

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING

JULY 8, 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

Slater Anderson, Member

Ranjit Singanayagam, Commissioner of
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P R O C E E D I N G S

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call the meeting to order. As is our custom, we start with the continued cases. And the first case I'm going to call is case No. 9930, 678 Mass. Ave.

Is there anyone here on that matter? Please come forward.

WACINE NOURI: It's not being continued.

CONSTANTINE ALEXANDER: Yes, it's being continued. You didn't advertise the last time around, so we continued the case. I don't think you have you've come before us. We have a stenographer. Please give her your name and address.

WACINE NOURI: My name is Wacine

Nouri, 52 Ashton Street, Boston, Mass.

CONSTANTINE ALEXANDER: And you're here on behalf of T-Mobile.

WACINE NOURI: Yes, sir.

CONSTANTINE ALEXANDER: Before we get into the case, because we don't want this as a case heard. I have to advise you that the filing is inadequate for us to consider this case. I don't know if you've overlooked or your client have looked at our typical telecommunications cases, but we have to make various findings to grant you the Special Permit that you seek. One of them, and one of the most important ones -- let me find the statute, is the extent to which the visual impact of the various elements of the proposed is minimized.

To deal with that we require that the Petitioner submit to us photo simulations before and after, and if we grant relief we tie the relief to those photo simulations.

We have no photo simulations in the file. In fact, we have very little in the file beyond that. I don't think we can consider this case tonight. I'm not prepared to consider this case tonight because we don't have an adequate amount of information. And I would urge you if you're going to continue to represent T-Mobile, that you get out the files for other telecommunications cases, we have another one later on, 1100 Mass. Ave. and see what is a typical filing package and what we typically require.

WACINE NOURI: The reason there were no photo sims -- we actually, we're prepared to provide the town with the photo sims, but I believe it was the clerk who said that since there was no visual impact from the street level, that it wasn't necessary. And there is no -- this is just an equipment change out.

CONSTANTINE ALEXANDER: I understand that, but there is a change. Even

the Planning Board in its comment said we can't figure out what the impact's going to be. We assume, because you're swapping out two for one, it's not going to be a visual impact. I'm not prepared to make assumptions. I want to see it. And if you're going to show us photo simulations, show before and after and there's no change, that's fine.

WACINE NOURI: All right.

CONSTANTINE ALEXANDER: And I think also the other information, we need a copy of your FCC license. We need other things that are dealt with in the Zoning By-Law that should be a part of your submission package we see in advance. We have to see the package, including the photo sims by five p.m. on the Monday before the Thursday hearing.

WACINE NOURI: Okay. Not a problem.

CONSTANTINE ALEXANDER: Okay. So I don't want to start the case, because if we do --

WACINE NOURI: There's no point to. I'll have everything prepped and submitted on Monday.

CONSTANTINE ALEXANDER: Let's see when we will continue the case to.

Other members of the Board disagree with me to continue the case?

RANJIT SINGANAYAGAM: We have September 6th.

CONSTANTINE ALEXANDER: We'll continue the case until September 6th.

WACINE NOURI: There were four in total. There were two tonight and two on the 23rd.

CONSTANTINE ALEXANDER: Well, if you can get your package in on time, we can deal with them on the merits.

WACINE NOURI: Okay.

CONSTANTINE ALEXANDER: But you have to have everything in by the Monday before.

WACINE NOURI: Oh, Absolutely.

TAD HEUER: So for the two you have upcoming, once you have it in, we'll be able to hear those on the merits. My question is whether we could get both of these, this one and the next one at the same time to save you sometime.

CONSTANTINE ALEXANDER: We have two slots open on September 6th.

RANJIT SINGANAYAGAM: September 16th we have only two continued cases so far.

CONSTANTINE ALEXANDER: Oh, okay, so September 16th.

RANJIT SINGANAYAGAM: So, are there two cases to continue?

CONSTANTINE ALEXANDER: Well, the next one is Canal Park we're going to continue as well.

RANJIT SINGANAYAGAM: Oh, okay.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued as a case not heard until seven p.m. on September 16th on the condition that the sign that's on the building or on the premises be modified. So just cross out today's date and put the new date in, September 16th. We already have on file a waiver of time for decision, so we don't need that.

RANJIT SINGANAYAGAM: We have that?

CONSTANTINE ALEXANDER: I believe so. This case is a continued case. It must be. I didn't look.

RANJIT SINGANAYAGAM: Sorry, you're right.

CONSTANTINE ALEXANDER: Just assuming.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

(7:05 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9932, 10 Canal park. Is there anyone here wishing to be heard on this matter? This is a whole new case. You have to give your name again.

WACINE NOURI: Yes. Wacine Nouri, 52 Ashton Street, East Boston, Mass.

CONSTANTINE ALEXANDER: And as you've spoken in the prior case, I'll just reiterate we think your filing package -- for the record, I'm not trying to be too hard. Your filing package is inadequate and, therefore, we're going to continue the case until you put together a filing package, and timely file it with this office by five p.m.

on the Monday before. So we have to continue this case.

There's one further issue in this case by the way; signage. Under the Zoning By-Law you have to, now this Canal Park is an odd location. But under our Zoning By-Law, you must have a sign that is on the subject lot at the street line or within the property but in any case, not more than 20 feet from the street line. And that wherever located, the panel shall be visible, easily identifiable and legible to persons passing by on the public street.

Currently the sign that you have posted is inside the building. Nobody can see it. It's more than 20 feet from the street. Also the signage in this case the sign doesn't comply.

WACINE NOURI: Okay.

CONSTANTINE ALEXANDER: You understand where you have to put it? No more

you get it no more than 20 feet from the street.

WACINE NOURI: Absolutely.

CONSTANTINE ALEXANDER: What some people do, depending on the nature of the premises, some people put it on a wooden placard. Stick it in the ground. You might have a brick wall you can put it on.

WACINE NOURI: That's right.

CONSTANTINE ALEXANDER: Okay. The Chair moves that this case be --

TAD HEUER: I have another.

Also the ownership form for this particular property is not case with 678 Mass. Ave. but it's missing the deed, book and page number. So it's been Notarized. I'm not sure why anyone would Notarize it with missing information, but you need a completed ownership form that includes a book and deed number for the lot and it would have to be re-notarized and resubmitted.

CONSTANTINE ALEXANDER: And that's part and parcel of an inadequate filing. Thank you.

While you're writing that down, I'll make a motion: The Chair moves that this case be continued until seven p.m. on September 16th on the condition that the Petitioner post a sign in compliance with our sign by-law and that sign should reflect the new hearing date.

You can take the old sign, put it where it should be, cross out the date. And this is being a case not heard, and it is also a waiver of time for decision in the file.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case is continued. We'll see you in September.

(Alexander, Hughes, Sullivan,

Heuer, Anderson.)

(7:10 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9936, 1100 Mass. Ave. Is there Anyone here on that matter?

ATTORNEY ANNE MALONE: My name is Anne Malone from Prince, Lobel here on behalf of Clearwire. And I actually would like to request that we continue this to the next available hearing. As I got a call from Maria Pacheco today that said we had one sign up, and I guess because of the location of the building on the corner we need more than one.

CONSTANTINE ALEXANDER: You might even need three.

ATTORNEY ANNE MALONE: She said she had two for me, so I'll go and pick those up

tomorrow.

CONSTANTINE ALEXANDER: Okay. We can put it on July 22nd?

RANJIT SINGANAYAGAM: Yes.

CONSTANTINE ALEXANDER: Okay. July 22nd. So you know you've got to have, I forget how many days, 10 days in advance of the hearing, 14 days. Get your number of signs up so you can post it where they're supposed to be posted.

The Chair moves that this case be continued as a case heard, on the condition that the Petitioner post the required number of signs in accordance with our Zoning By-Law.

That the signs reflect the new hearing date which is going to be at seven p.m. on July 22nd. This is a case not heard. And the Petitioner has already signed a waiver of time for decision.

All those in favor of continuing the

case on this basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor.

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

(7:15 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9942, 45 Walden Street. Is there anyone here on this matter? Please come forward. For the record, name and address.

If you have trouble hearing, just come along to the sides or nearby.

ATTORNEY DENNIS BENZAN: Attorney Dennis Benzan, law firm of Altman and Altman, 689 Mass. Ave.

ANGELICA BRISK: Hi. Angelica Brisk, 45 Walden Street.

CONSTANTINE ALEXANDER: You're here seeking a Variance?

ATTORNEY DENNIS BENZAN: Yes, Mr. Chairman. Good evening.

Mr. Chairman, I have some additional copies of elevations if you need them.

CONSTANTINE ALEXANDER: Are they substantially different than what we have in our files?

ATTORNEY DENNIS BENZAN: No. I want to make sure you have the dimensions of the elevations. I have large several copies here.

CONSTANTINE ALEXANDER: Are they already in the file?

ATTORNEY DENNIS BENZAN: They might be. I just want to make sure they're available.

CONSTANTINE ALEXANDER: And what exactly are you seeking a Variance from? What's the basis -- before we get into the why should you get the Variance, what are you seeking a Variance for?

ATTORNEY DENNIS BENZAN: Well, we're seeking a Variance because there's

going to be a change in volume with this particular building. This particular building actually sits below the Walden Street bridge. As you know, the Walden Street bridge was under construction for many years.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY DENNIS BENZAN: Angelica Brisk and Thomas Trumball have been the owners of this particular building since 1996. They have two children. One 11 and the other one 12. Right?

ANGELICA BRISK: They're 12 and 14.

ATTORNEY DENNIS BENZAN: 12 and 14.

They have been living in this house for a long time. It has not undergone any substantial renovation. If you look at some of the pictures that I have submitted, the foundation that's exposed is very, very minor. It's -- if you're walking down the street after entering the property from the

bridge and you look down at the foundation, there's about eight inches of exposed foundation. Due to all of the construction on the bridge, the foundation was substantially disturbed to the point where it completely has to be taken down and rebuilt. And so, what the family would like to do is take this opportunity to raise the building approximately a foot, foot and a half, rebuild the foundation. Currently the height in the basement is around seven feet, and create additional space in the basement for their children. And because of the change in volume, they are not within the setback.

CONSTANTINE ALEXANDER: So basically -- I'm sorry to rephrase it for you but to make sure I understand it. You're too close to the setback now.

ATTORNEY DENNIS BENZAN: Right.

CONSTANTINE ALEXANDER: And you're

going to move the building up so you're going to have more of the building too close to the setback.

ATTORNEY DENNIS BENZAN: That's right. The building is within the setback right now.

CONSTANTINE ALEXANDER: How far is it from the lot line?

ATTORNEY DENNIS BENZAN: From the lot line, I think on the side it's about 1.7 feet.

CONSTANTINE ALEXANDER: So 1.7 feet right now?

ATTORNEY DENNIS BENZAN: 1.9 on the right side, which is the side impacts the Kimbroughs' home who are here today.

CONSTANTINE ALEXANDER: So you're already 1.9 feet from the Kimbroughs' home? And you're going to do something with the deck that I guess is on the Kimbroughs' side of the lot?

ATTORNEY DENNIS BENZAN: The deck is in the rear, right rear of the house which also can be seen from the Kimbroughs' home. And the deck's going to be decreased in size.

CONSTANTINE ALEXANDER: From what to what?

ATTORNEY DENNIS BENZAN: It's going to be decreased, I think, it's just a couple of feet.

CONSTANTINE ALEXANDER: So how many feet is it now?

ATTORNEY DENNIS BENZAN: Well, if you look at -- let me find it here.

ANGELICA BRISK: Well, it's almost 12 by almost 13.

ATTORNEY DENNIS BENZAN: The deck is approximately about 12-by-12 now. And you're making it 8-by-5.

CONSTANTINE ALEXANDER: So 12-by-12 to 8-by-5?

ATTORNEY DENNIS BENZAN: Yes.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY DENNIS BENZAN: So, the major impact that it's going to have on the neighbors is obviously that we're going to be increasing the height of the building.

CONSTANTINE ALEXANDER: And privacy issues that come out of that.

ATTORNEY DENNIS BENZAN: And privacy issues.

CONSTANTINE ALEXANDER: How do you propose -- or maybe do you propose to deal with that?

ATTORNEY DENNIS BENZAN: Well, the privacy issues -- the main issue seem to be the windows that are going to be installed on the right side of the building.

CONSTANTINE ALEXANDER: Right.

ATTORNEY DENNIS BENZAN: And so what we are proposing to do is install glass block that's obscure. There will not be much of it because, again, you know, we're talking about

exposed foundation about eight inches which will probably increase to 20 inches once we build --

CONSTANTINE ALEXANDER: In terms of privacy, invasion of privacy and raising the foundation doesn't necessarily impact, nobody can look out from that raised foundation on to the neighbor's property?

ATTORNEY DENNIS BENZAN: Well, according to a drawing, there is a window that has been an issue. And Angelica has discussed this issue with the neighbor Shirley, who I'm sure she will address you later. And the main issue is that they do not want this window to affect their privacy. So what we're proposing is to install obscure glass block. And there will not be much of it because again we don't have much room to do it.

CONSTANTINE ALEXANDER: That obscure block that you're talking about is

that reflected on the plans that we have?

ATTORNEY DENNIS BENZAN: There is on the right side of the building. It is reflected there. However on the right -- the rear of the building, the rear right side of the building, the window that's shown, and that window is a little bit out of place in this drawing, but they're going to install glass block in place of that particular window.

CONSTANTINE ALEXANDER: How many windows are you going to install glass block?

ATTORNEY DENNIS BENZAN: There will be two on the right side of the building.

CONSTANTINE ALEXANDER: You're going to install the glass block?

ATTORNEY DENNIS BENZAN: Two windows, yes.

CONSTANTINE ALEXANDER: Okay,, and how many windows will not, on the right side of the building will not have glass block?

ATTORNEY DENNIS BENZAN: They will all have glass block.

CONSTANTINE ALEXANDER: All of them?

ANGELICA BRISK: Well, the windows that exist --

CONSTANTINE ALEXANDER: I'm sorry?

TIM HUGHES: All the ones in the foundation.

ATTORNEY DENNIS BENZAN: In the foundation, right.

TIM HUGHES: Not the existing ones up above?

ATTORNEY DENNIS BENZAN: We're not going to be touching the existing.

CONSTANTINE ALEXANDER: Although, I know we'll hear from your neighbor, I suspect I know what they're going to say. I trust you've talked with them and tried to resolve things with them in the past or no, have you reached an agreement?

ATTORNEY DENNIS BENZAN: I'll let you speak to this.

ANGELICA BRISK: So, we did have a discussion last week, I think last week about some of the issues that were on the drawing and felt like we were getting some good input in terms of what were concerns and trying to address. I mean, we're very open to addressing the issues that we heard about when we discussed the plans. So, that included the window facing the Kimbrough property which we also would prefer actually to do glass blocks when we looked at it. And I think there may be a concern about the deck, but we think actually the deck is going to be better than the current deck because it's --

CONSTANTINE ALEXANDER: Well, it's smaller.

ANGELICA BRISK: It's smaller. And so we discussed possible privacy approaches to adding lattice under the deck. And so

those kinds of discussions. So I felt we had a friendly conversation. I didn't realize we were at an impasse.

CONSTANTINE ALEXANDER: Maybe you're not.

ANGELICA BRISK: Maybe we're not.

And in terms of other changes, there are no other changes in terms of that facing property.

ATTORNEY DENNIS BENZAN: Just to add to that, if you look at the elevation for the right side of the building, that's actually the part of the building that's actually the lowest.

CONSTANTINE ALEXANDER: Right.

ATTORNEY DENNIS BENZAN: If you look at the house, it's around 22 feet. And we're only to increase it about --

THE STENOGRAPHER: I'm sorry, it's around 22 feet, what?

ATTORNEY DENNIS BENZAN: If you look

at the elevation on the right side of the building, it's approximately 22 feet right now.

ANGELICA BRISK: And I guess just to underscore that. At the end of our discussion what we did talk about is just maintaining really clear lines of communication in terms of Mr. Primrose saying, you know, we understand that design things change as construction happens but just keeping clear communication in terms of some of the decisions that are going to be made, especially those that impact visual and privacy and of course any safety issues.

CONSTANTINE ALEXANDER: But I think you already addressed or already started to address the issues that we have to resolve to grant the Variance. You've dealt with the fact that the hardship being you've got a structure that's been damaged by the construction on the bridge that needs repair,

if you will. On that, the hardship is owing to the really the topography of the lot given that it's below the -- what bridge? The Walden Street bridge.

ATTORNEY DENNIS BENZAN: Walden Street bridge. And also I mean the grade changes at every point at that property. If you look at again the elevations, I mean, there are points where grade changes substantially as you get down towards the train tracks. So, you know, all of that affects -- and as a matter of fact, the front of their property, they've had to excavate to uncover the foundation because it was a lot of soil that was covering the foundation causing a lot of rot. And so --

ANGELICA BRISK: So we replaced a sill at one point right after -- about a year after we bought the property because a previous owner, we don't know, had raised the grade of the ground above the foundation line

and so there was rot. And so we excavated. But it's not even really doing much.

And then the other thing is that the street was in the process of building a street -- in the process of rebuilding the bridge, the street was raised two and a half feet. So our relationship with the street has changed from two steps to eight.

CONSTANTINE ALEXANDER: I don't live that far from this bridge. I know the area. And they did raise the street level. I can verify that.

ANGELICA BRISK: You can test by the uphill climb.

CONSTANTINE ALEXANDER: I can verify that. Anything else, sir? You'll have an opportunity to talk later.

ATTORNEY DENNIS BENZAN: The other option is to dig the basement, replace the foundation, that option is much more costly for --

CONSTANTINE ALEXANDER: I'm sorry, say that again? What's the other option?

ATTORNEY DENNIS BENZAN: The other option would be to create an additional space in the basement that extra foot. It would be to dig the basement and try to replace the foundation in its existing state, but that is much more costly and we're still going to have the very same issues which is that we're going to have only about eight inches of exposed foundation in the main parts of the house. Where in 15, 20 years we're going to be dealing with some rot issue again. So, you know, when you look at both options, you know, the best option really is to raise the building and, you know, still remain under the 35 feet which is allowed.

CONSTANTINE ALEXANDER: You're going to raise this building by how much again? I forget.

ATTORNEY DENNIS BENZAN: A foot and

a half. We're going from 27 feet to 28.6.

SLATER ANDERSON: And you are adding a bay window to the first floor and there wasn't one previously; is that correct?

ATTORNEY DENNIS BENZAN: To the rear of the house.

SLATER ANDERSON: To the rear?

