

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING
AUGUST 12, 2010 7:00 P.M.

in Senior Center
806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Brendan Sullivan, Member

Tad Heuer, Member

Thomas Scott, Member

Sean O'Grady, Zoning Specialist

Ranjit Singanayagam, Commissioner

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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, Thomas Scott.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Appeals to order. As is our practice, we're going to start with the continued cases. The first continued case I'm going to call is case No. 9951, 23 St. Mary Road. Is there anyone here wishing to be heard on that matter?

(No response).

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. The Chair is in possession of a letter from Edrick, E-d-r-i-c-k Van, V-a-n, I'm just going to spell the last name. B-e-u-z-e-k-o--m. He identifies himself as the principal of EBD Design an architectural firm. The letter says: "I understand our case," referring to

this case, "has been continued to the August 12th hearing date. Unfortunately I will be out of the country on this date. As the architect and Petitioner representative for the owners of 23 St. Mary Road, I hereby request that our case be continued to the next available hearing date. If there's any possibility of moving to an earlier date, we would be most grateful. Thank you for your consideration."

SEAN O'GRADY: October 28th.

CONSTANTINE ALEXANDER: October 28th. That's the earliest date?

SEAN O'GRADY: Yes. And that's actually the last one on that date.

CONSTANTINE ALEXANDER: Okay.
This is a case not heard for the record.

The Chair moves that this case be continued until seven p.m. on October 28, 2010. This being a case not heard, and there also being a waiver of time for decision on

file.

The case will be continued on the condition that the Petitioner modify the sign advertising the hearing to indicate the new hearing date.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

(7:00 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9941, 34 Larchwood Drive. Is there anyone here wishing to be heard on this matter?

CYRIL HUGHES: Yes.

CONSTANTINE ALEXANDER: Please come forward. Please give your name and address to the stenographer. And if you have a business card that has your name and address, that would be much appreciated. It will make her life a lot easier.

You're before us to add a two-story addition to your house. Take it from there.

CHRIS PIZZICHEMI: Good evening, Chris Pizzichemi, I will be helping with the design through Cyril the contractor.

We're here to seek approval for a

Variance with regards to an existing non-conforming condition. And within that small packet there's just two illustrations of the existing conditions.

CONSTANTINE ALEXANDER: This is the house as it now exists?

CHRIS PIZZICHEMI: Correct.

So I've highlighted the setback with the green color. The yellow shows where the building is overlapping the setback on the existing condition. And I think now is a good time just to keep us on the same page.

(Indicating projector.)

So on the cover is the existing house, and that facade is the north facing facade which you'll see here in the yellow along the top. Down here is an existing garage which overlaps the setback as an existing condition (indicating).

This is the proposed project addition (indicating). And as you can see, the garage

has been removed, and the new design keeps within the setback now. But unfortunately to the traditional quality of this facade, they're keeping that part of the house and that remains an existing non-conforming condition.

CONSTANTINE ALEXANDER: And that's the intrusion into the front yard setback?

CHRIS PIZZICHEMI: That's right. And that's this facade here (indicating). And that is the extent really of the situation.

CONSTANTINE ALEXANDER: So basically you're saying the relief you're seeking is modest, and in fact it's going to reduce the extent of the non-conformance of the existing structure. And in fact, you want to build, it's not in the area where you're intruding into the setback; is that right?

CHRIS PIZZICHEMI: That's correct,

yes.

CONSTANTINE ALEXANDER: And these are the detailed plans?

CHRIS PIZZICHEMI: That's right.

CONSTANTINE ALEXANDER: Just so you know, if we were to grant relief, we would tie it to compliance with those plans. So these have to be the final plans.

CHRIS PIZZICHEMI: Correct.

CONSTANTINE ALEXANDER: If you revise them, you have to come back before the Board. Just so you understand.

CHRIS PIZZICHEMI: Okay.

CONSTANTINE ALEXANDER: Questions from members of the Board?

TAD HEUER: What's your hardship?

CHRIS PIZZICHEMI: Well, the existing house has eight square footage of the existing house garage from having three floors within that small dwelling. And this existing house was built in 1929, and it

has seven foot ceilings in general. And it's very compact living quarters, especially for a small family. So, the situation basically is to revise the interior of that house so that it is more amenable to modern conveniences.

TAD HEUER: You have 2300 square feet.

CHRIS PIZZICHEMI: In the existing condition?

TAD HEUER: Yes.

CHRIS PIZZICHEMI: That square footage, though, is on three floors total. So it's really -- it's a like a shoe box.

CONSTANTINE ALEXANDER: But it is a habitable house is Mr. Heuer's point. It's a house that people have lived in, continue to live in.

DR. OMAR ETON: So, just a comment on the history of the house. No one has actually owned -- I mean, the owners have

rented that house for over several decades, probably 60 or 70 years. Every one of the neighbors have lived there while they were building their -- almost every -- it's amazing how many neighbors have actually rented that -- that has never been a primary home for anybody since we took on the house. Until now it's been just a rental property.

CONSTANTINE ALEXANDER: It's still habitable whether rented or owned. It's habitable and has been habited for the last several decades.

DR. OMAR ETON: It's been rented for brief periods by individuals, but the fact is the rooms were the size of closets. Doesn't fit any particular -- I mean, the room -- when you're talking about seven foot ceilings on three floors and rooms that are, some of them five feet wide, and they call it a room, even though it's really you can make it a closet.

CHRIS PIZZICHEMI: This is an

opportunity to take the house and turn it into a -- turn the existing house into a family dwelling in keeping with the rest of the neighborhood. So whereas right now it might be a little bit complicated as densely designed as it is if that makes sense.

TAD HEUER: Dense?

CHRIS PIZZICHEMI: Well, fitting all the square footage within three floors, the small footprint of the house.

CYRIL HUGHES: It actually just won't allow us, for example, this room here is the kitchen in the front, it's ten foot by ten foot. So to remodel this at the existing, because it needs to be modernized, there's no lighting in some of the rooms, there's no outlets. So to bring it up to the code compliant, so many bearing points and low ceilings that you can't just open it up. I hear what you're saying to say, but it's habitable at 2300 square feet, but you

couldn't do it without nearly tearing the whole house apart to make it a modern --

TAD HEUER: So you can have three floors in the new --

CYRIL HUGHES: No.

TAD HEUER: You're going to have two floors?

CYRIL HUGHES: Two floors. That's the problem.

DR. OMAR ETON: Because of the low ceilings and also -- I mean, really the bedrooms could handle a cot or a narrow bed. With the notion of having a queen in there, would take up most of the room. So we decided to convert a three-story home to a two-story home. So there's no -- 2400 was with three stories. The third story not really being much of anything there. We -- but by taking it down to two stories, you have to subtract out about 700 square feet. So you only -- the actual house now, this is a very

small structure and it would support about I think it was --

CYRIL HUGHES: 1600 square feet.

DR. OMAR ETON: Yeah, maximum.

That's with everything.

THOMAS SCOTT: So is the third story an attic space?

CYRIL HUGHES: Yes.

TAD HEUER: That can't all be FAR. You don't have three equivalent floor plates in your first, second and third story because you don't have FAR in your third story.

DR. OMAR ETON: No, no, no.

everything --

CYRIL HUGHES: As it was sold, it was sold as 2400 square feet.

TAD HEUER: That's fine. But let's do floor plate. What's your floor plate of the existing house?

CYRIL HUGHES: Kitchen.

TAD HEUER: No, no, no. Square

footage.

KAREN ETON: 34 something.

TAD HEUER: Third floor.

CYRIL HUGHES: Third floor?

TAD HEUER: Yes.

CYRIL HUGHES: Probably 800 and
above.

DR. OMAR ETON: It's still very
small.

CONSTANTINE ALEXANDER: I don't
mind you speaking, but you have to come up and
give your name to the stenographer and one at
a time. Okay?

KAREN ETON: Okay.

TAD HEUER: All right. So my
question is that's a gabled roofed house?

CYRIL HUGHES: Yes.

TAD HEUER: Where the gable hits the
front wall, even if there is a floor there,
it is not FAR.

CYRIL HUGHES: Yeah, so what you're

saying it's probably 996 or something like that.

TAD HEUER: That's my question.

CYRIL HUGHES: 996 or something.

THOMAS SCOTT: This diagram.

That's the footprint on the third level.

TAD HEUER: Yes.

THOMAS SCOTT: It's much smaller.

TAD HEUER: Right. So, what I'm trying to get at is, even if what you're saying we have difficulty with a three-story house with, you know, small ceilings and other things, if you're reconfiguring the existing house, and my sense from your application, is the existing house exterior wise doesn't change.

CYRIL HUGHES: No.

TAD HEUER: You're keeping the brick component. Right?

DR. OMAR ETON: Correct.

TAD HEUER: That if you were to keep

the brick component without the addition is where I'm trying to sort things out piece by piece, you would have 1800 square feet?

CYRIL HUGHES: Well, if you had it on two floors?

TAD HEUER: Yes.

CYRIL HUGHES: A little less than 1800 square feet.

TAD HEUER: Okay.

DR. OMAR ETON: Less.

CYRIL HUGHES: In or about. I don't know of the exact. We'll say between 1750 and 1850. The existing framing is two by six framing. Also we did exploratory. So, the reason being every room is so small, it's carried from one to the other all the way to the basement. So it's lolly columns -- so lolly columns in the basement. It's two by six. So to move any walls to open out a kitchen into a living room area, would be very difficult to even put an (inaudible) in at

that span, they're calling for nine and a quarter.

TAD HEUER: Okay. You can probably see where I'm going. My question is if you didn't do anything, you know, you're saying the house is uninhabitable as it is, you need to demonstrate to us a hardship.

CYRIL HUGHES: Yes.

TAD HEUER: And if the house is habitable on two stories at 1800 square feet by realigning what you've got already, that seems to be less of a hardship than saying we've got a three-story structure where none of it is habitable and we have to tear the whole thing apart and we have to add the addition in order to make it work. I mean, you can still get there, but I'm just trying to separate out, you know, what you'd like to do from what you could do to what would be impossible for you to do.

CYRIL HUGHES: You could probably

get 1700 square feet of living space in there.

TAD HEUER: Okay.

CHRIS PIZZICHEMI: That's with the low ceilings.

THOMAS SCOTT: How are you proposing to raise the ceilings on each level? Are you going to take out the second floor framing?

CYRIL HUGHES: Take out the existing joists.

THOMAS SCOTT: And you're going to take out the rafters?

CYRIL HUGHES: Yes.

THOMAS SCOTT: The attic framing rafters and raise that?

CYRIL HUGHES: Yes. We have the structural plans.

THOMAS SCOTT: Okay.

TAD HEUER: So, that would put you back at 1800 square feet within that envelope.

THOMAS SCOTT: Well, I think it

would put you at less because you're losing the entire attic space.

TAD HEUER: No, no, no. Because there are 2400 square feet. You lose the attic space and you're down to 1800.

CYRIL HUGHES: You come in the pitch of the roof. Now that you raise your fourth floor -- your second floor, when you come to the outside of that window. When you look at this, this floor is gonna be here. So at the beginning of the pitch of the roof is less than five feet. So you lose some FAR --

TAD HEUER: Okay.

CYRIL HUGHES: -- at that point. Only for about two feet.

TAD HEUER: Right.

CYRIL HUGHES: On the perimeter.

TAD HEUER: Okay.

CYRIL HUGHES: Which would end up at like a 30 foot or a 40 foot if it's -- it would be like another couple hundred square feet

less.

TAD HEUER: Okay.

BRENDAN SULLIVAN: When did you buy the house?

DR. OMAR ETON: In January. We don't live in it. We don't think it's liveable. And we don't want to for the extent of work that needs to be done.

BRENDAN SULLIVAN: When you bought the house back in January, you bought it with the idea that it was going to be inadequate but that you would have to add to it?

DR. OMAR ETON: No. We bought it with the knowledge that we would have to add to it. That was pretty much how it was pitched to us anyway by everybody who sold it to us.

CONSTANTINE ALEXANDER: You didn't do a Zoning check to see whether to add to it whether you would have a Zoning issue?

DR. OMAR ETON: Well, the people

that lived there a long time seemed very confident that this would not be an issue.

CONSTANTINE ALEXANDER: Were you represented by counsel?

DR. OMAR ETON: No, we weren't. We had bought two houses in the past in other cities and have never gone through this ever.

CONSTANTINE ALEXANDER: Have you spoken to your neighbors about this?

DR. OMAR ETON: Absolutely. As a matter of fact I have a note here from Terry Hunt who is our directly adjoining neighbor.

CONSTANTINE ALEXANDER: I'm going to read it later. We have a letter of opposition in the files.

DR. OMAR ETON: Oh, really?

CONSTANTINE ALEXANDER: Yes. You'll hear it.

CHRIS PIZZICHEMI: It's also the last page on the package.

CONSTANTINE ALEXANDER: On the

package you just gave us?

CHRIS PIZZICHEMI: Yes.

CONSTANTINE ALEXANDER: Okay. I'm going to read it into the record.

BRENDAN SULLIVAN: Do you have the dimensional form there?

CONSTANTINE ALEXANDER: Yes.

THOMAS SCOTT: So there's no FAR relief?

TIM HUGHES: No, just the front yard setback.

CONSTANTINE ALEXANDER: There's a letter from Terry Hunt. I'm sorry, Terry a/k/a Roy Hunt. Terry Hunt a/k/a Roy Hunt who resides at 36 Larchwood Drive since 1982. It's addressed to the Petitioner and I assume his wife. "I writing to acknowledge that we have sat with you and the plans for the construction project and realize that it will be in view of our windows that abut your property. We think that you have very

tastefully designed your addition to be away from the street and make very little change to the environment which are in fact tightly situated on all the lots around us. We support the project that as it is planned and look forward to its timely completion."

