide educational information. I don't know if there's going to be a mass proliferation of these if we were to grant relief tonight.

NICK POPUANO: I'm just wondering. Somebody else might argue that, you know.

CONSTANTINE ALEXANDER: They might want to do. If we don't have a problem with this, we may have a problem with that.

NICK POPUANO: Okay. That's my concern. And if any traffic issues --

CONSTANTINE ALEXANDER: I'm sure the traffic is going to be, foot traffic is going to -- hopefully people are going to walk on the street, stop and watch the video. I don't see people coming in their vehicles stopping and double parking. At least I hope not, to watch your video. Maybe you hope so, but I don't.

NICK POPUANO: And the other thing, will there be any sound associated with it?

CONSTANTINE ALEXANDER: No sound.

I will read into the file, we have a letter.

BRENDAN SULLIVAN: So you have a video that is behind glass?

CONSTANTINE ALEXANDER: Behind glass.

BRENDAN SULLIVAN: With tag line underneath, but no audio.

DR. ABDUL WAHEED: With closed captioning in English and Spanish with no audio.

BRENDAN SULLIVAN: No audio. Okay.

TAD HEUER: Well, you've applied for a Variance in 7.15 (a). I guess my first question is I don't see anything in the file from inspection for Community Development as to why we -- usually we see something from Community Development signed off saying how much signage you're allowed, why you're over what you're violating. We don't usually see

these as first -- we're not usually the first entity to actually see something like this. Can you tell us what you've gone through with Community Development to get to this point?

DR. ABDUL WAHEED: You know, every time when we try to do a project we -- when you're coming to a new neighborhood, you really need to reach out to the community and follow the rules and regulations. We've been advised by some of our counselors that this is not something you may not need to, you can just go ahead and just do it. But we're not into that kind of business. We have the respect for the community that we want to come in and ask and put in the application. Doctor Roozbeh Kashefi is the actual person that brought us to this point and I'm glad we had the opportunity to bring it to you. So I'll have him explain it to you.

DR. ROOZBEH KASHEFI: Well, basically we're interested in creating an

educational module. We weren't sure if we were going to violate any community rules, so. As Doctor Abdul would say we would want to do everything perfect, make sure things are following the rules and the community is satisfied with what we're trying to accomplish. That's basically why we went ahead and applied for the Variance.

CONSTANTINE ALEXANDER: I'm sorry. There was an easier route to go forward with this. You could have asked for a determination with the Inspectional Services Department. And if they said you needed a sign, they said you did need a sign, end of story. Unless an abutter appeals that decision. Or if they said you do need a sign and you didn't agree with that, and you could have taken the appeal to us for a complete different, easier standard. You've gone the hardest -- I'm not criticizing you. I'm just pointing out you've gone the hardest route

possible. You've assumed you need a Variance when you may not have needed one. And now being here we're going to pass on the Variance, and we'll have to see whether you meet the legal requirements for a Variance.

DR. SAEED KASHEFI: For the record, I guess I should also say before I hand it off to Roozbeh here, I actually was the person who started this. What I did was I actually got the approval from Liz Paden for still screens, like a still message in all the windows. And that was approved. But I did make the proposal what would I need to do if I wanted to have a moving display on a TV screens? And that's what she -- the recommendation was to apply for the Variance. And that's when I handed it off to Roozbeh, and so that's the route that we took.

CONSTANTINE ALEXANDER: Okay. Someone else wants to speak. You have further questions?

TAD HEUER: Yes. So you're looking at relief from 7.15 (a), which is the sign shall be stationary and may not have any visible, moving or movable parts. And I think that tends to deal with contraption like signs.

Was there any thought about the possibility of the need for relief from (b) which is about lighting, but it says flash or light creating, flashing, moving, changing or animated graphics is prohibited. Are we to presume that that's designed only for certain light provisions but not television provisions? I haven't really thought about it, but it doesn't really seem outside the realm of possibility. That's one of the reasons I asked if you went to Inspectional or anyone else before us, because usually they will walk you through that and will give us guidance of what their opinion is.

DR. ABDUL WAHEED: They pointed out

that, you know, we introduced the video. We told them this is what we're going to do. And they said look, you're violating, you know, (a). And so we're like, if we violate (a), we need to ask for permission and that's the route we took.

CONSTANTINE ALEXANDER: The point that's being made though, is that to the extent there was a violation of (b), you're not going to get relief from us tonight on that because that wasn't advertised. The way the case would come before us is that zoning enforcement will bring an enforcement action against you in which case if that happens, if that happens, you would have to come back before us and get a Variance from (b) assuming you get the Variance.

But if there's no enforcement action, if no one complains, then we don't deal with (b). We're only going to deal with (a) tonight because that's what you advertised.

I think that's all we can do.

DR. ABDUL WAHEED: Absolutely.

CONSTANTINE ALEXANDER: Someone else? I saw a hand up. Two people, three people. Okay. We'll take them one at a time. Come forward, please.

BARBARA BROUSSARD: Barbara Broussard. As president of the East Cambridge Planning Team, I welcome you to the community and I'm hoping you'll do a lot of outreach and we will invite you to our next meeting in September. And I want to say I personally appreciate your goals.

That being said, there are two things I think you need to be aware of: Right across the street the Planning Board has just reissued its approval on 123-unit housing development at the Old John's Mattress site. So there are neighbors. There will be neighbors. And I don't know what they're going to think about having streaming in the

evening.

TAD HEUER: They're not facing neighbors though, correct?

CONSTANTINE ALEXANDER: Across the street. But they're going to be on Cambridgeside Place. They're not going to be on First Street.

BARBARA BROUSSARD: They're not going to be on First. Only on well I call it Charles Street.

CONSTANTINE ALEXANDER: You may call it Charles Street.

BARBARA BROUSSARD: Remove that name.

I'm not so sure that I really believe that we need five windows full of videos. And I do think there are a whole lot of other innovative methods to educate the public. And the East End House and ACN, East Cambridge Planning Team would welcome these people to come and talk, give brochures, do anything.

I'm positive they would. And it would be a value to the community. So I seriously think that five might be a lot considering.

CONSTANTINE ALEXANDER: Thank you.

BARBARA BROUSSARD: And there is also another issue. There is a dentist within -- a well-established dentist Doctor Kileal (phonetic) within one block.

CONSTANTINE ALEXANDER: Yes, and?

BARBARA BROUSSARD: Well, he can come for a streaming video, too.

CONSTANTINE ALEXANDER: He may have to come before us and get relief and see if it was granted.

BARBARA BROUSSARD: Right. And I don't know whether that's where I'd like to go with signage in East Cambridge.

Thank you.

CONSTANTINE ALEXANDER: Sir.

CHARLES MARQUARDT: Welcome to the neighborhood. Charlie Marquardt, Ten

Rogers Street. We are probably closest neighbors so welcome to the neighborhood. I will echo Charlie's and Barbara's sentiment. And I would add to the list, maps.

Massachusetts Association of Portuguese speakers, you might want to put up Portuguese signs, too. However, I'm concerned as Nick was with the precedent. I sit here and think of bakeries, florists, travel agents, all of a sudden put up tanning things about the worries about skin cancer, and where does it lead with regard to all these videos now everywhere all over the place? And I think of, you know, maybe Representative Capuano may want to put up a nice screen about what he's doing in his window. And where does that really end?

And five? Honestly, five seems like a lot. Traffic on that street is difficult. I mean, we have the garage coming out. You have the kids turning in. It's somewhat of

a hectic place to begin with. And I'm somewhat afraid of five screens there -- granted, you know, okay, teeth. Some of it, would be, I don't know, I haven't seen them. It would be a little bit interesting to have pictures of oral cancer and have that result in an accident. And they point out I was watching the screen. And it's already hard enough down there. You do have some great signs already advertising. So, what you said earlier about starting with one and see how that goes, and if it doesn't work, I like that.

I don't know if there's a way to write the Variance that they start with one and come back later on. I will say that in the future, just as a hint, you might want to get an attorney to help shepherd you through the process because you were criticized at the Planning Board on Tuesday night with regard to your proposal. You weren't there I know,

but still I think you could have used some of that help, and good counsel is always -- will walk you through an awful lot. That's pretty much all. Welcome to the neighborhood. We hope you can do something smaller. Five is way too many. And next time please get a lawyer. You don't want us to do our own deep (inaudible.)

NANCY STEINING: My name is Nancy Steining and I live at 75 Cambridge Parkway. And these are personal opinions, not ECPT ones because we've never had a meeting about this particular issue.

I'm very glad that you're moving into the neighborhood. I'm glad to see that that building will be occupied. However, it's my personal opinion that oral hygiene should be taught in a different setting than on the street corner. You could go to the senior centers. You could go to the schools. You could go lots of places and show these videos

and actually answer some questions. And I personally think that would be a better way to do it. You might not have entirely the outreach, but I know at least the DSS children all get MassHealth and they do get dental visits once a year as long as they're in the system so they're not being ignored.

I also think there is a lot of congestion on that street even though it's Charles Way. There's a lot of traffic, there's bus traffic, there's exits from the parking garages. There are shuttles going around. There are people walking up and down. And I think that five videos, moving anything, if anybody stops to look at one, you're going to be tripping over people who are trying to get through. And I think that's just a confusion that maybe shouldn't be. At least for all five. And my suspicion is personally that the Sign Ordinance is under review right now. And maybe in the new

Sign Ordinance they will consider whether videos can constitute moving parts or not. I don't know. But, I seem -- to me I think maybe you should wait to make a decision until that discussion is over and things are either changed or not changed depending on what the Planning Board and the City Council do about those.

And lastly, you have to prove hardship in order to get a Variance. That's part of the process. And I am hard put to understand what the hardship would be when this is an educational component and not just advertising.

CONSTANTINE ALEXANDER: Thank you.

NANCY STEINING: Thank you.

CONSTANTINE ALEXANDER: I would just observe by the way, the sign in Harvard Square at Cardullo's, there's a television screen in the windows for Red Sox games and it doesn't seem to cause congestion for

people walking in Harvard Square.

We have a letter in the file from Hazel Arnette (phonetic), Ten Rogers Street. "I strongly oppose the display of any videos in the windows of 122 First Street. I happen to reside around the corner from this dental office and pass it almost daily on my way to the T at Lechmere. I would hate to be forced to navigate around viewers in not just one but five windows" -- exclamation point. "I also oppose this petition for aesthetic reasons. This type of subliminal advertising in motion is not totally out of character but an assault on the historic beauty of Cambridge, a city renowned for its low key, motionless commercial displays. We who live here would like to keep it that way."

Further public testimony?

(No response.)

CONSTANTINE ALEXANDER: None. I will close public testimony.

I don't know if there's anything else you would like to add at this point. I'll give you the last opportunity.

DR. ABDUL WAHEED: Thank you. I hear what the community has said and I'm just as much concerned about their concerns. Like I said, we are planning on putting one up, and if that is in any way detrimental to the community, I can assure I would not want to proceed further. We do do educational -- I personally go to the schools. I personally used to serve the Fernold Health Center. I don't know if you guys are familiar with it, it's one of the oldest mental institutions in the United States. It just got closed down. Access is a huge problem. Going to the schools, going to the community health center, I'm willing to do -- and all those friendly community members that showed up today, I can give you my word that if you give me an invitation, my

whole team will show up, weekend, evenings, you name it, I will be there.

And finally, I'm not so concerned about, you know, somebody mentioned another dentist. We want to work with, you know, that's not an issue. But MassHealth is -- a lot of dentists are not taking that insurance --

CONSTANTINE ALEXANDER: Or to state it a different way, to the extent you're educating the public about the need for dental care, you're helping this dentist down the street.

By the way, you have submitted basically a mock up of how the signs. If we tied relief to these, you would not be able to put bigger --

DR. ABDUL WAHEED: That's fine.

CONSTANTINE ALEXANDER: -- screen in the window as is set forth here.

TAD HEUER: And it would be located

where you suggested, so at the top line of the window?

DR. ABDUL WAHEED: It's almost, maybe, it's like a few inches off here and there.

TAD HEUER: But it wouldn't be centered? It's hung.

DR. ABDUL WAHEED: It's hung. It's on a pole mount. It's not an articulated mount.

CONSTANTINE ALEXANDER: Most importantly the size of the screen would be the size that's shown.

BRENDAN SULLIVAN: The unused telecom poles. Soon to be unused. Soon to be surplus.

THOMAS SCOTT: If you did not do this, would you do anything else in the window like a static display of some type?

DR. ABDUL WAHEED: We've mentioned for the other four windows for right now we're

going to put posters in it. And one of the things Mr. Sullivan mentioned was he didn't want it to be a message board. And we don't intend it to be a message board. If you have screens with just -- you know, they've approved us to allow us to put up screens or put a static message, in my view that is a message board.

BRENDAN SULLIVAN: Well, I think (b) addresses that issue anyhow.

DR. ABDUL WAHEED: So we have video instead of a message board.

CONSTANTINE ALEXANDER: Further comments from members of the Board or are we ready for a vote?

TIM HUGHES: Personally, you know, when I see a video, if it interests me, I stop. And if it doesn't, I just walk on by. I think people can exercise that same kind of judgment.

CONSTANTINE ALEXANDER: I think

that's true, too. I think it just provides a service. The fact that it's subliminal advertisement, so be it.

TIM HUGHES: All signs.

CONSTANTINE ALEXANDER: Most signs are an advertising. You have a sign that's on the building that says Joe's Bar and Grill, that's advertising for Joe's Bar and Grill.

TIM HUGHES: I've been flashing subliminal stuff all evening.

CONSTANTINE ALEXANDER: It hasn't worked.

THOMAS SCOTT: I guess I would be okay with approving one tonight, but I don't know if I'm okay with approving five. And I think -- I know what's before us is five.

BRENDAN SULLIVAN: I sort of was leaning towards three. One, in the middle and one at the end.

CONSTANTINE ALEXANDER: I must say I share both of your views on that. On the

other hand, I don't feel as strongly enough that we require three or one. I could live with the five. I think the overall impact is not great. It's not, if you will, on a side street. It's not on Cambridge Street. I think it's not necessarily bad. The fact that you'll have some images flickering there. It enlivens the streetscape to some extent. So I don't -- I defer to others if you wish to limit the number of signs.

TAD HEUER: I similarly would prefer less than five at this point. Frequently in the past we've had people on other types of, not necessarily signs, but other types of limited Variances where they will have the smaller portion of what they originally requested and come back or where they quite frankly expire and then they have to come back and have it renewed. But I don't think that grant of five for all time to run the land is something particularly where the Petitioners

have represented that they're not capable of doing five at this point anyway.

CONSTANTINE ALEXANDER: Is three the number? I can make it a motion or do you want to do what Tom suggested, one.

BRENDAN SULLIVAN: I sort of settled on three myself to give it some symmetry.

DR. ABDUL WAHEED: If the Board feels that three would be a safer bet and better for the community, I'd be happy to accept three as the number.

CONSTANTINE ALEXANDER: You can always come back, should it be three, and come back for two more if you decide. If we were to grant you relief.

DR. ABDUL WAHEED: Sure. If the Board would like it to be three, I would like to respect that and I will take three.

TAD HEUER: I think I'd also just like to say, and the Chairman said it as well, this is possibly the most difficult route you

could have chosen to get a legally potentially permissible outcome that you desire. You're perfectly entitled to come before us. I'm quite frankly surprised that you're here. And one thing I will point out is as one of -- you know, the findings we need to make is hardship. If Inspectional Services says you don't, you know, you can convince them this is like the TV in Cardullo's allowing people to watch the Red Sox game and no one's ever complained about that ever. And if anyone in the audience, I would advise them not to.

The route to get that kind of approval is much easier than coming here where we do have a legal standing of hardship, and while I certainly see the public service value and I would certainly grant that you're going to as many schools and senior centers as you can, even if you did it as your full-time job, you're missing people that don't show up at

that those places, who don't want to hear it. And that way with a passive message they have to walk by may have to stop and see is a great way to reach those undiagnosed individuals. But I mean, in reading the submission where you talk about hardship, I mean, it seems to be somewhat completed with the fact that it's a good thing to do, it's a public service. And I guess I'm not quite there. Maybe the Chairman will frame the motion in a way that it will convince me. But I appreciate hearing from other members of the Board for better or worse on the Variance standard what the hardship issue is.

CONSTANTINE ALEXANDER: I think the hardship is that you have a retail space that's being occupied by medical professionals and who needed to get a message out that will benefit the community. And without the permission we're going to grant tonight, if we do grant it, this message would

not be out to the community. And I would further point out in my judgment anyway, that the question itself as to whether we need a Variance is not, it's not free from doubt. You should have, as you heard me say and now you've heard Mr. Heuer say, you might have been better served -- not getting a lawyer, at least talking to Mr. O'Grady or Mr. Singanayagam and talking it through. You might have saved yourself a lot of grief tonight. But be that as it may I think the hardship would have to be that. It is a paper thin hardship, I don't have any question about that. But I would be one to opposed to frame a motion that describes a hardship in terms of the nature of the structure and the ability for these professionals to inhabit the structure which in turn will benefit the community to provide dental services and education to a part of the Cambridge that doesn't have sufficient amount of dental

information. That's the best I can do.

Further comments from members of the Board or are we ready for a vote.

The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of this Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that it would not be able to convey to the citizens of Cambridge an educational message that benefits the citizens of Cambridge.

That the hardship is owing to the circumstances relating to the shape of the structure or the nature of the structure. That this structure is a structure that has been vacant for a substantial period of time. And that don't allow the zoning relief, the message that will allow individuals to build a practice and to benefit the citizens of Cambridge by improving dental care and dental

awareness, would be lost.

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.

It would be no substantial detriment to the public good because subject to the conditions I'm going to impose in a second, what is being proposed here is fundamentally an educational benefit for the community. Perhaps and only perhaps secondarily, there is a business aspect to it, an advertising aspect. But I would further make it clear for the record that just the fact that it's advertising does not mean that it is violation of our sign by-law. And the further reason I don't think it derogates the intent or purpose of this Ordinance, is that it's not quite clear that relief in the first place is necessary. At most we're talking about a borderline or a problematic violation

of Section 7.15 (a).

On the basis of these findings the Variance would be granted to the Petitioner on the condition that the signs be no more than three in number.

That their dimensions be as shown in the plans submitted by the Petitioner, initialed by the Chair in the file.

And that there would be no audio. Any message would be close captioned, whatever languages you choose.

And lastly, that it would not be a message board but in fact a TV screen or something like that so that it would be hanging behind the window.

On the basis of the foregoing, I move that we grant the Variance. All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: One, two, three, four.

(Alexander, Hughes, Sullivan,
Heuer.

CONSTANTINE ALEXANDER: All those
opposed?

THOMAS SCOTT: Opposed.

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

(9:40 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9963, 222 Brattle Street. Is there anyone here wishing to be heard on this matter? I don't know if there are people in the audience who are here on this case, if you have trouble seeing or hearing, please relocate behind us or on the side of us. We have no intention of excluding you of what's going on.

ATTORNEY ANDREW BRAM: Good evening, members of the Board, Andrew Bram, B-r-a-m. I'm an attorney with the offices here in Cambridge.

MARK LOUIS SCHMID: Is that good for

the members of the Board, you can see these displays?

CONSTANTINE ALEXANDER: We can see them.

ATTORNEY ANDREW BRAM: To the right, the owners of the property. This is Bill Sawyer and Rosalie Hornblower owners of the property. Recent purchasers of this property, the house -- I'm sorry, to my left is Mark Schmid the architect on this project.

This house is a very small house as you can see from the materials already submitted to the Board. It is -- was originally a carriage house for the house in front that fronts on Brattle Street. In 1957 or '58 this lot was subdivided and the carriage house was sold off separately. The woman who bought the carriage house back now a few years ago, 50 years ago, has lived there continuously since then until she passed away within the last couple of years. And so the

estate sold the house. She was a single woman. She was a bit of recluse and she was able to live in this tiny cottage in the back of this property. The people who bought it now, as you can see are a couple, while the children are grown, this house is pretty small for anyone to live in as a couple. So they've come to the Board tonight to ask for two things:

The first is a bit technical, and that is when this lot was created in '58, it never came before the Board for subdivision. And while it is a conforming lot in the sense that someone was careful to draw the lot line leaving this lot with 5,900 square feet of land in order to beat the minimum lot size for Res. B Zone, which this was back in '58, the frontage on this property is only something less than five feet. Although it has a right of way that extends out almost 20 feet, but not quite 20 feet with the property

next-door. So we're here to ask that to the extent we need the subdivision approval for this, you know, 50 plus year old lot, that the Board approve that. We don't think there's any opposition to that. That is also supported by a neighbor that fronts this. This would be great for him to modernize.

The second relief is which we've tried to work with the neighbors on, and that is that we've asked to build two small additions.

CONSTANTINE ALEXANDER: Well, let me stop you. I don't want to hear the word small. I mean, you're doubling the size of this house. That's not small. Maybe it's small if you're putting the additions on the Hancock Building. But I have a problem personally with the notion that it's a small addition.

ATTORNEY ANDREW BRAM: I would, say Mr. Chairman, that they are small in the

sense that, yes, the house is being doubled in size. But under Zoning, the footprint of this house, the floor area of this house could be 2500 square feet. They've asked to increase it by something around 700 feet. In terms of what the lot would be permitted for, it is not an excessive, I think, request to give them functional living space. The two additions --

TAD HEUER: Did they know how big the house was when they bought it?

ATTORNEY ANDREW BRAM: Of course, yes.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: And although you have -- you can go a number of square feet you've indicated, you can't in fact do what you want to do because that's why you're here tonight otherwise you would do it as a matter of right.

ATTORNEY ANDREW BRAM: I guess my

point is they haven't asked to max the zoning. This house is only 20 feet high. And Zoning is 35.