ATTORNEY DENNIS BENZAN: Yes.

CONSTANTINE ALEXANDER: That faces the railroad tracks?

ATTORNEY DENNIS BENZAN: That faces the rear neighbor who is in full support of the project.

TIM HUGHES: That window is not an issue, though, is it?

ATTORNEY DENNIS BENZAN: No.

TIM HUGHES: It's not in the setback?

ATTORNEY DENNIS BENZAN: It's not setback. As a matter of fact, I think we're actually -- the rear yard doesn't even fall

in the setback.

TAD HEUER: Is the deck in the setback?

ATTORNEY DENNIS BENZAN: Side setback that effects their property, yeah.

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

I'll open the matter to public testimony. Anyone wishing to be heard in this matter? You can sit there if you'd like, but give your name and address to the stenographer.

SHIRLEY KIMBROUGH: Shirley Worth Kimbrough and it's 6 Mead Street right on the corner.

THE STENOGRAPHER: You know what, I have to move because I cannot hear you.

SHIRLEY KIMBROUGH: Shirley Worth Kimbrough, 6 Mead Street.

A couple of weeks ago I wrote a letter

to the BZA expressing some of concerns about some of the changes and things that have taken place next-door. And one of the reasons, certainly, that I wrote the letter is because I'm very interested in the short term implications as well as the long implications for us as neighbors and being as close as we are. Being able to just touch each other's homes, so to speak, and being able to just touch their deck, and being able to touch their foundation or wall from our property. We are just that close. And so, concerns regarding the size of the deck. I know initially there may have been some adjustment and changes made to that and we've had some discussions about that. And I think that's really going in a positive direction. Also, some concerns regarding the, the basement and where the windows are that are going to be on our side, and the agreement to make a change in terms of making those block windows, the

two that are proposed are now I think are going to be block windows. Which I think would be great for us in terms of privacy, but will also give them light which is great.

There are a couple of things that I'm still struggling to understand and really trying to understand what some of the elevation actually means for us. Certainly in terms of privacy. Even as -- I'm not sure how I can do this. Even as we look at some of the drawings, there are currently some windows certainly in the back. And the way our property is situated, you know, our house is -- it's hard to just kind of describe it so you have to bear with me as I'm trying to do this. Just in terms of how the house is situated. If the basement is raised a foot. That means the window also comes up and where does that also window put us in relation to where our windows are currently in terms of issues of privacy? Whether it's our window

that's actually facing our property or the window that's perpendicular to the property. I'm not sure how I understand how we're going to be impacted by that. And even the bay window, if everything is going up, we do have also a window on the second floor that's also above the kitchen window that's facing their property and not understanding, you know, the privacy issues around that. And right now, I can be putting my dishes in the cupboard and happen to pass by the window and I can see the neighbors in their house. So there are certainly quite a few privacy issues that I'm trying to understand and be supportive of.

BRENDAN SULLIVAN: Not to interrupt. Your concern is obviously so looking straight across, but also a bigger concern would be that somebody would be looking down?

SHIRLEY KIMBROUGH: Absolutely.

BRENDAN SULLIVAN: In other words,

by raising the house that that is --

SHIRLEY KIMBROUGH: In other words, we can just walk out of our door, and right now the way the deck is just, you know, is right there. And understanding this is going to be smaller, but now it's going to be up higher. And the deck is going to be higher. The windows going to be higher. It's going to affect how we also look out from our kitchen in terms of where their windows are now going to be that are in the back and the perpendicular issue. There's some things that I'm not totally understanding, but I'm -- I want to be able to understand the short range impact and the long range impact on all of it in terms of --

CONSTANTINE ALEXANDER: I guess you've had some conversation?

SHIRLEY KIMBROUGH: We've had some conversations, yes.

CONSTANTINE ALEXANDER: Do you need

more conversation? What can they do to help you better understand I guess is what I'm asking?

SHIRLEY KIMBROUGH: I guess I really do need to get a sense in terms of where the windows are going to be in terms of where ours are and the raising of the house and how it's actually going to impact then.

BRENDAN SULLIVAN: You're not at a comfort level?

CONSTANTINE ALEXANDER: That's what I'm getting at.

BRENDAN SULLIVAN: And so I think that we're not going to resolve it tonight.

SHIRLEY KIMBROUGH: I think that there are a few things -- I think we can certainly probably need to talk about a little bit more. You know, I'm concerned about asbestos that was removed recently and --

CONSTANTINE ALEXANDER: That's not

an issue for -- that's not a zoning issue. We don't have to get into that.

SHIRLEY KIMBROUGH: But I'm also concerned in terms of a general health issue, period.

CONSTANTINE ALEXANDER: Health in what regard?

SHIRLEY KIMBROUGH: Well, I know that when the state did the bridge over, we expressed concerns as a in the community about health and safety issues. As close as we are, I'm concerned about health and safety issues.

CONSTANTINE ALEXANDER: I understand that. But does the project that they're going to do, how does that affect your health and safety?

SHIRLEY KIMBROUGH: I don't know. That's, I think that's my point.

CONSTANTINE ALEXANDER: I suspect it's not. Privacy certainly is and it could

be an issue. I'm not sure why putting --

BRENDAN SULLIVAN: Excuse me. How close are you again now to the property line?

CONSTANTINE ALEXANDER: 1.9.

BRENDAN SULLIVAN: So the state building code is going to come into effect also. As far as privacy questions and address the things that need to be addressed on that score. So the zoning, but there's also building?

SHIRLEY KIMBROUGH: Yes.

BRENDAN SULLIVAN: And they have to meet.

CONSTANTINE ALEXANDER: You have to satisfy both.

SHIRLEY KIMBROUGH: Right.

CONSTANTINE ALEXANDER: They have to satisfy both the state building code and our Zoning By-Law. Unless they get relief from the proper body. We don't give relief for the state regulations. Tim?

TIM HUGHES: Currently are the windows on your side of the house that are facing this house right opposite the windows that are presently there?

SHIRLEY KIMBROUGH: No. They're perpendicular.

TIM HUGHES: How close are they?

ANGELICA BRISK: The house is perpendicular, so there's no windows facing each other.

ATTORNEY DENNIS BENZAN: Right, I mean, it makes --

TIM HUGHES: Is there a wall facing a wall or is that --

ATTORNEY DENNIS BENZAN: No, that's part of the -- I guess the problem that Angelica is having is that -- I mean the buildings are not even side by side. I mean, the front of their building -- if you guys have a copy of the plot plan.

BRENDAN SULLIVAN: We're going much

more forward.

ATTORNEY DENNIS BENZAN: Oh.

CONSTANTINE ALEXANDER: We have some that are in the file.

ATTORNEY DENNIS BENZAN: Well, the front of their building is actually at the rear, at the left rear of their building. So if you raised the building, there's really very little chance that even looking down, that you're going to be able to look into their property because the buildings don't sit next to each other. The only impact, if at all, from the windows will come from the rear of the house. And I think we've already established that we're not within a setback. And so if they want to replace the building -- to build the window and convert it to a bay window, as long as they're in compliance with the state building code there really are no issues.

The only reason why we're here today is

because there's going to be a change in volume. And generally with these types of cases, the major issue is the impact of sunlight on their building. There is going to be no impact of sunlight. And this issue can be very easily resolved if Angelica and Thomas decide to install windows that have obscure glass. And that will be somewhat excessive and really, you know, unnecessary. And I think Angelica has really tried to work with her neighbors. At this point, you know, it's going to be very costly to complete this project, and these delays are going to begin to affect them financially.

CONSTANTINE ALEXANDER: I understand that. But on the other hand, you recognize this it's obvious that you have to live with your neighbor, they're very close to you, No. 1. I haven't heard, maybe I'm dense, I haven't heard that they're opposed to the project, they just need to understand

it better. And it strikes me that if you sat down with them with drawings, elevations of where you're putting the windows, as they are now house to house, and what they're going to be next if we grant you relief, I think that should answer her questions and at least allow this Board to also better understand the impact.

ATTORNEY DENNIS BENZAN: Right. I mean, with all due respect, I think Angelica has tried to do that. You know, Shirley has hired counsel, Matt. He and I have discussed the project. And, you know, I think at some point there has to be a level of comfort based on all the conversations that have taken place. So either there's, you know, opposition to the project or support for the project. And all of the neighbors are in support of the project with the exception of, you know, Shirley.

CONSTANTINE ALEXANDER: They are

the most directly affected by this project.

Are you ultimately opposed to this?

SHIRLEY KIMBROUGH: I am not opposed to the project. I understand the need and the importance of getting it done. And I certainly respect that. And I think what I've talked about in my letter is certainly a grave concern to me and certainly regarding health and safety issues as I talked about. And there are no issues regarding that, then there are no issues regarding it. But also understanding the privacy issue. We have space that we also use outside that abuts their wall where they're going to be putting the block windows that, certainly put the block window, that will also give us some privacy, that's very important as well. And I know that we can -- we've been neighbors for a long time, and we can walk through this and work through this. I'm confident in that. I want to make sure that I'm understanding it

and I understand what the ultimate implications are.

CONSTANTINE ALEXANDER: That's understandable. That's understandable. On the other hand, I think as you appreciate there is a need on the Petitioner's part to do work on the structure. It's a bad situation. And, you know, we can't change the location of your structures to theirs. I do think, and I will say to my fellow Board members this case will be better served to be continued, not for a long time, but to allow at least some more conversation and hopefully you can get to the end on that. But we have to continue this case to a time when all five of us -- this is a case heard at this point, can sit.

TAD HEUER: That's presuming that we all vote to continue.

CONSTANTINE ALEXANDER: You're right. Assuming we all vote to continue.

We have two votes to continue and we need one more, but you're right. We'll put it to a vote. I'm going to find a date to continue the case and we'll make a motion.

ATTORNEY DENNIS BENZAN: Well, if I may, I just want to be clear that, and I agree that obviously we have to continue this case, but I also want to make sure that we leave here understanding what the next process is. Because, you know, determining how a window affects a property requires professionals to develop some type of a drawing that can determine what angle how the windows are going to affect the property next-door, how high the building's going to go. And, you know, that costs money. So, you know, I don't think -- it sounds like the conversation is not, what's going to resolve this because that already has happened. And so I want to be sure that we leave here with the understanding that she's asking my client

to get a copy of drawings that show the impact of the windows on her property or, you know, something else. But I want to, I want to make sure that we leave here clear with what's expected of Angelica and her husband and her family.

CONSTANTINE ALEXANDER: Before we -- and fair point.

ANGELICA BRISK: I just also want to make sure that we're talking about which windows. I mean, if we're talking about the bay window, that's a different issue than the windows that are -- sorry.

CONSTANTINE ALEXANDER: I'm going to give you a chance.

TIM HUGHES: And I want to say something, too.

CONSTANTINE ALEXANDER: We have two members that want to say something. And we may have a descent whether we continue the case at all.

I'll let Tad go first. Go ahead.

TAD HEUER: First, I'd like to get a sense of kind of putting together these various pieces of what I'm going to look at. So looking at the schematic, obviously the stenographer has no idea what I'm talking about, and the record won't reflect this. This is your structure (indicating.) This is Mead Street (indicating). This is the front to Mead Street coming this way (indicating). This is the front to Walden Street this way (indicating). This is the property line from which you are a foot and a half from, ish, a foot nine, right? This is the deck (indicating). This is the proposed bay window which is not in the setback and does require relief (indicating).

ATTORNEY DENNIS BENZAN: Correct.

TAD HEUER: The window's here (indicating), none of them are wall to wall

structures here; is that correct?

ATTORNEY DENNIS BENZAN: Right.

And they're going to be obscure.

TAD HEUER: Correct.

ATTORNEY DENNIS BENZAN: The lower ones.

ANGELICA BRISK: What they are.

TAD HEUER: A foot and a quarter, right? Is that right?

ATTORNEY DENNIS BENZAN: Right.

ANGELICA BRISK: Right.

TAD HEUER: Okay.

TIM HUGHES: On this proposed drawing here, on the right side elevation, those two windows already exist?

ANGELICA BRISK: They already exist.

ATTORNEY DENNIS BENZAN: They already exist.

TIM HUGHES: A foot and a half lower than you're proposing?

ANGELICA BRISK: Right.

ATTORNEY DENNIS BENZAN: Right. If you stand in front of those windows, you really can't see --

ANGELICA BRISK: You see to the street.

ATTORNEY DENNIS BENZAN: -- you see to the street.

ANGELICA BRISK: Although, you do see --

TIM HUGHES: They overlook their yard?

SHIRLEY KIMBROUGH: Yes.

ANGELICA BRISK: Right.

TIM HUGHES: But those windows already exist there, correct?

ATTORNEY DENNIS BENZAN: Right.

TIM HUGHES: Okay.

TAD HEUER: I mean, I've listened to all of this. My -- in terms of what we're being asked for here, we're not a health and

safety Board. Those issues, if they exist and they preclude the project from going forward, even if we grant relief, the project can't happen. You still have to get relief from sundry, various other entities in order for this to go forward. We're not dealing with that tonight. So the health issues well certainly relevant, are not within our realm. They're just not.

The rear window, the bay window is also not within our -- it's not within a setback. I don't think it's something that we are -- have any reason to make any comment on whatsoever. I just don't think it's -- and it's a by-right addition as far as my reading of the form, the dimensional form, and they can proceed by right.

The deck is getting smaller. If there are concerns about the largeness of the deck, the fact that the deck overlooks the property because of the encroaching further, I would

have some issues, but it doesn't appear it's going to be that way. It's going to be a smaller deck in the same place.

So the last issue with the windows, it appears that none of the windows look into the other adjoining property which is what we usually are concerned with when we look at windows. We're looking at windows that can look into someone else's property. Here the windows that are transparent, the windows that already exist, the windows that are going to be added are going to be opaque. In neither situation do I see a substantial change from the situation which is already accepted which is something that's allowed because it's grandfathered.

CONSTANTINE ALEXANDER: As I understand it, what I've heard is that everything you've said is absolutely correct. But the transparent windows are going to be at a different location, a foot

and a half or so higher. And what the neighbor is complaining -- not complaining, but is raising the questions, I don't know what the impact of that's going to be. And although you can't look directly across, I assume you can look diagonally in and maybe you'll see there are more privacy issues by virtue of the foot and a half higher. And the neighbor desires to understand better what that impact is going to be. And --

TIM HUGHES: You know, it doesn't take a professional to do this. You can stand a foot and a half higher in the window and look out at both sides and figure this out.

CONSTANTINE ALEXANDER: That goes to I don't think you have a lot of money to I think --

ANGELICA BRISK: We can't see into their house through either of those windows. Not even -- I mean, I have a cabinet above,

above this window. I have a cabinet that's above it, right? So I have to go into that cabinet on a regular basis to get games for the kids. I can't see into their home. I can see into their yard, absolutely. I can. But we've put -- we actually put a -- it's actually both neighbors have put obscuring stuff right on the second -- on the first panel, the lower panel. They have done that for the kitchen and we've done that for that window. And actually for this window, too.

ATTORNEY DENNIS BENZAN: And in raising the building a foot and a half and looking out the window is not going to allow them to see the yard more or less. I mean, it's going to allow them to see the yard the very same amount. And it's not going to allow them to see more into their house because of the angle. I mean, the only, if I recall, Shirley, maybe you can help me with this, but their rear yard has a huge patio

door. Okay? And has very few windows on the second level. So, you know, I really think that there is no impact in terms of, you know, what they're able to see by virtue of the fact that the building's going up a foot and a half.

CONSTANTINE ALEXANDER: I hear you, and I suspect you may be right. Here's where I'm coming from, and I may be out voted by the Board members. You've got a situation if a neighbor, Shirley. If you don't mind me calling you by your first name. I forget your last name, but I remember your first name -- who were not opposed to this, I would decide the case tonight. You have to live with your neighbors. You're very close to each other. She just needs a little more comfort is what I'm hearing. I think, I think it's in the interest of the community to give her the opportunity to get that comfort. If you come back whenever we come

back, and you're still where you are today, I'm ready and prepared to make a decision. But I'm just reluctant to force a decision in a situation here where there's not a meeting of the minds, and I think there could be if there's a little more time given. That's why I'm in favor of continuing the case.

TIM HUGHES: I think I'm leaning with Tad that I'm not in favor of continuing this. I think the impact is minimal. I think they'll come to an understanding without us continuing this case. I think that the window, that raising of the house is not going to exacerbate any privacy issues with the configuration of these two houses the way they are. And the glass block wall, I don't want to call it a window because it's not, it's a wall, you know, is going to accommodate both the light in the basement and privacy on the other side. I'm opposed to continuing. I'm ready to make a decision

tonight.

CONSTANTINE ALEXANDER: Anyone else want to be heard or we can put the motion on the floor?

SLATER ANDERSON: I tend to agree with the two of you. I also am sensitive to the Applicant. The impact of the timing of the continuance which could push a significant project into a season which is not a good construction season which could push the project into next year. They've already had to deal with something outside of their control which was the construction for a very long time of the Walden Street bridge. I don't see a huge gulf between the parties. There seems like there's a level of trust and good will, and I hope that will continue through the process to complete the project. So, I see this as ripe for a vote.

CONSTANTINE ALEXANDER: Okay.
Given that, I don't think it makes sense to

make motion since the motion is not going to carry. I still feel the way I feel about continuing the case, but be that as it may, let's keep going on the merits.

Is there any more you wish to add with regard to this project?

SHIRLEY KIMBROUGH: Well, I know that we will certainly continue to have some conversation. I guess what I need to understand, too, in terms of what is presented here in terms of what you have received --

CONSTANTINE ALEXANDER: We have a set of plans.

SHIRLEY KIMBROUGH: Right.

CONSTANTINE ALEXANDER: If we grant relief, we would tie the relief to those plans that are in the files.

SHIRLEY KIMBROUGH: That's correct. I'm sorry, I don't know your terminology, but granting relief means --

CONSTANTINE ALEXANDER: It means we grant them the Variance that they're seeking. Allow them to build up the foot and a half.

BRENDAN SULLIVAN: They have to follow those drawings.

CONSTANTINE ALEXANDER: Follow the drawings that in our file.

BRENDAN SULLIVAN: And not deviate from those drawings.

CONSTANTINE ALEXANDER: What you've should have seen before now are in the file. There's a set of plans. It's going to be cast in concrete.

ANGELICA BRISK: But just to clarify, okay, we are -- I mean, obviously we're not going to put the window facing the property, so that is going to deviate from the plans.

CONSTANTINE ALEXANDER: No, no.

ANGELICA BRISK: And the things that we want to -- we're trying to accommodate for.