DR. OMAR ETON: Terry Hunt by the way, is one of the original people who had that whole plan lives around us and is one of the original -- or the original homes in the Larchwood area.

CONSTANTINE ALEXANDER: Okay. I'm going to read the letter that you're not aware of yet, I guess, of opposition after Mr. Sullivan's through with the file.

Are you done?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: We are in possession of a letter from Elizabeth D. Hodder, H-o-d-d-e-r and Melville T. Hodder who reside apparently at 15 Fresh Pond Lane.

And I've noticed they received -- their title to receive notice to this, to your petition and therefore they are truly a party at interest. June 1st is the date. "Dear Members of the Board of Zoning Appeal: We have lived in the neighborhood of the Larches since 1964 and enjoy the multigenerational, friendly, yet independent nature of the neighborhood. We are not primarily any one kind of family, but most of us share a web-based link enjoined in the neighborhood cookout annually. We respect individual decisions and at the same time we want to like and be able to talk with our neighbors. There are larger and smaller houses in the neighborhood, but most of them were built in the 1920s and renovations have been largely just that, not large add-ons. Several of the add-ons have been poor in design, but in most cases the lot size has accommodated the addition. The proposed reconstruction at 34

Larchwood Drive is inappropriate in every possible way. A small house on a highly visible corner lot has already lost one of its charming features -- garage and entrance breezeway -- to demolition. The proposed plans offer a genuine eye sore to the neighborhood. Not only would they create a structure entirely out of proportion to the lot, but they propose a building of disparate parts that would be an ugly and obtrusive architectural anomaly to the environment. We ask you as protectors of Cambridge Zoning integrity and neighborhood character and quality to deny the petition for a Variance allowing the violation of two important articles of the code, case 9941, Petitioners Karen and Omar Eton."

Do you have anything you wish to comment on in regard to this letter?

DR. OMAR ETON: I find it highly unusual that this is the first time I'm

hearing about this letter even though we've had in the same e-mail trail multiple communications with everyone in the Larches. So this came in -- this is a complete surprise to us.

CONSTANTINE ALEXANDER: It's been in the file since June 1st so you know.

DR. OMAR ETON: We're in August.

CONSTANTINE ALEXANDER: I know.

DR. OMAR ETON: And since June 1st we've had further -- and as a matter of fact, we've been told by many of our neighbors, oh, don't, don't do this anymore, we get the point. This is fine. Just go on with the project. There is -- our abutters are not concerned that the -- this is completely a surprise. There's another architect in town, Peter Rose who lives in the neighborhood and his initial -- he had an initial similar response at the -- when he saw the original plans we sent, but no one

actually had sat down and realized what the measurements truly were. And so when we marked the grounds and showed that it's really not a major encroachment beyond just enough for one width of a garage, narrower than what the previous garage was, this Peter Rose who is by the way professor at the Kennedy -- not Kennedy, the School of Architectural Design at Harvard, said oh, actually that's fine. So, that's been true of everyone we've spoken to.

This is someone we've never talked to. We don't know who this person is, and we don't know how they've come to their assessment of the plans. We know that there was this initial response which is typical of people that live in that area for a long time. And I've been impressed by how nobody wants anything changed in that particular area. But once you explain to them what we're doing, there's been uniform agreement. We went to

the -- there was a neighborhood party just a few days ago and everyone was very positive about the whole deal. And I'm telling you the honest to goodness truth.

This individual has never come forward. We've given everybody plenty of opportunity to come back at us, send e-mails. We've received various -- we just wanted to give our abutters. But we did not -- there was no negative e-mails. This person never commented to us in one form or another, so it's -- I have nothing else to say.

CONSTANTINE ALEXANDER: Okay. Is there anyone else wishing to be heard on this matter?

(No response.)

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

You've been effective in somewhat of a rebuttal or closing remarks. Anything else you wish to add before we close testimony?

CHRIS PIZZICHEMI: No, thank you.

TAD HEUER: What's your plank? Is it wood?

CYRIL HUGHES: Wood.

CONSTANTINE ALEXANDER: Comments or questions from the Board?

TIM HUGHES: I have comments.

Through no fault of this owner or any previous owner or the property itself, this property has been deemed non-conforming by a Zoning Ordinance put in 20 or 30 years after it was built. I don't have any trouble seeing the hardship here. It's an odd shape of the lot and the structure on the lot. There's no FAR relief. Without, you know, if that setback requirement was three feet less, that building could be built as a matter of right. It's a very modest request in terms of requests that we typically get in front of us and I support the project.

CONSTANTINE ALEXANDER: Anyone else

wish to comment?

THOMAS SCOTT: There's a large deck indicated on the second floor level. Can you describe what the intention is for that?

CYRIL HUGHES: We're going to walk out onto the second floor and if I could show you if you don't mind me coming over there?

THOMAS SCOTT: Yes, sure.

CYRIL HUGHES: To utilize the space on top of the first floor. This is only a first floor addition.

BRENDAN SULLIVAN: It's coming off the master bedroom?

CYRIL HUGHES: Not coming off the master bedroom. Just coming off a hallway between the bedrooms. And it's at the top of the stairs, this hallway.

THOMAS SCOTT: Okay. And roughly how big is that area?

CYRIL HUGHES: That area is about 21 by 10. 20 by 10. Okay?

THOMAS SCOTT: Just a large deck.

CONSTANTINE ALEXANDER: Yes. One that faces the property of the people who wrote the letter of opposition.

Anyone else wish to comment?

TAD HEUER: I will. Yes, I agree with Mr. Hughes that it's a technical violation of the Zoning Ordinance. It's still a violation of the Zoning Ordinance. That's why we're here and that's why they can't build it. I agree that it comes in right at the corners of the allowable side yard setbacks and it comes in right under the allowable FAR. It seems to me to be a technically sufficient application, but one that I think violates the spirit of the Zoning By-Law by the way the neighborhood is set up. It's not a structure that in and of itself, based on what I've seen here, is uninhabitable. Perhaps there's an argument that it is financially infeasible to convert

the existing structure into a habitable structure. But even if that were the case, I'm not sure why it would merit an addition that brings it right up to the limits of all of the requirements without responding to the neighborhood that it's in. These are requirements that are set forth for the entire City of Cambridge and they're applied to individual properties. I'm probably going to vote for it, but I would say this is one of the votes that I hate to have to take because I don't agree with what I'm going to be voting on.

CONSTANTINE ALEXANDER: Ready for a vote?

BRENDAN SULLIVAN: I agree with Tim. The comments that it's preexisting hardship to do anything with the building. I'm all set.

THOMAS SCOTT: And I think to speak to some of the hardship of the conformity of

the house, just the small size of the rooms, the kitchen, the dining room. They are small per today's standards. So I can see the need for someone to have to move in there and really need to kind of expand some of those spaces.

BRENDAN SULLIVAN: An elegant house built in a different era.

THOMAS SCOTT: Exactly.

CONSTANTINE ALEXANDER: Okay. I'm going to make a motion.

The Chair moves that this Board make the following findings:

That a literal enforcement of our Zoning By-Law would involve a substantial hardship to the Petitioner. Such hardship being that he would be left with a structure that is inhabitable, but if you will, barely so. It's not to the desirable size, the rooms and in need of today's society and needs. It needs additional space.

That the hardship is owing to circumstances relating to the shape of the lot and to the structure, which is a non-conforming structure. The lot is an odd shaped lot, a corner lot I believe.

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.

The relief being sought as a matter of fact, as others mentioned, is technical in nature. There is an intrusion into the front yard setback. But notably the addition that's before us is in the rear yard. So it's not going to increase the non-conformance of the lot in terms of setback intrusion. And, in fact, will reduce it by eliminating the setback intrusion on the yards other than the front yard.

So on the basis of these findings, the Chair moves that a Variance be granted to the

Petitioner on the condition that the work proceed in accordance with plans prepared by Petrie, P-e-t-r-i-e Architecture. And they're numbered A1.1, .2, A2.1, .2, .3, .4, A3.1, .2, .3, and .4, the first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(7:30 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call a case from our regular agenda on the docket at 7:30. It is case 9968, 60 Ellery Street. This case is going to be the appeal of the determination of the Inspectional Services Department Commissioner's June 9, 2010 decision. And depending on the outcome of this case, we will then hear the continued case, which is a Variance involving this property. If we were to grant the relief you're seeking and overturn the decision of the Commissioner, the Variance will become moot.

ATTORNEY CHARLES SOLOMONT:
Correct.

CONSTANTINE ALEXANDER: I'll just get my paperwork in order. As you've heard

this evening, please give your name to the stenographer.

ATTORNEY CHARLES SOLOMONT: I'm Charles Solomont and I represent the Petitioner.

CONSTANTINE ALEXANDER: And you're with the firm of?

ATTORNEY CHARLES SOLOMONT: Bingham McCutchen.

CONSTANTINE ALEXANDER: And, sir.

OBIE ARTHUR: Obie Arthur with R.C.G. O-b-i-e is the first name. Last name is Arthur, A-r-t-h-u-r.

CONSTANTINE ALEXANDER: R.C.G. is what to the project?

OBIE ARTHUR: I work with the owner.

CONSTANTINE ALEXANDER: As a contractor?

OBIE ARTHUR: No, partner.

CONSTANTINE ALEXANDER: Partner?

Sir.

JASON DOWNING: I'm Jason Downing and I'm a property manager for R.C.G.

CONSTANTINE ALEXANDER: Okay. The case is in its structure is actually quite straight forward. We have a determination from Mr. Singanayagam turning down your application on the basis -- you applied for a building permit to legitimize the nine units in this building. And he turned you down and you're now before us.

ATTORNEY CHARLES SOLOMONT:
Certificates of occupancy, yes.

CONSTANTINE ALEXANDER: Okay. Why is he wrong? Well, maybe just to do this logically.

Ranjit, why don't you summarize your letter or I can read your letter into the record if you like. Which would you prefer?

RANJIT SINGANAYAGAM: You can read it.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: So, setting the stage again. There was an application made for a certificate of occupancy for nine units?

ATTORNEY CHARLES SOLOMONT:
Correct.

BRENDAN SULLIVAN: And that CO was denied?

ATTORNEY CHARLES SOLOMONT:
Correct.

BRENDAN SULLIVAN: And the reason is?

CONSTANTINE ALEXANDER: There's a letter dated June 9th addressed to Alex Steinbergh which I gather is your partner. Re: 60 Ellery Street. And it's signed by Ranjit Singanayagam, the Commissioner of the Inspectional Services Department. "Dear Mr. Steinbergh: I am in receipt of your letter regarding the above-referenced property. I reviewed all the documents

available in this office and have made the following determination." And this is in connection with, again, an application to get the certificate of occupancy for nine units. "There are several Board of Zoning Appeals cases for this property. In 1962 the building at this location received a building permit to convert from one-family to nine dwelling units. In 1978 the prior owner received a Variance from the Board of Zoning Appeals, case No. 4583, to subdivide the property, so as to build townhouses in the vacant lot with a condition that the use of the building in Lot B, or 60 Ellery Street is located, to be reduced to four dwelling units by attrition. Later in 1983 and 1985, you as the owner applied to the Board of Zoning Appeals requesting that building be used for nine dwelling units and was denied. The ten year statute of limitations that you reference in your letter to me does not apply

to uses of the property, but only to structures. The condition to the Variance for a lot subdivision in case No. 4583 relates to the use of the property by requiring that the use be reduced from nine units to four units by attrition. And, therefore, I cannot issue a certificate of occupancy for nine units."

Okay, now tell us why you think Mr. Singanayagam is not correct.

ATTORNEY CHARLES SOLOMONT: I think the Commissioner is misapplying the statute with all due respect. And so if I could, I have a copy of the statute.

CONSTANTINE ALEXANDER: Sure, I have copies.

ATTORNEY CHARLES SOLOMONT:
Everybody have a copy?

TIM HUGHES: No, I don't have a copy.

ATTORNEY CHARLES SOLOMONT: Thank you.

TIM HUGHES: Thank you.

CONSTANTINE ALEXANDER: I had a copy. Yes, here.

The statute you handed out, again for the record, the stenographer doesn't have it, is Section 7 of Chapter 40-A General Laws.

ATTORNEY CHARLES SOLOMONT:
Correct.

And in our letter requesting certificates of occupancy to the Commissioner, we did sort of anticipate that he may have a concern that the condition of Zoning Variance was inconsistent with the relief that we were seeking. So we did cite the statute in our letter. And the statute, you know, just if I could read the pertinent provision in the record that we're relying on, basically says: "No action, criminal or civil, the effect or purpose of which is compelled for removal, alteration or relocation of any structure by reason of,

among other things, the conditions of any Variance, shall be maintained unless such action, suit or proceeding is commenced and noticed thereof recorded in the Registry of Deeds for each county or district in which land lies within ten years next after commencement of the alleged violation."

So, the history here, as the Board knows by reason of the continuation of the last request for a Variance, is that an original Variance issued with respect to a project that included the parcel at issue, 60 Ellery Street, that contained a condition. A Variance was issued containing a condition, requiring the owner of the property to reduce the number of units in the building on this parcel from nine units to four units. And again, I think as everybody knows, that was over 30 years ago, almost 35 years ago. And since that time, the -- for a variety of reasons, which we can explain, which I think

have been either verbally or in writing presented to you, the reduction of the units didn't happen. It was to happen, there wasn't a deadline by which it was to happen it was supposed to happen through attrition. Those units were turned over many times in the 35 years since.