CONSTANTINE ALEXANDER: But they are in departure of the Zoning By-Law.

ATTORNEY ANDREW BRAM: Well, of course, no question about that. But they've not come here asking for what we consider excessive relief for essentially we consider minimally relief. Essentially we consider it minimal relief to make the house functional for people to live in.

So, there are proposed two additions. One addition will face the house that is in front of us on Brattle Street. And that was what was being proposed before the Board and what is in the package was essentially a two-story addition. In discussions with the neighbors and in trying to meet their objections, we have agreed with them, in fact, just this evening, that we would reduce

that to essentially a one-story addition and reduce the size of the roof line. And with that change and with the commitment that we have no intention of paving over any part of the yard, we think that those neighbors will --

CONSTANTINE ALEXANDER: The question, though, is if you're going to do that, we're not going to have revised plans before us tonight.

MARK LOUIS SCHMID: We do.

CONSTANTINE ALEXANDER: You do have them? Because they were not in our files by five p.m. the Monday before.

ATTORNEY ANDREW BRAM: No, because they were just developed --

CONSTANTINE ALEXANDER: I realize that. Usually you would ask for a continuance and put them in the file and wait to hear it another night.

ATTORNEY ANDREW BRAM: We would hope

the Board would hear this tonight since this is relatively a small change in the plans. They're not significantly changed and we think the neighbors will speak for themselves that they would be supportive of this change.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ANDREW BRAM: The other addition is on the side of the house, I'm going to ask Mr. Schmid to show us in a minute to point this out for us. The other addition is on the side of the house. The neighbors behind us whose property actually fronts on Mount Auburn Street, although they are one of the series of townhouses and they are the rear house furthest from Mount Auburn Street and therefore are our closest neighbor on that side. They were concerned -- they have a problem with drainage because of the way our yard slopes. And they've had a continuous problem over the years when the former owner lived there. We have agreed with

them -- and, again, they're here tonight represented by counsel, and I will let him speak to this. But we have agreed with them that we will make certain commitments that can conditions of the Variance should it be granted to address the drainage issues and address the landscaping issues, and again the commitment that we have no intention of tearing up our yard to add parking to it.

CONSTANTINE ALEXANDER: Didn't they also raise privacy issues and concerns about windows?

ATTORNEY ANDREW BRAM: They raised privacy issues. There's only one window in this one-story addition on that side that faces them and we've agreed that one window will either be stained glass or opaque. So that neither we will be looking at them or they will be looking at us.

CONSTANTINE ALEXANDER: So you're representing to us so far anyway that you seem

to -- we'll find out for ourselves, that you have now modifications and neighborhood support.

ATTORNEY ANDREW BRAM: There are other neighbors here --

UNIDENTIFIED MALE: Absolutely not.

CONSTANTINE ALEXANDER: Okay. We are not done yet.

ATTORNEY ANDREW BRAM: There are other neighbors here who have not actually approached us. These two neighbors who are our closest abutters essentially, are the ones that we've worked the closest with because they're most directly affected. We have sent letters to all the neighbors, all our abutters and abutters to abutters. And in fact, I have before the Board tonight, we have six letters of support. They are essentially a form letter signed by six different either abutters or abutters to abutters supporting this.

And in addition, there are some neighbors here tonight who don't know or obviously someone has an objection, I guess we'll find out what the objection is. In addressing since I know it's going to come up, the issue of hardship.

CONSTANTINE ALEXANDER: Before you get there, you do have to address that. Can you show us the revised plans that you say you've worked out at least with one abutter? And also tell us in a little more detail what kind of condition about drainage and the like that you're proposing -- that you've worked out with the neighbors?

ATTORNEY ANDREW BRAM: If you, what I would refer you to, Mr. Alexander.

CONSTANTINE ALEXANDER: I'm sorry, this is.

ATTORNEY ANDREW BRAM: This is one of our architects, Betsy Roosa who is also with Mr. Schmid our architect.

ELIZABETH ROOSA: Betsy Roosa,
Dewing and Schmid.

CONSTANTINE ALEXANDER: What you've
handing to us is the revised plans?

ELIZABETH ROOSA: Yes.

CONSTANTINE ALEXANDER: Do you have
anything in writing relating to the drainage?
The conditions that are related to the
drainage?

ATTORNEY ANDREW BRAM: I was just
going to ask the Chair, in your file is a
letter that we know was submitted by David
Teller and Jillian Bailey who are the
neighbors I referred to. And in the second
page of their letter in the end they've listed
conditions that if the Variance were to be
granted, they would want to have incorporated
and we are in agreement to --

CONSTANTINE ALEXANDER: All of it?

ATTORNEY ANDREW BRAM: -- all of
those conditions.

CONSTANTINE ALEXANDER: Then you've answered my question. Thank you.

ATTORNEY ANDREW BRAM: One condition, their condition is that no windows facing the house. They've agreed that one window if it's opaque is okay with them.

TAD HEUER: Is that window in the setback?

ELIZABETH ROOSA: Yes.

TAD HEUER: Did you file for a Special Permit for a window on the other side?

CONSTANTINE ALEXANDER: I hate to ask this question, are you putting new windows, I mean new window cuts as opposed to just replacing the glass in the window?

ATTORNEY ANDREW BRAM: This is in the new addition.

CONSTANTINE ALEXANDER: New addition?

ELIZABETH ROOSA: And yes, to the original house.

CONSTANTINE ALEXANDER: I think under our Zoning By-Law, the Variance doesn't cover that. You're going to have to get a Special Permit for that.

TIM HUGHES: Sean.

ATTORNEY ANDREW BRAM: I went through this with the Commissioner, this application.

SEAN O'GRADY: We would say that a window in a new addition would be part and parcel of that new addition. You still have control over it. But yes, we would hold the window to the higher standard there.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ANDREW BRAM: So those are the conditions that we would be prepared to have incorporated.

CONSTANTINE ALEXANDER: And you were correctly going to address hardship and I interrupted you.

ATTORNEY ANDREW BRAM: Hardship. I

think it's very simple and straight forward, this is a very small house in a corner of a lot. It was built in 1850, so it clearly predates zoning. It would be impractical to move this house in the middle of the lot where what otherwise would be conforming additions could be built. Because we are seeking only setback relief rear yard and side yard. One side yard totally complies.

CONSTANTINE ALEXANDER: Is there any way of providing additional living space as a matter of a different approach to the addition so that there would be no need for zoning relief that would not cause --

ATTORNEY ANDREW BRAM: No. The only other way of enlarging this house would be to go up. And since the existing house has non-conforming setbacks in extending the non-conformity.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY ANDREW BRAM: So we believe

that based on the language of the statute that talks about size or shape of the structures on the lot, that this does qualify as a hardship.

CONSTANTINE ALEXANDER: I'm sorry. I'm just reading the revised plans. But keep going I'm listening as well.

ATTORNEY ANDREW BRAM: I'm prepared to have the Board -- have the architect --

MARK LOUIS SCHMID: Shall I read the revised plans?

CONSTANTINE ALEXANDER: That would be good.

MARK LOUIS SCHMID: But maybe just prior to that is to just reintroduce you to the site plan that as Attorney Bram has described, the 5,900 square feet of the total lot and the existing house that sits in this corner, in the southeast corner.

CONSTANTINE ALEXANDER: Ma'am, come forward. No, no, I don't want you to sit in

the corner.

MARK LOUIS SCHMID: And it sits in the southeast corner. That existing two-story carriage house as was stated as 1,000 square feet in the first and second floor, and then the basement another 500 square feet. So it's approximately total of 1500 square feet. The proposed additions as you can see in this site plan, go to the north and to the west. This north addition is about 280 square feet, and the west division is 380.

CONSTANTINE ALEXANDER: And those two additions does not changed from what you originally submitted?

MARK LOUIS SCHMID: Correct. The change that we agreed to just prior to this meeting with the neighbors who live in this house, 220, is that formerly the end of this north addition, which faced closest to their kitchen, was originally a two-story

addition. And here we're looking at the -- what we call the north side of the house. And this is the new addition which originally came out from -- this is the existing roof in the back. And in the foreground is the proposed addition where we've dropped this down three and a half feet. So this is no longer a second floor. This is just a one-story addition. And we've also agreed verbally that we'd remove that window that would be high in the ceiling of the first floor. So there would be just these two windows facing the neighbor to the north. So that's the essential.

Here are some photographs which show these -- maybe I'll just -- here we are standing in the driveway looking east at the existing carriage house. And the neighbor that we were just discussing is to the right here.

CONSTANTINE ALEXANDER: Left.

MARK LOUIS SCHMID: The left.

CONSTANTINE ALEXANDER: Your left.

MARK LOUIS SCHMID: Right.

And in this photograph it's interesting, we did a mockup of the original two-story addition going to the north. You can see it's outlined in these two by fours. And it comes off the existing peak and comes out six and a half feet and -- eight and goes -- six feet -- eight and goes 16 feet. So now what we're proposing is that ridge would be dropped down three and a half feet from where it's currently constructed in this mockup.

Here's a view from our neighbor's kitchen window we took with his permission.

CONSTANTINE ALEXANDER: I hope so.

MARK LOUIS SCHMID: Nice conversation over the kitchen sink, and I snapped a picture so you can see what he's looking at what he's concerned about and

that's what we're trying to address by diminishing reducing the height of that ridge, there will be less of a structure, the volume of the structure closest to him will be reduced. So, that's that issue of the change that we've made.

CONSTANTINE ALEXANDER: What about the window, the opaque window? I think I see on your elevation, is that the lower right proposed south?

MARK LOUIS SCHMID: Correct. This is the again, this is the addition to the west, going to the west. And this is the south facing window which looks toward the fence on the southern part of the property. And that's the window which the neighbors had some concern about and we said we could, if the owners have some very nice stained glass windows that came out of a former house or residence, and we can replace the clear glass with that stain glass so that no one can

actually see inside.

CONSTANTINE ALEXANDER: Okay.

Thank you.

MARK LOUIS SCHMID: And I've got more photographs and plans, but I'll take it issue by issue.

CONSTANTINE ALEXANDER: Let's --

BRENDAN SULLIVAN: Where's that window?

MARK LOUIS SCHMID: That's here.

BRENDAN SULLIVAN: That's this one? Well, okay.

MARK LOUIS SCHMID: There's a roof that comes over this new stairwell that accesses the basement. It replaces the old crumbling stairwell that goes in the basement now.

CONSTANTINE ALEXANDER: Other questions from members of the Board at this point? We'll have further opportunity later.

TAD HEUER: I have something.

CONSTANTINE ALEXANDER: Go ahead.

TAD HEUER: Do you need any Section 8 relief? So for a conforming addition to a non-conforming structure you mentioned that addition in the front which I take is the area that you can build in by right because you don't have a setback problems; is that right?

ATTORNEY ANDREW BRAM: Right.

TAD HEUER: You mentioned that would be about 300 square feet.

MARK LOUIS SCHMID: Yeah, 280 square feet.

TAD HEUER: And the house right now is 780?

MARK LOUIS SCHMID: The house is 1,066 on the upper floors, and the basement is another 500 for a total of 1600.

TAD HEUER: How big is the house right now?

CONSTANTINE ALEXANDER: That's the

house you want to build not the house where it is right now?

MARK LOUIS SCHMID: No, right now. You're asking the current house?

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: The application says 780.

MARK LOUIS SCHMID: Oh.

TAD HEUER: So the existing house is that 780 feet or 1600 feet?

ATTORNEY ANDREW BRAM: It's 780 based on what I saw.

ROSALIE HORNBLLOWER: 863.

CONSTANTINE ALEXANDER: 863? Well, on the table we have 780, 863, and you're saying somewhere 1100. Where are we

MARK LOUIS SCHMID: I can explain. I think the variance in the calculations is that what's in your application is what -- is only the area that -- on the second floor we have two eaves that come down and there's some

places that's less than five feet of headroom.

TAD HEUER: Right. What is it? So, it's not counted?

MARK LOUIS SCHMID: Well, for zoning purposes that's not counted.

TAD HEUER: That's all I need to know. For zoning purposes what's the number? Is it 780?

MARK LOUIS SCHMID: 780.

TAD HEUER: Excellent.

So, if you're at 780 and you're looking at Section 8 which it says conforming additions are allowed as long as they do not increase the area of volume by more than 10 percent, since the structure first became non-conforming. So that's back way in the day. Ten percent of 780 would be 78 if I'm doing my math correctly by dropping my zero. 78. And you're pushing the addition to more than 78 square feet. Does that mean you need

Section 8 relief?

ATTORNEY ANDREW BRAM: That's for a non-conforming dwelling, that section. And I think this is what takes us into a Variance.

TAD HEUER: It certainly would take you into a Variance, that's right. I didn't see you advertise for it.

ATTORNEY ANDREW BRAM: No. If I could see those pages.

CONSTANTINE ALEXANDER: You want to see the statute?

ATTORNEY ANDREW BRAM: The Zoning Ordinance. The section you're reading from about the ten percent. So the beginning of that section, it says the following alterations; reconstruction, extension or enlargements should not result in use for a substantially different purpose or a same purpose in a substantially different matter shall be permitted after the issuance of a building permit by the superintendent of

building. Any change, extension or alteration non-conforming should use Section 822.2.

TAD HEUER: Is this non-conforming?

ATTORNEY ANDREW BRAM: No. But this says if you do a minimal change, you can do it based on a building as of right. But as a building permit. You don't need zoning relief. It says shall be permitted after the issuance of a building permit by the superintendent of buildings. So to make any of these changes here, a petitioner, an owner, does not have to appear before this Board if they meet these criteria, including the one you mentioned, which is the increase of only ten percent of a non-conforming structure can do it based on building permit.

TAD HEUER: That's true. But am I --

CONSTANTINE ALEXANDER: I'm not sure. I'm not following you entirely.

TAD HEUER: My question is this: I mean, so you can allow a 300 square feet in a by right as a conforming addition which is more than ten percent you can do by right. Right?

ATTORNEY ANDREW BRAM: No. To get the 300 feet, we are because of the setbacks, okay, we need a Variance. Okay? The existing house essentially --

CONSTANTINE ALEXANDER: I think what Tad is suggesting is that you may not need a Variance for this part of the addition if you go to Section 8.

TAD HEUER: So what I'm looking at. I'm just doing this based on your plan here. So the red area, this long rectangle is that the setbacks of the subdivision, right?

ATTORNEY ANDREW BRAM: Okay.

TAD HEUER: So this setback on this line approximately it draws the setback, it says here, here's your front. This red

rectangle here, is that to note or are these overlapping front and rear setbacks.

ELIZABETH ROOSA: No. There's a buildable area.

TAD HEUER: It's a buildable area of ten feet.

ELIZABETH ROOSA: It's about ten feet by 30 something feet.

TAD HEUER: Right. So there's no setback problems for the front area?

ELIZABETH ROOSA: And my understanding is that we didn't fit any, didn't fit any of the criteria to allow anything to be added on as of right. And you and I, Sean, we sort of went through that over the phone. And I don't think we fit any of the points, and I can't go into detail about what those are, but I thought we needed -- and I think it was what you said, that we were over the square footage allowable by right the 78.

ATTORNEY ANDREW BRAM: Once you go.

Even if you're in a permitted building envelope, if you're going to go over that ten percent, you need a Variance. So that section is inhabitable. That Section 8.22 because we're not coming in for alteration for non-conforming dwelling, we're asking for a Variance because we're going to increase this by more than ten percent. Which takes us out 8.22.1.

SEAN O'GRADY: 8.22.3 probably controls here.

TAD HEUER: Okay. That's my only point.

CONSTANTINE ALEXANDER: I think we're ready for public testimony. You'll have further opportunity to ask questions obviously.

Anyone here wishing to be heard on this matter? Come forward and give your name and address, please.

ATTORNEY STEVEN CLARK: Hi, my name

is Attorney Steve Clark with the firm of Walker, MacLean, Holloway, Doherty, Aardiff and Morse. I represent Jill Bailey and David Teller who are the abutters on the south side of the property which is the townhouse closest.

CONSTANTINE ALEXANDER: Okay. The Mount Auburn Street townhouses?

ATTORNEY STEVEN CLARK: Exactly. Dave and Jill live right here. This is their townhouse. You have a letter from my clients.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY STEVEN CLARK: In which they strongly objected to the grant of the Variance due to the drainage considerations and privacy issues with the window which they've addressed. And also due to their concerns relative to damage to a number of -- potential damage to a number of trees on both sides of the property line.

CONSTANTINE ALEXANDER: But I've heard tonight is that we solved the privacy issue by the opaque window.

ATTORNEY STEVEN CLARK: Correct.

CONSTANTINE ALEXANDER: And they've agreed to drainage conditions.

ATTORNEY STEVEN CLARK: I'd like to discuss the conditions a little further to make sure we're clear about what we have agreed to. And my clients would withdraw their objection to the granting of the Variance if all of these conditions are included, but I would like to reserve the right to object to and discuss the hardship issue later if these conditions were not adopted by the Board.

CONSTANTINE ALEXANDER: The conditions that are being proposed to be adopted -- I don't have the file. It's down the other end of the table. Is it your client's letter?

ATTORNEY STEVEN CLARK: My client's letter.

CONSTANTINE ALEXANDER: As I understand it, Mr. Bram has said that that letter, those conditions, word for word are can be part of our decision.

ATTORNEY STEVEN CLARK: I would descent in a few minor ways, and I'd like to go through them if I could.

CONSTANTINE ALEXANDER: Sure.

ATTORNEY ANDREW BRAM: Mr. Chair, as it's written here, we should have no windows facing the house.

CONSTANTINE ALEXANDER: I'm talking on the drainage issue. I'm well aware of that.

ATTORNEY STEVEN CLARK: I'd like to go through depending on how we characterize this.

CONSTANTINE ALEXANDER: Let me just find the letter for a second.

ATTORNEY STEVEN CLARK: Sure.

CONSTANTINE ALEXANDER: I have it right here.

ATTORNEY STEVEN CLARK: I'm actually -- I have them written out in perhaps a different order, but we can kind of go back and forth if we could. One condition that is not on this list to start with is that the existing fence, type of fence and existing location of the fence, be maintained in its current position. That is not related to the drainage issue per se, but it's a concern to my clients. And I know the neighbors --

CONSTANTINE ALEXANDER: Are we talking about the fence that just borders your client's property? Give me a sense of where the fence is.

ATTORNEY STEVEN CLARK: The fence runs along here (indicating).

CONSTANTINE ALEXANDER: The whole

lot line.

ATTORNEY STEVEN CLARK: The whole length. We'd like to make sure that that fence is maintained. The fence has been there quite a while. More than 20 years.

MARK LOUIS SCHMID: You can see it.

ATTORNEY STEVEN CLARK: It wanders on the line a little bit, and we want to avoid any future disagreements that it's something that will be moved. It's close enough in most cases. I don't believe the Applicant has a problem.

CONSTANTINE ALEXANDER: You have no problem?

ATTORNEY ANDREW BRAM: No problems with the fence.

ATTORNEY STEVEN CLARK: Second issue, which is not specifically here in this list of issues, is that we are concerned, and this I would say, although I represent Jill and David, there are other members of the

association which there are part of concern that the construction might affect tree roots of some significant trees that are on both sides of the property line. If heavy equipment was used in certain areas, this could affect the trees.

CONSTANTINE ALEXANDER: We can't deny or grant a Variance because the construction might damage tree roots.

ATTORNEY STEVEN CLARK: I understand that that standing alone that's true. However, as part of your drainage concerns and that the maintenance of some of these trees, we would like to encourage, and I believe the applicant is okay with those conditions, again. So there is an area here if you look in this area here (indicating), we would like there to be a condition -- there's a canopy of trees sitting right along the heart here that if heavy equipment comes in from this way, and

this is not used here to dig up whatever foundations.

CONSTANTINE ALEXANDER: I'm not going to get into -- speaking only for myself. I don't want to get into governing how the construction equipment is going on and off the property.

ATTORNEY STEVEN CLARK: In this case it becomes significant particularly relevant to this tree here which is a significant tree and could be affected by the construction coming right through a couple feet of it. And so we'd like to try to preserve that.

CONSTANTINE ALEXANDER: I assume the Petitioner has the same objective. I don't think he wants the tree to be damaged. I can't get to the point of writing a decision of conditions relating to how construction equipment gets on the property so it doesn't affect the tree roots. I think I have to leave that to the self-interest of the

Petitioner. And, again, I'm speaking for myself. Other members of the Board may disagree with me. I just don't want to go there.

ATTORNEY STEVEN CLARK: Well, I would request it. I hear you. And I believe the Petitioner would not object. But particularly the Petitioner has proposed that an arborist be consulted prior to any construction in this area by this large tree, and the construction in a manner that the arborist directs that is mostly to save the tree. And they have no problem with that.

As to the conditions relative to the drainage, I believe Mr. Schmid has a diagram of what they're proposing with more specificity which is not listed per se. The issue is covered by the objection in our letter, but the specificity of what they're proposing is important to our agreement that we withdraw our objections. In particular

they are talking about moving the retaining wall that they were initially proposing to build right on the property line with the whole back and the build up the soil, go back a foot from the property line, and that it, a drywall be installed at approximately this area to catch a lot of the runoff that currently comes down the driveway. And that the grading from that retaining wall back will take the runoff and channel it to the dry well rather than where it currently goes right down into our backyard. So that those specifics be incorporated into your decision.

CONSTANTINE ALEXANDER: Isn't that covered by the conditions that are in your client's letter and Mr. Bram has agreed to?

ATTORNEY STEVEN CLARK: Well, I don't think the specificity of that proposal is covered by it.

CONSTANTINE ALEXANDER: They say

they will agree not to build any retaining wall within one foot of the existing fence line, or if they build a retaining wall, they will be able to fill the space between the wall and the fence with one inches to two inch stones four inches deep in order to ameliorate runoff.