CONSTANTINE ALEXANDER: Yes.

TAD HEUER: To the extent that should reflect glass block and it doesn't right now, we would put it as a condition that that window --

ANGELICA BRISK: I know it sounds silly, but I just want to be clear.

ATTORNEY DENNIS BENZAN: And also to be clear --

CONSTANTINE ALEXANDER: One at a time. One at a time. Okay.

SHIRLEY KIMBROUGH: And the change within the deck is not reflected on here either?

CONSTANTINE ALEXANDER: No, I will add that. When I make the motion, I will add as a further condition that the deck be reduced to a size of approximately no more than eight feet by five feet.

ATTORNEY DENNIS BENZAN: It's reflected in the plans.

CONSTANTINE ALEXANDER: Is it reflected in the plans?

ATTORNEY DENNIS BENZAN: Yes.

ANGELICA BRISK: Like we're going to put some private -- the privacy elements on the deck to do -- so for instance, like this design it doesn't -- we were talking -- Shirley and I talked about the fact that we would do some kind of higher, higher banister there to make it more private between, and some kind of a lattice work underneath also. So we've talked about some options there.

CONSTANTINE ALEXANDER: It sounds like on that you're not in disagreement.

ANGELICA BRISK: No.

TAD HEUER: So the deck as it's indicated on this plan shows 13, 6 by 6, 5; is that incorrect?

ATTORNEY DENNIS BENZAN: 13, 6. The proposed plan is 13, 8 by 6, 5, yes.

ANGELICA BRISK: But we're going smaller.

CONSTANTINE ALEXANDER: It wasn't 8 by 5, it's 13, 6 by 5?

ATTORNEY DENNIS BENZAN: Right.

TAD HEUER: So it's 13, 6 by --

ATTORNEY DENNIS BENZAN: Yes.

TAD HEUER: -- 5.

ANGELICA BRISK: Actually, we want to bring it in by one foot. So that is different. It's going to be 12 by 5.

TAD HEUER: 12, 6? 12 flat.

ATTORNEY DENNIS BENZAN: 12, 8 by 6, 5. So it's currently shown as 13, 8.

TAD HEUER: It's currently shown as 13, 6.

ATTORNEY DENNIS BENZAN: 13, 6.

ANGELICA BRISK: So 12, 8. We were going to bring it in a foot. It's being less. Not as close --

TAD HEUER: All right, so bringing

it a foot from 13, 6 --

ANGELICA BRISK: Exactly.

TAD HEUER: -- to bringing it a foot from 13-ish. Which one is it?

ANGELICA BRISK: Bringing it a foot from 13, 6.

ATTORNEY DENNIS BENZAN: 13, 6, it will be 12, 6.

TAD HEUER: 12, 6.

CONSTANTINE ALEXANDER: So it will be 12, 6 by 6, 5?

ATTORNEY DENNIS BENZAN: Right.

And they've agreed to install lattice on the right side. They've agreed to install the obscure glass block on the right side.

They'll continue to have conversations in good faith to make sure, you know, that everyone is satisfied. And I think that's the point of it here. Besides that try but, you know, as Mr. Anderson pointed out, you know, if this project is delayed due to the

continuance, I mean, this project can very well go into next year. The house has been exposed now for over a year without any siding. So, you know, it's going to cause a lot more hardship than what it's already caused the family.

CONSTANTINE ALEXANDER: Yes.

SHIRLEY KIMBROUGH: As I said, I'm not opposed to the work that's being done. Certainly there are a few things that I think we certainly needed some objections to. And one of the things that -- I mean, certainly I'm here because of some level of trust in terms of the deck being built or in terms of asbestos and all of those things without permits. That's one of the reasons why we're here because of those things.

ATTORNEY DENNIS BENZAN: Well, I'm sorry, just a point of clarification. I don't mean to cut you off, Shirley. But the asbestos was removed on this property --

CONSTANTINE ALEXANDER: I don't want to hear --

ATTORNEY DENNIS BENZAN: But just for the record, I mean just for the record I think it's important to note that there was a permit taken out to remove the asbestos. Okay?

CONSTANTINE ALEXANDER: No more mention of asbestos. It's not that it's not a hazard, it's not our jurisdiction.

SHIRLEY KIMBROUGH: Understanding that. But I'm saying that I'm here because there's some concern regarding trust and then being able to understand how things are moving forward and the impact upon us without us being able to even come to a place like this to express some of those concerns about other things that have been done.

SLATER ANDERSON: After this hearing you will have the Building Department to be there if relief is granted to make sure

that everything is done in accordance with the building regulations and other state and city regulations.

CONSTANTINE ALEXANDER: Ms.

Kimbrough, you refer to the fact you have sent a letter to us and you have. I would propose not to read it into the record because I assume all the points you raised in your letter were covered in your oral testimony?

SHIRLEY KIMBROUGH: Yes.

CONSTANTINE ALEXANDER: I don't believe there are any letters in the file. Although you did represent that these other names as far as you know, are in support of the project.

ATTORNEY DENNIS BENZAN: Yes.

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

(No response.)

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

Questions, comments, any discussions from members of the Board? Ready for a vote.

I'm sorry, any closing comments?

ATTORNEY DENNIS BENZAN: No, I do not. Ready for a vote.

CONSTANTINE ALEXANDER: 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 that the Petitioner will not be able to rebuild or refurbish the structure that's been damaged by work to build a railroad bridge nearby. That the hardship is owing to circumstances relating to the topography of this lot. This lot is an unusual topography. It has different grades at different points in the lot, and it just slopes down some points below the street level.

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

What the Petitioner is seeking to do is to make a single-family dwelling more habitable. That what is being proposed is to raise the structure by approximately one and a half feet, and the structure and the reason they're here is because that part of the structure that's going to be raised, or at least part of the structure that's going to be raised invades the setback requirements of our Zoning By-Law.

It will not derogate from the intent or purpose of our Zoning By-Law because as I said before, it will enhance the housing stock of the City of Cambridge.

And with the conditions that the Board will impose, it should not adversely impact the privacy of the abutting property owner,

being noted that given the relationship of the structures, this structure and the structure of the neighbor, that there should be no, with the raising of the structure, the relocation of the windows should not cause privacy issues for the neighbor.

On the basis of these findings, the Board would grant a Variance to allow the Petitioner to proceed on the condition that the work proceed in accordance with the plans submitted by the Petitioner, five pages in number prepared by RAV and Associates. The first page of which has been initialed by the Chair.

On the further condition that with respect to these plans, that the two windows shown to be in the raised foundation, be block windows so that they allow light in, they are not transparent. With regard to the right side elevation only.

And on the further condition that the

near deck in the property be reduced in size from what is shown on the plans to approximately 12 feet, six inches by six feet, five inches. And that the Petitioner seek to minimize the impact of this deck on the neighboring properties for the use of lattice work or other reasonable means of established shading or disguising or shielding this deck from the view of the people of the neighboring lot.

On the basis of this, the Chair moves that the Variance be granted.

All those in favor, say "Aye."

(Aye.)

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

ATTORNEY DENNIS BENZAN: Thank you, Mr. Chairman. Thank you, Board members.

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

(8:00 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The case will call case No. 9954, 15 Grozier Road. Is there anyone here wishing to be heard on that matter? Name and address for the file, please.

PETER WRIGHT: It's Prometheus Enterprises.

THE STENOGRAPHER: And your name?

PETER WRIGHT: And my name is Peter Wright, W-r-i-g-h-t, I'm the architect. And this is Martin Cafasso who's the manager of the Prometheus.

Shall I introduce the situation?

CONSTANTINE ALEXANDER: Yes, please. Members of the Board have read the file, or most of us have read the file, but I think you should walk through specifically talking about why -- just it's exactly what you're seeking a Variance for.

PETER WRIGHT: Right.

CONSTANTINE ALEXANDER: And where you're deviating from our Zoning Code and why you're entitled as a matter of law.

PETER WRIGHT: Right.

The deviation is the side setbacks on two sides briefly concerning that we are maintaining the existing, except that on the rear we're actually alleviating, we're pulling back roughly seven feet to be inside of the setback:

CONSTANTINE ALEXANDER: Are there any issues being too close to the main house there's a garage?

PETER WRIGHT: Yes. We are

maintaining the distance of 10 feet plus, as roughly 10 foot, 10 foot, 6 through the house. So we're maintaining that safety distance, yes. And that's a constraint, but I'll get into that.

Another deviation will be the height. It will be lower than it is today by roughly five inches or six inches where as an accessory building, as you know, we're allowed 15 feet and -- I'm sorry. Sorry about this. There's 16. We're asking to have it 16, 3. It's 16, 8 right now today. And the proposed would be 16, 3. So, one foot, four inches.

CONSTANTINE ALEXANDER: And the 16, 8 today is legal non-conforming?

PETER WRIGHT: It is. It's been there for a long time. I would assume probably back in the twenties.

CONSTANTINE ALEXANDER: So you're going to still have a non-conforming

structure, but less non-conforming than before?

PETER WRIGHT: Yes. Both in the setback because we're alleviating one side of it and also in the height.

TAD HEUER: Do you have a reason for not going to 15 feet?

PETER WRIGHT: Yeah. A good reason is we're trying -- the existing house, which if I may just explain, we just recently got a permit to renovate it. It was a house that was -- it was a grand house. It was ignored for many years, and had fallen apart quite a bit. And Martin is in the process of extensive renovation. The whole inside has been cleaned and gutted out. It's not worthy. And so it's been taken care of there.

And we'd like -- the garage, I assume you all have seen it?

TAD HEUER: Yes.

PETER WRIGHT: It's literally falling, it's literally falling down. And so those are the two various issues. Is there one more?

MARTIN CAFASSO: Well, no, to try to answer your question about why not going to 15 feet.

CONSTANTINE ALEXANDER: Yes.

MARTIN CAFASSO: As it stands right now in the house, there are three dormers on three different sides of the house. There's now a dormer on the garage that matches the dormers on the house.

CONSTANTINE ALEXANDER: For aesthetic reasons is why?

MARTIN CAFASSO: For aesthetic continuity we're trying to make it that way.

PETER WRIGHT: Presently the garage, first of all as I mentioned, it was built I would assume somewhere in the twenties, I'm not sure exactly. It

was -- and then they tacked on, literally tacked on two feet to accommodate a larger, probably a 1950s car. And then we are trying to -- we'd like to of course be able to get a car in the garage, so we're asking just for a depth outside dimension of 20 feet I believe. I'm sorry, 21 feet.

CONSTANTINE ALEXANDER: As compared to what now?

PETER WRIGHT: Today it is 21 feet, yeah. But that, that includes that tacked on little piece. The foundation presently is non-existent. I'm not sure what else I should say about that.

MARTIN CAFASSO: Which is why it's listing because it's sinking into the ground.

PETER WRIGHT: Right.

So we're not increasing the side setback. We're not going to affect abutters whatsoever. At least I feel whatsoever. I believe you might have some letters.

CONSTANTINE ALEXANDER: We do. And at the appropriate time I'll read them into the record.

PETER WRIGHT: Okay.

CONSTANTINE ALEXANDER: If you have additional letters you want to give us, fine.

PETER WRIGHT: No.

CONSTANTINE ALEXANDER: We do have a number. I can tell you the number in the file.

PETER WRIGHT: Now, one thing that might be deceiving in the increase in the gross floor area is because as, you know, when you -- when we initially did the reckoning for the FAR for the permit, for the existing house, we were able to subtract the area used by the two cars. And we included the storage area to the side and the little bit of area in the attic above five feet as I'm sure you know. And so in the revised gross floor area we had to add on a lot of square footage. So,

what I'm getting at is that the coverage is only about three square feet more, and we're adding roughly about, I would safely say no more than 20 square feet by the attic by the dormer, these are the dormers, and all that.

CONSTANTINE ALEXANDER: What is the attic used for?

PETER WRIGHT: It's purely storage.

CONSTANTINE ALEXANDER: How much space are we talking about?

PETER WRIGHT: At the very tip -- at the very underside of the ridge I would assume it's about six foot, two, six foot, one and then slopes down. It's not, it's probably a 10, 12 pitch.

CONSTANTINE ALEXANDER: And how many, the second floor generally how much space is --

PETER WRIGHT: Above five foot. I believe it's 33.

CONSTANTINE ALEXANDER: It's not

large enough for an apartment.

PETER WRIGHT: Oh, yeah, yeah. Not at all.

CONSTANTINE ALEXANDER: That's what we're getting at.

PETER WRIGHT: Yeah, right. It's inconceivable.

MARTIN CAFASSO: And, again, the purpose of us asking for this is not even to get greater volume for storage or anything.

CONSTANTINE ALEXANDER: I understand that.

MARTIN CAFASSO: It's purely for aesthetic reason.

PETER WRIGHT: And I'd like to also -- you also have received in the material a plot plan of the neighborhood of both -- in my case right here, it includes Grozier and part of Larch. And this is the property concerned. And as you can see, 80 percent of the houses in this neighborhood have two car

garage. And I would say probably 98 percent of them violate, and probably even more than that, I'm being conservative, violate that five-foot accessory building setback. In fact, you can see on the plot plan how accurate these are which they're not terribly -- I mean they're accurate enough. Some overlap the property lines as you can see. So, I'm sure you're quite aware of this. I believe I've covered the basic issues.

CONSTANTINE ALEXANDER: You'll have an opportunity to make a closing statement, but if there's anything else you want to tell us right now?

PETER WRIGHT: Okay. That's all I had prepared to say.

CONSTANTINE ALEXANDER: Questions from members of the Board?

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

this matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. We do have letters in the file.

We have a letter in the file from Jim Sokoloff, S-o-k-o-l-o-f-f who resides at 45 Fresh Pond Parkway also known as 10 Grozier Road. "I'm a long-term resident of our city and several year owner of the above property and I am writing to express my full support for Prometheus Enterprises' proposed garage replacement at the neighboring 15 Grozier Road, diagonally across the street from my property. I believe that taking the existing structure in poor condition and replacing it with new more functional garage/storage buildings will represent a substantial improvement to the property and will benefit the neighborhood by both reducing parking pressure on this end of

Grozier Road and the visual discord that on-street parking represents. I've been shown the plans detailing a similar height building with an extremely modest footprint expansion and a building which is appropriate and in character to the site and neighborhood. I'm not sure which zoning regulations apply for which they're needing to petition for a Variance, but it does not seem to me that the proposed structure is meaningfully different than the existing structure, and certainly the overall improvements at 15 Grozier are a welcome change to the community. I ask you to consider this as my full support in deciding to approve this petition."

We have a letter from a Kurt, K-u-r-t Roth, R-o-t-h who resides at 83 Grozier Road. "My name is Kurt Roth and I have lived on Grozier Road for 13 years, currently residing at 83 Grozier Road. I'm writing to express

my support for Prometheus Enterprises's application to replace the existing garage on the property at 15 Grozier Road. I understand that a Variance is required to replace the garage since the new garage will not have the required setbacks on the property line. My neighbor, the architect Peter Wright, has explained to me that it will not be quite as tall as the current structure."

MARTIN CAFASSO: It's just marginally small.

PETER WRIGHT: Yeah, he misunderstood that. It's actually smaller -- shorter.

CONSTANTINE ALEXANDER: All right.

"And will have approximately the same footprints and location. After considering the facts, I heartily support demolishing the existing structure which is in poor shape and replacing it with a new garage that will

enhance both the property and the neighborhood. As for the setback issue, I do not see this as an issue because it occupies the same position and has the same setback as the current garage. Indeed many of the garages on Grozier Road are not even close to required setback including mine. Thus it will not be out of character for the neighborhood."

There's a letter from -- I can't read the signature, but it's a residence at 22 Grozier Road, and also it looks like 26 perhaps 20 Grozier Road. "We, the undersigned, are neighbors of 15 Grozier Road and are writing to express our support for Prometheus Enterprises's application to replace the existing garage on the property at 15 Grozier Road. We feel that the existing structure is delapidated and believe that the proposed new garage will be an improvement to the property and the

neighborhood. We've been shown the revised footprint and elevations of the proposed structure. We understand that the height will be a bit less and the coverage is virtually the same as the existing structure."

PETER WRIGHT: A little footnote. They actually look right down the driveway.

CONSTANTINE ALEXANDER: We have a letter from Marjorie, M-a-r-j-o-r-i-e Bride, B-r-i-d-e who resides at 23 Grozier Road. "I am the abutter to the north of 15 Grozier Road and have observed the present renovation of the house. I've reviewed all the related plans, elevation and site plans showing the proposed garage and find that it will be a vast improvement from the existing structure using the term loosely. Like most garages in the neighborhood, the existing garage does not conform to the present setbacks. The proposed garage will not be any closer to my

property and nor will it be higher. I endorse the proposed design."

PETER WRIGHT: Little footnote, she looks right down on top of it.

CONSTANTINE ALEXANDER: Right. Getting to the end. We have a letter in the file from Ann --

SLATER ANDERSON: That's the same one.

CONSTANTINE ALEXANDER: That's the same one? You're right. Thank you, Slater. As he pointed out, this person resides at 21 Grozier, basically signed the same letter that I just read. And note, "I, Ann Warner -- she added the following note -- "I, Ann Warner, am the direct abutter to the north of 15 Grozier. I have reviewed the application material and feel the new garage will be an asset to our neighborhood."

And last but not least we have a letter from Morgan and Judy Wheelock who reside at

33 Fresh Pond Parkway. "For many years we have walked by the property at 15 Grozier and felt sad at its continued fall into disrepair. We are now encouraged to see that Martin is in the throws of this well-deserved renovation of this property. The reason for this letter is to express our total approval for the replacement of the existing garage. We believe that it will be an asset to the house and neighborhood. We have seen the plans and understand that the proposed garage will essentially be the same massing as the existing. We find that the proposed will reflect the character of the house and neighborhood."

I believe that's all there is in the file. Anything further you wanted to add?

PETER WRIGHT: No, I do not.

CONSTANTINE ALEXANDER: Okay.

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

I'm going to tie this vote when I make the motion, in compliance with the location that's shown on the certified plot plan as marked.

PETER WRIGHT: Absolutely.

CONSTANTINE ALEXANDER: And that the construction will be consistent with the two pages, the drawings that you have in the file, and this will be it. You can't modify it without coming back before us.

The Chair moves that the Board make the following findings:

That a literal enforcement of the provision of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the Petitioner will either be before us with keeping a delapidated, by all indication, garage or having no garage whatsoever on the property, thereby potentially causing parking problems on the streets of Grozier Road. The hardship

is owing to basically the fact that the current garage is a non-conforming structure as a condition of the structure, and by what is being proposed will be substantially no more non-conforming than what is permissible right now.