So certainly many more than ten years have passed since there was a technical violation of the condition that was imposed with respect to the Variance. So I think the issue here, and the Commissioner I think you know honed in on it, is whether or not the statute that would prohibit enforcement of a condition applies to, you know, whether or not this is a use or whether or not it's an alteration of a structure. And I would -- we submit that there are sort of three reasons why the Commissioner's decision is in error.

One is that implicit in the notion that there's going to be a reduction in the number

of units from nine to four is the fact that there's going to need to be an alteration of this building. Nine residential units cannot be converted.

CONSTANTINE ALEXANDER: What type of alteration, internal or external?

ATTORNEY CHARLES SOLOMON: It's internal, right.

CONSTANTINE ALEXANDER: I think significant is the reason I asked question.

ATTORNEY CHARLES SOLOMON: Solely internal is our reading of it. And there's nine small units. And clearly the order was to convert those nine units into four larger units.

TAD HEUER: Is that really the order? The order was to convert nine units into four units?

ATTORNEY CHARLES SOLOMON: To reduce the number of units from nine to four.

TAD HEUER: By?

ATTORNEY CHARLES SOLOMONT: By attrition.

CONSTANTINE ALEXANDER: By attrition.

ATTORNEY CHARLES SOLOMONT: Right. So the alternative to that would be that the owner was being ordered to leave five units vacant.

TAD HEUER: Was he being ordered or did he agree to it as a condition of a Variance that he wanted?

CONSTANTINE ALEXANDER: Plus this Variance was granted on the context of a larger subdivision of land. This was not accompanying that was just for this. It was a big subdivision. Zoning relief was granted. Part of the deal to grant a Variance, your client would reduce the number of units in this structure from nine to four.

ATTORNEY CHARLES SOLOMONT: Correct.

CONSTANTINE ALEXANDER: It wasn't to be done immediately. The Board said by attrition, which allowed this to happen over time.

ATTORNEY CHARLES SOLOMONT: Yes.

CONSTANTINE ALEXANDER: So, I mean so it strikes me as quite a reasonable solution. How do you get to this section of Section 7, the key words of which are "Removal, alteration or relocation of any structure."

ATTORNEY CHARLES SOLOMONT:
Correct.

CONSTANTINE ALEXANDER: Structure. Nobody's requiring you to relocate, remove or alter the structure in this externalities. Remember Zoning -- I don't mean to lecture you. Zoning concerns itself with dimensional issues and use issues. Here we're talking about in this Section 7 it's dimensional. And we don't regulate as a

Zoning Board how people configure the inside of a building. That's not a Zoning issue. We do regulate the configuration of the externals of the building. How close you are to the lot line? How high? How much space? That's different. And that's where I think Section 7, as the Commissioner has said, Section 7 is intended to deal with the kinds of things Zoning Boards have to deal with. Namely, the externals of a building.

And I think what they're saying and I get comfort from the fact that they make reference to the suit filed in ten years and notice recorded in the Registry of Deeds, that the concern here of the legislature was that someone has been ordered to take down a wing of a house that was too close to the lot line. He or she doesn't do that. And the property gets sold to someone else. Someone buys it and doesn't know, and 25 years later all of a sudden Mr. O'Grady shows up and says

tear down that wing. These people said, I had no way of knowing about it. So this is the statute of repose. After ten years if the city or the town hasn't taken any action, you're okay. But that's external. That's the kind of thing Zoning is supposed to deal with. Any alteration that you had to do to go from nine to four is an internal reconfiguration of the building. I don't see where that's covered by this language.

ATTORNEY CHARLES SOLOMONT: I mean, with all due respect we disagree. If you read the statute literally, it says: The effective purpose which is held removal, alteration of any structure.

As we, as we understand the order, again, from our perspective it would be -- I mean with all due respect, absurd to leave these five units -- to leave five units vacant and to have an understanding that that was the understanding or expectation that

five units would be left vacant in perpetuity. So our perspective is that this order was in essence requiring a conversion from nine units to four. From nine small units to four large units which would inherently require an alteration of the structure of units. Structure, walls, doors, you know --

CONSTANTINE ALEXANDER: But an alteration if it were done separately, would not require Zoning relief. I would think Section 7 deals with Zoning issues. Things where you had to get Zoning relief. You don't have to get Zoning relief to move a wall around on the exterior of the building.

BRENDAN SULLIVAN: Can I see the case that we're talking about? The pertinent case. Way back.

TAD HEUER: 1978?

ATTORNEY CHARLES SOLOMONT: Again, I think with all due respect, we just

disagree. We think that the statute needs to be read literally. It doesn't say removing an outside structure. It says we're altering a structure.

CONSTANTINE ALEXANDER: Well, your argument is implicitly -- you want it both ways. You're saying implicitly the decision in '78 requires you to alter the structure. There's nothing in the decision that says you've got to alter the interior. You say because it's implicit in the decision is you had to alter the structure. I don't see that.

And implicit was supposed to be covered, why isn't it in Section 7? And Section 7 could have been written to make it quite clear that the relief that the statute applies to your situation doesn't say that. You want us to read into that.

ATTORNEY CHARLES SOLOMONT: With all due respect, I don't think we're asking

you to read into anything. We're altering a structure. There's a structure. The structure of a building includes the walls, the ceilings, etcetera. And so, I mean, with all due respect, that is a literal reasonable reading of the statute.

CONSTANTINE ALEXANDER: We're not requiring -- if we were to say at the end of the day, you have to go down to four units, we're not saying you have to alter the structure. How you get there is up to you. We're not forcing you to alter it. You're saying you're implicitly required to alter it. That's a leap of faith.

BRENDAN SULLIVAN: Well, I was there that night.

CONSTANTINE ALEXANDER: 1978?

BRENDAN SULLIVAN: 1978. The way he was going to do it is that as units became vacant, they would be combined with the adjoining units. Combined. That's how he

was supposed to do it. And basically opening the door and closing the door or taking a door off its hinges.

CONSTANTINE ALEXANDER: No implicit requirement.

BRENDAN SULLIVAN: But had nothing to do with altering the outside of the building at all.

ATTORNEY CHARLES SOLOMONT: Well, again, with all due respect. You're suggesting that some units would retain two kitchens. You know, I mean --

BRENDAN SULLIVAN: That's very well. It's just that he had to reduce it down to -- and again, it was, it was also the crossfire of the rent control board at the time.

ATTORNEY CHARLES SOLOMONT:
Correct.

BRENDAN SULLIVAN: Because they were against what we were doing.

ATTORNEY CHARLES SOLOMONT: Right.

BRENDAN SULLIVAN: I won't go into some of the other background stuff, but it was implicit that he really wanted to reduce the number of units down to what the Board required him to do. And he just never did it.

ATTORNEY CHARLES SOLOMONT:
Correct.

TAD HEUER: I have two questions. And first is I'm looking at a letter dated February 15, 1990. This was sent to the then Chairman of the Zoning Board of Appeals signed by Mr. Steinbergh asking that one of the very many cases, I'm not sure which one this is, this is case 5213 be reactivated as a special case.

I'm not quite sure what that means, but that's what he wants. He states in this letter, Mr. Steinbergh, "I don't care how many units the building ends up; four or nine or six. What I want is for the city to reach

an agreement" -- and he's discussing the BZA and the rent control board disagreement -- "and let me know. I want the building to be legal."

The rent control board no longer exists, correct?

ATTORNEY CHARLES SOLOMONT: That's correct.

TAD HEUER: There's no --

ATTORNEY CHARLES SOLOMONT: Yes, that's my understanding.

TAD HEUER: There's no rent control ordinance in the City of Cambridge. It would appear to me that Mr. Steinbergh has conceded that whatever this Board, seeing as there's no conflict, believes to be the correct answer is the correct answer. Is that not true?

ATTORNEY CHARLES SOLOMONT: I would disagree with that. That was 18 years ago. A lot's happened since then, including his

having invested a significant amount of money in the improvement of many of these units in the reliance of his understanding that there was not going to be an enforcement of this Ordinance.

CONSTANTINE ALEXANDER: What's the basis that he's relying on?

ATTORNEY CHARLES SOLOMONT: He was told that by the city, including the city manager.

CONSTANTINE ALEXANDER: He was told -- the city manager said that the City of Cambridge is not going to enforce the Zoning Ordinance?

ATTORNEY CHARLES SOLOMONT: Yes.
Yes.

TAD HEUER: Can you tell me why, if this was expressed, this was supposed to be done by attrition, it's not an ongoing violation every time you refill a unit over the last 30 years?

ATTORNEY CHARLES SOLOMONT: Well, there was a violation. The first time -- the first time it became a -- the opportunity arose --

TAD HEUER: Yes.

ATTORNEY CHARLES SOLOMONT: -- for units to be combined, via attrition, there was a violation. And that's when the ten year statute of limitations --

TAD HEUER: All right. And then you filled the unit. And then you unit becomes vacant two years later. You are then required by the Variance to vacate that. That's a new violation. Unless you can show me that every one of the nine units has even under a reading of your interpretation of the statute, which I have to say I don't agree with, but even granting that arguendo, why is this not an ongoing violation every time there's a vacant unit that is refilled? Unless you can show me that under your reading

the tenants have all been there for more than ten years and one day, which I highly doubt to be the case. Although I could be wrong.

ATTORNEY CHARLES SOLOMONT: I don't know that. But I would say, you know, if you were looking -- you know, in the context for example in the breach of contract. If a contract's breached repeatedly, that doesn't mean that the statute of limitations doesn't begin to run the first time it's breached. So the statute of limitations begins to run when the initial violation happens.

CONSTANTINE ALEXANDER: I may be wrong, but aren't there multiple breaches of contract if each breach has its own statute of limitations? I don't think the first time you breach a contract and then you breach it the next seven years, each one of the successive breaches is not a separate breach for purposes of the statute of limitations.

ATTORNEY CHARLES SOLOMONT: Well,

we respectfully disagree with that.

CONSTANTINE ALEXANDER: Okay.

TAD HEUER: You suggest that if we were to require or if it were interpreted that the reduction to five to four units had to be done by attrition, which seems to be the order of the Variance, that if that were required, it would amount to an un-Constitutional taking. Why under Lucas would that be an un-Constitutional taking? That's your standard, isn't it? It's got to be a Lucas taking. And you still have a use of this building. That argument makes little sense to me unless you can elaborate on that.

ATTORNEY CHARLES SOLOMONT: The point of the argument, if you were to construe the order, the condition, as requiring that the owner keep five units vacant, that that is in essence taking the five units from the owner. And that would be --

THOMAS SCOTT: We're not requiring

him to keep five units vacant.

CONSTANTINE ALEXANDER: We're requiring you to have four units. We're not requiring you to have five units vacant. We're requiring you to have no more than four units.

ATTORNEY CHARLES SOLOMONT: Right. And our position is if you're not requiring implicit -- again, we're sort of going around in circles here. But the point is --

CONSTANTINE ALEXANDER: Not all of us.

ATTORNEY CHARLES SOLOMONT: The point is, the point is that implicit in the ruling is that there had to be alteration. That was the understanding, there had to be an alteration.

THOMAS SCOTT: As simple as opening the door as Brendan said. I mean....

CONSTANTINE ALEXANDER: You keep saying it's implicit in the ruling. None of

us here find it implicit at all. I think the ruling is very explicit. By attrition you go from nine units to four units. Period, end of story.

ATTORNEY CHARLES SOLOMONT: And again, we respectfully disagree that that doesn't entail an implicit -- I mean simply opening a door is, you know -- that doesn't, you know, give you normal marketable units. You've got two kitchens, you've got, you know. That's not the way it works. I mean, again, the understanding was that there would be conversion from nine to four, and that again our view of the world is that that would entail more than simply taking doors off its hinges.

TAD HEUER: You can't market the unit with two kitchens?

ATTORNEY CHARLES SOLOMONT: That's not the norm.

TAD HEUER: Do we say anything in the

Variance about the norm? We just say go from nine to four.

THOMAS SCOTT: You can remodel the unit without changing the structure.

BRENDAN SULLIVAN: I mean without requiring any Zoning relief. You can abandon one of the kitchens.

THOMAS SCOTT: Yes.

ATTORNEY CHARLES SOLOMONT: To abandon the kitchens in and of itself would require alteration of the structure.

THOMAS SCOTT: Not the structure.

BRENDAN SULLIVAN: Well, again, you're really stretching it here. It requires a building permit, not relief from the Zoning nor is it a Zoning issue.

TAD HEUER: I understand the argument you're trying to make and I appreciate you trying to make it on behalf of your client. But when we look at the -- your point to the word structure in Section 7 in

saying the structure could be anything, don't we have to look at the definition of structure in 40-A? I mean, it's within the context of the Zoning Ordinance. It's not just within the context of Section 7 itself. It's in the context of what 40-A is set forth by the legislation to do, and that's to regulate Zoning which doesn't regulate interiors, period. I mean, that's why we have all these situations where people say I want to do this and I want to do that. And we can say that looks hideous. I would never put my den there or my kitchen there. Or why do you need a bedroom that big? It's not up to us. It only matters if they've extended into a setback.

You heard the last case we had here. I was entirely opposed to what the gentleman wanted to do, but I was constrained by the law to say he has every right to do it. That's because 40-A is a Zoning Ordinance, not a

building permit.

ATTORNEY CHARLES SOLOMONT: I mean, just quickly looking I don't see a definition of construction in 40-A.

TAD HEUER: But because it deals with Zoning and Zoning is prohibited from dealing with interiors, unless it's structure for this purpose, to Section 40-A only, maybe in other sections of the statute it doesn't apply and there's a different definition of structure. But for the purposes of 40-A where the issue is Zoning relief and where Zoning does not deal with interiors, it would seem to be a stretch that structure in the interior is something that 40-A is governing at all, much less who would have authority to make any comment on whatsoever.