ATTORNEY STEVEN CLARK: Well, that covers the issue but it doesn't cover the installation of the dry well. It's not noted per se. And that is important to the success of the --

CONSTANTINE ALEXANDER: That's a private agreement between you and the Petitioner. If you have a further agreement beyond this condition -- I don't want to get our zoning enforcement people into neighborhood disputes of a level of detail that I don't think rises to the zoning issue. The concept will be embodied in the condition. You should reach our own

agreement and can have your private enforcement issues if you have a problem. But I would propose, I think Mr. Bram has indicated that he's conceptually in agreement with the notion of a dry well agreement.

ATTORNEY ANDREW BRAM: Yes.

CONSTANTINE ALEXANDER: So you work that out.

ATTORNEY STEVEN CLARK: And my last issue is that like the abutters to the north side, we want to make sure that parking is not expanded beyond --

CONSTANTINE ALEXANDER: I think they've agreed.

ATTORNEY STEVEN CLARK: It's agreed. The wording is important on this point because the wording initially proposed was beyond current parking areas. What we want to say is beyond the current paved area. Now, if --

CONSTANTINE ALEXANDER: You have the condition that Mr. Bram has agreed to is no portion of the Petitioner's property is to be paved, covered with pavers or otherwise turned into a parking area at any time now or in the future.

ATTORNEY ANDREW BRAM: Other than the existing. There is an existing paved area.

CONSTANTINE ALEXANDER: Right.

ATTORNEY ANDREW BRAM: That we intend to use.

ATTORNEY STEVEN CLARK: I would reserve any balance of my time as they say, I would like to speak with my clients.

CONSTANTINE ALEXANDER: Sure.

BRENDAN SULLIVAN: Just one question, Counsellor. You established that there is a drainage problem from the subject property to your client's property.

ATTORNEY STEVEN CLARK: There has

been a significant problem. My clients have spent more than \$6,000 in trying to --

BRENDAN SULLIVAN: So, we've established that there's a problem. Will the proposal that's before us exacerbate that condition?

ATTORNEY STEVEN CLARK: Absent the proposals that we have discussed to help with it, we believe it would exacerbate.

BRENDAN SULLIVAN: It will. Okay. And there are some remedial actions on the Proponent's part which you feel then will --

ATTORNEY STEVEN CLARK: Will actually help, yes.

BRENDAN SULLIVAN: -- will help. Okay. But that the proposal before us does exacerbate the drainage problem?

ATTORNEY STEVEN CLARK: Correct. Thank you.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishing to be heard?

MELINDA PONDER: I do. Melinda Ponder. I live at No. 5 on the Mount Auburn Street side. My house, if I could use -- I didn't bring any pictures, sorry. Maybe I can show you. I live opposite the Baileys, so that I -- my townhouse faces where this construction is. So let's see. The Baileys are here (indicating)?

MARK LOUIS SCHMID: No, they're here (indicating).

CONSTANTINE ALEXANDER: Where are you then?

MELINDA PONDER: I'm right here. So I look -- I look this way. And if I could show you on one of these color photos, I wanted to show you the trees. This fence also runs right across on my property. And this house is five feet from the fence. It was grandfathered in. There's a row of hemlocks here that we wrote about in our

letter. It's about 70 feet high. Those hemlocks run across the whole property so that all of us -- it's our privacy from this, when the leaves are on it, we don't see this house at all. But in the winter, it's the evergreen, it's the hemlocks that we've spent money to keep alive. So I'm very concerned that this will have the unintended consequence of destroying our privacy that the hemlocks provide from the construction that I know can damage tree roots even though I realize that if they can be replanted, they certainly wouldn't be 70 feet high. That this happens. So I'm very concerned about that. And I don't feel that the hardship is -- meets the hardship requirements that Cambridge has for getting a Variance for a building that is grandfathered in and that everybody can see was small.

CONSTANTINE ALEXANDER: Well, the hardship that the Petitioner has put forth,

we haven't voted on it yet, is that given the size of the structure, namely 780 square feet which is extremely small, that that additional living space is necessary.

UNIDENTIFIED MALE: Why'd they buy it?

CONSTANTINE ALEXANDER: I'm sorry?

UNIDENTIFIED MALE: Why'd they buy it.

TIM HUGHES: Don't answer him.

CONSTANTINE ALEXANDER: First of all, you have no right to speak out. You can speak when I recognize you and not before. Otherwise I'll ask you to leave the meeting.

UNIDENTIFIED MALE: I didn't know that. Thank you.

CONSTANTINE ALEXANDER: The fact of the matter is they bought the house, they knew the size of the house, but all of us buy houses and desire to put on additions. They realized presumably that if they do that,

they're running a risk, they'd have to get a Variance. And that's why we're here tonight. But the hardship is the size of the structure and its location on the lot. It's an older structure, too close to the lot lines. Rather small, and the need for additional living space and the desire or the proposal is to ameliorate the impact of what they want to do with the conditions that they have worked out at least with some of those.

MELINDA PONDER: Right. I understand. My issues are different because I'm so concerned about these trees, the privacy.

CONSTANTINE ALEXANDER: I understand that.

MELINDA PONDER: And I just feel that this house would be suitable for one person living in it or some other use that wouldn't require adding on to something that's already non-conforming because of the

history.

CONSTANTINE ALEXANDER: You're concerned about the trees and loss of the trees.

MELINDA PONDER: Yes.

CONSTANTINE ALEXANDER: I take it it comes from two sides, two things that you're worried about. Either the construction equipment is going to come in and get too close to the trees and tree roots and it's going to cause them to be injured or alternatively I would think from the letters, the concern that the drainage that would result from the construction might affect the root structure.

MELINDA PONDER: That's right. My experience in other homes has been foundation work especially enough to put a big huge dry well in, and the water table gets moved. Flood the roots of trees way beyond where the construction is actually happening.

CONSTANTINE ALEXANDER: Now, there is a proposal to have the retaining wall --

MELINDA PONDER: Right.

CONSTANTINE ALEXANDER: -- in addition to that. And they're also talking about a dry well. It's not in the Petitioner's interest to have these trees die either.

MELINDA PONDER: Well, be that as it may --

CONSTANTINE ALEXANDER: I understand your nervousness about it, but I'm just trying to understand the basis for the nervousness or how much we should be concerned about it.

MELINDA PONDER: I guess I'm just asking that you not grant a Variance when I don't think hardship has been proved. It's something that would affect --

CONSTANTINE ALEXANDER: That's different from the trees.

MELINDA PONDER: -- all of our property values as abutters.

CONSTANTINE ALEXANDER: Okay. You're not talking about trees, you don't want the addition to be built, fine.

MELINDA PONDER: I have two things. Thank you.

CONSTANTINE ALEXANDER: Thank you.

PATRICIA GALVIN: Patricia Galvin, G-a-l-v-i-n. And Sheila Mow.

CONSTANTINE ALEXANDER: You have to speak loudly because we have a stenographer. You have a letter in the file?

PATRICIA GALVIN: Yes, I do.

CONSTANTINE ALEXANDER: Are you going to cover the issues that you covered in your letter?

PATRICIA GALVIN: There are a couple that are not covered because you don't have them.

CONSTANTINE ALEXANDER: One of the

reasons I mention that is that the issues you raise may be entirely valid, but I don't think they go to the zoning issues. You're arguing about, at least in your letter, who owns what parking spaces and what rights you have to get to the parking spaces.

PATRICIA GALVIN: No, I'm not really questioning on the parking spaces.

CONSTANTINE ALEXANDER: No, you're not questioning it. You claim you own three spaces as I recall?

PATRICIA GALVIN: That's correct, yes.

CONSTANTINE ALEXANDER: And you also have the right of way, and you're concerned with what's going to happen, it's going to take up some of your parking spaces or the right of way.

PATRICIA GALVIN: Yes.

CONSTANTINE ALEXANDER: No. If that's true. If that's the point, all I'm

saying to you is that your concerns are extremely valid. They're not before us as a zoning matter. If those were to happen, if your worse fears were to occur, you have legal rights, it's a legal issue to trespass or misappropriation of property. It doesn't get into zoning. That's all I'm trying to say.

PATRICIA GALVIN: No, I appreciate that. But there's some circulation issues also.

CONSTANTINE ALEXANDER:
Circulation of?

PATRICIA GALVIN: Of vehicles and people. There is -- I don't know if you people can see this or not, but as you come in the driveway, there's right of ways here.

CONSTANTINE ALEXANDER: But you have rights in this driveway?

PATRICIA GALVIN: Yes.

CONSTANTINE ALEXANDER: Okay.

PATRICIA GALVIN: There is a proposal to turn -- instead of having two parking spaces they had to turn the driveway around.

CONSTANTINE ALEXANDER: I've seen those.

PATRICIA GALVIN: Fine. I'll be as brief as I can.

The problem here is we suspect we would be -- with the circulation here and instead of these two parking spaces, there is a circulatory to be taken, but I would expect would pose some problems. And we're just wondering how this is going to work out. They have four vehicles. We already have three here, that's seven vehicles going up and down here.

CONSTANTINE ALEXANDER: Thank you.

Again, I have to repeat that you have certain legal rights to your parking spaces, to your right of way, and to the

extent -- nothing we would do tonight would affect your rights. To the extent that what grows out of tonight's hearing, adversely affects your property rights. You have full legal recourse. It is not a zoning issue.

PATRICIA GALVIN: Not a zoning issue.

SHEILA MOW: You don't limit the amount of parking spaces that they would have?

CONSTANTINE ALEXANDER: We are going to limit the amount of pavement.

SHEILA MOW: We have one, and we want to know if they're going to be obstructing us because they have more than one car. We're almost sure that they have more than one car.

PATRICIA GALVIN: That we have know of they have four cars.

CONSTANTINE ALEXANDER: Do you want to answer that?

TIM HUGHES: It doesn't have

anything to do with it.

CONSTANTINE ALEXANDER: I know, I know it doesn't.

ATTORNEY ANDREW BRAM: Be he has two cars and he has two parking spaces. We park here. The right of way that Miss Mow is concerned about is this block that says right of way because her parking is over here. And her vehicles park and drive out here. We have no intention of parking in this area. We are parking ahead of this, for two cars and that's where we park. That's where we park now and that's where we'll continue to park.

SHEILA MOW: Okay. Because we feel they may be making an objection because they're talking about moving utility poles. We already had a company there to look at that, and maybe that's not part of zoning issue.

CONSTANTINE ALEXANDER: No. Your parking issues are your parking issues, and

I don't mean to minimize them and degrade them, it's not a zoning issue. Whatever rights you have tonight, you're going to have after whatever relief we take tonight.

PATRICIA GALVIN: Thank you for hearing us.

CONSTANTINE ALEXANDER: Sir, you seem to want to speak so here's your chance.

KEITH ARBOUR: Would it be all right?

CONSTANTINE ALEXANDER: Now it is.

KEITH ARBOUR: I'm Keith Arbour, 457 Mount Auburn Street. Arbour, A-r-b-o-u-r. We own house No. 3 there. You have on file a letter from several of the people who live there as well as other people who decided they didn't want to sign a blanket approval that we were sent. We had serious concerns.

One of the concerns we have was a hardship wasn't -- couldn't possibly be claimed because they bought the house knowing

the square footage and knowing what was not permissible. And I don't understand everything that you all have to consider or all the considerations, but I think I know that zoning laws exist so that set rules prevent people from doing things that will harm the property values or harm the interests of the abutters. You have a couple of times have said this is not Mrs. Galvin and Mrs. Mow's parking is not a zoning issue and it's not. But the existing conditions don't permit even a lessening of their rights there. And in a way the answer you've given to those of us whose interests are harmed, is even though there are rules that prevent them from doing this, we will have to incur legal expenses when they do something. And Mrs. Galvin and Mrs. Mow have serious concerns. And if the Variance is allowed without hardship, the legal costs to protect what their rights against what shouldn't have

been happened, the legal expenses are theirs. And that's a very serious matter. It's --

CONSTANTINE ALEXANDER: Wait.

KEITH ARBOUR: Sorry.

CONSTANTINE ALEXANDER: No, no, no. I shouldn't have interrupted. Keep going. I thought you were done.

KEITH ARBOUR: And with respect to the Petitioners, I would say the confusion you've heard over the square footage of that house, which differs in a couple of ways, and changes depending on who's telling whom what, is symptomatic of a deeper issue. And that issue is forthrightness and honesty. And I'm really concerned not on my behalf, but on the people who say might settle and the people who signed letters of protest who couldn't be here tonight, that some agreement could conceivably be made by this couple who lived a couple of blocks away and decided to buy this house perhaps to live in, but perhaps

like their other properties for investment purposes. And that the nature of this would be changed beyond the guarantees that the abutters had. And then they'll have to pay and the people who bought the property won't abide by the agreement. And then it's our costs. Sorry for interrupting earlier.

CONSTANTINE ALEXANDER: Let me try to explain the context. First of all, on the parking issue you're right. I mean, if they have to go to court to enforce their rights with regard to parking, they're going to incur legal expenses. That's just nothing we can do about that. We don't have any jurisdiction over this. This is a purely potential property rights dispute. So, if it causes them to incur expenses -- let me just finish -- they have to incur an expense. But to your point about the Variance and the hardship, that's valid.

To grant a Variance, we start with

rules. We have a Zoning By-Law that grants rules. And the Variance procedure says it's a matter of state law that's incorporated into our Zoning Ordinance, is that there are certain situations where these rules work a hardship on certain individuals. And so our Board, meeting its legal standard, has a right to vary, that's where the word Variance comes, vary the rules to allow this to happen. But we consider the hardship and we look at whether there's a derogation from the intent of our Zoning By-Law, we very much take into account the impact on the abutting property holders. The Zoning rules are there to protect the citizens of the City of Cambridge. Protect you against your neighbors. The neighbor's building something on the lot line, from building a 20-story structure when you can only have a 35-foot building and take away your life. There's all kinds of requirements. We

listen to you very carefully, you and everyone else who speaks. We listen to the Petitioner, and we have to balance the two. And in balancing it we have to deal with a very tough standard. The Petitioner has got a big thing to overcome. There's a three part test to a Variance. One of which is hardship. And specifically to the hardship you've heard Mr. Bram put forth what he believes to be the hardship. I'll just repeat it. We haven't voted on it yet as to whether we accept it. And if the hardship is based they bought the structure knowing it only had 780 square feet of living space, they've decided now living in that small structure they need more living space. They now have to face the Variance procedure. They can't go as a matter of right to build what they want. They're coming before us, they're running the risk, they bought the property, we could turn them down. Or conversely we could grant relief

and you take us to court or take them to court and overturn it. That's the risk they've taken. So I don't think you can say well, because they knew what they were getting into, we should turn them down. And that's not enough to my mind anyway. We do have to deal with the fact that they've got very small living quarters. And my view is, my personal view is that I'm sympathetic to expanding the living quarters provided that we minimize or eliminate the impact on abutting property owners from the relief they're seeking. And what I've heard tonight so far, and I'm very heartened by, because we have all kinds of letters in the file, is that they have reached out, maybe not to everybody, that they've reached out and agreed to make a number of conditions which I think are designed, and in the view of some neighbors, in fact, do accomplish minimize the impact on neighboring property owners. By putting by

reducing the size of the addition. By opaquing a window. By agreeing to drainage issues by limiting parking or paving I should say, paving of the lot. And they've reached out and they're going to maintain a fence. They've reached out a lot. And we've got to decide whether that's enough. But that's how it works, just so you understand and for the benefit of everybody else in the audience. And that's the balance we're going to strike tonight. And whatever decision we reach is appealable to the court by whoever is unhappy with that decision. And that includes the Petitioner can go to court, too, if we turn them down or put conditions that they don't think are appropriate or that they could live with I should say.

Sorry to have taken that up, but I think it's important for you people to exactly understand what our job is here.

KEITH ARBOUR: Thank you.

MELINDA PONDER: Can I ask a question?

CONSTANTINE ALEXANDER: By all means.

MELINDA PONDER: What relief would we have, let's the hemlocks all die, the 70 feet tall trees affects all of our property values in these townhouses, what relief would we have?

CONSTANTINE ALEXANDER: Well, it depends why the hemlocks died. If they died because the Petitioner did something that didn't comply with the conditions of the Variance, you would have, they would -- you would have a right, you have to get to the zoning enforcement people to challenge. You can't put the hemlocks back, that's for sure. But to say that the Variance was not adhered to, and that the -- I suppose, I'm just off the top of my head. The additions that we

approved are now illegally constructed. Which would in turn effect their property values, because now if they try to sell this structure, no one is going to buy a structure that doesn't comply with the Zoning By-Law. But to be sure the hemlocks, and the hemlocks die for other reasons, then they die. But either way the hemlocks are not coming back.

MELINDA PONDER: That's right.

CONSTANTINE ALEXANDER: I know that. But I think again if we balance this, the risks that the hemlocks might die as opposed to the relief that's being sought is part of the hardship and Zoning issues we're going to put in the balance.

MELINDA PONDER: I guess you have to consider whether it's a hardship to us to have somebody build --

CONSTANTINE ALEXANDER: The issue is not whether you have a hardship to you. The hardship is to the Petitioner. The

Petitioner has to demonstrate a hardship. And I understand, I speak for myself, I understand very much your concern about these hemlocks, very much. But it's their issue as well as your issue. They have no interest in causing those hemlocks to die. Just as your privacy will be invaded by the hemlocks going away, their privacy is going to be invaded.

MELINDA PONDER: Oh, no, this is the back of their house, with all due respect, it's going to have the blank window in it, too. I think it's not -- it doesn't exactly comparable.

MARK LOUIS SCHMID: Mr. Chairman, can I make one quick observation on the trees and just to --

CONSTANTINE ALEXANDER: Sure.

MARK LOUIS SCHMID: -- my opinion as the architect, and I fully appreciate this lady's concern, but she's referring to the trees that are in this back corner. And the

construction, as you see, will take place here and here (indicating). There's no -- and access from the construction vehicles will be on this side. So if the concern is with these trees in the back corner, I can't see how there would be any effect.

MELINDA PONDER: And how many feet away is that from those trees would you say?

MARK LOUIS SCHMID: How many feet is what?

MELINDA PONDER: This is a very, very small area. How many feet away is the construction here?

MARK LOUIS SCHMID: The fact is -- all right, it's 20 feet.

MELINDA PONDER: 20 feet.

MARK LOUIS SCHMID: But the construction -- there's a building between, there's an existing building between this addition and the trees.

CONSTANTINE ALEXANDER: The other point they've made is are you going to change -- the construction is going to change the water table of the lot, and that could also flow its way to the roots.

MELINDA PONDER: That's been my experience when I was 50 feet away. Thank you.

CONSTANTINE ALEXANDER: Thank you, but it's not responsive to her question.

One second. Are you all set? No. You have to give your name and address.

JILLIAN BAILEY: My name is Jillian Bailey. I'm -- Mr. Clark is our attorney.

I have spoken with Samantha Overton in the Department of Conservation and Recreations, she's the urban -- I contacted her about the trees in Lowell Park which is state property, but I also spoke with Richard Rossi who is the Assistant City Manager of Cambridge. And he contacted the Historical

Society. They came out and looked at the trees. There's a maple and an elm in the park that their canopies spread out over to the property, and they also were concerned with the construction, with the fact that these full grown elm and maple trees. So I think to say well, it couldn't possibly affect things on the other side, I think very much it could especially because it is a flood area, there is water table. And I think we all are concerned about the trees and the wildlife and the plant life there. And I do think it's a valid concern.

CONSTANTINE ALEXANDER: No one has suggested otherwise. If I have in my comment, I don't mean to minimize it. I'm just trying to put it in context. That's one consideration that we take into account, and that's not the only one. I know it's paramount in your mind and in your mind, but I've got to tell you it's not paramount in our

minds. It is a relevant consideration.

MARK LOUIS SCHMID: Mr. Chairman, the only other observation I can offer with respect to the water table, because the water --

CONSTANTINE ALEXANDER: We're not going to get there. Go ahead, I'm sorry.

MARK LOUIS SCHMID: Is that we have no evidence that the height of the water table being affected by these new foundations only because the existing foundation, existing basement, which is not a new waterproof, watertight basement has not experienced any flooding even in this last spring which as you know, has historically high amounts of rain. So it's a suggestion, and I'm only hypothesizing, that the water table is below the existing basement and we're not digging any lower than the current basement. So I don't think we'll be into the water table. But, again, we don't have concrete evidence.

MELINDA PONDER: I do have one more question.

CONSTANTINE ALEXANDER: One more, last question.

MELINDA PONDER: How deep will the foundation -- how deep will it go?

MARK LOUIS SCHMID: It will be eight feet. And it will be comparable to the existing basement. A foot lower than the existing basement, but that's just because the existing basement doesn't have sufficient headroom.

MELINDA PONDER: So eight feet?

MARK LOUIS SCHMID: Eight feet.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard?

(No response.)

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

We are in receipt of many letters. I'm just going to quickly go through them, but

many of which have been already dealt with in the course of our public testimony.

There is a letter from David Teller and Jillian Bailey but we've covered that letter, including conditions. So I think you've expressed your views on this and I don't think we need to read this.

We have a letter from Sheila Ann Mow and Patricia Galvin, and we've talked about their parking issues. And as I pointed out, I don't think it's a zoning issue.