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

The Chair would note in this regard is that what is being proposed is really taking an existing building in poor state and replacing it with essentially the same building in a much better state.

That this project has the full support of the neighbor.

That this project will allow parking to be done on-site rather than in the streets and avoid potential parking problems. At least one abutter is identified as a concern. And

that's it.

On the basis of those following findings the Chair moves that we grant the Variance on the condition that the work proceed in accordance with a -- in terms of external location, a certified plot plan submitted by the Petitioner, initialed by the Chair. And also in conformance with two pages of drawings submitted by the Petitioner, both of which have been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(8:15 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9955, 1663 Mass. Ave. Is there anyone wishing to be heard on that? Please come forward.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. For the record, James Rafferty on behalf of the applicant Lesley University. Seated to my immediate left is Mr. Will Suter, S-u-t-e-r. William Suter is the director of campus planning at Lesley University. And seated to Mr. Suter's left is George Smith, and Mr. Smith is the Vice President of --

GEORGE SMITH: Director of operations and campus planning.

ATTORNEY JAMES RAFFERTY: Director of operations and campus planning.

The Board might recall the building. We spent a few hours with this Board on this building. It's a newly constructed residence, dormitory residence on Mass. Ave. at the corner of Mass. and Wendell Street. It's part of a two building complex. It was subject of some revision based upon some neighborhood input and the Board influence. The building opened this past September, just completed first academic year, and I know Lesley is very grateful for the fact that they were able to construct it and house their students there. And they're back this evening on an issue involving signage. The building is prominent in its location on Mass. Ave. but not yet readily identifiable with Lesley. The application seeks a

Variance to allow for one banner to be constructed. The Ordinance as it's currently constituted, although it's under much discussion, would say you can have a projecting sign, you can have a single projecting sign, but it cannot be larger than 13 square feet. This sign, if you had an opportunity to see the sign certification form, this sign is approximately 31 and a half square feet. So the relief there is about 18 and a half feet.

Secondly, the location of the banner, the current restriction of 20 feet in height applies in this district. This banner is positioned at the top of the banner, is at 37 feet in height from the ground level. So that represents a request for approximately 17 feet of height.

The banner, however, is not illuminated which projecting signs can be illuminated. It is designed not to advertise a product or

to attract customers, but really to give the building some identity. You may have noticed we can speak about the banner with some definitiveness because the banner was actually constructed and was up for a short period of time.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: Because the proponent was unaware that there was a process that would require them to get approval, and it was brought to their attention, and the banner has since come down. We have copies of the banner. And it is a single banner, double sided. The idea is that over time the banner might change. It was particularly involved -- of interest this time because Lesley is going through its 100th anniversary and they've installed banners on the University Hall sign, and they received approval from the City Council to have some banners in the public way along the

street lights on Mass. Ave. during their centennial celebration, and there was unfortunately a misunderstanding or mistake in belief that this was on private property and therefore might be within the permits that granted the original dormitory and it was not, there was no relief sought at the time.

CONSTANTINE ALEXANDER: That's one of my first questions I'm going to ask you. I have a number of comments I want to make. You're an experienced practitioner before this Board. You brought plans before us but they were, what I would put, heavily negotiated. The Board had a lot of concerns. I think we granted a substantial amount of zoning relief. I think some members of the Board, I think it's fair to say, although it was a unanimous vote, I believe it was, were reluctant about the amount of relief. Why wasn't this brought -- and the plans that were

shown before us had no poles on them. And we don't, as you well know, maybe you don't know, we don't like situations -- I don't like situations where someone comes before us seeking relief and knowing or should have known that they need more relief and not presenting it to us. And then coming back subsequently asking for relief. We never get a chance to see the whole project with all the relief in context. And that's one of my problems with this case right now.

ATTORNEY JAMES RAFFERTY: Well, I can assure you it wasn't a calculated strategy.

CONSTANTINE ALEXANDER: I'm not suggesting it was for the record.

ATTORNEY JAMES RAFFERTY: I'm only saying because it's terribly ineffective. If I thought it would work, I would not be so quick to reject it. But the truth of the matter is there just wasn't, as near as I can

tell, and I'll let Mr. Suter and Mr. Smith speak to it, there just wasn't any intention or focus in all the planning of the building on the banners. It was very much an after thought during the course of construction, nearing the completion of construction. And I don't know if you gentlemen have anything to add on how this all came about. I was unaware of it. I'm not looking to distance myself from it. But I do think given all the issues involved in the design of the building and the fact that these are not developers per se, they're actually engaged in other business, this seems to slip through the crack and didn't gain any attention.

WILLIAM SUTER: And frankly, the similar answer, it was an oversight. And it's -- there's not much more to it than the banners that had been envisioned as part of the -- as part of the negotiation for the redesign of the building with the neighbors.

Such that even in sketches and renderings, the banner made appearances here and there. And when it came time to submit the material for the permit, it was simply forgotten.

CONSTANTINE ALEXANDER: Well, I'll accept on its face that it was an oversight. But now we're looking for relief tonight.

WILLIAM SUTER: That's right.

CONSTANTINE ALEXANDER: You're looking for signage that exceeds what's permitted by our Zoning By-Law twice. And Mr. Rafferty very nicely put it in terms of feet. But in terms of -- you want to have a banner that's 31 and a half feet when you're only allowed 13 feet. That's almost two and a half times what the Zoning By-Law allows from point of view of size. And in terms of height, you're almost twice as high as our Zoning By-Law allows.

Now, in terms of identifying Lesley, you're right next to a Harvard law school

dorm. I don't see any big banners on Harvard law school dorms that require identification. Why is it that Lesley needs a sign for its dormitory when Harvard next-door doesn't need a sign? What's your hardship? I'm sure Mr. Rafferty will deal with it momentarily. You have to establish a hardship, that's one of the requirements before we can grant you relief. I frankly want to be persuaded. I don't see a bit of hardship here.

ATTORNEY JAMES RAFFERTY: Well, Mr. Chairman, part of my role is to advise clients as to what to anticipate when they file things like this, and I learn about them a few days before the hearing. And I must say that I think I did a good job in this case. But, it is true that this -- but there is something about the signage. Part of what's taking place here is that the building itself has a ground floor that can contain retail and

there is conforming signage associated with that retail. The Bank of America ATM is there and there's a vacant space, and this would be affected. But the building would benefit from some identity. So an elevation --

CONSTANTINE ALEXANDER: Benefit who? It's a dormitory. The students have to know where their dorm is. Why do you need identification of a building? And the banner that's up there doesn't identify this as a Lesley dorm.

ATTORNEY JAMES RAFFERTY: Well, there's an interesting letter to that point, I don't know how persuasive, from Mr. Meyer, Fred Meyer, he lives on Hammond Street. I don't think these are in the file.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: But he opines that he's glad to see it because people keep commenting on the new Harvard dorm, and

he thinks it benefits from having a Lesley identification.

I think Lesley doesn't have many buildings of this nature on the avenue, and I do think they are looking to try to -- I won't speak --

TAD HEUER: Don't they own 1850?

ATTORNEY JAMES RAFFERTY: I'm sorry?

TAD HEUER: Don't they own 1850?

ATTORNEY JAMES RAFFERTY: They do.

TAD HEUER: It's the largest building up there. It's huge. Many signs on it.

CONSTANTINE ALEXANDER: Many signs. And you're the only projecting sign, I mean, enormous sign on this whole stretch of Mass. Ave. You know, one of the arguments that's presented in your letter was the fact that it's a continuation of the signage that you have out by Porter Square. But you can't

even see those signs from this building.

ATTORNEY JAMES RAFFERTY: Well, the elevation does show the relief, and the relief -- I mean, there are two points of relief, it's the height and the area. And in looking at the building, if you were to go there today, one of the things that we're required to add were street trees. And in some of the elevations you can see that the street trees really go up to the second floor window. So, the banner, if it were held to the 20-foot standard, would be largely obscured by the tree.

CONSTANTINE ALEXANDER: And we in the past, when it's just a height issue, we have often granted relief for that, for issues like that. Either the architecture of the building is such that you can't comply with the 20 feet, or in this case perhaps the foliage is such. But that doesn't give you 37 and a half feet banner going up. And I

still haven't heard the hardship, the need for such a banner.

TAD HEUER: I'd also suggest --

ATTORNEY JAMES RAFFERTY: I wish you were at this hearing I was at at four o'clock today where people said, Variances are fine, don't change the Ordinance, you can get them all the time. I said really, you ought to spend a day with me.

CONSTANTINE ALEXANDER: If anybody in the city can tell them it's not true.

ATTORNEY JAMES RAFFERTY: And I do, but you would be amazed how many people don't believe me the way you do. And I tell them, I said, look it, a hardship requirement is a very difficult thing. And there is frankly, I'll be very honest, and I'm sure you've seen it, there is a proposal pending now before the City Council that would make variations like this by Special Permit. And part of the discussion has been that the current zone

sign ordinance is kind of a one size fits all type of straight jacket that doesn't allow for the type of flexibility that can yield better signage. Whether it amounts to better signage, I know it's a different analysis. But, of course, we're mindful of the hardship, and it is related to the two elements; one is the height of the building. And then the other has to do with the proportions of the sign. But Mr. Suter is a designer. He might have a better understanding. We did have a letter from the architect who does see this as responsive to the building design itself. It's a letter from --

CONSTANTINE ALEXANDER: I don't see the letter -- it's not in one of these four letters you handed me.

WILLIAM SUTER: It is. It's the --

ATTORNEY JAMES RAFFERTY: Is it Bruner/Cott?

WILLIAM SUTER: Bruner/Cott.

CONSTANTINE ALEXANDER: Maybe it's already in the file.

WILLIAM SUTER: It's the second letter in your file.

TAD HEUER: The one thing I would point out in the trees issue, you know that there are trees will be planted to obscure the sign. But the sign will be parallel to the trees. I mean, if I'm looking at the building from Mass. Ave, looking through a tree, I could never see the sign because the sign I see only looking up Mass. Ave. where there's a rather large sidewalk that would separate me from the tree to the banner for I would say probably for the next 40 years or so until the tree got to a sufficient size that it could possibly be skimming the building at that point, maybe trim it back. So I mean I don't necessarily see the fact that street trees are there requiring an

additional boost of height because there's no way in which the tree would ever obscure any sign on that building that was bannerized like that. Is that not true?

ATTORNEY JAMES RAFFERTY: Well, I wouldn't say could never could, depending on one's perspective. Certainly a straight on view might obscure it.

TAD HEUER: But I couldn't see anything straight on anyway. Straight on I see the --

ATTORNEY JAMES RAFFERTY: Well, not straight, straight on, right. But if you were standing on the corner where Marathon Sports is, you're not totally straight on, but I think the tree would block you.

But I guess the point is we have a copy of the banner itself. And, you know, with banners it's all -- do you have a piece of it? You know, everything gets included. The color and all that. The actual lettering

involving Lesley isn't all that big.

CONSTANTINE ALEXANDER: The objection, of course, is not to the word Lesley. The objection is --

ATTORNEY JAMES RAFFERTY: No, no. I'm saying the sign, it's larger, but it's -- do we have the better image of the sign itself?

WILLIAM SUTER: It's included in the application packet.

ATTORNEY JAMES RAFFERTY: There's large swatches of color on the sign. My point is so that green block above the word Lesley, which adds three or four feet, doesn't have Lesley. Now, could you get a shorter soccer player? Yeah. I mean you could crop the sign down. There's an element of art and design and vibrancy and Lesley is here and part of it. So there's that. So, that has something to do with the size of the sign. Its location on the building is, it's

somewhat driven, too, by the point in the structure which the bracketing could be affixed. I'm not saying it's absolutely necessary, but there are only certain locations on the building in all honesty, I suspect. There might be other locations further down. But I think given the height of the building and all the feeling was that the sign at that location was -- it's interesting that the Ordinance does provide for non-profit theatres and other type of places to have banners that are a little more relaxed in terms of requirements.

TAD HEUER: Is this a non-profit?

ATTORNEY JAMES RAFFERTY: Well, not directly, but there is an art program. I mean, they're not selling a product. If this was a cell phone store, I think I could understand why people would say well, what is this? If this was a private business concern, it might be -- I think part of the

thinking behind it was that it is a university that is a part of the community that is in favors enjoys good relations and works closely with the abutters. The letters you'll see here tonight, they didn't get in the file today, but there's three or four of them. And they express strong support. Mr. Axelrod who is active in matters up and down this stretch of Mass. Ave. speaks in strong support of it. Mr. Meyer has a letter in support of it. Agassiz neighborhood member has a strong letter in support. So, it was said just but a few hours ago, well, if it's well done and it's tasteful, the Zoning Board tends to grant the Variances, so.

CONSTANTINE ALEXANDER: We'll see. We'll see. That's what we're here for.

ATTORNEY JAMES RAFFERTY: Well, if that's the world, I'd like to be part of that. We'll see how this goes.

WILLIAM SUTER: If I could just add one other statement to address your question. Cambridge is known the world over for its colleges and universities specifically. And unlike the two other major universities in Cambridge, Lesley historically hasn't had iconic spaces or architecture that are immediately identifiable. We don't have a Killian Court, a Building 10 Dome, a Stata Center. We don't have a Harvard Yard. We don't have a memorial tower. We don't have a memorial hall. We don't have the kinds of things that sort of identify the institutions. So this is an effort on a very precious frontage that we have on, you know, the main street of the city; namely, Massachusetts Avenue to identify ourselves.

CONSTANTINE ALEXANDER: You identify yourself up by Porter Square.

WILLIAM SUTER: That's right. And I think we've been very grateful for the

opportunity to do that there. And I think to a large extent we've been successful there. Unfortunately we currently have three campuses; the Porter campus that you refer to. Our historic campus is actually the campus which --

CONSTANTINE ALEXANDER:

(Inaudible.)

WILLIAM SUTER: Exactly. Which people always do this to, it's off the street. North of the law school or it's sort of, you know -- and so this is the one opportunity that we do have to identify that campus. The only other opportunity historically we've had is the sign at 1627 which is or admissions building. And that has been --

ATTORNEY JAMES RAFFERTY: On the corner of Melon Street. It's the very little kiosk sign.

WILLIAM SUTER: And so in terms of, you know, this is really one of the only

opportunities given our real estate on a major street here to do that.

TAD HEUER: Is that right across the street?

ATTORNEY JAMES RAFFERTY: Down a block. Down a block. Corner of Melon. This is the corner of Wendell. On the side of North Hall.

TAD HEUER: Towards the square. So you have a bounding of Porter on the north and the admissions house on the south. This isn't extending your boundary further to the south.

WILLIAM SUTER: Right, this is the only --

TIM HUGHES: You've got that Harvard building in the middle.

WILLIAM SUTER: There are four Harvard buildings.

ATTORNEY JAMES RAFFERTY: Former Holiday Inn.

WILLIAM SUTER: And then there's obviously the new Harvard Law School building which obstructs the building that's at 1627.

And so, again, this is the only building that Lesley has on that stretch of the avenue and so --

SLATER ANDERSON: I was just going to say, the point you're making, I hear them and I think they go to back to the original point that Gus made. That if identification of this building with Lesley University was so important, and you went through the process which I wasn't involved with the previous Variance for the structure, why wasn't the signage involved in that permitting? This is issues that come up with much smaller projects and people with a lot less power than Lesley does in these permitting projects. You know, we're stuck with regulations that we need to enforce the way they're written currently. And this

Special Permit scenario may come to pass and it may make for this relief to be more easily dealt with. Because I don't dispute that the signage, given the size of the building, there isn't a scale issue, that the existing regulations may not appropriately address. However, they are the existing regulations that we're charged with interpreting and enforcing. So I'm just, I'm still back where we started, which is what happened with this thinking of it being so insignificant to being identified with Lesley during the design and permitting process of the original building?

CONSTANTINE ALEXANDER: Further comments from members of the Board?

TIM HUGHES: I have another question.

CONSTANTINE ALEXANDER: Question?

TIM HUGHES: Let's say that this Variance request was denied tonight and that

the City Council decided to change the process to a Special Permit process, would you still be prescribed from coming forward with another application within two years?

ATTORNEY JAMES RAFFERTY: I don't think that would be a repetitive condition.

CONSTANTINE ALEXANDER: I had the very same thought. And I think you're right.

TIM HUGHES: Is the change in the Ordinance a significant enough change or does there have to be a change in your application?

ATTORNEY JAMES RAFFERTY: Well, I would say --

TAD HEUER: The same type of relief.

ATTORNEY JAMES RAFFERTY: No, the relief would change. The ultimate determination would be here. If it was a repetitive petition, it's not that you couldn't come back, you'd have to go through that added step. But I would hope that Inspectional Services would conclude that an

application under a different Ordinance through a Special Permit relief is not a repetitive Petition or Variance.

CONSTANTINE ALEXANDER: That's right. I also would point out that if there is going to be a change to the Ordinance and it's still in process, perhaps as part of that, you might want to have a provision in there that deals specifically with situations like this so you don't have an interpretive question. This could be resolved -- if the ordinance is changed, it could be made quite clear as part of the Ordinance change for any Variance that were denied previously and not precluded from being reconsidered as a Special Permit. It would be a legislative matter not interpretive.

ATTORNEY JAMES RAFFERTY: It should be noted that one of your former colleagues, former Chair, testified at the Planning Board

that he felt that a Special Permit process was the way to go, that these Variances placed the Board in difficult positions because --

CONSTANTINE ALEXANDER: I think that's right. We have a long evening ahead of us. But the Variance procedure is not well suited to sign cases.

Is there anyone here wishing to be heard on this matter?

(No response.)

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

The Petitioner has submitted four letters to us which I'll read into the record. One is from Meyer at 83 Hammond Street and 5 J.F.K. Street. Apparently he wrote this letter on a LimoLiner bus to New York City. So it says on the letter anyway. It's addressed to Les Barber. "I've been walking and driving by this Mass. Ave. Wendell Street corner for 50 years, ever since September

1959. A close friend was resident manager of the room rentals in the Victorian mansard house there, long since demolished to be replaced by a parking lot. In 2009 Lesley, listening well to all the neighborhood input from our Agassiz Neighborhood Council and the City Manager's working group designed and built a lovely new dorm with a modern facade on Mass. Ave., plus a mansard wing on Wendell Street. Both parts are appropriately contextual to their streets as imaginably designed by distinctive Cambridge architects. After the building's recent completion, a Harvard history professor neighbor asked me, 'Have you seen the new dorm that Harvard built?' The new banner, which I hope you will approve, will appropriately correct that widespread misunderstanding. And it will enliven Mass. Ave. quietly but colorfully celebrating our unique university neighborhood. Please thank your Board for

helping our community and our lives here."