CONSTANTINE ALEXANDER: Why don't we open this to public testimony. I'll give you an opportunity to collect your thoughts

and make some concluding remarks.

Is there anyone here wishing to be heard on this matter? Sir, that's fine. You have to come forward give your name and address to the stenographer. But I want to just caution you, we've got to talk about the question of the correctness of the Commissioner's decision, the appeal, whether the appeal should be overturned or not. I know there are other issues, but I don't want to get into those. Understood?

TRACY LICKLIDER: My name is Tracy Licklider. T-r-a-c-y. And Licklider is spelled L-i-c-k-l-i-d-e-r. And I'm at 12 Ellery Square. Ellery Square is an abutter. I do not -- my townhouse does not abut.

I'm struck by the arguments, I think that in many ways the same as some of the Board members seem to be, that it seems that the position that counsel is taking could be reduced to the fact that painting the

interior of the building was an alteration. And I think it's clear that, also to me, that there was ongoing violation which did not harm but profited the owner. And to me it seems plain, as you pointed out, that every reoccupying of an apartment, releasing of an apartment was a new violation of the terms of the agreement that the owner had had. And it seems that the arguments that he implicitly was compelled by the order to do anything other than evacuate five lessors, seems ridiculous to me and unsustainable. And so I can't see any basis for overruling the Building Commissioner's opinion on this.

I'd also just like to ask a point of information. My understanding from the last session was that this was going to go to court. And it was going to be, I thought we were talking about having the owner go to state court to appeal.

CONSTANTINE ALEXANDER: Maybe you

misunderstood. I think what we said if we were to deny relief.

TRACY LICKLIDER: Oh, at that point?

CONSTANTINE ALEXANDER: For tonight.

TRACY LICKLIDER: I misunderstood. I'm sorry, I misunderstood because it seemed like, you know, Sean was giving instructions on how to do it quickly. And I thought it was to be done for tonight. But I understand. Anyway, basically I stand opposed and I think the reasons are very plain.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one else wishes to be heard. And there appear to be no other letters in the file on this matter. Do you have something?

RANJIT SINGANAYAGAM: Yes. I just want to emphasize that it says in 40-A, any

violation of the Zoning By-Law, alteration (inaudible).

CONSTANTINE ALEXANDER: Anyway, I'm sorry, anything else? Any final remarks?

ATTORNEY CHARLES SOLOMONT: No.

CONSTANTINE ALEXANDER: All set?

Anyone else have any comments or I can go to the motion.

TIM HUGHES: I'm not a lawyer.

CONSTANTINE ALEXANDER: Well, you're the voice of wisdom on this Board.

TIM HUGHES: I just have one question. Do we know for a fact even if you were arguing this particular part of the Ordinance, do we know for a fact that the city never commenced an action or a suit of proceeding in order to get this situation corrected, within ten years?

ATTORNEY CHARLES SOLOMONT: That's a fact.

TIM HUGHES: That's a fact.

TAD HEUER: I do have one question about the citations of the appeals court cases. Where your submission states that the appeals courts have recognized that an owner cannot reduce the number of units in a multi-unit building without altering structure configuration. And you cite Wheeler versus Rent Control Board of Cambridge, Anastasi (phonetic) versus Rent Control Board of Cambridge and Rent Control Board of Cambridge versus Cambridge Tower Court.

Isn't it true that all those cases are dealing with the rent control ordinance requirements that you couldn't get around rent control by abandoning certain units or trying to reduce a number of certain units on the sly so that you can abate it and then market rate it?

ATTORNEY CHARLES SOLOMONT: That's exactly right, yes.

TAD HEUER: But those seem to be in opposite here where we don't have a rent control ordinance to deal with. I mean, those are in the context of an Ordinance that no longer exists. There's nothing that the courts are saying that by law, reducing the number of units means that you must combine it.

ATTORNEY CHARLES SOLOMONT: No. They were essentially basically saying -- they were just stating what we're saying is the obvious, right? That, you know, that reducing the number of units would require the structurally the organizer physically combining the units. They made that acknowledgement. From our perspective, the contents in which they made it, you know, they weren't interpreting the rent control statute as per se. They were basically saying these are the facts, and because, you know, you can't sort of -- they

were saying you can't have it both ways. You can't basically just abandon a unit and say okay, now there's only one unit. Because in order to combine the two -- if you want one unit, you can't have that unless you structurally change the building, the two units.

TAD HEUER: But that was in the conscious of rent control. You can't -- if you have a five unit, you can't -- if you need to go to three, you can't abandon two. But here where we're just saying you have to go from five to two, there's no requirement because we're not in a rent control ordinance world, that you need to combine them. You just reduce them. Right?

CONSTANTINE ALEXANDER: I think Mr. Heuer's point is basically the case is not exactly on point. They have some relevance, but they're not on point. They're not pressing on the nature of the --

ATTORNEY CHARLES SOLOMONT: The facts of the cases are different, yes.

CONSTANTINE ALEXANDER: And the law. The cases of the law are different, too.

ATTORNEY CHARLES SOLOMONT: Yes.

CONSTANTINE ALEXANDER: I think we're ready for a motion.

The Chair moves that this Board uphold the determination of the Commissioner of the Inspectional Services Department set forth in his letter to Alex Steinbergh dated June 9, 2010 and deny the appeal of that determination filed by Mr. Steinbergh on the grounds that Section 7 of Chapter 40-A of the General Laws does not apply to the decision of this Board to reduce, by attrition, the number of dwelling units at 60 Ellery Street from nine to four.

Specifically the applicable provisions of Section 7 refer to compelling, "The

removal, alteration or relocation of a structure." This Board believes that the operative language applies to external removal, alteration or relocation of structures since dimensional considerations are the crux of our Zoning By-Laws.

Zoning By-Laws do not concern themselves with internal rearrangements within a structure.

This Board believes that Section 7 is intended to protect the owner of a structure from the exposure and dislocation of having to modify her structure after ten years of Zoning Law non-enforcement. These considerations are not present in a use variance such as that granted to the Petitioner in 1978. The impact, financial or otherwise, of having to cease a use as required by the terms of the Variance, are not the same.

We reject Petitioner's contention that

our 1978 decision "implicitly" required him to alter his structure.

If the intent of Section 7 is to apply to use variances, that implicitly require interior modification, Section 7 couldn't say so and it does not. Rather, Section 7 is intended, we believe, to apply to exterior impact on a structure. Since it is the exterior's of a structure, its height, size, location or the like on this location on the site and the like and so forth that are the concerns of our Zoning By-Law.

We further would find that the Petitioner has not sustained his burden of proof. That ten years have run since as required by Section 7. Since every reletting of the units following the departure of the original nine tenants constitutes a new violation of Zoning By-Law, and has not been demonstrated that there's been further violations of the Zoning By-Laws

in the last ten years.

So, on the basis of all of those reasons -- any other reasons Board members want to add or subtract, I would move that we uphold the decision of the Commissioner and deny the appeal.

All right. All those in favor of that motion say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion for relief is denied.

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

(8:05 p.m.)

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

CONSTANTINE ALEXANDER: We have a second case involving Ellery Street. We're going to go back to the continued case. Case No. 9934 involving 60 Ellery Street. And in this case since we have found that the Zoning By-Law does apply to the fact that you have to go from nine to four units by attrition, you sought a Variance to legalize your use of the nine residential units. So, again this

is a whole new case, identify yourself for the record, please.

ATTORNEY CHARLES SOLOMONT: Charles Solomont for the Petitioner.

OBIE ARTHUR: Obie Arthur, R.C.G.

JASON DOWNING: Jason Downing,
R.C.G.

CONSTANTINE ALEXANDER: Okay.
Let's get right to the heart of the matter.
What's your hardship?

ATTORNEY CHARLES SOLOMONT: The hardship, Mr. Chairman, is the fact that again, it was alluded to in the last case, is it's been the Petitioner's understanding based upon, among other things, the absence of any enforcement of this Variance to direct communications from the city manager of the City of Cambridge, and reliance on the City's lack of intent or interest of enforcing the condition. The Petitioner has invested substantial amounts of money in improving

these units, maintaining and improving them. Including within the last two years alone investing nearly \$70,000 in renovating three of the units. So we respectfully submit that in light of all of the intended circumstances and their reasonable reliance upon the City's lack or intent to enforce the Variance, that the loss of the investment that the Petitioner would suffer if it were forced to reduce the number of units would impose a financial hardship on the Petitioner.

CONSTANTINE ALEXANDER: I have to comment that you're walking on dangerous ground here. You're telling our Board and saying in public testimony that the City of Cambridge, specifically the manager, instructed your client that he could ignore a decision of the Zoning Board and ignore the Zoning By-Laws of this city, is that what you're telling us?

ATTORNEY CHARLES SOLOMONT: He was

told that the city would not enforce the --

CONSTANTINE ALEXANDER: That's essentially the same thing.

ATTORNEY CHARLES SOLOMONT: Yes, that's what I'm telling you.

CONSTANTINE ALEXANDER: You're putting that on the public record?

ATTORNEY CHARLES SOLOMONT: Yes.

CONSTANTINE ALEXANDER: I don't know why that creates a hardship.

Now, first of all, the hardship has to be owing to circumstances relating to the soil conditions, shape or topography of the structure. And especially affecting such structure but not affecting generally the Zoning district to which it's located. Connect this language to what you just told me.

ATTORNEY CHARLES SOLOMONT: All we can say is that with respect to the original Variance, that the determination has already

been made, that the criteria for issuing a Variance exists. So that finding had already been made back in 1978. And what we're saying now is that with respect to the condition that's been imposed, and the absence of its having been enforced and the reliance that the Petitioner has had on -- has made on that, that there's now a hardship.

CONSTANTINE ALEXANDER: In '83 and '85 your client came before this Board, different members except for perhaps maybe Mr. Sullivan. And each time you argued for the hardship and each time we turned it down. So the hardship now, either you're saying the Board is wrong then and we should reconsider its decision, or you're saying it's a hardship created post-1985 because the City of Cambridge imposed this hardship on you by not enforcing its Zoning By-Law against you?

ATTORNEY CHARLES SOLOMONT:
Correct.

CONSTANTINE ALEXANDER: Okay.

It's an argument I suppose.

TAD HEUER: Even if that were true, is the City estopped from enforcing its by-law?

ATTORNEY CHARLES SOLOMONT: Has the city estopped from enforcing its by-law?

TAD HEUER: On the statements of its officers?

CONSTANTINE ALEXANDER: It's Horn book law that public entities are not subject to the laws of estoppel. That the people can rely on oral statements from city officials or state officials to their peril. That there's no notion of estoppel that they might be in private context. That's basic law. So you're asking for estoppel. Your hardship is an estoppel argument even though the law does not recognize estoppel as it applies to (inaudible).

ATTORNEY CHARLES SOLOMONT: The

hardship argument is that, again, in reliance upon what he said, he invested a lot of money in this project. It was reasonable, you know, again, in the last two years alone 35 years passed without the city enforcing this condition. And so certainly it was reasonable for the Petitioner to believe that this Ordinance was not going to be enforced. That the condition was not going to be enforced. And so in reliance upon that, buttress by the communications he's had with city officials it invested this money. And so it's our position that's created a hardship.

TIM HUGHES: I'd like to make one comment about the financial hardship. It seems to me that the Petitioner has been collected illegal rents on five units for 32 years and reinvesting money that he collected over those years, you know, illegally collected. So, I don't see any financial

hardship. I don't care how much he invested, you know, recently in this property. It's money he's -- you know, he's been putting in the bank that he wasn't supposed to be for 32 years. Unless I'm misreading something here.

ATTORNEY CHARLES SOLOMONT: Well, no, I mean you're assuming that if he had reduced -- if he had, you know, if 35 years ago he had converted the units from nine to four, four bigger units, he would have been, you know, he would have been making the same money if not more money.

TIM HUGHES: It's possible. But it was under the conditions of rent control at the time. So he probably wouldn't have made the same amount of money, at least not until rent control got booted out 15 years ago or whenever it was. So I don't see the financial hardship here. That argument of hardship doesn't hold any water for me.

CONSTANTINE ALEXANDER: Let me open it to public testimony. Does anyone here wish to be heard on this matter? We're talking about the Variance now. Sir, again, for the record.

TRACY LICKLIDER: Yes. Again, my name is Tracy, T-r-a-c-y Licklider, L-i-c-k-l-i-d-e-r and I'm at 12 Ellery Square.

It seems to me that the hardship can't be claimed because he has A, known about the decisions and scoffed at them. And to say -- knowing that three times he was told by the city not to do something but yet continued to do it, to profit from that, and then come back having done so and beg hardship, is a preposterous argument. That unrelated to this matter strictly, but in addition, the landlord, instead of relating the four parking places historically to the tenants, rented those separately, too. And

I hardly find this owner to be an innocent ill-informed person who has relied to his detriment, I believe he's relied to his profit at every point in this discussion. I would also like to ask if there could be details about this investment? As an abutter I've noticed the property principally deteriorating until, I believe, the owner decided he wanted to dress it up for sale. And I noticed that the investment seemed to be in making it so that water wouldn't leak into the basement. In other words, to make it sellable. Having nothing to do with the improvements to tenant's conditions or living arrangements. So I would like to see a budget that really demonstrates that this is a hardship unrelated to dressing something up for sale. I thank you.

CONSTANTINE ALEXANDER: Fair request in a sense. If I were you, I might

make the same request, but I don't think that's within the purview of our Zoning Board.