We have letters submitted to us by Mr. Bram. It looks like it's the same letter. I'll read the letter and then I'll identify who wrote the letter or at least the address. It's addressed to this Board dated June 12th. They're all different dates. One is June 26th. They're all June dates. Some in July. "Our new neighbors Mr. Sawyer and Ms. Hornblower have discussed with us their application to expand their dwelling by

constructing two additions. We have seen the plans depicting what they intend to build and has filed with your Board. We wish to be on record that we do not object to the requested Zoning Variances and we hope the Board will give them the approvals they seek." And the persons who have signed this letter are James R. Adams at 224 Brattle Street; Judith A. Giordano at 15 Brattle Circle; Michael S. Field, No. 4, 457 Mount Auburn Street; Rosalyn G. Davidson, s-o-n, 230 Brattle Street; Cameron W. Brandt, B-r-a-n-d-t and Anne M. A-n-n-e M. Brandt, same address. Letter signed by someone who is deceased but I guess someone who claims to have a power of attorney. Anyway, Theodore H. Pian, P-i-a-n identified as deceased, and Rulon Chow Pian and it's signed by someone who wrote attorney-in-fact for Rulon C. Pian. From the grave we have a letter.

We have a letter from Roxanne and

Michael Field who give an address in Chestnut Hill. They must own the property nearby. As the owners of 457 Mount Auburn Street, No. 4.

ATTORNEY ANDREW BRAM: They also signed one of those letters.

CONSTANTINE ALEXANDER: Yes, they signed a letter in support. So this letter is no longer valid?

UNIDENTIFIED MALE: They sent that letter after the first letter.

CONSTANTINE ALEXANDER: Which is the most recent?

UNIDENTIFIED MALE: That's a new letter.

CONSTANTINE ALEXANDER: That's the new letter? So, they've taken way -- sir, yes.

KEITH ARBOUR: Excuse me, there were people that sent the letter that presented to them to the --

CONSTANTINE ALEXANDER: I understand. I was going to say subsequently revoked their endorsement of the --

KEITH ARBOUR: Well, no, no. Some of the letters you have are from people they didn't know what the plans were.

CONSTANTINE ALEXANDER: I guess I'll read it into the file then.

It's from, as I said, Roxanne and Michael Field, F-i-e-l-d. "As the owners of 457 Mount Auburn Street, No. 4, Cambridge, we are opposed to the expansion of the above property -- the above property being 222 Brattle Street. The structure is very close to the property line of our property and would have a detrimental effect on our home value. Thank you."

We have a letter from the owners at 220 Brattle Street, Gary and Amy Selexson (phonetic). I'm going to summarize the letter. They express two concerns: One is

parking plans. And they were concerned about really paving over grass. And that you've addressed that. You're not going to do that.

And the other issue was the addition planned to extend to the north of our property. They are complaining of a two-story addition, and you've addressed that through your conditions. So I think, and they say in summary, "If the owners of 222 Brattle Street agree that there will be no parking outside the current driveway parking area, once the construction project is completed, and modify their proposed north addition to one story, within the current proposed footprint and then no point higher than 12 feet over current grade, we would have no objection to their request for a Variance."

And I think the only thing you're not doing, is you're not going to park outside the

current driveway, you're just not going to pave.

ATTORNEY ANDREW BRAM: Right.

Paving exists. We may redo that paving with pavers. But we're not going to add parking.

If I may add one thing, and Mr. Selexson is here. The addition is now going to be -- he said 12 feet, it's going to be 15 feet, and he has agreed to that. He and his wife are both here to confirm that.

CONSTANTINE ALEXANDER: Mr.

Selexson, are you here?

UNIDENTIFIED MALE: Yes, right here.

CONSTANTINE ALEXANDER: Do you have a problem with the 15 feet rather than 12 feet?

UNIDENTIFIED MALE: No, they proposed to revise and we'll withdraw our objection.

CONSTANTINE ALEXANDER: Okay, thank

you. Yes, sir.

ATTORNEY STEVEN CLARK: Our understanding of the parking agreement is that parking spaces will not be increased outside of the paved area. So that parking would be on the paved area and not that there will be other places -- the applicant has agreed not to expand the paving. We want to make sure that the parking does not expand off the pavement.

CONSTANTINE ALEXANDER: I guess I'm sitting here a little puzzled. I can't envision that you're going to -- how can we enforce that every time you go two feet over the paved area onto the grass they're going to have a violation of the Zoning law, that Mr. O'Grady is going to have to running down?

ATTORNEY ANDREW BRAM: This is the existing parking now (indicating). This is where we're going to park two spaces (indicating).

CONSTANTINE ALEXANDER: So you're not going to park anywhere else?

ATTORNEY ANDREW BRAM: Not going to park anywhere else. It's existing parking. We're not going to park anywhere else.

CONSTANTINE ALEXANDER: Hopefully that addresses that issue.

We have something from Richard Rossi addressed to Ranjit Singanayagam. No, I'm sorry. Mr. Rossi forwarded an e-mail from Charles Sullivan sent to Mr. Rossi. "I went out to look at the situation at 220 Brattle Street where the caller was concerned about the trees in Lowell Park. The applicants of the Variance has erected a structure of poles to illustrate the envelope of the proposed addition. There are two large trees in the adjacent park, one the very large elm, the other is a mature maple. They are 15 feet and 20 feet respectively from the property line opposite the proposed addition which itself

is about 20 feet inside the private property. While the canopy of the elm extends almost to the proposed addition, there could be no ground disturbance inside the park and I doubt that the trees would be much affected by the proposed work. However, maybe the Variance could include a condition establishing a buffer zone inside the private property to minimize root disturbance. I'm attaching a photo," which is not attached.

I don't know what your reaction to this buffer zone is. I mean, there's a retaining wall, it's not a buffer zone, I realize that.

ATTORNEY ANDREW BRAM: This is the park. The trees are here. This is the addition, the two additions.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY ANDREW BRAM: The buffer zone is effectively the house. These trees are on this side of the state property line. It's quite a distance from where we're going

to be doing any work.

CONSTANTINE ALEXANDER: Thank you.

We have a letter from Barbara M. Brizuela, B-r-i-z-u-e-l-a and Sebastian R. Martellotto, M-a-r-t-e-l-l-o-t-t-o. And essentially -- I'm just going to summarize their letter. It says that they're concerned about potential runoff on the changes being proposed. But I think you've addressed the runoff through the retaining wall and the dry well. And I think that's been addressed.

And we have letters signed by a number of people who live at 457 Mount Auburn Street. I suspect some have already spoken tonight. I'll read this letter into the file so we have it all. And it's signed by the owners of unit No. 9, unit No. 6, house No. 3, unit No. 8, two unit No. 8s, unit No. 7, No. 3 and No. 2 and No. 2. "As resident/owners of several of the houses constituting 457 Mount Auburn

Street, we write to support and share the objections registered by Jillian Bailey and David Teller to the Petition for a Zoning Variance filed by the new owners of 222 Brattle Street." And I would interject that those objections have now been dealt with through the proposal of the Petitioner. But I'll continue. "The Variance requested by the new owners of 222 Brattle Street will significantly reduce the privacy of the residences and gardens of our houses. No. 5 and 6. The year-round residences of the Teller Bailey and Melinda Ponder, P-o-n-d-e-r. The requested Variance would also permit excavations and foundation construction that would change the circulation of groundwater which may harm, may harm our shade trees and hemlocks. All of us have spent money each year to free our hemlock of a Woolly Adelgid."

UNIDENTIFIED MALE: Adelgid.

CONSTANTINE ALEXANDER: Pardon me,
I am arboristically --

BRENDAN SULLIVAN: Challenged.

CONSTANTINE

ALEXANDER: -- Challenged. Thank you,
that's the word. "And infestation. And we
continue to pay for treatment to preserve
these trees' health, which is crucial to the
preservation of our privacy and to
minimization of traffic noise inside and
outside our houses, including on our roof
decks. We understand that the Zoning laws
allow for Variances requested for true
hardships, like the installation of ramps or
special parking places for house owners who
have developed special needs as they grow
older in residences. They have long lived it
and would like to keep. Because the new
owners of 225 Brattle Street have just
purchased the house at this address, knowing
both its square footage and footprint on the

one hand, and the applicable zoning laws on the other, we do not understand how they might imagine the hardship requirement can properly invoked to support the request for a Variance. But thanks for your work."

And I think I've read all the letters. And I'm closing public testimony at this point. I'm getting tired.

Comments from members of the Board.

TAD HEUER: The FAR that's being added and particularly about how the basement is being used both currently and what's proposed?

ATTORNEY ANDREW BRAM: The basement is currently not considered living space.

TAD HEUER: Okay.

ATTORNEY ANDREW BRAM: It's not living space. We're not changing -- we're not changing anything in the basement.

BRENDAN SULLIVAN: There are two additions adds to the basement.

ATTORNEY ANDREW BRAM: Yes, right.
Will have their own basement, yes.

BRENDAN SULLIVAN: But you're
adding an office?

TAD HEUER: Yes, I'm looking at a
basement plan that says office, and other
stuff.

MARK LOUIS SCHMID: What the owners
hope to do and whether they get the additions
or not, they want to renovate the existing
basement because it's unfinished now, and
create some finished storage space and some
additional area for their laundry.

CONSTANTINE ALEXANDER: I want to be
clear on this. The basement now is not seven
feet high it's six feet high?

MARK LOUIS SCHMID: It's --

ELIZABETH ROOSA: It's under seven.

CONSTANTINE ALEXANDER: Therefore,
it doesn't count towards FAR?

ATTORNEY ANDREW BRAM: Correct.

CONSTANTINE ALEXANDER: As part of this addition are you going to increase the height of that basement so that it's now going to become living space?

MARK LOUIS SCHMID: No.

CONSTANTINE ALEXANDER: Isn't it two levels?

MARK LOUIS SCHMID: No, we are going -- well, the new, basements under the new additions if we got them, would be sufficiently, they would have eight feet.

CONSTANTINE ALEXANDER: And there would be steps into the old basement?

MARK LOUIS SCHMID: Correct.

CONSTANTINE ALEXANDER: But you're not changing the height of the ceilings and floor in the old basement?

MARK LOUIS SCHMID: No. We would not change that.

BRENDAN SULLIVAN: But going back to the basement again, there's going to be an

office there, and obviously an entry with new stairway going down. You've got a hall, storage, dressing area, a bath and a laundry. It's a Home Office, it's used in the home owners.

MARK LOUIS SCHMID: Yes. Oh, yeah, this -- the owner has no -- he doesn't have a study or anything upstairs, so he wants some space for his own papers and his files.

WILLITS SAWYER: A workshop, a place to work.

CONSTANTINE ALEXANDER: Anyone else have questions or comments? Ready for a motion.

BRENDAN SULLIVAN: Tad, was your question even answered?

TAD HEUER: Part of my question is how basement FAR was and was not counted. So the addition is entirely, if it's on two levels on the front, correct, the basement on the laundry and bath or at least the bath, but

the laundry and the bath are both accountable as FAR?

ELIZABETH ROOSA: They're over seven feet so they count for FAR.

TAD HEUER: And then the first floor in the front addition obviously counts as FAR obviously?

ATTORNEY ANDREW BRAM: Yes.

TAD HEUER: And then the office addition will count as FAR as will the first floor above and is there a second?

ATTORNEY ANDREW BRAM: There is no second floor. Both of these are now one-story additions.

TAD HEUER: That being the case as of now, does the number that you are asking for for FAR decrease if there's no second story?

ATTORNEY ANDREW BRAM: Yes, it does.

TAD HEUER: And if so, to what?

ATTORNEY ANDREW BRAM: You have to ask the architect.

MARK LOUIS SCHMID: Well, we're adding 660 square feet FAR in the two new additions. We're at --

TAD HEUER: You're at 780.

MARK LOUIS SCHMID: -- 780.

TAD HEUER: And you're now adding the new plans submitted, an additional 660?

MARK LOUIS SCHMID: Correct.

CONSTANTINE ALEXANDER: But of course it's an FAR issue anyway.

TAD HEUER: I just want the form to be right.

ATTORNEY ANDREW BRAM: 3200 square feet.

TAD HEUER: So you're going to 1440.

CONSTANTINE ALEXANDER: Do you approve of Mr. Heuer making a change to your dimensional form?

MARK LOUIS SCHMID: I do.

CONSTANTINE ALEXANDER: Thank you. Further comments, questions?

ATTORNEY ANDREW BRAM: May I ask one thing before you frame your motion to vote? Not knowing how the Board is going to vote on the additions, I would like to framed in two parts.

CONSTANTINE ALEXANDER: Thank you. I plan to do that anyway.

ATTORNEY ANDREW BRAM: Thank you.

CONSTANTINE ALEXANDER: Are we ready for a vote or votes I should say?

TAD HEUER: Could you just go over, I know the Chairman stated it several times, but your position as to hardship just because there are a number of people in the audience who are also requesting to get a sense of where the hardship is versus the standard that we have to decide upon. If you can elaborate that in your own terms.

ATTORNEY ANDREW BRAM: I think it is, as I said before, it's very simple and straight forward. Under the statute,

hardship can be owing to the size of the structure on the lot or its location on the lot. Both of those words are used in the statute. In this particular case you have a small house that was actually not a house. It was built as a stable. And it was put in the corner of the lot as was the custom back in the mid-19th century when this type of structure was built. It would be today for someone living in this house be impractical to move that house to a different location on the lot. If it were easily movable, then these additions could be made conforming additions because the required relief is the setback. So if the house were moved closer to the center of the lot, both of these additions would be made as conforming additions. But we've come to the Board asking that something as impractical of picking this house up and moving it to build these additions --

CONSTANTINE ALEXANDER: I'm sorry, I don't think you're addressing Mr. Heuer's point. The Variance requires that you have a substantial hardship and it's owing to special circumstances. You've addressed the second point, special set of circumstances. The first point, the hardship, I'm not sure you addressed right now. Why don't you address it again? What's the hardship? We'll accept, assume the special circumstances; shape of blocks, non-conforming lot, too close to lot line. What is the hardship?

ATTORNEY ANDREW BRAM: The hardship is to have a converted stable to be used as living space in modern times by two people that has again historically been used as explained in the earlier remarks this was used by one person for over 50 years. It's an old structure. It needs to be modernized, and it would be a hardship effectively

depriving these people of the use of their property as a resident in Cambridge.

They're not allowed to construct an addition for additional living space to make this a workable house for two people.

TAD HEUER: So here's, and I'll just engage on that question. So I live in an apartment that's maybe 1,000 square feet for me and my wife. It seems to be not huge, but accompanying to our needs. There are hundreds, if not thousands of apartments in Cambridge that are, you know, lived in quite happily about the size of, you know, a thousand square feet, plus or minus. There's a huge market for them. The real estate market in Cambridge hasn't exactly died down in the recession. I guess I have an additional question as to why, although maybe 780 square feet is small, 1500 square feet moves this from a small structure into a structure larger than many structures in

Cambridge that people live in quite happily.
Why --

CONSTANTINE ALEXANDER: Or a different point, if the structure is too small now, move to another building, to another house that it gives you more room. You can live in a 780 foot structure. Eleanor Apple did it for many years.

ATTORNEY ANDREW BRAM: Eleanor Apple was -- right, she did. She was a single woman who was a bit of a recluse who did it.

CONSTANTINE ALEXANDER: She was a director of placement at Harvard Law School when I went to Harvard Law School.

ATTORNEY ANDREW BRAM: Your later years perhaps, because she's been a recluse.

And, again, to Mr. Heuer's point, yes, there are certainly any number of apartments in Cambridge that are a thousand feet or some smaller, some larger. And as he's said, many people live in them. I don't think that's

the case with single-family homes. I would say most of the single-family homes in Cambridge are on their lot are considerably larger than not just 780 feet. Or even 1500 or 1400 feet. I think that was the difference between living in an apartment which has common space as part of an apartment building and other amenities, and the actual living space in this house. So this is a very small house for -- it is a very small house for a single-family in Cambridge. And I understand that there's some concern here because this is being challenged by a number of neighbors. But I have been before this Board and I have sat on cases where this type of addition has been routinely approved by this Board when it is, you know, needed to increased living space or to modernize an old structure.

CONSTANTINE ALEXANDER: We do it in the context of the nature of the relief being

sought. How extensive it is, and the context of the impact on neighbors' properties. So the fact that we've done it for other small houses is not precedent.

ATTORNEY ANDREW BRAM: I agree. And that's my point. The two houses most impacted by this are the one in front of us and the one in back of us. They had concerns and we addressed those concerns. Other concerns raised by neighbors are at best highly speculative. Raising the water table. Damaging trees that are considerably away from our addition. A lot of speculation, fear without evidence.

TAD HEUER: To a certain extent I think I agree with Mr. Bram on that point. That at least the issues that have come before us, particularly the trees and the parking, I think I'd say they're more meritorious than perhaps the Petitioner's would, but I would agree with the Chairman, certainly that

they're really not within our ambit. We, although it might be nice to style this all powerful Board, but we're not. There are other agencies and other recourse for people to take if these kinds of issues come up and they have those issues with the Petitioner. So, while the neighbor issues aren't necessarily those that I'm worried about, and I would also say that the concessions and the agreements that you've been able to reach since the original filing are viable and very useful, that kind of eliminates for me the negative side of the ledger. But there's still an affirmative case that the Petitioners need to make even if no one were sitting in the audience why it's a hardship, and I think that's what I'm working with. I don't need to really hear any more about the concerns. I'm looking more for the affirmative case for the Petitioners that would be in front of us

regardless of who is opposed.

TIM HUGHES: Mr. Bram makes a point too, that the Board has traditionally given Variances of modest additions, which this is. It still only amounts to less than 0.28 in the zone. It does double the size of it, but it's still only 1500 square feet, and that's a small house. That's still a small house. And we have suggested hardship. The hardship in being able to add on to this house is basically its placement on the lot. Mr. Bram says if the thing was in the center of the lot, not only wouldn't they have to prove hardship and the hardship to build it because it's in a setback, it wouldn't be in a setback. They could built it as a matter of right. Certainly they could build up to 2500 square feet on this lot if it was positioned in the center of the lot. The hardship is the placement of the building on the lot which is, you know, they're new

owners, but the zoning is what created this hardship by creating the zoning district around houses in and around Cambridge that, you know, can't be moved. So, I think basically it's a modest request for an increase. And, you know, it is -- it may not be a hardship for you to live 1,000 square feet but it may be a hardship for them to live in 780 square feet especially if there are specifically needs to have some kind of creative outlet or a place, an office to work in and stuff. And, you know, it's like, 1500 square feet's not a lot. They're not asking for a lot here. And they're bending over backwards to appease the people that have the biggest complaints.

CONSTANTINE ALEXANDER: And I want to endorse on what you're saying, Tim, and weigh in a little bit. I think there is hardship. The hardship is here is close. Frankly I think it's close. You made a very

good point to me anyway, is that we're talking about a single-family house. It's not an apartment. So the amount of square footage is important. I think we're doing a service to the City of Cambridge if we're creating more single-family homes that are inhabitable by a lot more people than a 760 foot home which probably only be one or perhaps two persons.

But I think the key, though, is the fact of the conditions that you've agreed to. I think the fact of the matter is that although it's a close case on hardship, I am persuaded with the conditions that we're going to ameliorate to neighboring properties to make sure there are still some risks involved. I well understand the concerns of neighbors regarding the trees, but I do think we will, with the conditions, minimize the impact of this addition in terms of in part from our Zoning By-Laws. And I think we are going to

improve the housing stock in the City of Cambridge. So I would propose to support this proposal when we come to a vote.

Anyway, other members can speak to it or I can just take the vote. You two on this side haven't spoken yet. You don't have to. Ready to take a vote.

BRENDAN SULLIVAN: I guess a little technical issue, how do we come up with 1440 on the square footage, and I don't want to waste a whole lot of time on this, but is this where the office is going and then obviously in the first floor. We're going 12 by 15 foot nine and a half; is that correct?

MARK LOUIS SCHMID: That's right. With the office. The west addition.

BRENDAN SULLIVAN: That's correct. So that number is correct.

And then we're doing where the laundry is and then the subsequent dining room 16, 3 by 8 foot 6?

MARK LOUIS SCHMID: Correct.

BRENDAN SULLIVAN: Those two numbers. What else figures into FAR or is that it?

MARK LOUIS SCHMID: That's it.

BRENDAN SULLIVAN: Those are the only two things that comprise at 1440?

ATTORNEY ANDREW BRAM: This is also the basement.

MARK LOUIS SCHMID: Well, the 1440 is not the new -- the 660 which was the new -- the 1440 was the total.

BRENDAN SULLIVAN: That's correct, in total of the house. But those are the additions?

MARK LOUIS SCHMID: Yes.

BRENDAN SULLIVAN: The area underneath the stoop, again, it's technical but to get the numbers right, the area under there has to be counted, and then also the area under the entrance into the basement. A

covered area that has to be covered, too. So those numbers need to be -- it's not going to change much, but --

CONSTANTINE ALEXANDER: And when I make my motion, one of the conditions I'm going to suggest --

BRENDAN SULLIVAN: This thing needs to be updated.

CONSTANTINE ALEXANDER: Right. The dimensional form needs to be updated to reflect the actual square footage that you're seeking to be accurate.

MARK LOUIS SCHMID: Okay. No, that's a good point. We'll recompute it.

BRENDAN SULLIVAN: It's a legal document and it should be correct for your protection and your client's protection.

CONSTANTINE ALEXANDER: Are we ready for a vote?

The Chair moves that we make the following findings with respect to the lot

itself:

That a literal enforcement of the division of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that they would be left with a lot that's legally non-conforming and a lot that for 50 years has been legally non-conforming, and nothing would be served by creating an illegal lot where everyone in the community is believed to be illegal for the last 50 or so years.

That the hardship is owing to circumstances relating to basically the shape of the lot. The lot is such when it was created, is that it could not have street frontage as required by our Zoning By-Law. And this frontage was attempted to be achieved for this easement and right of way.

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, all we would be doing is legally after the fact endorsing or validating what has been practically the case for the last 50 or so years.

So on the basis of the foregoing, I move that a Variance be granted to the Petitioner to allow this lot 5,009 square feet lot with a right of way to Brattle Street that does not comply with the frontage requirements of our Zoning By-Law.