We have a letter from Carol Weinhaus, W-e-i-n-h-a-u-s who resides at 64 Oxford Street, which I would comment it's in the neighborhood generally, but it's not an abutter. "I am writing in support of a Lesley University proposal to install a banner on their dorm on the northeast corner of Massachusetts Avenue and Wendell Street at 1663 Mass. Ave, Case No. 9955. I've lived in the Agassiz neighborhood since 1978 and am an abutter to Lesley properties on Oxford Street. A block and a half from the dorm site. I was part of the neighborhood group from Agassiz neighborhood 9 that worked with Lesley to improve their original plans for the dorm. The result was retail on the ground floor, reduced parking and an additional dorm on the Wendell Street side of the site. The banner on the Mass. Ave. front of the building was part of the design that

was approved at the meeting of the Agassiz neighborhood council." And then I'm puzzled why wasn't this part of the plan that was shown before us, just as an editorial comment. "The result of our neighborhood discussions was Lesley on these dorms benefitted both the neighborhoods and Lesley University. I hope you will approve the Variance. You're welcome to contact me if you like additional details."

We have a letter from the firm Brun/Cott, B-r-u-n-/C-o-t-t. It is signed, I'm going to just spell the first name, A-o-i-f-e. Last name is Morris. "Dear Board Members: In designing the Lesley University dormitory building Brun/Cott worked at the university and residents of the neighborhood to create a design that compliments the existing Massachusetts Avenue buildings and the look and feel of the larger surrounding area. The design of the

exterior of signage is an extension of that process. The purpose of the banner is to visually break up the brick facade while helping to orient visitors and residents to the dormitory entries on Wendell Street. Centered on the brick between windows and near the intersection of Wendell Street and Mass. Ave, the banner height off the ground anticipates the planting of sidewalk trees and they're expected growth. The height will also allows the ground floor retail to maintain a separate identity from the dormitory above. The appearance of the banner is consistent with the orientation and size of Lesley University's all banner also location on Mass. Ave. Thank you."

And I will editorialize here, if the architect was such a wonderful idea, why wasn't it on the original plans?

ATTORNEY JAMES RAFFERTY: That's not on the letter though?

CONSTANTINE ALEXANDER: I'm sorry? That's not on the letter. That's my editorial comment.

A letter from Leonard Axelrod, 26 Shepard Street. "I support Lesley University's Variance for a banner on their dormitory building at 1663 Mass. Ave. Almost every morning I walk down Shepard Street from my home where I've lived for 35 years to Mass. Ave, looking at the beautiful new dormitory Lesley built on the corner of Wendell Street and Mass. Ave. intersection. The addition of a banner to the building will bring added color and life to the building and Mass. Ave. It is an appropriate size for the building and it is not a commercial sign. Both the Agassiz and neighborhood 9 neighborhoods are focusing their efforts on improving the visual quality of Mass. Ave. between Harvard and Porter Square. Banners of this type help do that. They are positive

and lively additions to the streetscape that can change periodically. Lesley University has been a very good in communicating and coordinating with our neighborhoods. They view Mass. Ave. as part of their campus as it links their Everett Street and Porter Square campuses. Their overall master plan includes positive development along the avenue in terms of buildings and streetscape improvements. It's only fitting that a colorful and lively banner on their dormitory be part of the approved avenue's visual quality."

That's it. I don't believe we have any other letters in the file at this point.

Questions, comments from members of the Board?

ATTORNEY JAMES RAFFERTY: May I be permitted one comment?

CONSTANTINE ALEXANDER: By all means, go ahead.

ATTORNEY JAMES RAFFERTY: The proposal, of course, seeks to go to 37 feet. And the 20-foot height really talks about the window sill on the second floor level. The Petitioner would be wondering if there might be support for something less than 37 feet by looking at this window structure that I -- that's the 20-foot line, that's the 30-foot line. Of course they're all the way up to 37 feet. I think there was some commentary about the extent of the relief, and it is significant in terms of the 20, the percentage of 20. But 20 really does, I think, go closer to the hardship issue that Mr. Heuer was talking about with the trees and all that. So, to the extent that the Board was willing to consider relief over 20 but not to the full extent of the request, we'd ask for your consideration.

CONSTANTINE ALEXANDER: I don't think -- we're not in the business of giving

advisory opinions. If you want to come before us with a different proposal, we'll continue the case as a case heard. You bring a new proposal before us and we'll vote on it.

ATTORNEY JAMES RAFFERTY: I appreciate that. Sometimes the sentiment is well, don't really waste people's time.

CONSTANTINE ALEXANDER: Sometimes, and not you, sometime people come before us asking for the moon and the stars and then come back with the real proposal.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: We want the real proposal.

ATTORNEY JAMES RAFFERTY: Understood. And I can assure you that wasn't the case here. But given the nature -- and it's not as if we're talking redesign, and I hear that. But I would say if there's a willingness to allow, I think Lesley would like to explore that because I do think if

there was any sense that there might be some willingness to look at it given the extent of the relief, I would request --

CONSTANTINE ALEXANDER: Other members of the Board can speak for them self. But myself I want to see something specific. But other members can express their view if they want.

TIM HUGHES: I agree with Gus that, you know, it's easier to make a decision if we had a plan in front of us.

ATTORNEY JAMES RAFFERTY: Fine. Could we be permitted to continue then without overburdening your schedule?

CONSTANTINE ALEXANDER: We have to continue as a case hear. We have to have the same five members.

ATTORNEY JAMES RAFFERTY:
Understood. Oh, yes, yes, yes.

CONSTANTINE ALEXANDER: If you think you're going to get a better hearing,

you heard my comments. Do you think you'll get a better hearing on a smaller sign, it's up to you.

ATTORNEY JAMES RAFFERTY: Well, I mean I think I heard the nature that one of the comments was the extensive relief, both the size and the height, and I think that's well understood. And well, I also heard some commentary that some relief might -- there was some empathy, but yes.

CONSTANTINE ALEXANDER: Do you think you can establish hardship with a smaller sign, than that's obviously your legal right to come back and continue the case. It's your call. If other members of the Board want to provide whatever guidance other --

ATTORNEY JAMES RAFFERTY: No, I think, I think that's, I think we can -- I would on behalf of Lesley ask for consideration to do that, whether we come

back or simply notify the Board, we can come back. I understand, let's put it this way, I would understand that the changes would have to be significant in the relief given would appear to be modest would be my sense, and no one needs to affirm that. But there's that and I would think that Lesley would like an opportunity to examine that issue now. That they frankly, I think, and I say this with all due respect. I think they didn't have an adequate appreciation for the issues around hardship involving this. They -- and I don't say that to be critical of Lesley, but I do believe that the thinking was oh, yeah, this makes sense. And I think --

CONSTANTINE ALEXANDER: Well, I'll make a motion to continue the case. We'll find a date. And before I was going to make a motion on an earlier case, and my Board members shot me down so you may get shot down again or I may get shot down. And you get

shot down ultimately, too.

ATTORNEY JAMES RAFFERTY: I'm quite accustomed to that.

BRENDAN SULLIVAN: My feeling is that the proposal that's before us advertises Lesley and it is not building specific. It has no meaning to the building. And, you know, a proliferation of these was filled in and they thought it was wonderful streetscape and what have you, but a proliferation, the apartment building across the street can advertise 1630 Mass. Avenue or something like that, and we would have a whole proliferation all up and down the avenue. You know, they would wind up looking like J.F.K. Street after awhile. And I don't think it has any purpose other than to advertise the university. And it may be that the university is here, we have arrived. We're here. I know you've been here for a long time. You're wonderful and an asset to the

city. I think that there are a number of signs coming our way also. And I look very wearily on signs, any deviation from the sign Ordinance.

TIM HUGHES: I personally don't look that wearily at the deviations of the sign Ordinance because I think that the sign Ordinance it has us hamstrung because of its a one size fits all thing. I think different sizes of the buildings should suggest what the signs should be not an arbitrary number of 13 square feet. So I'm, you know, I would like to see you redesign this a little bit in terms of its height off the street. But in terms of the square footage, I think it's, you know, it's reasonable to the size of this building.

CONSTANTINE ALEXANDER: Let's -- I don't mean to cut off the discussion. We're going to try to find a date that all five of us can be here and then we'll move to continue

the case until that date. Tell me if this is enough time for you, as well. September 16th. Does that work for people? Is that enough time for you?

ATTORNEY JAMES RAFFERTY: I'm sure it is.

WILLIAM SUTER: Yes.

CONSTANTINE ALEXANDER: September 16th?

The Chair moves that this case be continued until seven p.m. on September 16th on the condition that the Petitioner sign a waiver of time for decision.

And on the further condition that the Petitioner modify the sign on the structure, you know, crossing out today's date to the new date. You can do it with a magic marker.

The Chair notes this is a case heard so all five of the current members of the Board, people sitting here tonight will have to sit on that case.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case will be continued until September 16th.

ATTORNEY JAMES RAFFERTY: Thank you very much.

CONSTANTINE ALEXANDER: I don't have to remind you to come with the modified plans.

ATTORNEY JAMES RAFFERTY: Oh, yes.

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

(8:50 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

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

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. Do we have a letter in the file?

MALE AUDIENCE MEMBER: We're the abutters.

CONSTANTINE ALEXANDER: Not to keep you in suspense, they requested this case be continued and we are going to continue the

case so the case will not be heard tonight.

FEMALE AUDIENCE MEMBER: I need to know when.

CONSTANTINE ALEXANDER: We're going to decide on when in a second.

The Chair is in receipt of a letter from Paul A. Gargano, an attorney regarding this matter. "It has come to our attention that our clients Eugene Wang and Jie Liu will be in China on vacation for the July 8th hearing and will not be able to attend the hearing regarding the curb cut Variance for their property. As a courtesy to them, we respectfully request that you change the date of the meeting to a date preferably for the first possible date in August as they will be returning in late July."

The first date, the first one in August is August 12th. We have three continued cases as it is on that date. We have gone to four. This is the case not heard so we don't

have to have the five of us here. Would it make sense if we took a fourth case? We have three now. We have eight regular cases so it's a heavy agenda. Maybe we should go to August 26th where we have six regular cases.

Before I make a motion, the Chair would also note, and I will ask you or ask Maria to advise the Petitioner, I don't think their sign posting complies with the Zoning By-Law. They tacked the sign on a tree in the public way. And though it actually, in terms of noticeability, it's very noticeable but it's also open to vandalism. But more importantly it doesn't comply with our sign requirements of our Zoning By-Law. They should be advised that the sign has got to be on the subject lot at the street line or within the property but no more than 20 feet from the street line. And so they may have to -- because I know their house is set back quite a bit, they may have to put it on a

wooden placard and shove it in the ground. They have to understand they have to do that or we're going to continue the case again.

BRENDAN SULLIVAN: There's another issue as well. There's a letter in there.

CONSTANTINE ALEXANDER: Will it effect the continuance?

BRENDAN SULLIVAN: Well, it may.

CONSTANTINE ALEXANDER: Oh, thank you.

The Chair would note before we take a vote, and we're still on the motion to continue, so it's not a case heard, that there is a letter in our file from the Cambridge Historical Commission regarding this site. And the letter states: The property is located in the Avon Hill Neighborhood Conservation District where exterior alterations are subject to review and approval. A property owner should make an application and schedule a time to meet with

the Historical Commission staff to complete the non-binding staff review of the application for a curb cut and driveway.

I don't think if we did the case in August, they would have time to do this. And I think it's important -- our Board likes to hear from the Historical Commission, so I think it's important that the Petitioner do go to Historical before coming back before us. So I'm going to suggest the last hearing in September, September 30th where we have no regular cases right now and three continued cases. So this being a case not heard, there's no issue about who's going to be here.

The Chair moves that this case be continued until seven p.m. on September 30th on the condition that the Petitioner sign a waiver of time for decision. Do you have a waiver? Yes, we do, thank you.

RANJIT SINGANAYAGAM: No.

CONSTANTINE ALEXANDER: It hasn't

been signed?

RANJIT SINGANAYAGAM: No.

CONSTANTINE ALEXANDER: Well, we have to get back to them to get them to sign it. A waiver of time for decision. And on the further condition that the sign advertising the new hearing date be properly located on the site in compliance with our Zoning Ordinance, and it reflect the new date of September 30th.

The Chair would further note that this is a case not heard.

BRENDAN SULLIVAN: I'm sorry. The waiver has not been signed?

CONSTANTINE ALEXANDER: Not been signed.

BRENDAN SULLIVAN: So what the drop dead date?

CONSTANTINE ALEXANDER: In my view, since this case --

BRENDAN SULLIVAN: So, there's a

defect to begin with?

CONSTANTINE ALEXANDER: Defect to begin with. So they're really not necessarily need a waiver of notice, because we don't have jurisdiction over the case until they comply with the signage requirements.

I think we can safely, in my view, otherwise what's our other alternative? You can't hear the case tonight.

BRENDAN SULLIVAN: Well, the alternative would be to reschedule within the time frame. If they have not gone to Historical, then we continue it again. Because you may be dealing with --

RANJIT SINGANAYAGAM: Can you say that the you continue if the waiver is not signed, it will be heard on the next available hearing date and make a condition at that time?

BRENDAN SULLIVAN: Yes, I think we

say if we should mark it up, call it, before the expiration of the time frame. If they have not complied with going to Historical, we can continue it on that basis. But I wouldn't let -- I wouldn't let it go beyond the 65 days.

CONSTANTINE ALEXANDER: Okay.
What's the date?

TAD HEUER: August 11th.

CONSTANTINE ALEXANDER: August 11th. We have another hearing of course July 22nd. It doesn't sound like they're going to be back from China to sign the waiver at that time anyway. And August 12th is the hearing after that. If we did it July 22nd and we don't have the waiver, we can then I guess decide the case at that point. I think we have a right not to hear the case at all.

BRENDAN SULLIVAN: Well, you may be correct. But in this particular case I would not --

CONSTANTINE ALEXANDER: Then we're going to have to decide the case on July 22nd.

BRENDAN SULLIVAN: Correct.

TAD HEUER: Well, they're represented by counsel.

BRENDAN SULLIVAN: And that's -- I will just be cautious.

CONSTANTINE ALEXANDER: That's a good point. They are represented by counsel. Counsel should be instructed that we're going to decide the case on July 22nd. And I think there's a sense --

BRENDAN SULLIVAN: Do you understand what we're debating here?

MALE AUDIENCE MEMBER: Well, problem is it's already been -- a different location, it's already been before the neighborhood conservation district. And there are many other problems, but that's one of them.

BRENDAN SULLIVAN: Right.

MALE AUDIENCE MEMBER: They've got an approval from the neighborhood conservation district to put this on Linnaean Street.

BRENDAN SULLIVAN: Okay.

MALE AUDIENCE MEMBER: And now they're going for a next-door property.

BRENDAN SULLIVAN: All right. So, as far as rescheduling this, we want to make sure that we are within the statutory time frame is the point I'm making because I would not let it go to chance to go beyond that.

CONSTANTINE ALEXANDER: I will make a motion to continue the case to July 22nd.

BRENDAN SULLIVAN: I would call it to that particular date. If they're not ready, for whatever reason, then we can always continue it. But at least -- and at that point we could --

CONSTANTINE ALEXANDER: We can only continue it if their attorney signs that

waiver of notice on their behalf. Otherwise we're going to decide the case on the 22nd.

RANJIT SINGANAYAGAM: Okay.

BRENDAN SULLIVAN: That's correct.

CONSTANTINE ALEXANDER: And their counsel should be advised of that. Okay?

The Chair moves that this case be continued as a case not heard until July 22nd at seven p.m. on the condition that the Petitioner, as I said before, on the condition that the Petitioner sign a waiver of time for a decision. And on the further condition that the sign be correctly posted and put in conformance with our Zoning Ordinance with a new July 22nd date placed on the sign.

RANJIT SINGANAYAGAM: If it's July 22nd, we don't need a waiver, right?

CONSTANTINE ALEXANDER: They don't need a waiver. But I want to put it in the motion anyway so it gives them incentive to

do something about it, make sure they understand. You're right, typically they don't need it.

And the Chair would note that for the record, too, is that at least the Chair believes that the current posting of the signage does not comply with our Zoning Ordinance, and so we're not in a position to hear the case in any event now. And quite probably by July 22nd as well. So we preserve that for the record.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

(9:00 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9957, 14 Cambridge Terrace. Is there anyone here wishing to be heard in that matter? Please come forward.

ATTORNEY JAMES RAFFERTY: Good evening again, Mr. Chairman, members of the Board. For the record, James Rafferty on behalf of the applicant Vickery Investments, LLC. Seated to my immediate left is David Vickery, the principal --

JASON VICKERY: Jason.

ATTORNEY JAMES RAFFERTY: Jason. David Vickery was another name in Cambridge Zoning. This is David Vickery's son, but

that's a whole other story.

Jason Vickery who is the principal. And seated to Mr. Vickery's left is the project architect.

PATRICK HAYDON: Patrick Haydon.

ATTORNEY JAMES RAFFERTY: Patrick Haydon, H-a-y-d-o-n.

Mr. Chairman, members of the Board, this is an application that seeks to do some modest renovations to a house on Cambridge Terrace. And Cambridge Terrace is a somewhat unique street, rather distinctive, a rather established form of most of the homes on the street, largely three-family houses with nice porches.

CONSTANTINE ALEXANDER: And a densely settled street?

ATTORNEY JAMES RAFFERTY: It is. It is. But by the same token it's a very nice urban street. It's got great proximity to Porter Square.

CONSTANTINE ALEXANDER: Not a critical comment, just an observation.

ATTORNEY JAMES RAFFERTY: Silly of me to consider densely a pejorative. I understand now.

So, the home, while it's rather consistent with the other homes of the street. At the rear of the home there have been some rather unartful treatment of these three rear porches. As you know, these covered porches are already included in the GFA calculations. So what's being sought here actually doesn't represent an increase in GFA. What's being proposed actually represents a reduction in GFA.

CONSTANTINE ALEXANDER: But with the reduction you're going to be substantially over the --

ATTORNEY JAMES RAFFERTY: Yes, that's why we're here, correct.

CONSTANTINE ALEXANDER: There are

some setback issues?