TRACY LICKLIDER: Well, that's part of his argument to hardship.

CONSTANTINE ALEXANDER: The hardship, getting answers to a budget as to how much money he's spent. I don't think -- I don't want to go there. I speak for myself.

Anyone else wishing to be heard on this matter?

(No response).

CONSTANTINE ALEXANDER: No one else wishes to be heard.

We did, by the way, all of you will have a chance for closing comments. But also one thing we didn't address is parking. And not so much the fact that you're supposed to make four parking spaces available for the residents of the building instead of leasing

them out. There was a letter in the file from the Traffic Department citing a violation in doing that. But if we were to grant the relief you're seeking to giving you the Variance, we have to make a finding to do so that wouldn't derogate from the intent of our Zoning By-Law.

One of the intents of our Zoning By-Law is to deal with parking in the city, to avoid over parking in the streets. And if we were to legalize nine units when there's only four parking spaces on the premises, assuming those four are made available to the nine tenants, that would cause all kinds of parking problems. In other words, our Zoning By-Law would not count this, a nine unit building with only four parking spaces. And that's what you're asking us to do.

ATTORNEY CHARLES SOLOMONT: Well, if I can speak to that issue. I mean, historically the tenants have had not a need

for parking. They have been offered the parking spaces first. And on average over the years there's been no more than one or two tenants that have needed spaces. So, currently -- they're no longer leasing spaces to anybody else. There's one tenant leasing a space. Four are available. And I would submit that if anything might adversely impact the demand for parking, it would be converting nine small units that are traditionally occupied by students and single folks who rely a lot more on public transportation, into four family units that are more likely to have cars. So in terms of the parking, there is not a derogation. In fact, the nine small units are more consistent with the purpose of the parking requirements.

CONSTANTINE ALEXANDER: Anything else you wish to add?

ATTORNEY CHARLES SOLOMONT: No,

thank you very much.

TIM HUGHES: I'd like to make one more comment about the counselor's argument that the hardship was pre-existing from the former Variance. My understanding, the former Variance, he was willing to go from nine units to four units. He gave that up as a condition of the Variance. So that hardly can be considered a hardship, you know, in the granting of the former Variance. If that's something he gave away, you know.

CONSTANTINE ALEXANDER: And he did. It was in the context, as I said, of a subdivision of a larger plot of land. It was part of the tradeoff and it was to your client or -- it's your client. Your client's willingness to do this. He's getting other considerations.

ATTORNEY CHARLES SOLOMONT:
Correct. Although there were years where he was being -- where there was, he was being

ordered by the rent control board not to do exactly what -- so a lot of time passed and circumstances changed. So....

CONSTANTINE ALEXANDER: Ready for a motion.

The Chair moves that the 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 he would have to go from collecting rents from nine units to collecting rents from four units.

That the hardship is owing to circumstances relating to the history. I guess -- I suppose it relates to the soil conditions, shape or topography of the structure. I haven't heard any evidence of that, but I'll just say it as set forth in the statute.

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.

On the basis of these findings I move that this Board grant the Variance to the Petitioner. All those in favor of granting the Variance say "Aye."

(No response.)

CONSTANTINE ALEXANDER: None in favor.

All opposed?

(Show of hands.)

CONSTANTINE ALEXANDER: Five.

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

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

That a literal enforcement of this Ordinance would not involve a substantial hardship to the Petitioner. In fact, all we

are doing is enforcing the decision that was made in 1978 basically with the Petitioner's consent. The decision that was upheld twice in the eighties; in 1983 and 1985.

That there is no hardship relating to the soil conditions, shape or topography of the structures.

And that desirable relief cannot be granted without substantial detriment to the public good because we would effectively be allowing a nine unit building with parking for only four units which is not what our Zoning By-Law contemplates. In our Zoning By-Law one of its prime functions is to deal with parking in the City of Cambridge.

Any other findings the Board would wish to make? I move that we make the findings as I've set forth. All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in

favor. Thank you very much.

(Alexander, Hughes, Sullivan,
Heuer, Scott)

(8:20 p.m.)

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

CONSTANTINE ALEXANDER: The Chair
is going to call -- I understand this is
something unusual. But we're going to
digress from our regular agenda to return to
34 Larchwood Drive. And I understand the
three of you are here with respect to that

matter and were misinformed by the sign that was on the property because it said eight o'clock p.m. for the hearing. When in fact, we heard it at seven as we said in our hearing. The sign was not modified to correctly reflect the time, because it was seven. We made our decision for seven.

So I believe you're in opposition to the relief that was being sought? Are you here in support of it? Identify your name to the stenographer. We take a public transcript.

JOAN RILEY: I'm Joan Riley.

CONSTANTINE ALEXANDER: And you live where?

JOAN RILEY: 74 Larchwood Drive.

JENNIFER FORD: Jennifer Ford.
F-o-r-d, 43 Larchwood Drive.

SUSAN POVERMAN: And I'm Susan Poverman. I live at 65 Larchwood Street.
P-o-v-e-r-m-a-n.

JOAN RILEY: We're also wanting to

see the proposal.

CONSTANTINE ALEXANDER: Well, that we can show you. We have the plans.

JOAN RILEY: Which we've seen.

JENNIFER FORD: I have a basic question. It's my understanding when a Variance is granted, there's some sort of hardship?

CONSTANTINE ALEXANDER: Yes.

JENNIFER FORD: And I wanted to know what the hardship was in this case?

CONSTANTINE ALEXANDER: The hardship that we found in this case was that the structure itself is an older structure, with very small rooms. And that there is need for additional living space. And that hardship arises from the shape of the building. The building is an older building, it's non-conforming. And also the shape of the lot, it's an odd shaped lot. So that is a hardship which is required to be

found under the Zoning By-Law.

To put it just the plush around it. I've identified the hardship; namely, the hardship being the lack of sufficient living space in the structure. And then in the file thing that we took into consideration is that the relief being sought was rather technical in nature. This house when it was built, it was legally built. But the Zoning Laws changed and as a result, its front yard setback is not sufficient. It's a little too close to the street. The front of the street. The addition that's being built, or proposed to be built, will be in the rear of the structure. In fact, will not violate any aspects of our Zoning By-Law. And in fact, will reduce one non-conforming intrusion to the side yard setback. So that is the sum and substance why we granted relief.

JOAN RILEY: We all live in this neighborhood so he we all have these houses.

JENNIFER FORD: We have the small little spaces.

JOAN RILEY: That they all have these non-conforming setbacks. So we -- my -- building the -- I mean, there's a lot of properties in Cambridge. If it didn't fit their family, they could have gone somewhere else. But other than that, doubling the size of the house on this small lot and we're now -- they're filling the lot with a home.

CONSTANTINE ALEXANDER: Understand one thing, though, as large as this structure is going to become by virtue of this addition, it's still not too large for the lot under our Zoning By-Law. The only issue, as I said, is because the front of the house, which is not being affected by what's being proposed, is a little too close to the front, to the street. That's why they had to come before us. If it were not that, they could build

this addition, as big as it is in your minds, where it's located without any Zoning relief.

JENNIFER FORD: Well, it's not just that they're building behind the house. They're actually building to the side of the house.

CONSTANTINE ALEXANDER: I know, but that also complies with our Zoning By-Law. That aspect of it is all Zoning compliance.

JENNIFER FORD: And what about the historical integrity?

CONSTANTINE ALEXANDER: Fortunately or unfortunately that's not a Zoning issue.

JENNIFER FORD: What about the fact its hardship is they don't have enough living space. How many people are going to live there?

CONSTANTINE ALEXANDER: We don't know. And I'm not sure it's in our province to find out.

JENNIFER FORD: Well, because there have been large families living there. I mean, this was a four bedroom house.

CONSTANTINE ALEXANDER: We discussed that. But we also discussed the fact that most of the people, though this is not technically relevant to Zoning, most of the people who have lived in the house have been tenants as opposed to owners. And further, the rooms are small. The kitchen is like ten by ten as I recall in the front of the house.

JENNIFER FORD: It's a lovely house. I would love to have lived there myself.

JOAN RILEY: Do you count when they put a porch? Is that counted in anything?

CONSTANTINE ALEXANDER: It counts. It counts for purposes of --

JOAN RILEY: On a raise? So that's all figured out when you figured out the calculations and that's still --

CONSTANTINE ALEXANDER: Still
Zoning compliant.

TAD HEUER: Okay, this might help.
This is what they handed in. This is what we
were looking at. This is what they
represented. So, this is the house as it is
now with the garage here. And the yellow
part is the part that's the violation. That
part of the garage is violation, and then this
is the front yard. This is what they're
proposing to do.

JENNIFER FORD: So you're saying
they could --

JOAN RILEY: They could have filled
the whole thing.

CONSTANTINE ALEXANDER: No, no.

TAD HEUER: They couldn't have
filled the whole thing. This just shows the
setbacks. So here where it's a setback
violation in the front, if they went too far
this way, too far this way, too far this way,

they would have had another problem, they would have needed relief from us. But they didn't.

They also need to get under what's called floor area ratio, and every district has a certain maximum that you're allowed to do by right. After that, if you want more, you have to come to us. They did their calculations, so they came in a few square feet under the required --

JOAN RILEY: Do you go back and check after?

TAD HEUER: Inspectional Services does.

JOAN RILEY: Okay.

TAD HEUER: Yes. So, what they've done is they've technically stayed within all the setbacks. And they've technically come in under their required floor area ratio. So they've essentially put the maximum amount of building they can do by law on this site.

CONSTANTINE ALEXANDER: And I would just quarrel a little bit with Mr. Heuer's use of the word technical. I mean that puts a --

TAD HEUER: They have legally put as much building as they can.

CONSTANTINE ALEXANDER: It's entirely legal.

JENNIFER FORD: Do they have to maintain the integrity of the house at all? Because of what they're adding to the beautiful brick house and they're adding --

CONSTANTINE ALEXANDER: That's not what Zoning Board's involved with, no. But it may be Historical, but it wasn't in this case, Historical Commission. No, it's not an issue for us.

TIM HUGHES: But my understanding is that the front facade is going to remain.

JOAN RILEY: Well, he's tacking this on and tacking this on and being the same height. This can't be the same, right? You

know when you glom on a whole other thing and another -- and it's almost equal size.

TIM HUGHES: I'm just saying --

JOAN RILEY: Yeah, I mean, right.

TIM HUGHES: -- the front aspect of the building --

JOAN RILEY: Well, this -- except we're adding all of this stuff over here.

JENNIFER FORD: And the two stories comes up out here.

TAD HEUER: I'll let you know, and I think I can speak uniquely from the five of us sitting here, I was not impressed by this application at all and said so.

Unfortunately legally I voted in favor of it because legally they had -- there's almost no basis for us to deny it.

JOAN RILEY: Yeah, okay.

CONSTANTINE ALEXANDER: Let me just say one thing, we do have to move on.

JOAN RILEY: Thank you very much.

CONSTANTINE ALEXANDER: No, no. I want to advise you of something. We do have to move on to other cases. The fact that the sign was not modified to seven o'clock and put eight o'clock is a defect. If someone wants to challenge the decision, they have to go to court. Our decision, one of the grounds that the decision could be attacked beyond the merits is the fact that there was improper notice. That's not for us to decide. We would have taken that into consideration had we known it, but we didn't know. So they have a perhaps, perhaps, a flawed Variance, but it's up to the neighbors to decide what they wish to do with it if they wish to do anything at all.

JENNIFER FORD: Great. Thank you.

JOAN RILEY: Thank you very much.

SUSAN POVERMAN: How old is the house? When was it built?

CONSTANTINE ALEXANDER: Twenties.

1929.

SUSAN POVERMAN: I lived there in

1932.

CONSTANTINE ALEXANDER: Thank you
for coming down.

JOAN RILEY: We've lived in the
neighborhood for quite a while and we keep
seeing more and more of this. And we're
like.

JENNIFER FORD: Enough is enough.

JOAN RILEY: The trees are gone.

SUSAN POVERMAN: Thank you very
much.

(8:25 p.m.)

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

CONSTANTINE ALEXANDER: The Chair
will call case No. 9969, 15 Buckingham
Street. Is there anyone here wishing to be
heard on this matter?

GREGORY COLLING: My name is Gregory

Colling. I'm an architect with Merrimack Design Associates in Amesbury, Massachusetts.

DAVID PEELER: And my name is David Peeler. I'm the homeowner.

GREGORY COLLING: We're proposing an eight foot -- roughly eight foot by six foot bicycle storage shed on the side of a non-conforming structure.

CONSTANTINE ALEXANDER: What makes it a bicycle storage shed as opposed to a shed for garbage cans or furniture that you're not using in the house at the time?

GREGORY COLLING: What's the difference between that and a trash storage shed?

CONSTANTINE ALEXANDER: Yes. Why is this a bicycle storage shed as opposed to just a storage shed?

GREGORY COLLING: Because it's -- the purpose of it is for the storage

of bicycles. And there isn't -- I mean, I can cut to the chase. The hardship is that the owner doesn't have a place to store his bicycles currently. There are three entry points into the existing residence, and they're all finished spaces and they're all upstairs. Two of them are up the stairs.

CONSTANTINE ALEXANDER: I trust you do a lot of bicycling?

DAVID PEELER: I do.

CONSTANTINE ALEXANDER: Did you bicycle here tonight?

DAVID PEELER: I did not bicycle here tonight. But my wife actually does bike to work. She works at MIT.

TAD HEUER: Is there anything about that structure once built that would make it somewhat irrevocably bicycley (sic), if that's a word. So that while, you know, while you used the shed for your bicycles, you decide that you're going to move and you sell

the house, that would prevent anyone from coming in and saying I'd like to put some furniture there or my trash cans there?