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

BRENDAN SULLIVAN: Oh, you're putting in conditions?

CONSTANTINE ALEXANDER: Well, the conditions I think should be on the structure itself.

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. That Variance has been granted.

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

CONSTANTINE ALEXANDER: Let's go to
the next one.

The Chair proposes that the Board make
the following findings:

Now we're talking about the proposed
additions, the two additions. As modified
in and as reflected in the plans that are
submitted tonight and which I will identify
later in my motion.

That a literal enforcement of the
provisions of the Ordinance would involve a
substantial involvement Petitioner. Such
hardship being that the Petitioner is now
faced with a residential home of only
approximately 760 square feet. And for a
single-family home it is not a suitable
amount of living space.

That the hardship is due to
circumstances relating to the shape and

topography of the land and structures. We are talking about a non-conforming lot, a non-conforming structure. A structure that was built long before zoning, and was built as a carriage house over the course of the years has become a residence.

And relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of this Ordinance. Subject to the conditions, which are going to be substantial, that we're going to impose which we believe accomplishes what the Zoning By-Laws intends to accomplish with respect to their restrictions that we have. That the ultimate result would be a more usable and marketable in the sense of creating the benefit for the citizens of Cambridge. Not just the marketability of your structure. But a single-family structure that is more consistent with the necessary living needs of

people who occupy single-family homes.

On the basis of this and subject to the following conditions I move that we grant the Variance. The Variance would be granted subject to the following conditions:

First, that the work proceed in accordance with the revised plans submitted by the Petitioner. They are prepared by Dewing, D-e-w-i-n-g and Schmid, S-c-h-m-i-d Architects. They are dated 7/22/2010. They're numbered A.2.1, A.2.2, A.2.3, A.2.4. And also attached to them is a site plan prepared by Everett and Brooks. The most recent date is May 26, 2010. This plan shows the footprint of the proposed additions. And further subject to the conditions in compliance to the plans submitted by the Petitioner numbered EX1-1, EX1-2, EX1-3, A1-1, A1-2, A1-3, first page has been initialed by the Chair.

Let me just interject at this point for

the benefit of the people in the audience. What this means, assuming the rest of the conditions go unopposed, assuming the vote gets carried, is that the work has to comply with these revised plans. And if they don't, these are the final plans, you're going to have to come back before us and face the wrath of your neighbors. This is it. Okay? Understood?

MARK LOUIS SCHMID: Understood.

CONSTANTINE ALEXANDER: That's one condition.

On the further condition that no portion of the lot in question is to be paved, covered with pavers or otherwise turned into a parking area at any time, now or in the future, except that with regard to this condition that you may repave the current parking area and that you can use the two spaces, but no more than those two spaces that are currently designated on the property.

That the grade, another condition, the third condition, the grade of the property will not be raised in any way at any time, nor is the slope between any part of the property in question and the abutter at 225 Brattle Street be increased now or in the future.

ATTORNEY STEVEN CLARK: Excuse me.

ATTORNEY ANDREW BRAM: The grade technically because of this retaining wall, we are going to grade to prevent the water runoff, the grade in the back is going to be raised. Right now there's a slope that goes down.

ATTORNEY STEVEN CLARK: This is what we talked about.

CONSTANTINE ALEXANDER: Okay, thank you.

With regard to this condition, except that you may modify the grade in connection with the retaining walls that I'm going to further condition when we get there.

Next condition, that the addition is to have no windows facing the property at 220 Brattle Street that are transparent. The windows can only be, and there will be one per the plans will be the such that they'll be opaque or otherwise.

TIM HUGHES: Facing the other property.

CONSTANTINE ALEXANDER: You're right. Facing the other property.

ATTORNEY ANDREW BRAM: 457 Mount Auburn Street.

CONSTANTINE ALEXANDER: Thank you. The windows facing 457 Mount Auburn Street, which would be one and only one would not be transparent, it would be opaque in one fashion or another. All the hands now down?

ATTORNEY STEVEN CLARK: Yes.

CONSTANTINE ALEXANDER: Okay.

Next condition will be they will not build any retaining wall or any other

structure along the existing fence line, or if they do build a retaining wall, the space between the wall and the fence will be filled with one inch to two inch stones, four inches deep in order to ameliorate runoff. And further, that you will other take action that are reasonable in nature to ameliorate runoff including the destruction of dry wells.

Next condition would have dealt with the configuration of the basement entrance not to be changed as proposed. But since you're tied to these plans, you can't do that anyway.

Further that the fence along the property line between the property in question at 457 Mount Auburn Street be maintained at least in its current size and nature. In other words, no chain link fence. No 20-foot high spy fence. It will be roughly the same size and nature as you have right now.

And I think I covered everything else.
Did I miss anything?

On the basis of these conditions, I
propose that the Variance be granted. All
those in favor say "Aye."

(Aye.)

(Alexander, Hughes, Sullivan,
Scott.)

CONSTANTINE ALEXANDER: One
opposed.

TAD HEUER: Opposed.

CONSTANTINE ALEXANDER: One
further -- I'm sorry. The further condition
to the Variance is that the dimensional form
that has been submitted by the Petitioner be
revised to reflect the true FAR.

Thank you.

(11:20 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9964, 35 Gorham Street. Is there anyone here wishing to be heard on this?

For the record.

MARK BOYES-WATSON: Mark Boyes-Watson for Boyes-Watson Architects, 30 Bows Street, Somerville.

ROSS HOFFMAN: And I am Ross Hoffman. I now live at 47 Archwood Drive in Cambridge. I am the owner.

MARK BOYES-WATSON: So, this is an

existing non-conforming house on Gorham Street and it's slightly complicated in the relief requested, but not so complicated in some ways of what's being done.

Fundamentally the renovations are contained within the building envelope, but the two side yard setbacks; rear yard setback and front yard setback are all non-conforming as existing. So, what this house has to sort of undergo sort of a renovation. And so as part of that renovation is the addition of windows.

CONSTANTINE ALEXANDER: That's a Special Permit.

MARK BOYES-WATSON: Just do the variances first.

So the variances are to with the addition of the stoops because it's sort of little things so that down on the first floor, there is an existing rear stoop but we're actually changing from a single door to a

French door so the stoop configuration changes. And because that's an existing non-conforming facade, the reconfiguration of that stoop requires a Variance. The ingress -- the addition of the egress from this unit --

ROSS HOFFMAN: I have two neighbors that maybe they can sit behind.

CONSTANTINE ALEXANDER: I've said to other people feel free to move behind us.

MARK BOYES-WATSON: So there's an actually an existing driveway, right? So actually -- so, this stoop is non-existing, non-conforming. We get to the smallest. Again, it's a stoop but it's in the side yard setback. It then relates to another part of the Variance which is right now, there's a driveway down this side. And actually it goes to the bay. The bay is already -- and actually there's a garage in the back which we can talk about in a minute of the lot. And

actually there's a point here where there's only about seven foot, six. So you can't, you can't really get to the garage without going on the neighbor's property. But actually -- so what I'm trying to say is that there was always a car parked here, and actually when we put the stoop in, there's backup space less than on the property. We don't need a backup space really.

CONSTANTINE ALEXANDER: I don't understand. There's nothing -- in your application you talk about parking backup.

MARK BOYES-WATSON: But you don't need it.

CONSTANTINE ALEXANDER: I don't see anything in your materials that suggest it.

MARK BOYES-WATSON: Actually, all you need is the parking space and then being outside the front yard setback which we are. I don't think --

CONSTANTINE ALEXANDER: Parking.

MARK BOYES-WATSON: Parking's fine.
I don't think the stoop affects that.

Then up on the third floor --

CONSTANTINE ALEXANDER: The dormer.

MARK BOYES-WATSON: The dormer.

We're actually eliminating the cover on this, on this back thing, which is actually floor area. There's actually more floor area here than there is on the slight widening of this dormer, but you're not allowed to relocate a non-conforming FAR, so we're just asking for permission to widen this dormer.

There is something which is not in the application, and I'm not sure either that this requires -- because it came in last minute. We were worrying about this garage. There's a garage back here that right now attaches to the house. And because you can't get there, we don't need a garage. What we need is somewhere to put the bicycles and a baby carriage and whatever it is. So what

we've done is curtailed the -- removed the attachment of the garage and just create, you know, two sort of storage areas in the existing garage.

CONSTANTINE ALEXANDER: Let me stop you right there. If you need zoning relief, you can't get it tonight from us because that wasn't advertised.

MARK BOYES-WATSON: And I don't think we do.

CONSTANTINE ALEXANDER: Unless you think you need to work that out with Sean.

MARK BOYES-WATSON: We can ask your opinion because if you couldn't get there -- it was always used for storage.

CONSTANTINE ALEXANDER: I am not giving you my opinion. We don't give advisory opinions.

MARK BOYES-WATSON: So, okay. We'll wait for that.

CONSTANTINE ALEXANDER: You work

that out.

MARK BOYES-WATSON: So, we don't need to talk about that. In which case the overall reduction -- there is actually a slight reduction in the floor area of this building.

CONSTANTINE ALEXANDER: Now, let me ask you a question. If you look at the plans, it looks like you're enclosing the front end to the looks like the front porch?

TAD HEUER: (Inaudible.)

MARK BOYES-WATSON: Actually it is. Because --

CONSTANTINE ALEXANDER: That's my question. Do you need a Variance for that or do you need a Special Permit for that?

MARK BOYES-WATSON: I believe because it's in the front yard setback, we need -- is that a Variance?

SEAN O'GRADY: What piece are we doing?

MARK BOYES-WATSON: The front porch.

SEAN O'GRADY: You want to enclose it?

MARK BOYES-WATSON: Yes.

SEAN O'GRADY: Special Permit to enclose a porch in the setback.

MARK BOYES-WATSON: So, yes, we're enclosing part of it. This part is remaining open, this part. So I think the Variance, the two stoops. This is out. There's not a parking issue and then the dormer here.

CONSTANTINE ALEXANDER: Now, let's turn to the Special Permit. What exactly are you going to need on that?

MARK BOYES-WATSON: Right. So the Special Permit --

CONSTANTINE ALEXANDER: We know about the enclosure of the front porch.

MARK BOYES-WATSON: Right. So the Special Permit issue. These skylights are

in the setbacks. There are some window changes. So I've tried to flag them, and I can flag the elevations if it's clearer, too. There's a new window here (indicating). A new window here (indicating). This fenestration, and I'll show you on the elevation, slightly changed. This is changed from a window to a door (indicating). These are high windows (indicating). This one -- I'll show you on the elevation. These are slightly modified.

CONSTANTINE ALEXANDER: Show us on the elevation.

MARK BOYES-WATSON: Let me just see. That's a changed window (indicating). That's in a non-conforming rear yard setback.

So just going through -- side yard. The window is here (indicating), changed. These windows short. Actually, that doesn't require relief. So that's new. Here (indicating).

CONSTANTINE ALEXANDER: Yes.

MARK BOYES-WATSON: Right?

CONSTANTINE ALEXANDER: Have you talked to the neighbors that are most affected by that change? You're obviously going to change how you look at the neighbor's property.

ROSS HOFFMAN: I did try to talk to the neighbor on which side are you talking about?

MARK BOYES-WATSON: This one is your right side neighbor.

ROSS HOFFMAN: Yes. I engaged her a few times, but she didn't really want to talk further. She had some concerns about construction, but she thought that whatever I would do would improve the property.

CONSTANTINE ALEXANDER: You did reach out?

ROSS HOFFMAN: Yes.

MARK BOYES-WATSON: From the rear

yard this is where that existing door is from its cover, so that's the new French door you can see there's less windows here and more windows here (indicating). There's those same three windows, but up here we're adding one in between. Over on the left side setback there's that new exit from that bay and the stoop. The existing window. So this is the change with the window here and the high window here.

CONSTANTINE ALEXANDER: And what about the neighbor on that side?

CATHY LEE: That's us. So we're seeing this for the first time. I didn't realize that there was going to be a change in the door.

MARK BOYES-WATSON: And so although actually it's not relevant for the Variance. The idea here is also that the driveway goes all the way to the garage right now, although open space doesn't really figure here because

it's existing non-conforming and increasing open space. We're actually shortening that driveway so it stops just before the bay. So it stops before this bay. So that then it's green space from there.

CONSTANTINE ALEXANDER: You're going to pull up the pavement?

MARK BOYES-WATSON: Yes.

TAD HEUER: You don't hear that too often.

MARK BOYES-WATSON: We try to do that as often as we can. And really truthfully it may become relevant just between us, you can't get back there. It's only seven foot six from the tip of that bay to the property line. Because the driveway --

CONSTANTINE ALEXANDER: And the shortened driveway was not going to create issues with the front yard?

MARK BOYES-WATSON: No.

CONSTANTINE ALEXANDER: But you follow? Since you're seeing it for the first time.

CATHY LEE: I mean, is the driveway used by both sides? Because Michael kind of pulls over to the left.

ROSS HOFFMAN: We're only talking about the half of the driveway.

CATHY LEE: And they shared the driveway.

ROSS HOFFMAN: But that part of the driveway will continue to exist near the street.

CATHY LEE: Uh-huh. But I mean they pulled up closer, too. But I think it was too narrow?

MARK BOYES-WATSON: No, it's --

ROSS HOFFMAN: The parking in the street is wide enough to park fairly comfortable.

CATHY LEE: Oh, I see. It was too

narrow towards.

ROSS HOFFMAN: It gets narrower because the building comes to a point in the middle of the driveway there.

CATHY LEE: I see.

ROSS HOFFMAN: So, we've gotten along well so far, but we're not going to change it.

MARK BOYES-WATSON: It's this configuration. There's that little pitch point right there (indicating).

CATHY LEE: Uh-huh.

MARK BOYES-WATSON: So, I guess the one thing I didn't get to is the front facade also. Actually, the front facade is existing non-conforming as facing the street, so it actually doesn't require relief. But I just wanted to show you the front porch. So here's the front porch now, and there's the front porch that's proposed.

CATHY LEE: I see.

CONSTANTINE ALEXANDER: What did you say about the front yard doesn't require relief?

MARK BOYES-WATSON: If you're allowed to change windows on the front side of a facade even if it's not non-conforming.

CONSTANTINE ALEXANDER: That true?

SEAN O'GRADY: Yes.

TAD HEUER: And the skylights.

MARK BOYES-WATSON: Yes, the skylights, we'll get back to them.

TAD HEUER: Those are in setback?

MARK BOYES-WATSON: They're in the setback. It's a C-1 zone that's accumulative setback. It's not like Res B. This house is non-conforming.

CONSTANTINE ALEXANDER: That's the point to the question.

CATHY LEE: Will that door on our side, would that be a secondary exit?

MARK BOYES-WATSON: Yes.

CATHY LEE: So their main entrance would be on the front?

ROSS HOFFMAN: Where it exists now.

CATHY LEE: Just access to the storage?

MARK BOYES-WATSON: Yes.

CATHY LEE: And the little side yard?

MARK BOYES-WATSON: Exactly. And the little side yard.

ROSS HOFFMAN: And the back unit will have an entrance on the other side where there's currently a side yard.

CATHY LEE: Where the mail is?

MARK BOYES-WATSON: Those are the Special Permit. That's it.

CONSTANTINE ALEXANDER: Okay.

Questions at this point from members of the Board? No questions.

Is there anyone here wishing to be heard on this? Do you want to speak? You do don't

have to but you have an opportunity.

HARVEY KIMSEY: I don't think we have any major.

THE STENOGRAPHER: I do need you to identify yourselves.

HARVEY KIMSEY: Cathy Lee, L-e-e and Harvey Kimsey, K-i-m-s-e-y.

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

(No response.)

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

We do have a letter in the file. It is from a Werner Low. W-e-r-n-e-r Low, L-o-w. And Dianne, D-i-a-n-n-e DesRoches, D-e-s-R-o-c-h-e-s. It's addressed to us dated July 3rd. "Regarding the petition submitted for 35 Gorham Street. We are opposed to the Variance." And there's no reasons stated.

Anything more you want to add to it?

ROSS HOFFMAN: I know who they are. I know a they are on Wendell Street.

CONSTANTINE ALEXANDER: 56 Wendell Street. Although I looked on the Assessor's map, I couldn't find it. However I found 54 and 58.

ROSS HOFFMAN: Mark, it's the property you renovated a few years ago.

MARK BOYES-WATSON: Oh, it is?

ROSS HOFFMAN: It's that three-family where you put the basement parking.

MARK BOYES-WATSON: So it's about here.

CONSTANTINE ALEXANDER: That's the sum and substance of the public testimony. Close public testimony.

Comments, questions from members of the Board or do we go to a vote?

TAD HEUER: I have just one. I don't have any problem with any of the

arrangement. The windows, my concern is with the closure of the front porch and the fact that it masses the front of the building as I think I'm concerned with the front porch, but particularly where this one is A, in a non-enclosed porch where there's a sight line.

MARK BOYES-WATSON: The interesting thing about this one is I mentioned when we started, we didn't realize. I just want to speak to this issue. The -- when we first got here, we didn't have the old survey that we had showed it actually entirely. It's eight foot six, 8.6 feet so we're allowed to enclose up to -- we should be a foot back. We're allowed to enclose by right everything except for the last 1.4 feet.

TAD HEUER: Right.

MARK BOYES-WATSON: The thing is about the way that these interior layouts work and actually I thought we -- I didn't

think we were going to be here, but the layout really benefits the 1.4 if you look at the plan. It's close. So it's -- and we don't enclose the whole porch. We're partially enclosing the porch. We are trying to keep the articulation, if you look at the elevation, the articulation that has the quality of the porch.

TAD HEUER: So you're enclosing the left side --

MARK BOYES-WATSON: Well, actually as you face it from the street, the left side and there's still an open stoop, porch to get into the front door on the right side.

TAD HEUER: So, are you enclosing it, you're enclosing it across the front?

MARK BOYES-WATSON: Yes, across the front, but not all. But I understand your point. But I just -- so okay, so this, this is the enclosure. There's the open part. So this is still open. And we're enclosing

here. Right?

TAD HEUER: Right.

MARK BOYES-WATSON: We're allowed to enclose everything except for that last 1.4 feet.

TAD HEUER: (Indicating.)

MARK BOYES-WATSON: Yes.

So -- which I think it adjusts, you know, I would say, you know, if you, you know, if the Board really feels that it's an impact on the street, you can pull that back. It does negatively impact the way the interior configuration works, so it's much better as proposed. But that's -- it's not that, because we're entitled to go but not all the way.

TAD HEUER: But going all the way -- going as far as you wish wouldn't give you anything that you wanted, right?

MARK BOYES-WATSON: Just do that again.

TAD HEUER: As far as you're allowed wouldn't give you anything that you wanted?

MARK BOYES-WATSON: The problem that we have is that, you know, it's delicate on these things in terms of the size of it of the first floor.

ROSS HOFFMAN: There's also a glass wall on side of this porch.

MARK BOYES-WATSON: Existing. But only on one. What happens right now it's actually an interesting porch. That lattice, it's latticed off in the front of the plane right now. And we're actually going to remove that piece of cross on that. I guess we haven't really talked about that. On this side. It's actually still shown here.

So, this side's already got a piece of glass all the way to the line that's glazed in. And that lattice is sort of there. It's still a porch now, so there's a question there.

TAD HEUER: So the only thing you're enclosing is the last wall.

MARK BOYES-WATSON: Yeah. But we actually have to open that up. Our intention is to have an open stoop there as you first come into the house.

CONSTANTINE ALEXANDER: Does anyone else want to share Tad's concern with regard to the front? I only say that because I guess in framing the motion, I don't want to frame it to give you the Special Permit if you don't have the votes for everything you want to do, to put it exactly goes down the tubes.

MARK BOYES-WATSON: Exactly.

CONSTANTINE ALEXANDER: When it comes to framing the motion, how do you want me to frame it or how do you want to present to Mr. Boyes-Watson about the enclosure in the front? Myself, I can live with it. I think the impact in that neighborhood is minimal. It's not like enclosing the front

deck making a three-decker house as a front yard porches.

THOMAS SCOTT: I'm okay with it, too. I think architecturally you've tried to keep some of the character of the house, move it onto that enclosed portion.

MARK BOYES-WATSON: Right, exactly.

THOMAS SCOTT: I think architecturally it works.

CONSTANTINE ALEXANDER: Is there anyone else? Not to put anybody on the spot, but I don't want to throw out the baby with the bath water when we come to the motion.

BRENDAN SULLIVAN: I think you're okay.

TIM HUGHES: I'm good with it.

CONSTANTINE ALEXANDER: Okay.

Comments for members of the Board or we ready for a vote. Ready for a vote.

We have two votes, one involving a Variance and one involving a Special Permit.

With regard to the Variance, the Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being as that a reconfiguration of the entranceways would be prohibited without, the relief we're granting, and that the hardship would be that the structure would be less usable or functionally usable and would be the case if we grant relief.

The hardship is owing to circumstances relating to the shape of the structure as a non-conforming structure. And any relief regarding steps would require zoning relief.

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

The Variance requested in fact is

modest in nature. Relocating certain steps, and in some respects we're going to get a corresponding benefit and increasing green space from the property because you're going to shrink the amount of paved area of the driveway.

So on the basis the Chair moves that a Variance be granted the Petitioner on the condition that work proceed in accordance with the plans submitted by the Petitioner. They're three page in length as prepared by Boyes-Watson Architects. They're dated -- it doesn't have a date on it. Oh, yes, they do. 6/16/10. They're numbered 01, 02 and 03 all of which have been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: Next we'll
turn to the Special Permit.

The Chair moves that the Board make the
following findings with respect to the
proposed relocation of windows and doors.