ATTORNEY JAMES RAFFERTY: There are some setbacks. But like the GFA, it also represents an improvement in the setback. So what's proposed here and the floor plan details it best, is to realign this space here by stepping it in, by making the side yard of this section actually more conforming than is currently the case, and reorienting the space. So, it is, while the net changes, if you look at the map on the numbers, both the GFA and the setback relief -- the GFA goes as a result of the change in the porches are actually going from 5161 to 5017. So, it's about 143 less square feet. And that's because these porches become reduced in size, they get slid over, and it allows the porches to be incorporated into the floor plan of the building.

JASON VICKERY: Can I add one thing, Jim? The current porch is within the 20-foot

rear yard setback and we're proposing to bring that into compliance when it's prebuilt.

ATTORNEY JAMES RAFFERTY: Right. So both the rear setback is made conforming on this proposal. It's non-conforming in terms of rear setback by a foot. So in looking at Mr. Vickery's options, mindful of the fact that he was looking for relief, one of the things he did was look for ways in which his proposed modification could be bring the property into greater conformity. So the rear setback is noted, is over the 20 feet. These are, these are going to be set at exactly the 20-foot mark. So there will no longer be a rear setback violation. Similarly the side yard setback violation here gets improved by the stepping back.

There is also some window realignment standing with --

CONSTANTINE ALEXANDER: Special

Permit. We'll get to that next.

ATTORNEY JAMES RAFFERTY: -- the Special Permit.

So, that's the nature of the relief. It really is an effort to modernize the house, improve it. There have been good communication with abutters. It's pretty much an established form. The building itself. And what is being proposed here is just these changes to the rear of the building, which in fact bring the building into greater conformity with the Ordinance.

CONSTANTINE ALEXANDER: I trust you're aware that there are some letters in the file opposing, of abutters opposing relief being sought.

ATTORNEY JAMES RAFFERTY: I know.

CONSTANTINE ALEXANDER: Okay, we'll get to that. I know there are three letters in the file. At least two letters in the file are opposed. I haven't read the third one.

ATTORNEY JAMES RAFFERTY: I was looking at the file the other day, I didn't see them.

CONSTANTINE ALEXANDER: Maybe it's just a little bit out of turn. Maybe I should read the letters into the record so you may want to decide what to do after you hear them. It's up to you.

ATTORNEY JAMES RAFFERTY: Okay, thank you.

CONSTANTINE ALEXANDER: There's a letter in our files from Matthew M. Commons, C-o-m-m-o-n-s and Claire W. Commons. They reside at Nine Cambridge Terrace, No. 2. "We are writing to oppose" -- and they underscore that is the reason I emphasize it" -- to oppose the Variance proposed in case 9957 to the property at 14 Cambridge Terrace. The proposed modifications appear intended to add bedrooms to the property, increasing the number of residents. We oppose this

Variance for several reasons:"

Bullet point: "Adding bedrooms will increase the number of occupants per floor raising concerns about additional parking availability in an already dense neighborhood.

Bullet point: "All indications are that this property will not be owner occupied. The properties on Cambridge Terrace that are not owner occupied often have poor trash management and neglected snow removal.

Bullet point: "Adding an additional outdoor stairway will disturb the existing architectural continuity of the community and reduce scarce green space further. As residents of a recently renovated property, we understand the need to occasionally obtain zoning variances for useful rehabilitation. However, these variances should be used to create higher value, owner occupied

properties as opposed to cramming in more short term renters."

We have a letter in our file from Edward Roger John Owen who resides at 19 Cambridge Terrace No. 2. "I would like to register my objection to the building variance requested, that means the house at No. 14 will be altered to allow more persons to live there. Cambridge Terrace has recently experienced both huge amounts of building work which has created a great deal of noise and inconvenience to the residents as well as influx of new cars, many of them SUVs, which has made parking near my house, I'm disabled with a disabled sticker, even more difficult particularly when I have heavy shopping bags to carry."

There's also a letter from Elizabeth and Manocum Stern, S-t-e-r-n who reside at 20 Cambridge Terrace. "We are concerned that as this property is not owner occupied it will

continue to neglected with garbage spilling onto the sidewalks and walks not shoveled in the winter. Adding a third bedroom by enclosing the porches will likely increase the number of occupants per floor and may add to the existing problem of neglect if it's not owner occupied. Further, higher density rental apartments will contribute to the parking difficulties already experienced in this densely populated area of three deckers especially in winter. The street consists entirely of closely packed three deckers with one two-family. For these reasons we are opposed to granting the variance at 14 Cambridge Terrace. Thank you for your attention."

And I think that's it. I don't see any other letters in the file.

So, what do you want to do with this? We can go forward, but now that you're aware of this. That's why my comment about the

dense.

JASON VICKERY: There's not a letter from 16 Cambridge Terrace?

ATTORNEY JAMES RAFFERTY: I got an e-mail from them two days ago.

JASON VICKERY: As of today, indicating that all three of the occupants of the --

ATTORNEY JAMES RAFFERTY: The building immediately abutting it.

CONSTANTINE ALEXANDER: It's not in the file.

BRENDAN SULLIVAN: How long have you owned the building?

JASON VICKERY: I'm under contract to purchase it.

BRENDAN SULLIVAN: Okay. And you're going to develop it three condos?

JASON VICKERY: That's correct. I don't know where the rumor has started that I intend to rent it. It's currently a

rental.

BRENDAN SULLIVAN: Right. And it's in tough shape. And so you're going to rehab it into three nice marketable units?

JASON VICKERY: Correct.

BRENDAN SULLIVAN: And the purpose is to add this bathroom which will serve the master bedroom?

JASON VICKERY: That is one of the purposes.

CONSTANTINE ALEXANDER: Are you adding bedrooms?

JASON VICKERY: There will be an additional room that can be used as a bedroom.

CONSTANTINE ALEXANDER: In each unit?

JASON VICKERY: The square footage is not increasing. Yes.

CONSTANTINE ALEXANDER: Let me just finish. It may increase for the purpose of our calculation, but the comments of the

abutters is people-wise we're going to have more density than we had before. More likely --

ATTORNEY JAMES RAFFERTY: But it should be noted that the area in question only contains a bathroom. If you look at the floor plans --

CONSTANTINE ALEXANDER: I know that.

ATTORNEY JAMES RAFFERTY: -- the bedrooms are, the bedroom is the alignment as a result of reorganizing the plan.

CONSTANTINE ALEXANDER:
Understood.

ATTORNEY JAMES RAFFERTY: The area that's being enclosed doesn't represent the bathroom. It represents a bathroom for one of the bedrooms.

CONSTANTINE ALEXANDER: But I think it's fair to say, at least, what the neighbors would say is that if we allow the bathrooms

which is going to be done with this and you realign the bedroom, we are going to have more people in the structure. That's their concern. I'm not --

TAD HEUER: Floor area is functionable to a certain extent, right?

ATTORNEY JAMES RAFFERTY: Agreed.

TAD HEUER: I'm not saying dispositive.

CONSTANTINE ALEXANDER: Neither am I.

ATTORNEY JAMES RAFFERTY: Right. I don't know what the current alignment is. I don't think it's three bedrooms today.

JASON VICKERY: It's a two-bedroom, one bath.

BRENDAN SULLIVAN: Typical five roomer apartment for a triple decker?

JASON VICKERY: Right.

BRENDAN SULLIVAN: You have a living room, dining room, kitchen, two bedrooms and

a bathroom basically?

JASON VICKERY: And the third floor a finished room up there.

BRENDAN SULLIVAN: And then they expand it on the porch and it becomes a spare room on the third floor?

JASON VICKERY: Yes, it's a guest room. It is a typical five room configuration except for the third floor which has the sixth room which is the finished porch.

CONSTANTINE ALEXANDER: You're surprised by the letter. I take it you didn't talk to the neighbors?

JASON VICKERY: No, I reached out to the direct abutters that were affected by the -- are subject to this relief that we're seeking, and, you know, I did not reach out to beyond the circumference of the immediate abutters who these people --

ATTORNEY JAMES RAFFERTY: Some of

these are across the street and they wouldn't -- and our focus was on the visual impact so he spoke to the people behind and on either side that would see the change. To the extent it's relevant, the third bedroom, the city has a policy of trying to create a family style housing with three bedrooms. I do a lot of multi-family work and we hear often about the need to have household sizes that could accommodate more than two unmarrieds or a single. It's the first time that I've heard that increase in a bedroom count would -- I can perhaps get a feeling --

CONSTANTINE ALEXANDER: I think the response to it, there could be some neighborhoods that are very densely populated in terms of people where you're going to put more people in and you've got parking issues on the street which people usually need cars, I suppose that's the point they're making. Again, I'm not trying to

argue with you.

ATTORNEY JAMES RAFFERTY: I hear the point. I just was -- I mean, whether to the extent it's persuasive or I suppose we can wait and see. But you're right, when I checked the file on Monday, I didn't see any letters and we received the e-mail. I know there had been back and forth exchanges around paint colors, around trash, fencing, landscaping, all very positive exchanges with the abutters who seemed very pleased that Mr. Vickery was undertaking this renovation.

JASON VICKERY: They seemed to be concerned about whether or not it was going to be an owner occupied property.

CONSTANTINE ALEXANDER: Clearly the letters indicate that as well.

BRENDAN SULLIVAN: You know, my feeling on these things, that an issue of more rooms, more people, more cars. I mean, that

is so unprecise and so hard to target. You could have in the units that are there now, you can have a couple with two or three teenagers and each one of them have cars. You know, so you can have five cars per unit. This type of project that you're proposing tends to be professional people. Yes, a master bedroom. I think a market requires separate, a bathroom for it. I mean, you know, if we're going to get to a little bit of a high end. It will have a guest room and that other so-called bedroom becomes a computer room or a study. It could be occupied by one person, two people or three people I think, but, you know, the market that you're trying to target. The real issue with me is whether or not it's a good idea to close, to push the plane of the house backwards toward in-filling. The third floor is in-filled, not done very well, it doesn't look good at all. And whether or not we do

a nice job of in-filling with something that's a little bit more consistent with a nice stairway, that's the issue with me. Not necessarily what goes on on the inside. Because I think historically, and from what I've seen, it tends to be one or two people who live in this -- who tend to buy these units. And that spare bedroom really becomes an office or whatever. But anyhow.

CONSTANTINE ALEXANDER: You were not aware of these letters, I interrupted your presentation, Mr. Rafferty. You can go back to your thought.

ATTORNEY JAMES RAFFERTY: No, no, it's given me time to think. I don't know if the authors are here. Maybe there's an opportunity to speak.

CONSTANTINE ALEXANDER: We'll find out.

ATTORNEY JAMES RAFFERTY: Because I'm very mindful of what the issue about the

enclosure. The current expanse of the enclosure is reduced by more than a half. So it's only, according to the plan, it's only going to be seven and a half feet wide, so it's about half of what's currently depicted. But granted the enclosures don't go all the way down. And I anticipated that would be the focus and the concern of neighbors as well.

I think as I said, it's -- the hardship is really two fold; it's related to the building itself and the need to renovate it. But it also, I think, can be noted that the changes do not represent increases in existing conditions, but actually decreases unless in terms of rear setback bring it into conformity. And in terms of GFA, brings it into greater conformity. So, my thinking was that it would be a type of relief that while these are non-conforming additions they are at least efforts to improve upon

existing conditions which is often the case, which we know as of right conditions. This existing condition isn't particularly attractive or appealing. The thinking was you could get more with less that's what this plan represents.

TAD HEUER: And even if you were to take the step of removing the porches completely, you would not drop below you're -- you'd still be over on your GFA and your FAR just with the main building itself. So there's no solution that would actually get you back to that Variance standard itself.

ATTORNEY JAMES RAFFERTY: Right. And I dare say there isn't a structure on the street that could claim to conform to the 0.75 FAR. I mean, the size and the construction of these lots, and there are limited driveways and admittedly. So, yes, the thinking was that this was an appropriate

rehab of a property that was -- if you just look at the photos where the trash bins are kept right at the front of the building, and that was a big concern with these abutters, and paint selection and putting in a new wooden fence, which Mr. Vickery agreed to. And we saw an e-mail today that indicated that the three unit owners were going to be expressing their support. I guess I'm wondering whether the Board members feel that absent evidence of that support it would --

CONSTANTINE ALEXANDER: Well, I think you're representation, and we take representation from other petitioners that you talked to, certainly these neighbors and they support it. We have no reason to think otherwise. I don't think we need it in writing.

ATTORNEY JAMES RAFFERTY: Do you have the e-mail?

JASON VICKERY: I can pull it up on

my phone and see --

CONSTANTINE ALEXANDER: Let's take public testimony at this point to see if anybody wishes to seek.

Anyone here wishing to speak on this matter? Yes, sir. Please come forward.

OLIVER RADFORD: My name is Oliver Radford and I live at 24 Cambridge Terrace which is three doors down. We've lived there for more than 20 years. My concern is that I'm not hearing very much about hardship here. The street has been pointed out as almost identical triple deckers on almost none of which are conforming, all of which exceed the current zoning variance. I think that the rear porches on the building, I think they're an asset in the neighborhood. I think Mr. Rafferty is correct in pointing out that the previous enclosure of the third floor porch is unfortunate. I would think that if you really wanted to improve the

property, you would restore the porches rather than tearing them down and putting in what I think is a rather unattractive exterior staircase on the back in the backyard. I think going to the point of what is being enclosed, it's true that the additional enclosed space is creating a bathroom, but it's also true that there's a second staircase interior to the building which is being pushed to the exterior so that also creates more space on the inside. So I guess I ask the Board to consider where's the hardship and the properties and the properties purchased or recently purchased is that a self-imposed hardship? I mean, the property is what it is now. Many of the buildings on the street, many of the three deckers have been renovated over the 20 years, very few of them have involved significant zoning relief if any.

CONSTANTINE ALEXANDER: Thank you,

sir.

OLIVER RADFORD: Thank you.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard?

(No response.)

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

Mr. Rafferty, do you want any further comments?

ATTORNEY JAMES RAFFERTY: Could I have one moment?

CONSTANTINE ALEXANDER: By all means.

(Discussion).

CONSTANTINE ALEXANDER: We can recess.

JASON VICKERY: I don't think I need to request a continuance.

ATTORNEY JAMES RAFFERTY: I think the thinking was, and I understand Mr. Bradford's point of view. The hardship

is a necessary element we know, but also the nature of the relief. And, again, the relief here I think dimensionally represents less than what's here presently. Aesthetically it's our view that the rear elevation is enhanced by this as opposed to the existing condition. And it's coupled with the overall improvements with the property. It represents a plus. That's obviously a judgement for the Board to concludes.

CONSTANTINE ALEXANDER: With all due respect, you slid over quickly the hardship. The other points you made are relevant. They address other elements of the Variance requirement. But I still want to hear a little bit more about why there is a hardship here.

ATTORNEY JAMES RAFFERTY: Well, the hardship is directly related to the structure itself. The built form of the structure now has an enclosure on the third floor and it is

part of the GFA of the third floor unit, but it is accurately laid out and doesn't provide the type of efficiency that would allow for the type of renovation that's contemplated here. Similarly the other two porches have the same expansive affect. So the hardship is really a function of the effort to redesign the house. And it is correct that the redesign of the house would create a greater efficiency. But the hardship doesn't ask for additional GFA. It asks for a --

CONSTANTINE ALEXANDER:

Understood.

ATTORNEY JAMES RAFFERTY: I mean the relief asks for a realignment of existing GFA with a net reduction. I dare say if the porch condition was pristine, as is the case with some of these rear porches, it would be a far less compelling case.

CONSTANTINE ALEXANDER: Let me just push you a little bit on that. Why not

restore the porches as been suggested to the pristine state? In other words, rather than enclosing them and changing the exterior and putting on the new staircase, just go back and improve the porches that are there now? I recognize it may not make the building as valuable from a resale point of view but that's not our issue.

ATTORNEY JAMES RAFFERTY: Well, it's not necessarily -- it's a question of functionality and floor plan layout. So there's a separation now so that enclosed porch doesn't have the same level of efficiency to the floor plan. It's not simply a value issue, but it is -- I mean, it's a question of impact of design. But this is an application that's sought closely to try to limit what was being proposed here. Particularly with regard to the rear setback as well, that the thinking was that with a modest amount of relief, the existing

condition could be improved upon and that's the crux of the case and that's the basis for the request.

CONSTANTINE ALEXANDER: Okay.

Questions or comments from members of the Board?

BRENDAN SULLIVAN: I would feel the approval that you're -- it's not before us, but you see as you face your building to the right or to the left?

JASON VICKERY: Face the building, it's to the right.

BRENDAN SULLIVAN: It's to the right. A very nice plot there. A nice building. I guess I would feel a little bit more strongly opposed to extending the wall of the house into the backyard if the neighbor on Upland Road was somewhat of the same elevation, but the neighbor, the first floor of that house looks possibly at the third floor of this house. I mean, there's a huge

difference. And so I would feel a little bit more strongly against extending it, except for those conditions and except for the people on the right because it's standing back and yes, there are a lot of open porches. I think that it's not going to work as a rental. It's going to work as a condo and a little bit of a higher end. And I think it really improves the appearance of that house and I think two houses up, it's a greenish house or something like that. They've done some extensive renovations. Well, anyhow. I would reluctantly I think --

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, I apologize. It's also been the case in other dense neighborhoods that people seek to add decks and porches that are open. There is great concern expressed about privacy and impact of noise on abutters. So this represents a reverse of that situation I think.

CONSTANTINE ALEXANDER: Well, the neighbors don't -- some of the abutters don't accept that. Fair point.

ATTORNEY JAMES RAFFERTY: No, no, I'm just saying. I can recall a case recently where a deck and a porch and the activity of those open decks and porches in close proximity of the neighbors was seen as problematic and invasive and issues of privacy. So this enclosure reduces the size of those porches. So, it --

SLATER ANDERSON: Well, sorry to interrupt. One thing, this is -- I'm not sure how where my thinking is on this, but I do see, and it was highlighted by the comments of the abutters who spoke, you are taking a function of the structure which is the egress and ingress to the rear of the building, you're taking it from the inside of the building and moving it outside. And I'm not sure how I feel about that necessarily as

the impact that will have on the neighborhood or the direct abutters. One thing I do think about is the necessity for illumination of that exterior stairwell, that may have an impact on abutters. Which wouldn't be as great as the illumination of a porch, enclosed porch or covered porch as currently exists potentially. I also, you know, sort of have a -- I'm curious as to why you're taking the porch off the southern facing side of the building, which is the most desirable exterior place to enjoy the light in the day, and turning it into sort of a traffic way or, you know, really an egress, ingress, egress. And then Brendan's point about expanding what really is enclosed four season living area into an area that isn't really of that character. So, I, you know, I see what the benefit is as you're getting more into your square footage. I'm just, I'm a little concerned about this taking something that's

an inside, traditional inside function of a building and basically putting it outside for a benefit. So, I'm not sure how I feel about that. I would be curious if other Board members have thoughts about that aspect.