DAVID PEELER: Or lawn mower, or something, sure.

TAD HEUER: So even though you will be using it for bicycles, it would be believed that you would be --

DAVID PEELER: There's a racking system in it, but presumably somebody can take it out.

GREGORY COLLING: It's sized to fit five bicycles on a rack. But, yeah, it could be used for something else.

TAD HEUER: Is that a floor mount or wall mounted rack?

GREGORY COLLING: A floor mounted bicycle rack.

CONSTANTINE ALEXANDER:
Specifically what do you need a Variance from? What are your problems? Why are you

here before us tonight?

GREGORY COLLING: It encroaches on the side yard setback, which you can see here. There's actually an existing encroachment here, and it's -- just double check the dimensions.

CONSTANTINE ALEXANDER: Are you too close to the garage? Is there an issue there? I just want to know. You have to have a certain amount of space between buildings.

GREGORY COLLING: There's no garage.

TAD HEUER: Your request is not to be required to place it in the yard area which would allow you separation of buildings, because that would just be plopping something in the middle of a yard.

GREGORY COLLING: Right. And they would have minimal open space, and they'd like to preserve the backyard for their use.

They're not building a garage on the property. And they have primary access is on the left side of the property.

TAD HEUER: If this were not a bicycle storage closet, and I understand that's not the case before us, is there a reason that you went to this bicycle storage closet storage as opposed to merely an addition to the structure?

GREGORY COLLING: I don't -- I didn't understand that question.

TAD HEUER: Well, if you came in looking for a trash storage shed that doesn't have its own separate portion of the Zoning By-Law that governs it, I presume that would have added FAR that you would need or you're over -- that structure itself is over FAR?

GREGORY COLLING: Right. The existing structure exceeds the FAR.

CONSTANTINE ALEXANDER: It's a non-conforming structure.

THOMAS SCOTT: Does this have a foundation?

GREGORY COLLING: Yes.

THOMAS SCOTT: It will.

GREGORY COLLING: Yes, because it's attached to the house we have to have footings to support it below frost.

CONSTANTINE ALEXANDER: And the hardship is? Special circumstances I think are the nature of the non-conforming structure on the location of the lot.

GREGORY COLLING: Right.

CONSTANTINE ALEXANDER: What's the hardship?

GREGORY COLLING: The hardship is that there's no access at grade for the storage of bicycles. They'd have to carry bicycles either up the front stairs into the house or down the stairs in this area way, down a full story, to bring bicycles into the house. And there's a finished, there's a

finished entertainment room here. And this is the formal entry for the house. And then there's also a door into the kitchen here which is a family eating area there.

DAVID PEELER: Yes.

CONSTANTINE ALEXANDER: And you have five bicycles?

DAVID PEELER: We have five -- we have a mountain bike and a road bike. And then I have two children and they have a bike.

GREGORY COLLING: And also.

BRENDAN SULLIVAN: It's a practical hardship.

GREGORY COLLING: For whatever it's worth in 2000, there were two additions in approximately that location for trash storage structures which were removed I think around 2000.

BRENDAN SULLIVAN: And I might add that the granting of the Variance would add to domestic tranquility which is as good.

DAVID PEELER: Which is a true statement.

GREGORY COLLING: And it would also relieve congestion and pollution in Cambridge.

CONSTANTINE ALEXANDER: You really pull at our heart strings, don't you?

TIM HUGHES: I have no heart.

CONSTANTINE ALEXANDER: I didn't see any letters in the file.

GREGORY COLLING: I can show you elevations of it. It's roughly 60 feet high.

CONSTANTINE ALEXANDER: We saw that. What you're showing is consistent with the plans that you've given us, sir?

GREGORY COLLING: Yes.

CONSTANTINE ALEXANDER: And if we were to grant relief, we tie it to these plans. I mean subsequent you can't go back.

GREGORY COLLING: It's done. Encroachment's done.

CONSTANTINE ALEXANDER: I'm sorry, we're both talking.

GREGORY COLLING: You can see their existing condition here where they throw a tarp over their bicycles to protect them from the weather.

TAD HEUER: Does that serve to deter the use as well when they're under the blue tarps?

DAVID PEELER: It was mostly a request. Can I please cover the bikes.

GREGORY COLLING: There's a gate there and it's in their backyard.

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

(No response).

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

There's no letters in the files. I trust no neighbors have come up and

complained about the noise your bikes are going to create or other problems.

DAVID PEELER: We talked to them all.

CONSTANTINE ALEXANDER: Questions, comments from members of the Board beyond what we've asked already? Ready for a motion.

TAD HEUER: I just have a question and it's for members of the Board. Given that the bicycle shed ordinance is rather an orifice Ordinance and not very well defined, given that the Petitioners have said they intend to have a bike locking structure affixed to the floor, is that something that we would consider making a condition of the Variance so it would remain a bicycle shed and anyone who wanted to use it for storage and remove that structure making it a use for something else --

CONSTANTINE ALEXANDER: Speaking

only for myself, if they came in and said they want a structure for our garbage cans, I'm not sure I'd react any differently than for bicycles.

TAD HEUER: That's understood, but that's not what they asked for.

CONSTANTINE ALEXANDER: I know. I know. Well, as I've said they appeal to our heart strings as far as I'm concerned by going for the bicycle storage. But that's okay. You're entitled.

GREGORY COLLING: That's what it is.

TIM HUGHES: It would be much more amusing to watch a trash can driven to work.

CONSTANTINE ALEXANDER: I would not support that, Tad, but if other members of the Board --

BRENDAN SULLIVAN: I think what we're being asked to do is support the building of a structure for their purposes for bicycles, and yet if that were to be

abandoned, and the next owner came along and wanted to put in child's bicycles or lawn equipment or something like that, it's the structure, you know. And so, I would not want to impose I think would be an undue burden for them to remove it and restore it back to where it was, nor is it very practical.

TAD HEUER: I think it would -- and this is (inaudible), I think it does have relevance, that if they wanted a shed, you should be applying under our Ordinance for -- if you want a shed that can be used in perpetuity as I said for whatever purpose, you should be applying under our Ordinance for FAR here, bike shed, and it doesn't carry FAR because the intention is different --

BRENDAN SULLIVAN: You've got a point.

TAD HEUER: -- element to what we're being asked to approve.

BRENDAN SULLIVAN: Yes, you've got a valid point.

GREGORY COLLING: It doesn't contribute to the floor area ratio because it's a bicycle storage unit?

TAD HEUER: Right.

GREGORY COLLING: But I think if it were a trash storage closet, it would?

TAD HEUER: Certainly.

CONSTANTINE ALEXANDER: The amount of FAR you would tack on would be rather small. To me as, I said before, it wouldn't change my decision.

BRENDAN SULLIVAN: Anybody can come and ask for I want to put a shed for storing bicycles, and it is what it is.

TAD HEUER: This is more my concern that people will find out that you can get a free bicycle shed and call it bicycle shed.

CONSTANTINE ALEXANDER: When I frame the motion, I'm not going to tie it to

a bicycle shed. So I'm not going to create a precedent.

TAD HEUER: But I think you have to because that's what they're asking for, don't you?

CONSTANTINE ALEXANDER: They're asking to build a structure. They identified it as a bicycle shed, but we don't -- it doesn't have to be that. It's a structure, that's what we're looking at.

BRENDAN SULLIVAN: Structure for the storage of bicycles.

TAD HEUER: Can I ask the interpretation of Inspectional Services?

GREGORY COLLING: Actually, I met with Sean and he corrected my FAR calculations because of that, and I submitted it with the increased FAR.

SEAN O'GRADY: That's true.

TIM HUGHES: I think it is a bicycle storage and that's what we have to call it.

BRENDAN SULLIVAN: Yes, I mean I would not put it in the condition that should that use be abandoned that the structure be removed. I think that's an undue burden.

CONSTANTINE ALEXANDER: I don't want Mr. O'Grady running up there every other day to see if there are bicycle there.

Are we ready for a motion. The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of our Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the part of the Petitioner would be deprived of a storage facility now to be used as a bicycle shed, but the possibility for other uses.

That the hardship is owing to circumstances relating to basically the shape of the structure and where it is located. That being such that it

requires -- it intrudes into the setback requiring Zoning relief.

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

The relief being sought is modest in nature. It will have no impact on surrounding structures, and at least initially will be used for purposes that will further -- green purposes in the city by allowing the storage of bicycles. And thereby encouraging the use of bicycles.

On the basis of these findings the Chair moves that a Variance be granted the Petitioner on the grounds that the work proceed in accordance with the plans submitted by the Petitioner, prepared by Merrimack Design Associates. They are numbered A-1.1, A-2.1, A-2.2 and A-3, first

page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Scott.)

CONSTANTINE ALEXANDER: Opposed?

TAD HEUER: One opposed.

(8:40 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9970, 30 Tierney Street. Is there anyone here wishing to be heard on this matter?

Please come forward, identify your name and address for the record.

KELLY SPEAKMAN: My name is Kelly Speakman. And my address is 30 Bow Street in Somerville.

LISA CORRIN: I'm Lisa Corrin homeowner, 30 Tierney Street, Cambridge.

CONSTANTINE ALEXANDER: The floor is yours.

KELLY SPEAKMAN: So, we are proposing a 55-square foot mud room addition to an existing house that is non-conforming for setback and FAR. The house and the garage which are shown right here, the existing house and the existing garage, predate the Ordinance. And as the homeowners come home, they park their car in the garage and use what's right now a French door that opens into their kitchen as the main entrance to their house. And because they use this door pretty much as their main

entrance and it opens into a space where there's no storage, they would like to add a very minimally sized mud room with a door and a closet right here (indicating).

The mud room is 55 square feet. It doesn't change the setback as it's in the existing footprint of the building, and it also doesn't change any of the open space because right now this is paved as part of the driveway.

CONSTANTINE ALEXANDER: So the issue is simply FAR and you want -- right now you're at 0.57. You will go to 0.59 in a district has a max of 0.5. So, you're non-conforming as FAR. You want to slightly increase the non-conformance?

KELLY SPEAKMAN: Yes. One story as small as possibly can be for one door and a closet.

CONSTANTINE ALEXANDER: Anything else you want to add at this point?

KELLY SPEAKMAN: No.

CONSTANTINE ALEXANDER: Questions from members of the Board?

TAD HEUER: Is there a reason you didn't go flush on the back side? Just out of curiosity.

KELLY SPEAKMAN: It was really just to step back a little bit to maintain now what's now the main corner of the house.

TAD HEUER: Okay.

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

(No response).

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. There appear to be no files in the file.

BRENDAN SULLIVAN: Just for a little background, this house was a two-family up until a couple of years ago and the immediate prior owner inherited it from his aunts and uncles. And did a major renovation of the

house, reducing it from a two to a single. He wanted, in his original proposal, to build something like this. To have a covered rear entry basically. But when told that he was going to come before the Zoning Board, did not want to extend that process and so abandoned the relief request because he wanted to get going with the renovation. And Ms. Norris bought it subsequent to that. But it was always one of those items that you really needed an enclosed rear entry for some protection from the weather.

CONSTANTINE ALEXANDER: Thank you.

TAD HEUER: Are you aware of this?

LISA CORRIN: No. That's news to me. It's interesting. I'm surprised.

CONSTANTINE ALEXANDER: See what you learn when you come to the Zoning hearing? You learn about your own property.

BRENDAN SULLIVAN: I live two doors away.

LISA CORRIN: Oh, really?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: Any further comments or questions from members of the Board or are we ready for a motion?

TIM HUGHES: I'm good with it.

CONSTANTINE ALEXANDER: These by the way, relief is going to be tied to these three pages. This is it. Not that it's complicated.

KELLY SPEAKMAN: That's it.

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

That a literal enforcement of our Zoning Ordinance would involve a substantial hardship to the Petitioner. Such hardship being is the de facto front main entrance is causing problems because there is no protection from the elements as you enter, and that this makes the kitchen area in

particular, I guess the door opens into, not as usable or as -- well, not as usable as you would like.

The hardship is owing to the circumstances leading to the shape, topography of the lot and the shape of the structure. This being a non-conforming structure located on a corner lot.

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.

The relief being sought is very modest in nature. The departure from our Zoning By-Law is modest.

The effect of the relief, if granted, would be to improve the quality of the housing stock in the City of Cambridge by making this structure, at least, better usable by whoever occupies the structure.

On the basis of these findings I move

that a Variance be granted to the Petitioner on the condition that the work proceed in accordance with three pages of plans, prepared by Boyes-Watson Architects. All three pages of which have been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(8:45 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9971, 12 Hubbard Park Road.

For the record, name and address. And if you've got a card with you, please give it

to the stenographer.

JOSEPH GLENMULLEN: Joe Glenmullen,
12 Hubbard Park Road.

BLAKE ALLISON: Blake Allison, 159
Mount Auburn Street, Cambridge.

The proposal is to add on to a building
which is on a large lot, large house. There
are no setback issues, but the ridge of the
house is 36 feet. So we have a very slight
non-conformity issue.

CONSTANTINE ALEXANDER: You're
currently it's at 36 feet?

BLAKE ALLISON: That's right. So
we're adding on to a non-conforming
structure.

CONSTANTINE ALEXANDER: You're
going to have more of a structure, more than
36 feet high?

BLAKE ALLISON: No, actually none of
the structure -- everything that we're doing
will be below the 35 feet. So we're not

increasing the non-conformity, but we are asking permission to put on two dormers on the third floor and increase the third floor very modestly in the back of the building.