That the traffic generated or patterns
of the access or egress will not cause
congestion, hazard or substantial change in
established neighborhood character. It is
self-evident they're just changing windows
and doors. Maybe not doors, but windows
certainly that don't affect traffic patterns
or don't cause congestion, hazard or
substantial change.

That the continued operation of
adjacent uses would not be adversely affected
by what is proposed. To some extent that is
witnessed by the fact that there are no
neighbors who express an objection, abutting

neighbors who would be most affected by these changes, the window and door changes.

That no nuisance or hazard would be created to the detriment of the health, safety and welfare of the occupant or the citizens of the city. By definition, the windows are not going to create health issues or safety issues.

And that the proposed use would not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purpose of this Ordinance. In fact, this Ordinance desires within the limits of the Zoning Ordinance and improvements and enhancements of properties and this would in fact accomplish that.

A Special Permit would be granted on the condition that the work proceed in accordance with the plans submitted by the Petitioner prepared by Mark Boyes-Watson Architects. They are numbered 01, 02 and 03 all of which

have been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Scott.)

CONSTANTINE ALEXANDER: Opposed?

TAD HEUER: Opposed.

CONSTANTINE ALEXANDER: Motion granted. Good luck.

(11:45 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9965, 120-122-124-126 Webster Avenue. You're seeking a Variance?

ATTORNEY SEAN HOPE: Good evening. Sean Hope, I'm here tonight with two family members.

TERESA SAVIOLI: Teresa, T-e-r-e-s-a Savioli, S-a-v-i-o-l-i, 1000 East Porter Road, Malden.

CHRISTINA RUDA: Christina Ruda (phonetic), at Three James Way, Cambridge,

Mass.

TAD HEUER: Thanks for staying up.

ATTORNEY SEAN HOPE: We are requesting a Variance to reclassify 122 to 126 Webster Ave. located in a C-1 District. It was constructed as a four-family and we'd like to return it to the four-family classification. I briefly think -- I'll give you a brief history of the property and its use and I'll give you some context.

Their father, Mr. Charles Shuman, was the patriarch of the family and he is now deceased raised 15 children at the Webster Ave. property. Throughout the history of living there and as the family grew, they originally used the one unit and rented out the other three. I wouldn't actually say rented because I believe it was extended family as well as other occupants in the other units. With 15 children as the amount of children grew, they actually extended into

other units. They did keep separate units, I believe it was for grandparents at first. As the 15 children grew older, and it's traditional in certain areas in old Cambridge, they actually stayed in the second unit and actually helped watch Charles Shuman as he got older.

CONSTANTINE ALEXANDER: You did it by what, tearing down the walls, the interior walls? The exterior didn't change.

ATTORNEY SEAN HOPE: The exterior didn't change at all. And that was one of the key elements, there were four doors, four egresses, four kitchens and separate utilities and that's remained unchanged. There was some walls opened up to allow for access. They were a family. It can be said that there also were possibly even more than four households depending on how you determined it, but they were all family there, and they had all lived there.

The reason why we're here tonight is between 2000 and 2002 there was a change by the city's tax collector's office where the property was classified as a two-family for tax purposes. When we look back through the history, Mr. Shuman has now passed away, but we determined that due to taking some bad advice and financial hardship there was a petition and determination that the property could be assessed as a two-family. I'm sure as the Board is aware, the assessment doesn't create legal units. For example, if you have an attic or a basement, they can assess it as such but it doesn't create (inaudible). I would say in this case because of the four-family characteristics have remained unchanged and that you have the four egresses, that that classification shouldn't be dispositive in this case.

The hardship is really to deal with the preexisting non-conforming nature of the

structure on a corner lot, and the fact with 15 children it made sense for them that if they wanted to stay in that property, that they did extend into other units.

Currently now there are three family members living in essentially three households with one empty unit. If you pull the building jacket at Inspectional Services, there's never been any permit being pulled. So, the property is in great need of repair. I would like to point out again that I think it's important that the abutters that are neighbors and friendly friends of the Shuman family have not opposed. There's letters of support as well as the 15 -- there are 15 children, there are several heirs that are involved, so this is really about settling the estate in the proper way.

CONSTANTINE ALEXANDER: If we were to grant relief, are you planning to sell the structure? In other words, if we grant

relief, you'll now a legal two-family.

What's going to happen?

ATTORNEY SEAN HOPE: Four family.

CONSTANTINE ALEXANDER: I'm sorry,
four-family.

ATTORNEY SEAN HOPE: There is a potential to sell the property, but also with 15 heirs, they all have to be in agreement. So, even if all, you know, if they actually wanted to move back in and use each of the legal units, they would need to do it. So, this is really about preserving what, you know, Mr. Shuman had really bought when he had it. And really but for that change, and also this was Mr. Shuman was late in his life, you know, I believe there was some advice that hey, you can go down to the assessment and figure some of that out. Needless to say, you know, he has passed and now you have 15 heirs really trying to figure out the best possible way to settle the estate.

CONSTANTINE ALEXANDER: We need to deal with the technical issues. Exactly what are you seeking a Variance for? As a matter of fact, under Section 5.26 as a matter of right, you can convert this structure from a four-family to a two-family provided you meet four conditions. Under the four conditions do you meet any of them right now?

ATTORNEY SEAN HOPE: We're not looking to convert to a two-family.

CONSTANTINE ALEXANDER: I'm sorry, four-family. Either way you can do it as a matter of right if you can satisfy the four conditions, possibly six, which of those five are you not satisfied?

ATTORNEY SEAN HOPE: Well, and I would actually argue that we -- the property has never been legally turned into a two-family.

CONSTANTINE ALEXANDER: Then you don't need a Variance. Are you seeking an

appeal?

ATTORNEY SEAN HOPE: Well, it was the -- no, not seeking an appeal, but it was the determination by Inspectional Services based on the assessment that -- so I guess we're here tonight to reclassify it because there is some debate on whether or not it is a four-family. So, if you go to the Inspectional Services and you pull the jacket, it's still the same four-family.

CONSTANTINE ALEXANDER: You're seeking a Variance tonight.

ATTORNEY SEAN HOPE: Right.

CONSTANTINE ALEXANDER: I want to know what are you varying from the Zoning By-law? Because as a matter of right, you could have a four-family in this district.

ATTORNEY SEAN HOPE: Right.

CONSTANTINE ALEXANDER: And as a matter of right, you can convert a two-family into a four-family. That's 5.26.

ATTORNEY SEAN HOPE: It's dimensional non-conforming so actually to convert it to a four-family, you know, the setbacks aren't there. We're over the FAR.

CONSTANTINE ALEXANDER: You don't need parking. You need four parking spaces.

ATTORNEY SEAN HOPE: Exactly. Lot unit per dwelling unit right now is, you know --

CONSTANTINE ALEXANDER: So you don't meet any of the requirements.

ATTORNEY SEAN HOPE: Because the footprint remains unchanged, we're not asking to do anything to the footprint except o just reclassify it as a four-family.

CONSTANTINE ALEXANDER: Questions from members of the Board?

BRENDAN SULLIVAN: The essence of this is somewhat akin to somebody who buys two properties side by side and it becomes inadvertently a merger. And this was

inadvertently, because to allow little better access and flow and interaction with family members, it was inadvertently reduced from af our to a two. Through no action of theirs or no intention of theirs --

CONSTANTINE ALEXANDER: Well, actions but no intention.

BRENDAN SULLIVAN: No intentions or purposeful.

TAD HEUER: So, I understand where it's going, but just on a technical matter when you say it was classified as a two-family by assessing, is that what you're trying to clear now in terms of --

ATTORNEY SEAN HOPE: Right. In order to be able to either dispose of the property either sale or to eventually have four family members individually have households and move in, you know, and obtaining a certificate of occupancy, we thought the best method was to come and have

that --

TAD HEUER: Right. So the concern is that if you wanted to sell, for instance, you would go and the buyer would say show me the CO for one quarter and you could only provide -- the city would only provide you a CO with two.

ATTORNEY SEAN HOPE: Exactly.

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

(No response.)

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

We are in receipt of certain letters I should read into the file.

One is from Peter J. McLaughlin, Building Inspector for the City of Cambridge. It's addressed to Mr. Hope. "An inspection was conducted at 120-126 Webster Avenue on June 15, 2010. Upon inspection it was noted that there were four doors and four kitchens

at the above address. It is my opinion that this property was built as a four-family dwelling."

Which supports what you said to us.

We have a letter from a Timothy J. Toomey, Junior, City Councillor addressed to us dated July 12th. "I'm writing to lend my support to BZA case 9965 requesting a Variance at 120-126 Webster Avenue to return an existing two-family dwelling back to its original four-family dwelling status. The request seems to be appropriate due to the structural nature of the building itself. The home was constructed as a four-unit building and was only converted to a two-family because it has always housed members of the same family. Seeing as how the building is currently occupied by a number of family members, I see no reason to think that this would have any negative impact on the neighborhood. Additionally,

it is my understanding that most internal structures and utilities are still in place that would make it easy to convert back to its original four-unit use. Thank you for your attention to this matter. I hope you will find favor with the Petitioner's request and allow for the conversion."

And lastly, we have letters submitted by Mr. Hope -- I should say by Christina Ruda on behalf of Mr. Hope. A package of letters of support from five abutters and ten beneficiaries of the trust. They're all basically in support as I've indicated, I don't think it's necessary to read them into the file unless you wish me to.

That's it for the public record. Close public testimony.

Any comments questions from members of the Board or ready for a vote?

TIM HUGHES: I'm ready.

CONSTANTINE ALEXANDER: The Chair

moves that this Board make the following findings:

That a literal enforce of this Ordinance would involve a substantial hardship to the Petitioner, for the charge of being a functional four-family dwelling being limited to two families which has a financial impact in terms of the value of the structure.

The hardship is owing to circumstances relating to the fact that this is a non-conforming structure. And that what is being proposed is to return it to its original intention of that being a four-family dwelling unit.

And the relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of this Ordinance. Again, that being satisfied because of the fact that we are just returning a four-family

dwelling to a four family. And dealing with an inadvertent and legally inadvisable decision to modify the internal nature of the structure. Again, the structure contains four doors and in fact has four kitchen units.

I don't think there's anything to tie it to. So on the basis of these findings, I move that the Board grant a Variance to allow the structure to be returned to a four-family unit.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion is granted. Thank you.

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

(11:55 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call 9966, 1354 Massachusetts Avenue. Suite 1-12 Holyoke Center. Is there anyone here wishing to be heard on this matter.

BARRY PENN: I don't know if I should say good evening or good morning.

Good evening, my name is Barry Penn. I'm one of the partners in Al's Harvard Square Cafe. We are requesting a fast food service permit.

CONSTANTINE ALEXANDER: Before we get there on the merits. There was an issue in which sure you're aware of now --

BARRY PENN: Yes.

CONSTANTINE ALEXANDER: -- about signage. And as you're required to have just for the record, you're required under our Zoning By-Law given the size of the structure, five signs posted. And I and Mr. O'Grady and myself have confirmed that there only appear to be as of right now at least two signs, one on the premises itself, on the window of the premises itself, one on the interior of the building and one on Dunster Street. And can you elaborate for us what happened with the rest of the three signs tell, because unless we're satisfied with that we can't hear the case tonight.

BARRY PENN: Yes. Thank you. Jay, Jay Blacker was the one that was provided with the notices. He, on the day that he got those, he immediately brought them over to the Holyoke Center Building with the intention of putting them up. However,

since it's the Harvard-owned building, they insisted that they post the signs. They've done it in the past, they know exactly what they're doing.

CONSTANTINE ALEXANDER: Mistake No. 1.

BARRY PENN: Okay. But they did post it. And all, all of the signs were properly posted by --

CONSTANTINE ALEXANDER: What's the basis of you saying that?

BARRY PENN: Okay. The basis of that are several things: One, I personally saw that on my visits up there. Jay Blacker who was up there numerous times. Our architect --

CONSTANTINE ALEXANDER: You saw?

JONATHAN JAY BLACKER: Yes, after I dropped off the signs, the next day I came back and I actually circled the entire building to make sure all the signs were

posted, which they were.

CONSTANTINE ALEXANDER: And, what, three have been vandalized effectively, removed?

BARRY PENN: Well, they were up there as recently as a couple of days ago.

JONATHAN JAY BLACKER: At different locations. You know, I've been over to the property at different locations, and if I came in on the Mount Auburn side a few days ago, and any entrance I come in, I always make it a point to make sure I look for my name and the sign. And it seems to have been there.

CONSTANTINE ALEXANDER: There was something on the Mount Auburn Street entrance?

JONATHAN JAY BLACKER: There was one originally --

CONSTANTINE ALEXANDER: No, no. As a couple days ago. I was there on Monday afternoon and there were only two signs.

JONATHAN JAY BLACKER: When I walked in the other day on Dunster Street --

CONSTANTINE ALEXANDER: That's still there.

BARRY PENN: Oh, okay.

JONATHAN JAY BLACKER: You know, I remember looking at the sign of Massachusetts Avenue making sure it was there. So at different times, I can't remember which entrance I came in. I was always making sure the of the point that the signs were there.

CONSTANTINE ALEXANDER: But your representation to us -- I see you have a letter from Harvard there.

BARRY PENN: Yes.

CONSTANTINE ALEXANDER: But your representation to us is that the signs, five signs, were in fact posted and at least for a period of time they were on the premises.

JONATHAN JAY BLACKER: Yes.

CONSTANTINE ALEXANDER: For

whatever reasons, three have gone.

BARRY PENN: Mr. Chairman, that's correct. And when we found out about this today at about two o'clock, we immediately made contact with Berley McKenna at Harvard, and she graciously supplied a letter, a certification.

CONSTANTINE ALEXANDER: Let me read it into the record so we have it. It's a letter from Harvard real estate services, Berley, B-e-r-l-e-y McKenna dated today. "To Whom It May Concern: This is to certify that on July 7, 2010" -- that's more than 14 days, that's fine -- "I received five signs from Jay Blacker regarding the July 22nd hearing pertaining to his new restaurant location in the Holyoke Center. I affixed one sign to the storefront and one to each of the four entrances to the building. They were to be left up through the date of the hearing."

Let me just stop this at this point. I'm satisfied that you've complied with the sign requirements for our Zoning By-Law. I mean -- we in the past -- you have an obligation to sort of maintain the signs. But you can't be there 24/7. And I think there was a good faith attempt to have all the signs maintained. And in fact one of the two that still remain is in the window of where your store is, and where your high quality sandwich shop is going to be. So unless other members of the Board feel otherwise, I'm prepared to go further with the case. Anybody feel otherwise?

TAD HEUER: I just have a question.

CONSTANTINE ALEXANDER: Okay.

TAD HEUER: Is it different from our usual practice that if this location is entirely enclosed within a structure, usually the signs should all be posted within 20 feet of the public way? That five signs

are required, do all five of those signs need to be within 20 feet the public way?

CONSTANTINE ALEXANDER: I think, as I read the section, and Mr. O'Grady's here, if you read it literally, all five signs have to be on the exterior of the building within 20 feet of the public way. I don't see any question -- this is an odd building though. This building, the public way is more than 20 feet. So you'd have to post it, stick a stake where the chess tables are or the chess master and you can't play chess here for the next two weeks. And given to me more importantly, the key place is the premises you're going to be occupying, and there's a sign in there. Although it's not on the public way, it's obviously a public passageway through the building. Yes, I think technically there could be an issue about whether the five signs were properly posted at the outset. I'm satisfied there's been substantial

compliance and I'm prepared to go forward, but that's one person's opinion. Your point is valid. Do other people the same way?

BRENDAN SULLIVAN: Well, I think there's a technical aspect, there's also a very practical aspect.

CONSTANTINE ALEXANDER: That's what I'm trying to say.

BRENDAN SULLIVAN: It's not practical to comply with the technical aspect.

CONSTANTINE ALEXANDER: That's why I feel the way I do. Other members, are we ready to go forward?

THOMAS SCOTT: The two signs, one is on the entrance.

CONSTANTINE ALEXANDER: One is on the Dunster Street entrance, which is not a main entry. So, the real public notification except for those walking up Dunster Street toward Mass. Ave. is the sign

right inside the Holyoke Center on the premises where you're going to locate your sandwich space.

I have a question before we get to the merits. You're seeking relief to open up a high quality cold and hot sub sandwich. Is that to suggest Augie's and Au Bon Pan is (inaudible).

BARRY PENN: No, but they do not sell what we're going to sell. That's one of the interesting aspects of the lease restrictions that Harvard imposed on us and everybody else. We can't sell pizza, and we had no intentions of selling pizza, which Augie's has fantastic pizza by the way because I've eaten there. But at the same token Augie's cannot sell submarine sandwiches.

CONSTANTINE ALEXANDER: Is there another restaurant? We approved another fast food establishment in the building.

BARRY PENN: Subway?

CONSTANTINE ALEXANDER: No, no,
it's not a Subway.

TAD HEUER: Clover.

CONSTANTINE ALEXANDER: Clover.
What about that?

TAD HEUER: They're external to the
passageway.

CONSTANTINE ALEXANDER: They're in
the same building.

ALLEN COSTELLO: Currently there
now?

CONSTANTINE ALEXANDER: It will be
there, but we did approve it, although I
didn't agree.

TIM HUGHES: Because they didn't ask
for a quality.

CONSTANTINE ALEXANDER: Their big
argument was quality, that's right.

BARRY PENN: In regard to that
statement and I did not put it in there -- I

did the petition. I didn't put it in there just without a reason. The reason is -- and Al, this is Allen Costello. He is Al of Al's State Street Cafe who can address that a lot better than I can because he is the food artist behind this operation. And I think those questions would be best directed to Allen.

ALLEN COSTELLO: It's family run business. I have two stores, one on State Streets in downtown Boston. State Street in Boston is my first store. My second store two years ago we opened up right across from South Station, downtown Boston. My uncle runs that store. It's a family-owned business. And we bake and bread right there on the premises. So it's not your typical -- we don't bring bread in and three days later -- you're getting bread fresh out of the oven. Highest quality stuff. Everything comes in the same day. We use it

up, we get deliveries everyday. So everything is of the highest quality. Most expensive tuna I can buy. Everything is the highest quality we possibly -- we pay top dollar.

JONATHAN JAY BLACKER: Let me just to add give you sort of the flavor. If you're familiar -- Al's been on the Phantom Gourmet numerous times and so forth. And besides the really a great quality product, the value that he provides, and if you ever been on State Street in Boston, if you're familiar, it's really extraordinary in terms of what you get. So it's really basically working low margins, but it's high volume and it's really an extraordinary concept.

CONSTANTINE ALEXANDER: If we grant you the relief you need, you need a Special Permit. You are a fast food establishment as defined by our Zoning By-laws. It's not limited to McDonald's. Anybody that meets

your criteria. You're basically a walk-in trade, paper plates or at least non and no table cloths and all that. We have to make certain findings and let's walk through that.

TAD HEUER: But before we do that, are we leading to go merits at this point?

CONSTANTINE ALEXANDER: Yes. I don't know why not.

TAD HEUER: I have no problem practically going to merits. I think it's a procedural matter that the signage is something that I don't take this lightly.

CONSTANTINE ALEXANDER: You want to take a vote on it?

TAD HEUER: If you don't mind.

CONSTANTINE ALEXANDER: Sure.
We're going to deal with the sign issue.

The Chair moves that the Petitioner has complied with the signage requirements of our Zoning By-Law. We have a representation from the landlord of the building that the

signs were duly posted -- not duly. Five signs were posted. That two signs as of now remain posted. Three signs apparently have been vandalized or otherwise removed, but that there is a -- two signs that remain. Particularly the one on the premises within the building are substantially -- satisfy the basis for the requirements of signage. Namely, that the public be informed of what is being proposed and the relief you're seeking in the restaurant. So on the basis of that I would move that we go forward and hear the case on the merits and that again, to confirm that the sign requirements for this petition have been satisfied.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan,

Scott.)

TAD HEUER: Opposed.

CONSTANTINE ALEXANDER: One
opposed.

Now let's go to the merits and the
requirements.

We have to make findings that the
operation of your establishment will not
create traffic problems, reduce available
parking, threaten the public safety in the
streets and sidewalks or encourage or produce
double parking on the adjacent public
streets.

Which tell us why you don't meet that
requirement.

BARRY PENN: Certainly.

The business model for Al's is a walk-in
business model. People don't drive to get to
Al's. It's strictly as can be seen by the
State Street operation, people come in their
business offices three, four blocks away they

walk there. The same concept, and this is what we want, we don't need or want people to drive to get to Al's. There's a lot of people in the Holyoke Center Building that would like to go to Al's or something like Al's besides just the people that walk around Harvard Square and the people that come to visit and the people that work in Harvard Square and Cambridge close enough that they could walk there. So, we're not envisioning any traffic coming in to visit us.

TAD HEUER: You also have exceptional access to public transit?

BARRY PENN: Right, that's a very good point. It's right outside as a matter of fact.

CONSTANTINE ALEXANDER: And the interior of the building with no street frontage I think would discourage people from driving. People are not going to drive along and say I see Al's, I'm going to pull over and

double park.

ALLEN COSTELLO: It's 90 percent lunch.

CONSTANTINE ALEXANDER: Now that you mention it, what are the proposed hours?

BARRY PENN: According to the lease requirements, it's eleven to eight. However, we probably will stay open until ten o'clock. The landlord has permitted us to stay open until ten. After that we're on our own.

CONSTANTINE ALEXANDER: That passageway in there is open until ten o'clock at night? I didn't realize that.

BARRY PENN: The guard is on duty until ten, so that's why ten o'clock is the absolute limit. And if it turns out that business really doesn't generate enough traffic, then we will close at eight like everybody else.

CONSTANTINE ALEXANDER: We're

supposed to make a finding that the physical design, including color and use of materials in the establishment of Al's shall be compatible with and sensitive to the visual and physical characteristics of other buildings, public spaces and uses in the particular location. I haven't seen anything here about what it's going to look like. The actual interior of the store, do you have anything?