JASON VICKERY: If it's appropriate for me to speak now. But one of the issues with the current configuration is in order to access those rear porches, you have to walk through the rear, the common area stairwell to get to those spaces so they're less, they feel less connected to the unit and more, you know -- you're walking through -- it's -- it doesn't function as well as it could. And I know we're not solving that problem, but that is one of the reasons why it isn't as attractive a space as I think it would be being the southern oriented space.

SLATER ANDERSON: I lived in a place very similar to this. It was my first residence in Cambridge. We had that same

issue. We put a door in from the interior living area onto the porch. It was more a functional design of the time that the porch door was on that rear stairwell. You know, times change. And I think your plan reflects some of the changes in time. I do appreciate that it's three bedrooms versus the more common two bedroom condo design. So I'm -- I'm not sure where my mind is on it, but I'm curious what other Board members think about that change of utility.

CONSTANTINE ALEXANDER: I'll comment. I'm not sure change in utility. I don't think you've satisfied the hardship requirement. I think what you're talking about is certainly improving the structure, but it's improvement that's just going to be make the property more valuable. There's alternative solutions like this refurbishing the porches. That will improve the property, not to the extent you want to

improve it, and satisfy our zoning requirements. I just think it goes too far. I am also concerned about the enclosure of the porches as Brendan noted earlier and the massing further back. I'm not prepared to support the petition.

Other members of the Board want to comments or we go to a vote?

TIM HUGHES: I think the reduction in -- I mean, even in closing a small part of what the porch area was, I think there's kind of a reduction in the massing of it with the exterior staircase. And it doesn't mean I necessarily like the exterior staircase, but I don't think it's a bigger kind of a closing volume issue with this. And with that third floor porch over top of the other two, that's pretty ridiculously massive in and of itself, you know. And having all the empty space under it is just kind of ludicrous to me. I think it's far from a perfect plan, but you

know, if it was a perfect plan, we wouldn't have this discussion, would we? And I'm reluctantly in favor of it.

ATTORNEY JAMES RAFFERTY:

Mr. Chairman, I only note to your point, there are as of right moves here that would not result in the greater conformity that is going to occur if the Variance were granted. Chief among them is the rear setback and the side yard setback.

CONSTANTINE ALEXANDER: But all those arguments go to you're not derogating to the intent of the Zoning By-Law. It doesn't go to hardship. The hardship, if you have solutions, in my judgment, you have solutions that are -- and they keep the structure the way that it is, just improving it; refurbishing, keep the decks, the rear porches, then I have trouble finding the hardship. The other point you're making really go to the other elements of the

Variance and I think they address it very well.

ATTORNEY JAMES RAFFERTY: Well, the hardship goes to the structure is my point. The current configuration of these porches, which are non-conforming in terms of setback enclosed in a way that are aesthetically not particularly good. And that's the issue. The hardship has to do -- as I said, if the porches didn't exist or they were more traditional style porches, I don't think there would be as compelling a hardship. But the hardship here deals directly with the existing condition of the structure which is a recognized hardship. It's a particular condition unique to this structure and it's not necessarily the case in other structures that don't have these enclosed issues and in some cases don't have these setback violations. So the hardship has everything to do with the structure. And particularly

the current configuration of these porches. If you look at this porch now, it really doesn't even feel like a porch. It's coplanar with the wall of the building. Part of -- a lot of effort was made here to step it back to make it feel like an appendage, like it really should be a separate outside piece. That elevation today is straight across. So the volume and the mass continues down the length of the building. That will be improved upon. That's the nature of the hardship. It's related to the structure. And particularly the current configuration alignment of those porches.

CONSTANTINE ALEXANDER: Tad, you can speak or we can go to a vote, it's up to you.

TAD HEUER: I think it's -- well, to first get out of the way even though the petition says it, I don't think it has anything to do with the lot. This is one of

the most perfectly rectangular lots we have in the city. There is just no way a hardship is related directly with the shape of the lot, that's just not true. That being said, I seem -- having heard what's been said, I think I'm fairly in favor of it. I generally, as the Board knows, oppose filling in porches. I think as a policy and tradition, almost we opposed filling in front porches almost to the application. We've had less concern with filling of rear porches, particularly here where there's such a distinct elevation difference between the structures on Upland Road and the structures on Cambridge Terrace. It's dropping at least 10 feet, 15 feet or more. I mean, I'm not as concerned with the rear abutters as we are sometimes about massing in that respect. I think going down the street, if you're looking -- if you're going down the back yards, is the other concern about massing, the same way as the

front yards, and I think by stepping it back in, making these all enclosed but not having a huge top heavy enclosure on the top, does create, you know, and through the reduction of GFA, does bring us more into accord with what we want the Zoning Ordinance to do. We want to go back toward imperfectly in as small steps as possible, the limits that we have set out by the Zoning Ordinance. And I think this proposal does do that. So I think that to the extent that there's a hardship, is that they're dealing with a non-conforming structure that has been improperly and is insensitively added to in-fill and they're trying to bring it back to a state where they're less in state of violation. I think for me that, that's a significant hardship, particularly here where it's a smaller enclosure. It's stepped back enclosure. There are multiple dimensional issues that are being resolved, and I don't believe that

the use of this that we have in terms of rear abutters, that I'd be concerned with the rear porches that are necessarily present here. And that perhaps may be the only issue in which the lot is relevant, because the adjoining lots are not coplanar with -- they're actually stepped up with a significant degree. So yes, it will -- certainly I agree with Mr. Sullivan, will provide more marketability for these units, but I think they're also counter-failing reasons for finding hardship particularly in multiple reliefs that would be granted and that reduction of massing even though there's going to be an addition.

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

The Chair moves that the Board make the following findings:

That a literal enforcement of our

Zoning By-Law would create a substantial hardship to the Petitioner. Such hardship being that the Petitioner has a non-conforming structure that has been inartistically modified over the years, and it makes therefore any kind of renovation of the structure difficult and not cost effective. That the hardship is owing to the fact that the structure of the non-conforming structure.

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

That finding made on the basis that the proposal, if approved, would reduce the extent of the non-conformity of the structure. Would improve the inhabitability of the structure.

On the basis of these findings the relief will be granted to the Petitioner on

the condition that the work proceed in accordance with plans submitted by the Petitioner. They are 1, 2 -- there is a cover sheet, there's a plot plan, and then drawings numbered A1.01, A1.02, A1.03, A4.01, A4.02, A4.03, A4.04, A4.05, A4.06, A4.07, A4.08. The first page of these drawings, the cover pages are initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Hughes, Sullivan, Heuer, Anderson.)

CONSTANTINE ALEXANDER: One opposed. The variance is granted.

(Alexander opposed.)

CONSTANTINE ALEXANDER: Mr. Rafferty, make your presentation.

ATTORNEY JAMES RAFFERTY: Oh, sure.

The Special Permit is related to the enlargement. Not really enlargement, the relocation of a couple of windows on one of the non-conforming walls. And Mr. Vickery can tell me quick which elevation that is.

JASON VICKERY: It's on a couple of elevations. So it's -- the proposed is on 4.06 -- 4.06 and 4.07.

CONSTANTINE ALEXANDER: 06 and 07?

ATTORNEY JAMES RAFFERTY: Yes.

And the plan nicely details what the existing windows look like. And 4.06, you can see that the two of the windows are being shortened, so they're obviously not subject to relief. But there are the -- a double window is added where a single window currently exists.

CONSTANTINE ALEXANDER: Actually, isn't there subject to the relief, you've got a stronger case, but any modification of the window in the setback?

ATTORNEY JAMES RAFFERTY: No addition in enlargement relocation.

CONSTANTINE ALEXANDER: Got it. Okay, thank you.

ATTORNEY JAMES RAFFERTY: And on the A4.07 side, you can also see the impact of where the windows are being removed. This is more akin to a relocation of windows. The actual number of window openings doesn't change.

CONSTANTINE ALEXANDER: Questions from members of the Board with regard to the Special Permit?

Anyone wishing to be heard on this matter?

(No response.)

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

The Chair would further note that the records that have been read into the record, none of them seem to relate to the window

issue. So they're not relevant to the Special Permit.

Ready for a motion?

The Chair moves that a Special Permit be granted to the Petitioner to relocate doors and windows as shown on plans submitted by the Petitioner, numbered A4.06 and A4.07 both of which have been initialed by the Chair on the basis of the following findings:

That the relocation of these windows will not cause congestion, hazard or substantial change in established neighborhood character.

That the continued use, operation of adjacent uses will not be adversely affected by this modification of windows.

That no nuisance or hazard will be created to the detriment, health, safety or welfare of the occupants or of the citizens of the city. And that the proposed change would not impair the integrity of the

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

The Chair would note that these changes are really to a part of the refurbishment of the structure, and make the structure again more appropriately usable for the Petitioner given the other changes that are being proposed as part of this project.

So on the basis of the foregoing the Special Permit would be granted. Again, I'll make reference to on the condition that the work be done in conformance with the plans submitted by the petitioner numbered A4.06 of and A4.07, both of which have been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor of the Special Permit.

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

ATTORNEY JAMES RAFFERTY: Thank you very much.

(9:40 p.m.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9958, 143 First Street. Is there anyone here wishing to be heard on that matter? Please come forward.

For the record, could you give your name and spell your name for the stenographer.

NAJIM AZAD: First of all, thank you very much for giving us the opportunity to

present our case. I'm Najim, N-a-j-i-m Azad, A-z-a-d from Azad Architects in Newton, Massachusetts. Next to me is Mr. Osman Rasuli and Mrs. Paula Rasuli, both are the general manager of the 143 First Street Helmand Restaurant. On my right is Joseph Azad also from my office Azad Architects.

Our case is of course for a Special Permit of 143 First Street, which is one-story building serving cuisine from Afghanistan. It was established in 1993. It's a one-story building in a basement and second floor. The main entrance -- it has two main entrances, one is from First Street and the other entrance is from the Bent Street on the in order. It's a corner lot.

The subject of tonight's petition is that there will be no addition renovation, alteration or construction of any type to the structure. It is a restaurant that's established in 1993, and since that time has

provided quality services for the community and has established a good name. And not only in Massachusetts but throughout New England. And as far as the name goes, throughout the country. The manager tells me that he gets called from out of state for reservations. And he has only serving for dinnertime, no lunchtime. The only problem that the restaurant has is fewer capacity for seating. There is a great demand for more seating.

Now, the manager and Paula, the general manager they tell me that their intention is not to increase the seating for the purpose of the -- to having a full capacity all the time, but it's just once in a while when there is a graduation night at MIT or there's a special sport event, they get so many people that will it exceed the number of seats that they have. The restaurant was approved for 99 seats. Now, based on that, requirements

of that zoning, they need parking for that number of seats. Currently they have a designated parking space right across from the restaurant, and it is for 10 parking spaces. And I would like to be correct on that because there was a question whether it was nine or ten, and I never got a chance to call the engineer at the Traffic Department. I called and left a message but I wasn't able to speak with him.

CONSTANTINE ALEXANDER: In the opinion of the Traffic Department, are there nine legal spaces?

RANJIT SINGANAYAGAM: I think they have recorded nine spaces.

CONSTANTINE ALEXANDER: Nine spaces. Now, in fact for 99 seats, the restaurant, that's not -- even if it were ten, that's not enough for our Zoning By-Law. But as I understand it, you have a legal non-conforming use. In other words, it's

grandfathered to have nine or ten spaces, whatever you have.

NAJIM AZAD: Yes.

CONSTANTINE ALEXANDER: In fact, just to get it on the record, if legally you're required to have 20 spaces or one space for every five tables.

NAJIM AZAD: Exactly.

CONSTANTINE ALEXANDER: So you have nine or ten, depending on who you talk to. And you should have 20. But it's legal for you to have the nine or ten.

NAJIM AZAD: Exactly.

CONSTANTINE ALEXANDER: Now you want to add 20 more seats.

NAJIM AZAD: 20 more seats.

CONSTANTINE ALEXANDER: Which would require four more park spaces. So you would go from -- and you're not going to add any more. You want to go from nine or ten legal now, to nine or ten.

NAJIM AZAD: Right.

CONSTANTINE ALEXANDER: When in fact our zoning law, if you didn't have a non-conforming use, would require 24. That's the conflict.

NAJIM AZAD: But here's the way it is, and I spoke with the manager and I have been to the restaurants many nights. Right on Benton Street there are meter parking. And after evening when the business are closed, the meter parking are not used by people working. It's mainly used for -- there is plenty of parking close by.

CONSTANTINE ALEXANDER: There's also parking across from the Galleria Mall.

NAJIM AZAD: Across from the Galleria Mall which is just a half a block. Probably not be more than 300 feet if I'm not wrong. You can go to that, it's covered parking. It's \$3 per hour in the evening.

CONSTANTINE ALEXANDER: You're in a

business district but you're not very far from a residential district in East Cambridge. Have you ever had complaints from neighbors because of the fact that they can't park their cars because your patrons are taking up all the spaces?

OSMAN RASULI: With your permission, we put a very good name, Chairman, for the community, our neighbors very loyal to us. And also our establishment is well known because we built up our reputation. And our reputation is on the base of service, integrity, respect to the neighbors because we build our name by our community. And in this way, we have no bad name to any range of the area from First Street to Second to Third and Fourth. All these neighborhood comes to dine and we don't have seats for them. And this is the only thing because mostly they say oh, there's parking over there. We have this small

parking, it's free. We don't charge. Galleria Mall is two, three minutes walk from away from our restaurant. Roger Street is one hour meter. There's no residential. Bent Street is nothing after five o'clock. It's -- and other street is parking lot. Third Street is some residential. I don't think we affect our business, our business doesn't affect to take their spot because nobody park in this area of the First Street, Roger Street. The mall is closing around nine o'clock or ten o'clock, but they have the parking over there.

TAD HEUER: When you said that you have neighbors who come to the restaurant, so is there a significant amount of walk-in people who don't need to drive to your restaurant because they're from --

OSMAN RASULI: Well, some people come in to drive also because they invited their friends from someplace else.

CONSTANTINE ALEXANDER: It's also fair to say that the restaurant also has a reputation that most of the people come from not from walking distance but other communities.

PAULA RASULI: But also from the T.

CONSTANTINE ALEXANDER: You get customers from the T?

OSMAN RASULI: We get people from the T. We get people from Rhode Island, from New York City, from Germany.

SLATER ANDERSON: They drive from Germany?

OSMAN RASULI: They have to get from the airport to our restaurant. But I'm sure they don't.

PAULA RASULI: They take taxis.

CONSTANTINE ALEXANDER: I would comment for the record, there seems to be no letters of opposition from neighbors or the neighborhood. And theres a very active

community organization in East Cambridge. The East Cambridge Planning Team. We usually hear from them.

PAULA RASULI: They're a lot of our customers.

CONSTANTINE ALEXANDER: So in any event, did you have any communication with them or did they communicate with you?

OSMAN RASULI: Well, our communication is like this: When they come every hour of 150 people, if they come, we get at least 130 and this is a lot of number. Some people say why didn't you raise your price? It's too low. And I said we are not greedy. So with respect to the community and also respect to the City of Cambridge. Our reviews in Canada -- we are one of the views, they named us jewel of -- what was it? Darling of MIT and Cambridge. So we put a good name because we draw a lot of people from different area of the country. And we are

very proud our name goes overseas and they show Cambridge area, can you all check it, Helmand Restaurant. I'm very, very proud of that. And the neighborhood, they are very, very proud. They always invite us to expand your business. Why don't you open another location? People offer me cash money to open other restaurant, Florida, Dubai.

CONSTANTINE ALEXANDER: You don't have to worry about zoning in Dubai.

NAJIM AZAD: I don't think there's any opposition from the neighbors on this issue. I don't think that customers will ever complain about not having enough parking on-site because Cambridge is known to everyone that, you know, lack of parking exists at all kinds of businesses. And the covered parking garage across from the street, and Galleria Mall and Sears, that can accommodate parking spaces for the restaurant, too which is a paid parking.

CONSTANTINE ALEXANDER: Thank you.
Anything further?

NAJIM AZAD: And for the record, I just want to make one correction on this Google map. That it was marked here, but actually it's here (indicating). But I just want to make this correction.

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

(No response.)

CONSTANTINE ALEXANDER: No one wishes to be heard.

We are in possession of a letter from Timothy J. Toomey, Jr., City Council member. "I'm writing to lend my support to BZA case 9958 requesting a Variance at 143 First Street for an increase in seating with insufficient parking. Helmand Restaurant has a good long standing reputation in the community. I support their request to expand their seating, and see no negative

impact in relation to the parking requirement. Helmand has proven to be a successful restaurant in the neighborhood despite the lack of parking on First Street. Patrons can find parking in walking distance at local city garages or the Galleria Mall garage."

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

This is a Special Permit, and a Special Permit to reduce parking which is being sought under Section 6.35.1 of our Zoning By-Law requires us that we have to determine and site evidence in our decision that the lesser amount of parking, what you're requesting, will not cause excessive congestion, endanger public safety, substantially reduce parking availability for other uses or otherwise adversely impact the neighborhood.

And then we have, the various criteria

which we take into account in making this determination. And two of them are:

One, the availability of surplus off street parking in the vicinity of the use being served and/or the proximity of an MBTA transit station. And I would note for the record that there is within walking distance an MBTA transit station, that's the Lechmere Station. And also the availability of public or commercial parking facilities in the vicinity of the use being served. And in this case has been mentioned, there is substantial parking at the Galleria Mall facility, public parking. It's open to the public. It's a charge, there's a charge for it, but there's certainly much parking there. Particularly in the evening hours when your restaurant is open.

So I would move that the Board make the findings that the lesser amount of parking would not cause excessive congestion,

endanger public safety, substantially reduce parking availability for other uses or otherwise adversely impact the neighborhood.

And I would make this finding on the basis of the fact that there is surplus off street parking in the vicinity of the use being served. In fact, in the evening hours when the restaurant is open, there are metered spaces that are not used because people who traffic in the area for business purposes, use Galleria Mall parking. That there is an MBTA transit station in proximity, walking distance of the restaurant. And that there are available public or commercial parking facilities in the vicinity of the restaurant. Those facilities as I said, are located in Galleria mall.