There's a beautiful room up there that was just attic space originally, which is you can see it's this room up here. And it was built with a very jumbled roof line, so that the room inside, which you see this picture is extremely awkward. In the seventies it was renovated and they put in these windows which come down to the floor. They're single pane windows. One of the operable windows is at floor level so it's very dangerous. So what we're -- the intent of the project is to make it into a really nice room with the dormer windows, with new windows on the end wall which you can see in this perspective. So it will make it much more architecturally together. And will increase daylight and ventilation.

And the other part of the project is to renovate on the first floor, which would involve putting in a gas fireplace, and it would just be a very small enclosure for that fireplace. But because that's an FAR issue, I included that on --

CONSTANTINE ALEXANDER: You have no FAR issues?

BLAKE ALLISON: Well, we're adding on to existing building that's non-conforming, and although we're not going over the FAR, the building has already been adding on to post-war at least twice. So the 10 percent and the 25 percent limits have both been exceeded. So it's kind of a wrinkle.

TAD HEUER: This is the question that I had and you've kind of answered it. That when I looked at your file, I didn't see any violation except possibly -- and when I was looking at plans, I thought you were bringing one of your roof lines, it appears,

the third floor addition brings it up to the existing.

BLAKE ALLISON: That's right. I'm sorry, I misspoke. There is that one slight extension of the existing roof line.

TAD HEUER: And that would be at 36 feet?

BLAKE ALLISON: That's right.

TAD HEUER: So the relief you're requesting --

BLAKE ALLISON: That's the ridge right here (indicating).

TAD HEUER: Right.

BLAKE ALLISON: So we're only bringing it out six feet I think.

TAD HEUER: Understood.

CONSTANTINE ALEXANDER: Go ahead.

TAD HEUER: The relief you're requesting is to go above height for that portion, that rear portion --

BLAKE ALLISON: Right.

TAD HEUER: -- of the main roof?

BLAKE ALLISON: Right, exactly.

TAD HEUER: And then because even though your additions right now, or the proposed additions of the dormers and the height that vary you'll get by increasing the roof height by increasing the back portion don't put you over FAR in an absolute sense, you're still under FAR? It will constitute more than 10 and 25 percent respectively of all of additions that have been made to the structure --

BLAKE ALLISON: That's right.

TAD HEUER: -- many of which we don't see in these plans because they're, quote, unquote, existing.

BLAKE ALLISON: Yes, that's right. They're 1960s. It's a little convoluted. And there's one further item, which was that enclosure of the side porch, and I put that on there because I was afraid that we were

going to actually find that that was in a setback zone. Presently it's a, it's an open porch that has a roof over it. And the proposal is to enclose it to make it into an air lock mud room. But it turns out that it's actually not in the setback zone. We have that confirmed by a surveyor.

TAD HEUER: And that already counts in your FAR so there's no FAR issue?

BLAKE ALLISON: It's already been included in the FAR calculation, yes. So, that can be -- we don't need relief on that.

CONSTANTINE ALEXANDER: Okay.

BLAKE ALLISON: The hardship is obviously the existing structure, and that the relief may be granted because it's de minimus and that it has no impact, no negative impact on any of the neighbors. And the owner, Doctor Glenmullen, has been around to everybody in the neighborhood and has -- well, you can explain.

JOSEPH GLENMULLEN: So when the city called me to say they scheduled a hearing, I asked them for all the addresses that they had notified. And I went to everyone. It was actually a nice opportunity to meet neighbors. I showed them the plans. Everyone was very much in approval of it.

You can see the front of the house in the middle picture is very ugly at the moment, the porch was converted to what I call a tumor on the front of the house. But they're all very happy with what I'm doing with it. I'll give this to you. For the record, they've all signed off on it.

CONSTANTINE ALEXANDER: I'll read it into the record.

The Chair is in receipt of a statement to the following effect: "We have reviewed the plans for the third floor dormers and its addition at 12 Hubbard Park Road prepared by Dingman Allison Architects and dated June 23,

2010. We have no objections." And the people who have signed are residents of 14 Hubbard Park Road, 106 Foster Street, 106 Foster Street, 8 Hubbard Park Road, 6 Hubbard Park Road, 15 Hubbard Park Road, 114 Foster Street, 20 Hubbard Park Road, 100 Foster Street, 98 Foster Street and 5 Hubbard Park Road.

The Chair would note there is nothing in the file. Other than this, there's certainly no letters of opposition or indications of opposition. But I'll put it open to public testimony.

Anyone here wishing to be heard on this matter?

(No response.)

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

Questions or comments from members of the Board. Mr. Allison, are the plans the final plans?

BLAKE ALLISON: Yes.

CONSTANTINE ALEXANDER: You know the drill, if you change them, you're going to have to come back to see us and that's not a pleasant experience as you know.

The Chair would move that we 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 structure in its current configuration is not as usable as it should be or aesthetically as pleasing as it could be.

The hardship is owing to the circumstances relating to the shape of the structure and its location on the lot. And the relief may be granted without substantial detriment to the public good or nullifying or substantially derogating from the intent or purposes of this Ordinance.

The Chair would note that the relief being sought is technical in nature. And in fact, the quality of the structure would be improved by the Variance being sought which in turn leads to an improvement in the housing stock of the City of Cambridge. And that there appears to be almost the near unanimous or not entirely unanimous support from the neighbors for this project.

On the basis of these findings the Chair moves that we grant a Variance to the Petitioner for the relief being sought on the condition of the work proceed in accordance with the plans prepared by Dingman Allison Architects. They're numbered A1-1, A1-2, A2-1, A2-2, the first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in

favor.

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

(8:55 p.m.)

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

CONSTANTINE ALEXANDER: The Chair
will call case No. 9972, 128 Cherry Street.
Is there anyone here wishing to be heard on
this matter?

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

James Rafferty on behalf of the applicant. Seated next to me is Mr. Nelson Olivera, he is the principal of 83 Plymouth, LLC, the owner of the property.

CONSTANTINE ALEXANDER:

Mr. Rafferty, your reputation must be extending beyond the Commonwealth. We have plans prepared by an architect in California before us. Never had a California architect in Cambridge Zoning.

ATTORNEY JAMES RAFFERTY: Is that right? Well, I can't take credit for that.

TAD HEUER: I will say in an upcoming case we have a Deed that is notarized by a California Notary just a few cases back.

ATTORNEY JAMES RAFFERTY: I think sometimes it's not fully appreciated the level of scrutiny the Board members put on these cases.

CONSTANTINE ALEXANDER: Well, I'm sure you'll tell the world that we do give a

close scrutiny to all the cases.

ATTORNEY JAMES RAFFERTY: Often times it's not as appreciated as other times, but it should be noted.

Mr. Olivera has acquired this property. It's an existing two-family house. It's a small house in a 5,000 square foot lot on Cherry Street. It's down in Area 4. It presents an issue as a result of some non-conforming features of the house. Probably the most notable non-conformity is the left side yard, it's at about three feet. The front side yard seems to be off by inches. It's a ten foot minimum. But it's the left side yard which then subjects the house to a limitation on a conforming addition. And this is in fact a conforming addition. There is not FAR relief being sought.

Mr. Olivera's original intention frankly, had been to take the house down. And he went to see Mr. Sullivan at the

Historical Commission, and he really discouraged him from doing that. And that's really the hardship here. Because if the house were to come down, a house of this size, with these number of units could be constructed as of right, but because of the non-conforming nature of the left setback, the house is subject to the limitations of Article 8, 10 percent increase as of right, 25 percent by Special Permit. Beyond that requires a Variance.

CONSTANTINE ALEXANDER: Was Mr. Sullivan shown the plans? The alternative is to build what is before us? He prefers that to --

ATTORNEY JAMES RAFFERTY: Mr. Sullivan influenced some of the decision making in the design including the retention of the --

NELSON OLIVERA: He want the major front of the house remain and also he want the

Greek revival remain.

ATTORNEY JAMES RAFFERTY: That's a colored version of the plans that are in the file.

CONSTANTINE ALEXANDER: Yes, yes.
That's the front of the house in the upper left-hand corner?

ATTORNEY JAMES RAFFERTY: That's correct.

CONSTANTINE ALEXANDER: That's the street --

NELSON OLIVERA: That's pretty much what's existing there. We just trying to maintain the same look that's there right now.

TAD HEUER: Same look of the front door?

NELSON OLIVERA: The front.

TAD HEUER: Door?

NELSON OLIVERA: Yeah. Well, the house right now come to here.

TAD HEUER: So, you're going to tell me that's a Greek revival house I would say maybe you've got a Greek revival door.

NELSON OLIVERA: That's what he told me. So I want to keep the Greek there.

CONSTANTINE ALEXANDER: Go ahead.

ATTORNEY JAMES RAFFERTY: No. That is the issue. It is because of the nature of it, as I said at the end of the day, it's a case that the Board commonly encounters of a conforming addition to a non-conforming structure. And as I said, the limitation comes about because of the way that the house is sited on the lot.

CONSTANTINE ALEXANDER: The only question I had so, therefore, the relief -- you're here before us because of a setback issue on the side yard otherwise you would do this as a matter of right?

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: I'm

puzzled, I don't know the answer. It looks like to create a three dwelling units you're going to need parking for three, and you're going to pave part of the backyard and it's still going to be the driveway. How do you meet the open space requirements?

ATTORNEY JAMES RAFFERTY: Well, we went through those calculations fairly recently with Commissioner Singanayagam and Mr. O'Grady. The calculation is -- in fact, the backyard -- the calculation is that there are four areas, they need 150 square feet, 30 percent of the lot area needs to be open. The area closest to the house amounts to 837 square feet of open space.

CONSTANTINE ALEXANDER: Is that the green area?

ATTORNEY JAMES RAFFERTY: No, I'm sorry, in the rear. The rear block.

CONSTANTINE ALEXANDER: Oh, the rear?

ATTORNEY JAMES RAFFERTY: It should be noted in looking at the calculations, since 50 percent of the 1500 needs to be greater than 15 feet, Mr. Singanayagam noted that the calculation that the Petitioner was relying upon to get him to 1500, which included the five feet in the back, wasn't necessary because Article 6 doesn't require such a setback for existing one, two and three-family houses. So it was necessary to increase the open space to get -- to increase the portion of the open space to exceed the minimum 15 feet in any direction.

So the plan, and we did discuss this, the plan at the end would not contain the five foot setback that you see there. It would push the parking five feet into the rear and increase that green space push, because that became the issue that he didn't believe -- the calculation appeared not to meet the 50 percent greater than 15 feet. I was of

course mindful of the Board's longstanding rule about modifications to plans. I was encouraging and Mr. Singanayagam said, well, you know, you're really only here on the addition. We wouldn't give you the building permit. You'd have to do the calculation on the open space anyway. You haven't asked for open space relief. You haven't asked for parking relief. And you indicate since you're not asking for those items, that when they approve it, they would do that. So I think we were planning on obviously alerting that to the Board when it came to a motion, but that is a -- that's an issue. But the calculation does yield it at 1500 square feet.

CONSTANTINE ALEXANDER: Well, I think the point is if we were to grant a Variance, it would be a Variance only from the setback requirements. And that if you needed relief for --

ATTORNEY JAMES RAFFERTY: But to be technical, it's not a Variance from the setback requirements. I mean, it's a conforming addition. It's a Variance that allows you to exceed the 25 percent limitation.

CONSTANTINE ALEXANDER: Right.

TAD HEUER: So you would be seeking essentially a Variance that is necessary but not sufficient to allow you to proceed with what we have in front of us because you would need to move the parking closer to the rear lot line?

ATTORNEY JAMES RAFFERTY: Correct. So we would not -- the application doesn't seek any open space relief for parking relief. So we could --

TAD HEUER: So we would be approving not necessarily this plan, but this siting of the structure on the lot?

ATTORNEY JAMES RAFFERTY: Correct.

That plan as to the footprint of the structure, yes. As to the location of the parking, no. Because we would look to modify the parking layout to meet the open space requirement. So that the section of the Ordinance that I think is 8.22.3, which is the other section of Article 8, which is if you don't qualify for the 25 percent Special Permit or the 10 percent as of right, then it shall be done by Variance.

CONSTANTINE ALEXANDER: Variance, right.

Other questions from members of the Board?

Anyone here wishing to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. I don't believe there's anything in the file in terms of letters from --

ATTORNEY JAMES RAFFERTY: Oh, I'm sorry, here's a letter from an abutter.

CONSTANTINE ALEXANDER: Most interesting, have you heard from the abutters as you face Cherry Street to the right?

NELSON OLIVERA: Yes, he gave a letter of support.

CONSTANTINE ALEXANDER: He gave you a letter.

We have a letter addressed to this Board dated August 2010. "I am a neighbor of 128 Cherry Street in Cambridge, Massachusetts. Please be advised that after discussing the project with the developers of the building and after reviewing their plans for the project, I am of the opinion that the development at 128 Cherry Street will be a welcome addition to our neighborhood. As a result, I am supporting the project and urge the Board to grant the Petitioner's request." And it's signed by the occupant at 120 Cherry

Street. I just can't read the name so I'll just say it's the occupant of 120 Cherry Street.

There's no more public testimony. Further questions or comments from members of the Board.

TAD HEUER: I have a question about the width of the building. And this arises from the comment that this could be by right if it were not for the very minimal left side setback, and that the Petitioner's original plan was to demolish the building and reconstruct a by-right conforming structure on the lot. If the Petitioner were to construct a by-right conforming addition on the lot, it would need to comply with the setbacks and I presume that if it was three-family, there would also be parking so the driveway would remain the same. Which means that you would --

ATTORNEY JAMES RAFFERTY: Well, I'm

not sure that's the case. I think there could be parking under the struct -- there could be garage parking beneath the structure. There could be a range of ways to treat the parking which you would need to approach it differently. I agree.