BARRY PENN: Well, our architect Sally might be able to address that. But I know the interior of the store, it's going to look pretty much like the Harvard Bookstore looked. In terms of the floor it's going to remain exactly the same.

CONSTANTINE ALEXANDER: You mean the Harvard Press.

BARRY PENN: Harvard Press, right. That floor is not going to be changed. It's going to be cleaned up and sealed. The

ceiling is going to remain the same. We're going to use most of the same lighting fixtures. So the feel that you see now as depicted in the photographs is going to be maintained.

CONSTANTINE ALEXANDER: What kind of color are you going to have in the windows? Any kind of protruding signs that are going to advertise your place?

BARRY PENN: Jay, you wanted to address the sign?

JONATHAN JAY BLACKER: Well, the way the concourse is everybody gets a blade sign.

CONSTANTINE ALEXANDER: That's right.

JONATHAN JAY BLACKER: We'll have a blade sign.

CONSTANTINE ALEXANDER: Are you restricted by the size of that blade sign?

JONATHAN JAY BLACKER: Design restrictions and, you know, they have to

conform to I guess design criteria.

CONSTANTINE ALEXANDER: And those restrictions are consistent with what you're allowed to do would be consistent in size and nature?

JONATHAN JAY BLACKER: Yes. And in terms of addressing the exterior, which is what the glass frontage is the two double doors there, to be honest, that's going to be -- we're trying to address that issue and obviously we're sensitive to the issues, you know, in working well with -- I think we have a great working relationship with Harvard quite frankly. And so we're, you know, Sally who is our architect on board, we have not addressed that particular issue as to what's fairly consistent or appropriate for what our needs are and what's going to work for Harvard. Do you have any thoughts on that?

UNIDENTIFIED FEMALE: Well, again the existing storefront is largely going to

remain as it is.

CONSTANTINE ALEXANDER: That's the answer.

UNIDENTIFIED FEMALE: And which is a glass -- there's two glass display cases raised with air conditioning, HVAC units as a base and two existing storefront doors that will be remaining open for the day during business hours. And really that's going to be a matter of what's going to be done with the display areas. So that's going to be a changing display. And it's going to remain relatively simple.

CONSTANTINE ALEXANDER: We have to find that the establishment shall attract patrons primarily from walk-in trade as opposed to automobile or driving trade. We find that the district with which the establishment is proposed to be located does not have significant pedestrian traffic. Well, that's not your case here. I think

you've already addressed that. You're saying the nature of your business is such and the location is such that you're going to have walk-in trade primarily?

BARRY PENN: That's correct.

CONSTANTINE ALEXANDER: The establishment shall to the greatest extent feasible utilize biodegradable materials in packages the food and use utensils and other items providing for the consumption thereof.

BARRY PENN: Well --

CONSTANTINE ALEXANDER: Talk to us about that.

BARRY PENN: Sure. Al, you want to address how the food is packaged in terms of what's used?

ALLEN COSTELLO: Everything is takeout. We do have stools. We have ten stools. A little bit of counter space, but there's common area in the building where everyone can sit and eat.

CONSTANTINE ALEXANDER: But what about the materials? They walk out with, Styrofoam?

BARRY PENN: No Styrofoam.

CONSTANTINE ALEXANDER: Or plastic?

ALLEN COSTELLO: No. Just a bag, a sub bag that the sub goes in. And 20-ounce bottles of soda and we really have nothing as far as -- paper plates if they ask for them and --

BARRY PENN: Salads. We don't even use plastic. It's the tay-ware (phonetic) which is the biodegradable --

ALLEN COSTELLO: (Inaudible).

BARRY PENN: Right.

CONSTANTINE ALEXANDER: Supposed to provide convenient, suitable and well marked waste receptacles to encourage patrons to dispose of all packing materials provided with the sale of food.

What are you going to do about waste?

BARRY PENN: Well, we're going to have them of course inside the space itself well marked. And in the concourse there are already existing containers that are marked. And so between what we're going to put in and what's already out there, both inside and outside the concourse.

CONSTANTINE ALEXANDER: Does the lease require you to have anything special with regard to waste receptacles?

BARRY PENN: It suggest that we have to something. It says that we have to maintain --

CONSTANTINE ALEXANDER: All right, so you have that.

BARRY PENN: Absolutely.

CONSTANTINE ALEXANDER: That the establishment complies with all state and local requirements applicable to ingress, egress and use of all facilities on the premises for handicap and disabled persons.

This is going to be handicap accessible?

BARRY PENN: Yes.

CONSTANTINE ALEXANDER: It is ground level, there are no steps.

BARRY PENN: Ground level, no steps.

CONSTANTINE ALEXANDER: And are the doors wide enough for --

BARRY PENN: Yes. In fact, the doors will remain open during all hours of operation. And there are no bathrooms and facilities for us, because it's a common area bathroom arrangement.

CONSTANTINE ALEXANDER: I actually skipped over one. My favorite and someone in the audience will note. And you have to -- here's your chance for your PR. The establishment fulfills a need for such a service in neighborhood or the city.

BARRY PENN: Al, you want to address that?

ALLEN COSTELLO: Well, our lunch

\$6.75 for a ten-inch sub, a 20 ounce soda and a bag of chips.

BARRY PENN: Including tax.

ALLEN COSTELLO: You're not going to find that anywhere down there. Most people for lunch can't afford 20 bucks a day. Even 12 bucks a day. You give them seven bucks a day --

CONSTANTINE ALEXANDER: For that amount of money, you can't get a sandwich at Au Bon Pan?

ALLEN COSTELLO: No. The sandwich alone is 5.75, six bucks. You add a soda, there's two bucks. There's eight bucks. Now you want a bag of chips, you're up to about nine minimum. My experience in downtown Boston, we do high volume, low profit. People don't have that kind of money to spend every day on lunch. And that's why we have lines outside the door every day.

CONSTANTINE ALEXANDER: You're

going to be able to maintain your price structure with the high rent district in Holyoke --

ALLEN COSTELLO: I pay more rent on State Street --

CONSTANTINE ALEXANDER: I'm sorry.

ALLEN COSTELLO: I pay more rent on State Street and South Station than I will here.

BARRY PENN: I have to say Harvard was very --

TAD HEUER: Do they know that?

ALLEN COSTELLO: Can we keep that just between us?

BARRY PENN: Very reasonable lease which made this possible.

CONSTANTINE ALEXANDER: Okay. I just went over the checklist of the specific things that we have to find for fast order establishment.

Any questions from members of Board at

this point? No questions.

Anyone wishing to be heard on this matter?

(No response.)

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

I don't have the file. I don't think there are any letters.

BARRY PENN: There is a letter from the Harvard Square Business Association.

CONSTANTINE ALEXANDER: Oh, yes, there is. You're right. I'll read that.

BARRY PENN: I only have a copy of it.

CONSTANTINE ALEXANDER: I will read a letter. It's a letter of support from the Harvard Square Business Association. It's addressed to me as the Chair. "On behalf of the Board of Directors of the Harvard Square Business Association, please accept this letter in support of the AI's Harvard Square

Cafe, LLC Zoning petition for a fast food service permit for its proposed location in the Holyoke Center. We were provided with a copy of the zoning petition along with the attached exhibits." And nothing's attached. "Including photographs, menu and floor plans by Barry F." -- there is in the file the attachments that are referred to in the letter, just not attached just for purposes of the record. "I also met at length with Barry F. Penn, one of the partners on June 30, 2010, to discuss the details of this new business venture in Harvard Square, as well as the activities of HSBA." That's Harvard Square Business Association. "Al has joined the HSBA." Smart move. "And we are looking forward to having them become involved in our activities and events." That's normal by the way. "I have heard about Cafe. One is located on State Street, Boston. And I'm familiar with Al's

reputation for outstanding food quality and extremely reasonable prices, something which is definitely needed in Harvard Square.

Mr. Penn provided me with information about Allen Costello (Al) and the other partner, Jay Blacker. Jay started the Monkey Bar business in Faneuil Hall back in 1984 which is still in operation. Al also operates another Al's Cafe with his uncle on Lincoln Street in Boston. Al has been in business for over ten year years and looks forward to a long relationship with the HSBA and Cambridge community. Mr. Penn, formerly of the Boston area, is very familiar with Harvard Square and is providing the legal and planning resources necessary to open this business hopefully by mid-October 2010 contingent upon obtaining the necessary permits and completing the construction in a timely fashion. We believe this business will be constructed and operated in a

professional and business-like manner consistent with our other fine businesses in Harvard Square, and will help build the need for high quality food at very reasonable prices for the workers, staff, students and residents in this area. We urge the Board to approve this request for the fast food permit."

And that's the sum and substance of the correspondence other than the letter I have already from Harvard relating to the signage.

Questions, comments? Are we ready for a vote.

TIM HUGHES: I'm good with it.

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

That as previously enumerated during the testimony, that all of the requirements of 11.31 have been satisfied.

And further, we have to make the general

findings regarding Special Permits. And those special findings are that the traffic generated or patterns of access or egress will not cause congestion, hazard or substantial change in established neighborhood character. You've already addressed that. This is an area of heavy pedestrian traffic, and you're not going to change that one way or another. The continued operation of adjacent uses as permitted by the Ordinance will not be adversely affected by the nature of proposed use except for the few successful if some of the other sandwiches places are not going to be successful.

That no nuisance or hazard will be created to the detriment of the health, safety and/or welfare of the occupants for the proposed use of the citizens of the city. That being the fact that you're not going to be sell rotten food, right?

And that for other reasons the proposed use will not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purpose of this Ordinance. You're going to be one more retail food operation in the Harvard Square area.

On the basis of the foregoing, the Chair would move that a Special Permit be granted to the Petitioner to put an Al's Sandwich Place in Holyoke Center.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Hughes, Sullivan, Heuer, Scott.)

CONSTANTINE ALEXANDER: One opposed. And the opposition is I have a longstanding belief that fast order food establishments in Harvard Square do not meet the requirement that they fulfill a need for

such a service in the Harvard Square area.

(12:25 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case 9967, 808 Memorial Drive. Is there anyone here wishing to be heard on this matter?

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman -- good morning. James Rafferty on behalf of the applicants Brandon Woolkalis. Mr. Woolkalis is here to my left. This is an application that seeks

to reuse some space in an office district formerly an automobile gas station. And you recall the office district, the office districts are a bit challenging when it comes to retail uses, and this application seeks authorization for two uses that are currently not permitted. One is a dry cleaner. Notwithstanding the fact that there are hundreds of residents living above and around this, and offices and similarly a fast order food establishment, a Dunkin' Donuts. A third use that's contemplated there appears to be permitted use. But if you look at the Table of Uses here, I always find it ironic that in this particular location the table would allow for a car rental agency, the sale of automobiles, things that are not at all consistent with what one would think should be on Memorial Drive in this location. So thus we're not in Special Permit territory. We are mindful of the fact that we are in

Variance territory. And part of the challenge here is to try to take what was built and designed as a gas station and try to repurpose it in a way that contributes more to the life of the complex it's in and the surroundings.

CONSTANTINE ALEXANDER: Do I understand that wasn't in your materials, that this was originally a gas station and that this Board granted a Variance for a residential structure to be erected above this gas station?

BRANDON WOOLKALIS: That's true. I think it was in the sixties they permitted to build above and around a gas station.

CONSTANTINE ALEXANDER: Around a gas station, with all the gas tanks and fuel tanks below?

BRANDON WOOLKALIS: Exactly. Very dangerous.

CONSTANTINE ALEXANDER: You must

have represented the Petitioner on that one.

ATTORNEY JAMES RAFFERTY: I was in grade school then. There's a long history along Memorial Drive. I think it might have been a comprehensive. There were all kind of issues. But I don't know if this was part of the 808 project or if this was separate.

CONSTANTINE ALEXANDER: It's amazing to me is all I can say.

ATTORNEY JAMES RAFFERTY: There's gas stations all along that stretch on both corners and of course the Shell Station a block down. So it definitely had a focus and orientation towards that.

The district in that area has changed. There's a Starbucks a block away on the other side of the hotel. The hotel has been reenergized with new ownership and new investment. And Mr. Woolkalis does operate an establishment in North Cambridge that he has photos of. That he's very proud of that

has proved to be a good community gathering spot. And he's hoping to bring that along with the dry cleaning business, which would be another tenant but under the purview of --

CONSTANTINE ALEXANDER: Just to be clear for the record, the dry cleaning is not on the premises.

ATTORNEY JAMES RAFFERTY: No, just the drop off. No plant.

So, typically we would go through the criteria associated with the Special Permit, but in this case we're really not dealing with the Special Permit.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: But it does come down to the notion that there are a limited amount of uses here, and the preexisting use and the range of other uses, but for reasons that still mystifies me in office district cafes, restaurants dry cleaners, convenience stores, all require

Variations. Why we wouldn't allow a convenience store in this location? But the wisdom of that Ordinance is in someone else's hands and we're here to say that the hardship really has to do with the building itself, the limitations of it. It doesn't lend itself to a lot of other things. The frontage right and the parking lot there, we think can be better used for the purpose that we're intending. And for that reason Mr. Woolkalis is seeking a Variance to allow for the dry cleaner, drop off dry cleaning and the fast food.

CONSTANTINE ALEXANDER: Does this address the parking and traffic issues particularly as it relates to the Dunkin' Donuts?

ATTORNEY JAMES RAFFERTY: Right. The Dunkin' Donuts will have. There is surface parking.

CONSTANTINE ALEXANDER: Not much.

BRANDON WOOLKALIS: 16 spaces.

CONSTANTINE ALEXANDER: There are 16 spaces in there?

BRANDON WOOLKALIS: Yes.

CONSTANTINE ALEXANDER: Nice to know. Okay.

ATTORNEY JAMES RAFFERTY: So, there are 16 spaces which far exceed the Zoning. The Zoning is based on the number of seats and there are there's at least 20 seats, and Zoning would say one per five or one per four.

SEAN O'GRADY: Something like that.

ATTORNEY JAMES RAFFERTY: Close enough for after midnight. It's four, five or six, but it's nowhere near 16 and so we've got 16 parking spaces. And, again, with the office use, the office use in this building and the residential uses in this building, there's an expectation for both the uses, both the dry cleaning and the restaurant, the Dunkin' Donuts establishment, that there

would be a heavy concentration of uses from within the complex of the building itself.

CONSTANTINE ALEXANDER: So you will have, you've got to address the notion there would be a lot of cars pulling in and out that drive in to grab their doughnuts and drop off their dirty shirts. And what about the traffic hazards, people pulling in and out on the very busy corner?

BRANDON WOOLKALIS: How I would address that, is the previous store that I did up in North Cambridge -- this is my second store I'm attempting. Was a big concern, traffic problems up there. And we actually had a review of it a year later to see if there's any traffic impact. And the way the plan worked out, it worked out well. We have a very similar number of parking spaces and much to our benefit, we found that we're more -- less of a destination spot than we were a spot where people came from their house

and utilize our facility. We have a beautiful patio in North Cambridge. I don't know if everyone is familiar with the store in North Cambridge across from Marino's, we have patio, we have 20 seats inside.

Actually, you know what --

CONSTANTINE ALEXANDER: Yes, but that's a different world though. Here we're going to have people driving in and out on a very busy corner. Pulling in and pulling out. I'm driving down Memorial Drive toward Lechmere. And I say, oh, my goodness there's a Dunkin' Donuts, I want to pull in. That's a very busy street and you got traffic going both ways. Should we be concerned about the risk that's going to be created?

BRANDON WOOLKALIS: Well, the previous use was a gas station. And to be quite honest, they'll have a higher traffic count than we will in our Dunkin' Donuts. And another thing is, they were pulling in and

out. You know, they weren't staying. We're going to have people who are going to come in for a cup of coffee and enjoy the day. We have a patio proposed outside with four tables. And to be perfectly honest, we believe this site right here will have a much higher walk-in traffic, jogging and bicyclists. I sat out there for 20 minutes today and 30 bikes went by me. I mean, it was fully impressive. I mean I've lived in Cambridge all my life so I know what the river's like and people utilize it. But I really think we're going to get more of the people walking by, jogging by. It's like an oasis in the city. Someplace to stop and have a break and have a coffee or a sandwich.

These pictures here, the top represents the gas station that I purchased. Before it was Frank Mazzeo's old gas station in North Cambridge. And that's the store we subsequently put in. Our development is

non-traditional Dunkin' Donuts. We make it look like a cafe. We want it to be as pretty as possible. We built that building to blend in with the community around it. And it's worked out very well. And this is the pictures of what we have now.

CONSTANTINE ALEXANDER: The gas station in operation right now?

BRANDON WOOLKALIS: No, it's not. That's currently what's there.

ATTORNEY JAMES RAFFERTY: We just want to just briefly address the environmental conditions because part of the hardship here is the soil conditions will require significant remediation as was the case in North Cambridge.

BRANDON WOOLKALIS: The site had numerous oil spills and hazardous waste contamination. It's on DEP's list. There's been I think three spills that are reported to DEP. Sunoco has remediated the

site, but it will have to remain under constant, you know, digging these wells, they monitor the soil conditions. And if there's any remediation in the future, I mean at least we'll have an open parking lot so they'll be able to dig and take out what they need.

CONSTANTINE ALEXANDER: My disconnect is why is the fact that you have an environmental problems under the ground justification for opening a Dunkin' Donuts and a dry cleaning establishment? And that's the problem with whoever -- for the bank, anybody who wants to commercially develop this property in accordance with the Zoning By-laws are going to have the same issues. Why are they unique to what you're seeking.

BRANDON WOOLKALIS: Do you want to --

ATTORNEY JAMES RAFFERTY: You start. I'll think.

BRANDON WOOLKALIS: Well, what my ideal here is to get rid of a nuisance property. I mean, it's a gas station. We'd rather have something that's, you know, secured to the neighborhood site, something for the neighborhood. And by maintaining a gas station or God forbid, you know, a rental care agency, you're going to have a bunch of cars leaking oil and gasoline. And it will contribute to this environmental problem that's already there. If we have remediated the site as it is now, there would be no further contamination to that site, no more risks of contamination which is inherent with gas stations. I mean, right now they have for our five bays that they work on cars. They have all sorts of solvents, brake fluid, carburetor cleaner. You know, they've got the impact guns going all day. It's just not conducive to the location. I mean, you've got all these tenants living above you.

You've got 30,000 gallons of gasoline in the ground. It's just, a gas station is not a good use for this property.

CONSTANTINE ALEXANDER: You will soon find the tenants are not very happy with the gas station as at least as compared to what you want to do with it.

ATTORNEY JAMES RAFFERTY: I think the relevance of the soil is that there is an as of right automotive use that can go in here based on the prior use. And historically that has created this problem. So the issue, while it's not directly related to why it needs to be a donut shop, it begs the question or suggests that a use other than that allowed under the Ordinance may better serve this site.

TAD HEUER: In terms of traffic can you just talk about presumably, maybe I shouldn't presume, Dunkin' Donuts would have a very large concentrated volume of traffic

at certain points during the day rather than the spread out traffic that you might expect for a gas station, for instance, use evenly as people run out of gas. People come to Dunkin' Donuts presumably early in the morning.

TIM HUGHES: I go to the Dunkin' Donuts when I run out of gas.

TAD HEUER: Runs on Dunkin'. Can you just discuss, and I mean going to the Chairman's point, will there be traffic backup as many people try to get into this one limited space?

BRANDON WOOLKALIS: We don't think that's going to be an issue. That was a question raised very strongly in the North Cambridge location, and that's a very heavily -- almost the same traffic patterns, the same amount of cars on both roadways. And to be perfectly honest, it was never an issue there. We put it in and we had, we had

a second meeting a year later to be sure that the traffic was working, and it flowed fine. And this site, I mean, we believe that we're going to have a lot higher percentage of people just coming from the neighborhood; walkers, joggers and runners and bicyclists. So we believe our customer count per car is going to be lower than Mass. Ave. North. And right now we don't fill our parking lot in Mass. Ave. North, and I don't perceive us filling this to maximize every spot. I think it's going to be a nice flow. And our business is spread out from about 7:30 in the morning and it peaks to lunch. After lunch it dies down after a couple hours. And then like when the kids are coming out of school at like three o'clock, it picks up to five-thirty, six. And after six it pretty much drops off. You know, there's not many clients. We actually were considering closing our Mass Ave. store a little earlier

because it's pretty dead after nine. But we stay till ten because there are a few customers that complain if we close the hours back. I mean, they're going to a late shift or something like that and they want a cup of coffee so we stay open for them.

CONSTANTINE ALEXANDER: Any further remarks at this point?

ATTORNEY JAMES RAFFERTY: No.

CONSTANTINE ALEXANDER: Questions or comments from members of the Board? I'll open it to public testimony.

THOMAS SCOTT: Are the canopies going to be removed?

BRANDON WOOLKALIS: Yes, actually they just removed those. They just took those out.

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

PAUL BOYSON: Paul Boyson

(phonetic) President of the Tenants' Association for 808 Memorial Drive. And we have some of the same concerns as you folks have talked about tonight; the traffic, rodent problems and safety for the people. We have about a thousand residents in those two buildings. So we need to know, and I've talked with Mr. Woolkalis, he and I met today and he's willing to work with us to try to address some of our concerns. And it was a short meeting unfortunately, but it was a productive short meeting.

CONSTANTINE ALEXANDER: Good.

PAUL BOYSON: And I told him I couldn't answer for the residents but that we would have to have a meeting and I would invite him into a community meeting to present himself.

TAD HEUER: Are there some concerns that you, you know, since we have a stenographer taking a record, that you just

want to get out so that he can answer them and so everyone is on the same page?