So on the basis of these, we make these findings, we have to make further findings. That the traffic generated will not cause

congestion, hazard or substantial change in established neighborhood character. We're talking about adding 20 seats to the restaurant in a business area that is not heavily traffic in the evening hours when the restaurant is open. That the continued -- the development of adjacent uses will not be adversely affected by the nature of the proposed use. In fact, again, because of the surplus of parking and the alternative parking available, adjacent uses should be able to continue their businesses as before.

No nuisance or hazard would be created to the detriment of the health, safety or welfare of the occupants or the citizens of the city.

And 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, the intent of the Ordinance is to encourage commercial development in business zone districts. And this is what would happen if we grant the relief; that there would be more seating at the restaurant, and that the restaurant is in a position to even do better financially than it has been before. This in turn could encourage more businesses to come into the area.

So on the basis of all the foregoing, I move that the Board find that a Special Permit be granted to the Petitioner to allow it to increase the number of seats in its restaurant from 99 seats to 119 seats without increasing the amount of on-site parking that already exists.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Your Special Permit has been

granted.

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

PAULA RASULI: Thank you.
Appreciate it.

(10:00 p.m.)

(Sitting Members: Constantine Alexander,
Tim Hughes, Brendan Sullivan, Tad Heuer,
Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair
will call case number 9959, 15 Chalk Street.
Is there anyone here wishing to be heard on
this matter? Please come forward. Name and
address, please, for the record.

JOHN MITCHELL: John Mitchell.

ERIN JANSSEN: Erin Janssen,
J-a-n-s-s-e-n, 15 Chalk.

ATTORNEY TIMOTHY TAYLOR: And I'm
Tim Taylor attorney with an office in
Lincoln.

CONSTANTINE ALEXANDER: Okay.
You're here seeking a Variance to construct
a dormer at your detached carriage house.

ATTORNEY TIMOTHY TAYLOR: Right.

CONSTANTINE ALEXANDER: This is a
property that has been before us before. Not
with you as the owner. It's been before us
a number of times.

ATTORNEY TIMOTHY TAYLOR: That's
correct. This Board granted a Variance in
2004 to the predecessors to the applicants to
utilize not just the second floor of the
carriage house but the first floor which is
much larger in floor area. So that the
entire carriage house could be used as a Home
Office.

CONSTANTINE ALEXANDER: That Home Office at the time was for a mediation business at the time as I recall.

ATTORNEY TIMOTHY TAYLOR: That's correct.

Doctor Mitchell uses the carriage house as a Home Office but finds that the second floor is dysfunctionally small an area. The first floor, which originally was two basically parking bays was two large particularly given the separated from the second floor. There was also a half bath on the first floor which is not very functional and it should be on the second floor. And in order to the put the half bath on the second floor, that really practically requires an addition of a very modest dormer. And the applicants desire that one of the two bays, if you will, on the first floor be returned to its original use which was parking space. So in effect the intensity of the use is being

reduced.

CONSTANTINE ALEXANDER: The structural, the structural non-conformance is going to be increased. You're going to talk about modifying a structure, a carriage house which in our first decision was cited by the then Chair or the then Board as historically significant. So we're going to take this, a structure and you're going to modify it.

ATTORNEY TIMOTHY TAYLOR: We're going to add, again, a 15-foot dormer on the second floor.

CONSTANTINE ALEXANDER: Right.

ATTORNEY TIMOTHY TAYLOR: Which is only be visible by the abutter to the rear who has expressed his support of this application.

CONSTANTINE ALEXANDER: Can I ask you a couple questions?

ATTORNEY TIMOTHY TAYLOR: Sure.

CONSTANTINE ALEXANDER: I mean, you're supporting statement, it says -- as typed, it says that you Doctor Mitchell is a physician specializing in radiology. It was crossed out and anesthesiology was written in. I mean, what specialty do you practice? Can you explain why? I'm just curious.

ERIN JANSSEN: The papers were prepared by our lawyer who obviously had a mishearing and I saw them and corrected them before I turned them in because I --

ATTORNEY TIMOTHY TAYLOR: I heard radiology.

ERIN JANSSEN: We don't do radiology. It was just a miscommunication and I didn't have the Word document to type it in which would have been the best thing.

CONSTANTINE ALEXANDER: And then your supporting statement was the new location that you're seeking with the dormer will be substantially more convenient and

particular to patients. And you talk about the convenience of the bathroom on the first floor and the like. As an anesthesiologist how many patients do you see in your Home Office?

JOHN MITCHELL: Well, we have not started seeing patients yet. But my wife is a pediatrician and so we want to explore the options for either her to see pediatric patients or me to see either --

CONSTANTINE ALEXANDER: Well, you didn't tell us that in the application. You're talking maybe perhaps having two now medical offices in this structure?

JOHN MITCHELL: Well, a shared office for potentially the two of us.

CONSTANTINE ALEXANDER: That's why you want more space, because you're going to have two different doctors practicing in the space?

JOHN MITCHELL: Well, it will

actually be less space, but a more convenient set-up for the two of us. I'm probably -- to this point, she's not being prepared to do this, but we'd like to keep that option open for the future. And with regards to types of patients, I can see, as an anesthesiologist, I can see pain management patients. I can also say patients --

CONSTANTINE ALEXANDER: How many patients do you see a week?

JOHN MITCHELL: I see them all in a hospital setting.

CONSTANTINE ALEXANDER: So you don't have any patients coming to 15 Chalk Street at this point.

JOHN MITCHELL: No. At this point --

CONSTANTINE ALEXANDER: You haven't decided yet what you're going to do.

ERIN JANSSEN: We haven't been able to renovate the structure to make it really

usable for patients as it stands right now.

JOHN MITCHELL: One of the main problems is the main carriage house doors are essentially rotting off the structure. Part of it would we thought we'd be able to fix because we put some gutters on the structure and tried to alleviate some of the drainage issues that we had. There's also dirt in the basement that was really emanating a moldy smell. So over the last couple of years, we've spent sometime shoring up the basement, excavating some of that musty smelling dirt, trying to get rid of some of the rot from the front of the carriage house and otherwise preparing it so that it would be appropriate to bring patients into. Because I wouldn't have subjected patients to what was basically an unusable structure when we moved in.

TAD HEUER: Why move a parking space when you could gain that space for practice use on the other side of the garage instead

of asking for more space? So you're saying we're not increasing the FAR very much because we're able to take away applicable parking space.

ATTORNEY TIMOTHY TAYLOR: We're actually reducing it.

TAD HEUER: Right. But you wouldn't be reducing it if you weren't taking a parking space away and you could have the car parked in the driveway and then you would have that space and you wouldn't need a dormer. Why isn't that a reasonable solution?

JOHN MITCHELL: It was our sense from speaking with neighbors that they were consumed about previous -- from reading over transcripts of previous events, that one of the common themes in the neighborhood has been use intensity, and specifically parking spaces on the street or in the yard. So what we sought to do was to alleviate some of the

concerns of neighbors by creating some parking for our office right there on site. And by adding that bay as a parking spot, that would open up more parking on our site that would keep us from parking in the street or having patients park in the street. So we felt like that was a good faith gesture to the neighbors, to give them something that might -- they might feel as beneficial, was to keep our cars off the street which we've always been able to do because of our driveway, but might be less able to do if we had some patients coming in.

CONSTANTINE ALEXANDER: I think my problem, to be very frank, you do and as pointed out in your statement, you do have as a matter of right to have a physician's office as a use, accessory use in this district. But that, that's all the zoning law allows you to do. It doesn't say, it doesn't follow that because you can have a Home Office, we

need to give you structural relief. Relief from structural requirements of our Zoning By-Law. That's a separate one. And you're asking us to do that. And, you know, I'll give you an example, as maybe a false example, and maybe other members of the Board will shoot me down. But if you're in a commercial district and you have a lot that allows commercial activities, and someone wanted to build a supermarket on that lot. But the lot is too small. And if you come before us for dimensional relief, I don't think we would grant the relief because I wouldn't. Because I would say you have other commercial -- the lot's feasible for other commercial purposes. Here this lot, this building was usable for a mediation business, you could have a customer Home Office occupation. You want to create -- you want to change the nature of the structure, add a dormer to a structure that the Board, as I

said before, has recognized or cited as being significant from an architectural point of view. And you're going to increase the intensity of the use when you two doctors' offices being conducted here or maybe none. I'm just puzzled. I mean, you gave us a whole statement that says this is dysfunctional for your practice, and now I just hear you don't have any patients coming to this.

JOHN MITCHELL: We haven't been able to because it's been too dysfunctional. I wouldn't bring a patient into that environment as it stands. The only thing I've been able to use it for is spend sometime working on papers and other things in the space as a Home Office in that sense of the word, but I don't think it's being in a state where we could effectively bring patients in. And to finish off the renovations, it seemed like logical thing for the patient flow to have a rest room on the same floor.

CONSTANTINE ALEXANDER: Would you as an anesthesiologist have patients come in on a regular basis visit if we granted you relief?

JOHN MITCHELL: Some of the things I can bring patients in for are things like pain management as I said before, and/or things like evaluations for sleep studies and things of that nature. So that I can, I can screen patients for things like sleep apnea and things like that. So, yes, I think I can, I can -- actually, I've been in discussions with some people about making this a viable practice or opportunity for myself.

ERIN JANSSEN: And it was also I think reassuring to the neighbors that we were actually cutting down on the size so we wouldn't have five or six exam rooms. It would limit the number of patients coming in and out at any one time. And by, you know, changing some of this to parking, it really

alleviated their concerns that there would be additional parking on the street. We could have enough parking for ourselves and our patients within our very own driveway and the garage space that we're changing that we would want to change it to.

JOHN MITCHELL: Effectively this limits our opportunity to expand overall and, that was comfortable to neighbors to say well, you've got a limited space, you can see a couple patients there and you're not going to take up our street parking.

ERIN JANSSEN: And the front facade would be changed very little, slightly wider to accommodate a car. But as far as what people -- the vast majority of people see from the street and the historical value of the structure, there would be very insignificant changes made. The only changes would be the dormer to the back, which actually only one neighbor could really see.

And they provided the letter of support.

JOHN MITCHELL: It's actually here.

CONSTANTINE ALEXANDER: It's a letter in the file?

JOHN MITCHELL: Yes, they dropped it in our file today.

TAD HEUER: So, we had a dentist come in and said I purchased a condo in a building with 12 units, one of them was for commercial use. And he said I can't use it as a dentist because I have HIPPA requirements and other mechanical requirements that at minimum I need X number of square feet in order to run a dentist office that gets me, that is accredited and, meets all my professional requirements. The space I have to put my dentist office in, that I'm coming before you, is less than that space. And there is no way I can run a dentist office out of this space because the numbers don't work. They require 600 square feet. I only have 450

square feet. You need to give me a Variance to let me convert it, in this instance back to residential use because it cannot be used for this dental purpose. Just can't be. There is no way in 2010 that that's an option.

Here, I guess I clearly have the same question that the Chairman does, I'm having trouble understanding, you know, I see you don't have six exam rooms, you have three. Why not two that fit within the -- I mean, why can't the structure be used in a way that meets your needs? I guess the basic hardship is the structure could not be used unless we had this addition here. It just sounds like it would be nice to have more space and move stuff around for people so they don't have the parking which I think is a legitimate give to the neighbors, and I think it's a valuable one here. But I'm still trying to get to the issue of why the configuration of the space is impossible to use for the purpose you want.

And the only way it can be usable is by adding a 15-foot dormer on the roof. So you're saying it's impossible to use as a medical office?

JOHN MITCHELL: Well, if we're parking a car on the first floor, I don't think that's an appropriate place to have a patient rest room or a place where they need to give us samples or things like that. Also, if I'm going to be doing testing or studies which may result in patients getting dizzy or light headed, it would be nice for them to have a place to go on the same floor as the exam rooms which would be on the second floor.

TAD HEUER: Is it a good idea to have dizzy and light headed people in a place where you need to stairs to go up and down? I don't know.

JOHN MITCHELL: I'm saying if they -- say they get dizzy if we're drawing

blood or something like that.

ERIN JANSSEN: To have the bathroom on the exact same floor as the patients are at as opposed to having them go up and down stairs maybe multiple times during one visit.

ATTORNEY TIMOTHY TAYLOR: This is clearly sort of a work in progress, if you will. But what we're -- the applicants want is in effect three rooms. Three sort of intact separate rooms. And right now they could have two on the first floor and I guess you call it a somewhat dysfunctional one on the second floor. It sort of renders the second floor not terribly usable, and therefore the tradeoff for reducing the intensity of the use of the structure is to add a modest dormer, which no one on Chalk Street can see and will not alter at all the appearance of the carriage house on Chalk Street. It seems to me to be sort of a reasonable tradeoff, to reduce the intensity

of use, to take one car out of the driveway and to add --

TAD HEUER: But cars are allowed to be parked in driveways. I mean, I know where you're going, but reducing the intensity use by swapping in and out of parking, you're allowed -- cars may be parked in the driveway that you have. It may not be optimal to the neighbors, and I understand the friction. But it's not a prohibited use.

ATTORNEY TIMOTHY TAYLOR: No.

TAD HEUER: So, I mean, I guess this kind of gets me back to a similar way of this question of you've got a lot of square footage there to use, maybe it's better and more convenient, the neighbors would like it more if the car was parked in the driveway. But you have a by right option to park the car in the driveway. So to take out that option because you want more room above when you have room next-door --

ATTORNEY TIMOTHY TAYLOR: But the applicants are willing to cause the appearance of their operation of Home Office to be less obvious to the neighborhood by having at least one less car in the driveway. As well as the potential of having cars on Chalk Street. So they're in effect reducing the Home Office, taking one car out of the driveway, putting it in the carriage house. And the sort of price for that is adding something which can't be seen from Chalk Street. And which complies with most of your requirements and your design guidelines for dormers.

TAD HEUER: I just have several questions.

CONSTANTINE ALEXANDER: Keep going.

TAD HEUER: On that point about the dormer, so if my notes are correct, the language, and I don't have it directly, and I'm sure you went through it directly in the

letter. What I've noted is that you say that the dormer adheres completely or substantially with several of the principle guidelines. That's a number of qualifications. I mean, I'm an attorney and I don't usually qualify my statements that way.

ATTORNEY TIMOTHY TAYLOR: Well, I can pull out the guidelines. I can recite them to you.

CONSTANTINE ALEXANDER: Well, you meet the (inaudible) requirement. You're set back from the side of the building. So I think your problem was you went right down to the front. You didn't set back.

JOHN MITCHELL: Right, the setback.

ATTORNEY TIMOTHY TAYLOR: Setback from the, quote, front wall.

JOHN MITCHELL: The only thing that we didn't get complete requirement.

CONSTANTINE ALEXANDER: I read the

plans.

JOHN MITCHELL: And we spent a long time with an architect working on this to try to make sure it was in so far as possible, but that was the only thing that we weren't able to do in order to get that modest rest room facility in there. There just wouldn't be enough head clearance to do that. But apologize, but that was really the best we could do in keeping it small and unobtrusive.

Yeah, it's our goal to protect the look and feel of the house. We reside at the residence. We don't want to make this a very high traffic area. We don't want to make this a (inaudible) appearance. In fact, we want to keep the carriage house the same appearance as it is now, and something we could actually use as opposed to something that's just not a very functional structure right now.

TAD HEUER: So is it accurate, and

you can tell me if I'm wrong, to say that the dormer adheres completely with several of the principle guidelines?

JOHN MITCHELL: It's adequate to say it adheres to completely all by one. Or you can say --

CONSTANTINE ALEXANDER: That's right.

TAD HEUER: When I say completely or substantially with several, it suggests that might not be any completion with any.

ATTORNEY TIMOTHY TAYLOR: Well, it's already been established it's only 15 feet in length.

TAD HEUER: Right.

ATTORNEY TIMOTHY TAYLOR: The setback is more than three feet. It's also -- the high point is below the roof peak. It doesn't have any windows and that was intentional. So that, there would be no additional light shining on the abutter to

the rear. There was a skylight. But, so I mean, as the guidelines try to promote, 50 percent of the length of the dormer would be windows. But we thought in this case that would not be desirable. Because then people are not living there. It's not like you leave the light on all the time. It's a half bath up there to more of a storage space.

CONSTANTINE ALEXANDER: Further comments from members of the Board?

BRENDAN SULLIVAN: Looking for some comment intervention here.

CONSTANTINE ALEXANDER: I'll open it to public testimony. Is there anyone here wishing to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair will note no one wishes to be heard in this matter.

The Chair would also note that the Petitioner has submitted a letter signed by

Nathan Abramson, A-b-r-a-m-s-o-n who resides at 14 Kelly Road. "We are abutters to 15 Chalk Street, the property owned by John Mitchell and Erin Janssen for which we understand an application for a zoning variance has been filed, case No. 9959. Our property directly abuts the carriage house that this proposal pertains to. Erin and John have shown us their proposal for the repairs and improvements to the property as well as the construction of a new second story shed dormer. We have no objections to this proposal and would favor approval of the requested variance."

JOHN MITCHELL: And they're directly behind.

CONSTANTINE ALEXANDER: That's what they said in the letter. Thank you for pointing it out.

Comments from members of the Board or do you want to go to a vote?

TIM HUGHES: I'm good with it.

SLATER ANDERSON: I'm ready for a vote.

CONSTANTINE ALEXANDER: 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 the Petitioner would not be able to use this carriage house for a physician's office to their liking, believing that they need to have a rest room on the second floor and not on the first floor.

That the hardship is owing to the fact that the structure is a non-conforming structure and, therefore, any modification would require a Zoning relief.

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

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

This finding would be made on the basis that the relief being sought substantially complies with our dormer guidelines but not entirely. And that the appearance of the structure, to the most citizens of the city would not be affected because the dormer would be on the rear side of the structure and that permitted use in this district is the physician's office, and that the relief would allow this to be better used as a physician's office.

So on the basis of these findings the Chair would move that a Variance be granted to the Petitioner on the grounds that the work proceed in accordance with drawings numbered A1.1, A2.1, A1.0, A2.0., four pages, all of which have been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Hughes, Sullivan, Heuer, Anderson.)

CONSTANTINE ALEXANDER: One opposed. Variance is granted.

(Alexander opposed.)

(At 10:20 p.m., the meeting adjourned.)

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS BRISTOL, SS.

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

I am not related to any of the parties in this matter by blood or marriage and that I am in no way interested in the outcome of this matter.

I further certify that the testimony hereinbefore set forth is a true and accurate transcription of my stenographic notes to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of July 2010.

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

My Commission Expires:
April 23, 2015

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