PAUL BOYSON: Well, it's easier -- I'm sorry, it's pretty easy for us to tell the residents what we think is the problems. And they're going to go with that. But in fairness to him, if we have, we have a community meetings, you know, every so often. And if he wants to present what he's going to do to help us, keep our fears down and do what we need to have done for the protection of our residents, then, you know, he should have that chance.

TAD HEUER: Well, I guess the reason I raise this is because if we were to grant the relief tonight, he would be able to go and open and you'd be --

BRANDON WOOLKALIS: I will still meet with them. I'm a man of my word.

TAD HEUER: I'm certain he would still meet with you. He's done so in North

Cambridge as well. But that we have the ability to write conditions to the Variance that would be binding on him if he decided suddenly that he had no desire ever to meet with you ever again and continue on his merry way.

PAUL BOYSON: Okay, that would be the proper thing to do for everybody. That protects him and protects us, our residents, the conditions.

TAD HEUER: Right. I guess are there things, you mentioned --

PAUL BOYSON: The traffic and rodent problems. Trash. And just the safety of the residents and kids. We have a lot of children in that area.

CONSTANTINE ALEXANDER: I will when it comes to making a motion, I'm going to put in a condition regarding trash removal and rodents. I think that's something that should be addressed. You should have

further conversation, but I'm going to make it part if we do grant relief, part of the relief.

Traffic, I don't know how we can legislate to grant relief. You would work with him.

BRANDON WOOLKALIS: Definitely, yes.

CONSTANTINE ALEXANDER: And I don't know in terms of maybe traffic signs.

BRANDON WOOLKALIS: He was telling me that cars have been going up the sidewalk and then cutting through the Mobil Station to get to River Street. And he gave me a great idea. They start at Polaroid on the sidewalk and cut through the Mobil Station. We came up with a great idea to put a marble pole. Bicycles get by and joggers no problem. I don't know if it's DCR or Cambridge that owns that sidewalk. If it's DCR, I'll petition DCR and pay for the cost to put it in to

prevent cars. I don't want my customers coming and getting hit by a car coming down the sidewalk.

And another thing we talked about is rodents. And we met in my store in North Cambridge and it's immaculate. That's one thing we pride ourselves in, we keep a clean and beautiful parking lot and store. And we'll have trash receptacles outside. And all my employees are responsible to check the parking lot every hour on the hour. People throw trash right out the window, they do it, there's a trash can right there. The employees are responsible. They check and they police the parking lot. And rodents, we'll have a monthly inspection with the exterminator that we have, he comes and checks everything. In our Mass. Ave. store we never had any cockroaches, any mice or rats. We keep it -- if you go in the back of the house, it's absolutely immaculate and the

floors are just shining. So we'll have that monthly inspection.

And what else? What else did we come up with? We had something else.

PAUL BOYSON: It was short. It was a lot. We need to meet again and we'll discuss that, too.

BRANDON WOOLKALIS: I'll meet again with the tenants, too. If there's any other concerns, I'll mediate those concern.

BRENDAN SULLIVAN: How do you dispose of excess products that don't get sold?

BRANDON WOOLKALIS: The doughnuts are thrown away in the trash at night. The muffins are sold out.

CONSTANTINE ALEXANDER: That's what's going to bring the rodents.

BRANDON WOOLKALIS: We have a covered dumpster. We have the same ones in Mass. Ave. I've never had a rat or anything.

I check at night. I'm always around, so I always stop by the store. But there's never been a rodent problem at all up there.

TAD HEUER: The dumpster is collected how many times?

BRANDON WOOLKALIS: That's twice a week.

BRENDAN SULLIVAN: And there's a dumpster receptacle space someplace?

BRANDON WOOLKALIS: Right. We have one planned for the front, it's going to be fenced in with cedar fencing. I was going to talk to the management and see if maybe we couldn't pay some money -- because I found out they had dumpsters around the side. I would rather keep the trash all in one side. If they're amendable to us paying, and they have the same style with a cover so the rodents and birds can't get into them.

CONSTANTINE ALEXANDER: Any other questions from members of the Board?

Is there anyone wishing to be heard?

SHIRLEY ROACH RUSSELL: My name is Shirley Roach Russell, and I'm a resident at 808 Memorial Drive. My apartment is located above where the gas station was where the Dunkin' Donuts is proposed to be. I oppose any fast food restaurant going into that space, not just Dunkin' Donuts. Any fast food for the following reason: There was a convenience store located on the premises before, and I've lived there for over 30 years. The amount of rodents that was there, I mean, you come out the door early morning and there are rats running across. We were -- and this is just an example, we were thinking of doing a garden in back of the building. One of the things that we were told was that wouldn't be wise because it would bring rodents to the building.

The other thing was the traffic. Right now the yellow line is solid on Memorial

Drive. Cars still pull in, when the gas station was there, it was a dangerous things. I for one was very happy when the gas station closed because it was dangerous. I think a Dunkin' Donuts will be just as dangerous as far as the safety for the kids, the cars coming, going down towards Lechmere and coming in once they see a Dunkin' Donuts there. I don't know, I heard briefly about the parking. I think right now residents aren't allowed to park there on that side of the building because it's also a fire lane. I think having the Dunkin' Donuts and cars pulling in and parking there to even just go in or, you know, I think that would be dangerous. So that's -- those are my reasons for opposing any fast food restaurant.

The rodents, I'm telling you are just now under control, really. Using a dumpster even the ones with cover, doesn't help that problem. What we have around the building is

those lock boxes, a lot of them, to curtail it. And it's just now getting under control. So my fear is that any fast food restaurant coming in here is going to just act it up. We live across from the river. There's river rats. They come across. There's food there, they're going to stay and multiply. And the rats are dangerous for kids. The traffic is dangerous for kids. I live on that side. I don't want to get up in the morning and smell coffee seeping through my windows. And I certainly don't want to have to close my windows to smell that coffee. And I drink coffee. I just don't want to smell it all throughout the day.

The sad thing about it is Paul and he met today, I don't know why that meeting didn't take place before so we could have a meeting with the resident. Because the Board, the tenant association represents the resident. And I'm a member of that Board.

It's unfortunate that that didn't happen. And if you decide tonight to let this Variance go, you know, approve it, the residents don't have a say. We don't know -- I can't speak to his plan because I don't know what his plans are. All right? I oppose it because of what I just said. But it will be exactly how when he put those four tables and chairs, where exactly was it going to go? You know, the dry cleaning -- I'm not opposing a dry cleaning, it's not a food and it's not chemicals. You know, the gas station was dangerous. I think this is dangerous, too.

Thanks.

CONSTANTINE ALEXANDER: Thank you very much. And I would like to say that with regard to the issue if we granted a Variance tonight, you are stuck and you wouldn't have an input. I think you heard this gentleman that he will meet and continue to work. I know, I can see his wheels going and -- the

fact of the matter is that he has got to live in the city. He's got other establishments as far as I'm aware.

SHIRLEY ROACH RUSSELL: Can I ask a question, where exactly is the Dunkin' Donuts you have?

CONSTANTINE ALEXANDER: Almost at the Arlington line.

SHIRLEY ROACH RUSSELL: That's on Mass. Avenue. Mass. Avenue is a main street just like Memorial Drive is granted. But you can turn in most places on Mass Ave. where there's a store and the median is not there, and can you go in. There's ways, there's allocation for that. There's no allocation going -- when you're driving towards Lechmere, you cannot, it's illegal to make that turn, that left turn into that space. You know, and people still do it. The cars, I mean, I'm not saying you're going to try to address the problem with the cars on the

sidewalk, but kids go that way to go to school, you know, to go to the school. There are a lot of kids in the building. It's dangerous. And the city refuse to put the bump in the road to slow traffic down. So I'm just thinking this is more traffic to deal with, you know. We don't have a playground on premises for kids to play. So they play out, you know, out in the open, right? It's pretty dangerous for them.

Is there a way to postpone this until -- I believe residents also signed a petition. Do you have it?

CONSTANTINE ALEXANDER: I'm going to get to that. We do have a petition. And I'll make that part of the public record.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, I would just note that there is another public process associated with this use which would be the application for Common Victualer license at the License Commission.

And they are quite experienced in dealing with the impacts of food type uses. And I'm sure Mr. Woolkalis will commit to having these meetings prior to seeking those hearings, but that you can be assured that these issues are addressed very regularly; trash in particular, adequate rodent termination and the impacts --

CONSTANTINE ALEXANDER: What are the notice requirements? There was a hearing before the Licensing Board for a common Victualer license, is it abutters and abutters to abutters.

ATTORNEY JAMES RAFFERTY: Sometimes it's more extensive they do it. But then they would recognize -- they have recognized lists of neighborhood associations and there are a couple of neighborhood associations that get noticed and people get the agenda and the applicant needs to send certified mail to people as well.

CONSTANTINE ALEXANDER: I would ask that you and have you agree that you will make sure that this tenants' association does get noticed.

BRANDON WOOLKALIS: Definitely.

CONSTANTINE ALEXANDER: And sufficiently in advance of the hearings so they can appear.

BRANDON WOOLKALIS: Definitely. I've called Paul and set-up a meeting so we can sit and talk. And if there are any issues that come up, we can try to resolve anything we can.

TAD HEUER: Are there any tenant entrances on this building are any on this facade?

BRANDON WOOLKALIS: The River Street side, right?

PAUL BOYSON: The tenant entrance, there's one on Memorial Drive side. There's like a little alcove tunnel. And there's

also one on River Street which is a road turn around where the building is and that's also.

TAD HEUER: And the River Street side is the main entrance?

PAUL BOYSON: That's the main street.

SHIRLEY ROACH RUSSELL: 808 Memorial Drive is the back building. 810 Memorial Drive is on the River Street side and that's the office building, commercial building, and there's a 812 Memorial Drive which is also a residential building.

PAUL BOYSON: That's the one above the Mobil Station.

TAD HEUER: All right.

CONSTANTINE ALEXANDER: Anyone else wishing to speak on this matter?

(No response.)

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

We do have some letters in the public

file. We have we have a petition submitted by "We the undersigned object to Dunkin' Donuts locating to 808-812 Memorial Drive on the grounds that if Dunkin' Donuts is allowed to move forward with its plans, it will result is significant increases in the litter, early morning and possibly late night noise traffic problems and other safety issues with residents a major increase in rodents and other vermin fenestration in the building as well as the local area." And we have, I would say, I'm just going to guess 50 or 75 people who have signed this. Most of them seem to reside at 812 or 808 Memorial Drive. Yes, mostly 808 and 812 Memorial Drive. This is the tenants' association that you're referring to.

In addition, we have two letters. We have a letter from City Councillor Timothy J. Toomey, Jr. addressed to this Board Dated July 21st. "I'm writing to lend my support

to BZA case 9967 requesting a Variance at 808 Memorial Drive that would allow the Petitioner to convert a gas station store into a coffee shop and dry cleaning pick-up. This project will help to revitalize the area by converting what is currently an unoccupied gas station and transforming it into a coffee shop with ample seating that would add a human element to the area. The Petitioner has already established himself as a responsible business owner. The first Dunkin' Donuts location was opened in North Cambridge and he has shown a great level of involvement with charitable organizations such as the North Cambridge Little League. I feel this is a great opportunity to help a Cambridge native to help establish this location along Memorial Drive as a place people can enjoy with close proximity to the Charles River. Thank you for your attention to this matter. I hope you will find favor with the

Petitioner's request."

And we also have a letter Mayor David Maher dated today. "I respectfully ask that the Zoning Board of Appeals favorably consider the application of filed by Mr. Brandon Woolkalis, case 9967 to establish a Dunkin' Donuts at 808 Memorial Drive. Mr. Woolkalis who was born and raised in Cambridge. He is an established business owner in our city. An active supporter of many charities and a trustworthy community member. Mr. Woolkalis operates a beautiful and successful Dunkin' Donuts in North Cambridge. The case that came into fruition of granting a Variance granted by the Zoning Board. I believe that Mr. Woolkalis's vision for the gas station at 808 Memorial Drive fits in with the Memorial overlay for the area. It is unfortunate that in our office zones like the one that Mr. Woolkalis is proposing requires a Variance."

Parenthetically change the Zoning By-Law.

"I ask that you consider the application on Thursday, July 22, 2010, and that you recommended a granting Mr. Woolkalis a Variance which will allow him to grow as a successful business owner in the City of Cambridge."

On this point by the way, as I recall, I did not sit on the case for the North Cambridge Variance, but it was a contentious matter.

BRANDON WOOLKALIS: Very, very much so.

CONSTANTINE ALEXANDER: What has happened since then? Have you had any problems with the neighbors?

BRANDON WOOLKALIS: I got a great story for you. Very extensive, lots of meetings and etcetera. And there were some people that no matter what, were still opposed and, you know, came to the meeting and

opposed me and opposed my Victualer license. And I think it was more the fear of the unknown. Fear of I was going to do what I said I was going to do. And I had one lady come in one day, and I am often in the stores, and she come up to me and she said, Do you remember me? And I said, Yes, I do. I don't forget faces. And she said, I just have to tell you something. She's like I'm so sorry I opposed you because you told me what you were going to do and you did exactly what you told me you were going to do. You built a beautiful store and it's immaculate and I come here and get my coffee here every day now. And that's just point in case, I want the community to be happy. These pictures here. The Cornerstone Apartments off of Harvey Street. We did some ice cream socials when I had my Baskin Robins. We still do coffee and doughnuts with them when they have cookouts and picnics. Like the letter said,

the Little League. Any charity events. We also sponsor the dance league off of Fawcett Oil. Any charity that comes to me. I'm always here for Cambridge because I was born and raised here and I give back to the people I grew up with, you know. And you can see the store how clean it is the lower picture. That's one up on Mass. Ave. and there's some pictures of people having -- we have elderly housing on 50 Churchill Ave. all day long. My mother is always in there playing checkers in there with them. And it was awesome. I was in there with Paul and there was three gentlemen from the elderly housing and we hope this is the same thing we have here. Hopefully have the residents come down and have ownership of something you know.

CONSTANTINE ALEXANDER: Thank you.

Questions or comments from members of the Board at this point or ready for a vote.

SHIRLEY ROACH RUSSELL: Can I give a

little history of 808 Memorial Drive just a brief one?

CONSTANTINE ALEXANDER: Sure.

SHIRLEY ROACH RUSSELL: The gas stations, all four of them: Shell, Shell, Mobil and were there before the building was built. In order to get the building built, the builder, the architect, they made a deal with the gas station owners. We will give you -- we will own the building, but you will act as owners yourself. We will give you a 99 year lease that can be renewable five times over. So that's it. When I moved to that building, you couldn't get rid of the gas station. They were part of the deal. One gas station is open. I'm hoping Mobil will leaves, too. But one gas station is gone. And it's just that I think, and maybe this is, maybe this turned out to be a good thing, you know, right now with the knowledge I have, with information I have, I really do oppose

it. But that was a little history. I felt like you all needed to know how it came to be that the gas stations were there and residents upstairs.

ATTORNEY JAMES RAFFERTY: They were there first.

THOMAS SCOTT: Why wouldn't we continue the case so they could have the meeting with the residents that he hasn't had yet? He's only met with Paul. He hasn't met with anybody else. I mean, he's done a good job convincing me that he's a good operator. Convince the residents that you're good operator.

BRANDON WOOLKALIS: I will. And if we vote on this and then I can go to the Common Victualer License and I will meet with the tenants' association and everyone in the building and hear their concerns. I have to go through another hurdle. This is just one jump in a series of hurdles, you know.

CONSTANTINE ALEXANDER: Well, I'm sure and you haven't really answered the question. Are you under some time constraints?

BRANDON WOOLKALIS: Well, we do have a lease and it costs a lot of money. We still have build out time and we still have to get a Common Victualer License.

CONSTANTINE ALEXANDER: Subject to getting a Variance from us?

BRANDON WOOLKALIS: It is.

CONSTANTINE ALEXANDER: If it is, then you're not paying any rent.

BRANDON WOOLKALIS: We will be if this passes --

CONSTANTINE ALEXANDER: No, no, no, wait a minute. If we were to continue this case --

BRANDON WOOLKALIS: Right.

CONSTANTINE ALEXANDER: -- the case will not have passed on the Variance. If

we're not passing the Variance, your lease doesn't commence. Where's your financial outlook?

BRANDON WOOLKALIS: But this is when we get approval, then we have no more build time. Like usually --

CONSTANTINE ALEXANDER: If you're not going to get approval. The point is if we continue the case tonight, you'll not have approval tonight.

BRANDON WOOLKALIS: Right, right.

CONSTANTINE ALEXANDER: Because you won't have approval tonight, your lease obligations will not start to run.

BRANDON WOOLKALIS: (Inaudible.)

ATTORNEY JAMES RAFFERTY: I think what is traditional and I'm not familiar with the details, but I think what I hear him saying, there's a window. And during the window you have a period to obtain your approvals. And if you get the approvals done

sooner, then you can commence your construction during the non-rent window. If the case were continued, the window is the window, but you obviously don't -- you can't get any permits to begin building so you lose that period of time. So there's, I'm guessing there's a fixed period of time prior to rent commencement. And if rent commencement, so if this --

CONSTANTINE ALEXANDER: I hear you. I hear you. And you're looking for a financial advantage.

ATTORNEY JAMES RAFFERTY: I was just providing the explanation.

CONSTANTINE ALEXANDER: I understand that. I'm hearing the explanation. I guess my rejoinder is that's nice and I applaud you for trying to get this jump start on the free rent. Nevertheless spend some time with the neighbors, and I know you're an honorable man, give up this time to

meet with the neighborhood association. Because I think that -- well, you made a good point, Mr. Rafferty, about the fact you're going to have to get a Common Victualer License, another hearing, different hearing. A different situation.

BRANDON WOOLKALIS: That's more weeks and weeks out.

TAD HEUER: Am I correct in interpreting the timeline, it's not just that you're trying to open in a free rent period, you're able to build out while still paying rent on a space that can't be used?

ATTORNEY JAMES RAFFERTY: That's exactly what I was saying.

TAD HEUER: Right. So, it's not just you're trying to gain an advantage on opening your space ready for use if the Variance is not granted until well after.

ATTORNEY JAMES RAFFERTY: Right. Because the period of time between the

approval and the build out you'll have fallen into the rent payment period.

BRANDON WOOLKALIS: And we don't do a traditional Dunkin'. I mean, we really do a nice job. Like you can see with that one. The build out takes longer. The traditional, the grey plastic and the orange. We do a nice job. So it takes us longer to do it right.

BRENDAN SULLIVAN: I think there's another still another day, another hearing.

CONSTANTINE ALEXANDER: That's true.

BRENDAN SULLIVAN: And that all of those issues can be vented at that point at that time. Whereas, should we continue it, we're off into months. This is not the last bite.

TAD HEUER: This strangely is not a Special Permit hearing which means that some of the findings we would make on Special

Permit don't need to be made here because we're looking at a hardship. And for instance, where we look at trash, we've had appearances, but the next Board he has to go to, as is our obligations, one of its sole obligations is to determine whether he has a proper pest control. Whether he has proper that's all they ever talk about. Here it comes up and it's an appendage in a Special Permit situation. But as the Petitioners we're not special.

BRENDAN SULLIVAN: The irony of this is that our concerns fall under the Special Permit criteria.

TAD HEUER: Yes, that's right. And we are issuing a Special Permit.

BRENDAN SULLIVAN: We're not granting --

TAD HEUER: Right.

BRENDAN SULLIVAN: And those really are the nuts and bolts of all the concerns.

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: You wanted to say one more thing and that will be the last.

SHIRLEY ROACH RUSSELL: Yes. There is another organization, Homeowners Rehab that's involved in the leasing of the property. And one of the -- I'm going to say, I'm going to use the word policy. It's an agreement. But while Sunoco has the lease and they can sublet to anyone, they still need approval of the owners. Fortunately for us the tenant association is part owner when you look at the big picture, the way it's all written. So I'm sorry, pronounce your name again, sir.

CONSTANTINE ALEXANDER:

Mr. Woolkalis.

BRANDON WOOLKALIS: You can call me Brandon.

SHIRLEY ROACH RUSSELL: I don't know

when you go to the Licensing Board and I don't know when this Board meets again, but I would love for you to talk to the residents.

BRANDON WOOLKALIS: I will.

SHIRLEY ROACH RUSSELL: Especially the ones who signed and objected to the fast food restaurant, and talk to the residents and come up with something that makes us, at least the residents, and that includes me, feel comfortable with rodents. I live with rodents in that building. I don't want to live with them anymore. I'm not paying rent for rodents, too.

BRANDON WOOLKALIS: I understand.

CONSTANTINE ALEXANDER: I think we're ready for a vote. I'm sure you will honor what you just told this individual?

BRANDON WOOLKALIS: Yes.

CONSTANTINE ALEXANDER: I'm going to make a motion. I move that the Board make the following findings:

That a literal enforcement in the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that this property is a business zone district, had very limited uses beyond office use and this is the nature of these premises. This ground floor area is not conducive to office use.

And that the hardship is owing to the nature of the premises you're talking about. Again, it's ground level. It's got very few uses under the office requirements for our Zoning By-Law.

That relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent and purpose of this Ordinance. In fact, the relief if granted, the operation of a coffee shop, a fast food establishment and a dry cleaning pick-up store really will improve the quality of life for those in the

neighborhood, provide necessary services and useful services. And that as compared to a gas station or a service station underneath the residential structure, this is far safer to the inhabitants of the residents of the Cambridge, this proposed use.

On the basis of the foregoing I move that we allow the Petitioner to operate these premises, a fast food coffee shop, fast food establishment as defined by our Zoning By-Law and as well as dry cleaning pick-up store.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

BRANDON WOOLKALIS: Thank you members of the Board.

(At 1:05 a.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 August 2010.

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

My Commission Expires:
April 23, 2015

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