TAD HEUER: I guess what I'm looking at is yes, that it's in one sense simply a non-conforming addition to a non-conforming structure. But in another sense you are gaining the nine plus, almost ten feet of setback land along the frontage that you would not otherwise be entitled to were you to demolish and then build by right, correct?

ATTORNEY JAMES RAFFERTY: Not the front, the side.

TAD HEUER: No, no, no, the front. Well, the side setback is what allows you to encroach your front nine feet further to the left side then, you know, essentially where that front door is.

ATTORNEY JAMES RAFFERTY: I'm sorry, I'm not following you. You're saying that this requirement is 10 feet. It's at 9, 9 now.

TAD HEUER: Correct.

ATTORNEY JAMES RAFFERTY: And this is at three feet.

TAD HEUER: Three, right? If you were to rebuild by right, this setback would need to be here. Somewhere around 11 and a half feet, right? And you would also need 11 and a half this way. Which means that the width of your building right now is wider than you would be allowed for a by-right construction, correct? Because you would have to have a thinner --

ATTORNEY JAMES RAFFERTY: Yes, yes.

TAD HEUER: -- you would have to have a narrower or deeper building. Because you certainly can't go taller because you're already at 35.

BRENDAN SULLIVAN: If the lot -- if where you're going is that if the lot were void of a structure, yes, they could build something there as of right. I would prefer that it would not be the same size as what is before us.

TAD HEUER: Right. And I guess what I'm saying is this strikes me as somewhat different than the case we had earlier this evening, where there's no addition being made to the front where the violation is similar, it's a technical, very small intrusion to a setback there that triggered the Variance requirement. But the addition was being made well away from the offending portion here. The offending portion, nine feet of it are allowed to be included across the width of the building where they would not otherwise be. And I guess where I'm getting is that it creates an overly wide structure on a very narrow lot that would not otherwise

be allowed and I'm a bit hesitant on that.

ATTORNEY JAMES RAFFERTY: Well, I give you -- but this calculation of 13, 7 is I guess the issue is the --

BRENDAN SULLIVAN: Have you done an as of right solution?

ATTORNEY JAMES RAFFERTY: No. Not after Mr. Sullivan discouraged the demolition.

TAD HEUER: So your front width -- so what's your front, it's 50 feet?

ATTORNEY JAMES RAFFERTY: 50.

NELSON OLIVERA: Well, the door -- the way our plans were before, they are kind of through that. The driveway this side here. The driveway this side here. And the building be out a little bit longer and a little bit space right here just along the back.

TAD HEUER: Right. But you couldn't get a 15-by-15 open space if you're

working with two ten-yard setbacks.

NELSON OLIVERA: Over here. All of this going to be cleared because we're going to put tandem parking.

TAD HEUER: You could?

NELSON OLIVERA: I don't know.

TAD HEUER: By right? I don't think so.

NELSON OLIVERA: I don't have the drawings with me. But the design go more to the architect, it would be underneath the structure parking.

TAD HEUER: Right.

NELSON OLIVERA: Move the building back and come around and park in it.

TAD HEUER: Right. But you certainly wouldn't -- if you're talking about two ten foot by ten foot -- two ten foot side yard setbacks, you get your maximum 30 foot across frontage, you're certainly not going to be meeting your open space requirement in

either of the side yards. It's going to have to be in the back. I mean --

ATTORNEY JAMES RAFFERTY: Well, I don't disagree that the footprint of the building would change and you would have to be able to figure out the driveway. You'd have to have a ten foot minimum driveway, and then you'd have to have the -- since it's a formula setback and you can multiplane in this district, I suppose a clever architect, which if you're familiar with the property near the Taylor Square Firehouse, that clever architect used multi-planing the home that was formerly owned by a member of the McCann family, that put three structures on the lot through the use of the multi-plane setback requirement. So I have great faith in the creativeness of these architects. But when you're dealing with a formula setback and the opportunity to multi-plane with the denominator goes from seven to five for

structures less than 40 feet, and then you multi-plane, I'm guessing you can get there. I don't know how. But I'm guessing you can come that close.

TAD HEUER: Okay.

TIM HUGHES: So you're sticking with your original argument that you could do something like this as of right if it wasn't for --

ATTORNEY JAMES RAFFERTY: Well, I don't want to guild that lily. But the reality is that --

BRENDAN SULLIVAN: You can do something.

ATTORNEY JAMES RAFFERTY: You can do something. You know, so much of this is about -- I mean density is established by lot area per dwelling unit. We meet the density. So I don't think it can be said. Mass is determined largely by FAR. And we meet the FAR. And then open space is being met here.

So it is -- and his initial intention was, because it was -- and he did go -- was to take it down. And I think part of the value that the city is a land use objective places as a land use policy, is to preserve structures like this. And then maybe, maybe you couldn't get to three, maybe you wouldn't max out the FAR, but I think you could figure out a way possibly. But, I mean, no, it's a fair plan. I hear what you're saying which is okay, show me how you can get it. I don't think it's a complete linear analysis that I could get every square foot in a new structure, but I'm fairly confident we've come rather close.

TAD HEUER: I mean, I'm a huge fan -- I mean, I used to work for the National Trust for Historic Preservation. I like historic preservation. The only thing I see on this plan being historically preserved essentially is the front doorway. Quite

frankly if this is what's going to happen on this lot, I would almost foresee that doorway salvaged and placed in the building that had conforming setbacks because that's a whole density as we're getting here. But we're getting a huge massing across the front of a very small lot. So if my tradeoff is demolishing a building and keeping a doorway or it's getting this building here with the doorway where it's physically situated but the rest of the building is essentially changing beyond all recognition, even my preservationist tendencies start to ring a bell in my head. So that's just me.

ATTORNEY JAMES RAFFERTY: Do you think the fact that the addition is co-planar in front if it were setback a little would it retain more of its original --

TAD HEUER: It might.

THOMAS SCOTT: I do. I think the Greek revival aspects of the house are gone.

So the only thing that's left is the door. And if somehow they could have maintained that facade and set the building back a little bit so that that became the prominent part of the elevation, I would definitely be more in favor of that.

CONSTANTINE ALEXANDER: Your call.

NELSON OLIVERA: Move it back over here.

ATTORNEY JAMES RAFFERTY: I'm studying faces.

CONSTANTINE ALEXANDER: I know exactly what you're doing.

NELSON OLIVERA: It's very difficult over here. Not be able to pull this out and cut it in half and put the front.

CONSTANTINE ALEXANDER: You've heard two members express some desire, and the scrutability of the other three members might tell you something. Might it be advisable to continue this case and come back

with some new plans?

THOMAS SCOTT: Mr. Sullivan's intentions were good. I think they're completely lost.

TAD HEUER: Of course if this is the best that can be done under the circumstances, and you're able to demonstrate that to us, you know, my pendulum swings a bit.

CONSTANTINE ALEXANDER: You can come back.

ATTORNEY JAMES RAFFERTY: You'd like to see some further study on this question?

TAD HEUER: Yes, if it's possible.

ATTORNEY JAMES RAFFERTY: Do you have a sense, Mr. O'Grady, when the Petitioner might be able to return with the case?

SEAN O'GRADY: I do. We're into November now.

CONSTANTINE ALEXANDER: Let's talk about if we wanted it to be more hard working than we already are and we wanted to do it earlier, what's a date we can squeeze it in?

SEAN O'GRADY: On the 26th you have eight and three. On the 16th of September you have eight and five.

CONSTANTINE ALEXANDER: What's the first one in October?

SEAN O'GRADY: October 14th we have three if you felt inclined.

CONSTANTINE ALEXANDER: It's a case heard. So we have to have all of us here on October 14th.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: You haven't asked for it yet.

ATTORNEY JAMES RAFFERTY: So I guess what --

CONSTANTINE ALEXANDER: I wanted to give you a sense.

ATTORNEY JAMES RAFFERTY: Well --

THOMAS SCOTT: You have a balcony on this edge that, you know, I don't know, maybe that could --

ATTORNEY JAMES RAFFERTY: Is it fair to say the concern is that the width of the house and the frontage is feeling a bit too expansive?

TAD HEUER: Yes. Particularly because you have a two-foot setback, you're building into your allowable space. And the other way around usually is you want to intrude into a setback.

ATTORNEY JAMES RAFFERTY: No, no, but I think --

TAD HEUER: Right. You're not intruding but what you have already is eight feet into a setback. If you came to us in the alternative and said I want to intrude eight feet into a setback, we'd say hang on.

ATTORNEY JAMES RAFFERTY: Yes,

right.

TAD HEUER: So I think that's where this comes from. That even though you're moving in this middle space which is allowable, you're moving from a starting point that is so far into a setback that it makes the width very large for that lot.

CONSTANTINE ALEXANDER: Let me put something also out, too. The fact that you started out saying you came here before us with this proposal, that Mr. Sullivan discouraged you from tearing the building down. I don't know if Mr. Sullivan has seen, probably not, what you're bringing before us tonight. I would like him to see that or something else, and I would like to hear from Mr. Sullivan, maybe yes, this proposal is before us, it's fine, I'm very happy with it. Or maybe you can show him something that makes us happier, or at least some members of this Board happier and he also would signoff on it.

I would like to get some input from him on what it we're going to approve. We don't have that tonight.

ATTORNEY JAMES RAFFERTY: Now Historical does review the cases as you know, for their jurisdiction. But I don't know that he saw it.

CONSTANTINE ALEXANDER: And we don't have any letter or comment.

ATTORNEY JAMES RAFFERTY: Right, right. But I hear the point you're making. Can I have just a moment? Do you have another case?

CONSTANTINE ALEXANDER: We have other cases.

ATTORNEY JAMES RAFFERTY: Maybe I can explain to Mr. Olivera my sense of --

CONSTANTINE ALEXANDER: We'll recess this case and we'll take another case.

This case will be recessed to allow the counsel and the Petitioner to confer.

ATTORNEY JAMES RAFFERTY: Thank
you.

(Case was recessed.)

(9:20 p.m.)

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

CONSTANTINE ALEXANDER: I'll call
the next one. The Chair will call case No.
9974, 286 Third Street. Is there anyone here
wishing to be heard on that matter?

JESSICA ERICKSON: Jessica Erickson
from Signs On-Site.

JOHN PALMIERI: And John Palmieri

from Alnylam Pharmaceuticals.

CONSTANTINE ALEXANDER: Okay.

You're here for a Variance for a sign?

JESSICA ERICKSON: Yes.

CONSTANTINE ALEXANDER: Keep going.

JESSICA ERICKSON: We would like to install a sign above the second story.

CONSTANTINE ALEXANDER: So your issue is you want a sign, it's too high otherwise it's okay.

JESSICA ERICKSON: Yes.

CONSTANTINE ALEXANDER: This is your second sign on the building?

JESSICA ERICKSON: Yes, it is.

CONSTANTINE ALEXANDER: And you're going to replace the Archemix sign?

JESSICA ERICKSON: Yes.

CONSTANTINE ALEXANDER: This sign, and you have the dimensions in the file. How does the sign compare in size compared with the Archemix sign and the sign that you

already have?

JOHN PALMIERI: It matches the one we have and I believe it's smaller than --

JESSICA ERICKSON: Two inches smaller than the Archemix.

CONSTANTINE ALEXANDER: Two inches. So roughly the same size?

JOHN PALMIERI: It doesn't have a big back.

JESSICA ERICKSON: It actually looks a lot smaller visually because it doesn't have the background and it's not as dense as the other sign.

CONSTANTINE ALEXANDER: Not illuminated?

JESSICA ERICKSON: It is illuminated.

JOHN PALMIERI: It's a backlit.

CONSTANTINE ALEXANDER: Backlit.

TAD HEUER: Fewer letters.

THOMAS SCOTT: Is that a photo

simulation?

JESSICA ERICKSON: Yes.

CONSTANTINE ALEXANDER: Yes. It's in the file. Can we keep that?

JESSICA ERICKSON: Yes.

CONSTANTINE ALEXANDER: And your hardship is, the reason you need to put the sign too high for the purpose of our Zoning By-Law?

JOHN PALMIERI: Basically we would just be putting it -- because it would be the same height as the one we currently have, and it we'd be replacing all the holders where the Archemix sign is without beating up the rest of the building.

CONSTANTINE ALEXANDER: When Archemix put its sign up, we had to give them relief for the same reason. And the issue there and what we found isn't the issue, what we found is they have a hardship due to the architecture of the building. You can't put

a sign --

JOHN PALMIERI: Right.

CONSTANTINE ALEXANDER: -- within 20 feet of street level because of the way the building is configured.

JOHN PALMIERI: Correct.

CONSTANTINE ALEXANDER: And we did make a finding of hardship on that basis.

TAD HEUER: And of course in that situation, are they no longer in the building? Have you taken over their space?

JOHN PALMIERI: We're taking the entire building. They're moving out.

TAD HEUER: Okay. One of the main purposes of signage is so people can find your building.

JOHN PALMIERI: Exactly.

TAD HEUER: Alnylam has a sign on the building. The fact that you're having more space mean that people are going to find it less difficult to find you?

JOHN PALMIERI: No, no. The current sign is kind of -- it's on the side of Third Street and it's really not visible. What happened was Archemix took the spot that we should have taken originally. And now we'd like to put it -- because that's the front of the building. That's wherever one sees. When people come, they're going to where's Alnylam? They think it's Archemix.

TAD HEUER: So you're essentially looking to increase the visibility of your building even though there's a sign on it in a less preferable able location?

JOHN PALMIERI: Correct.

TAD HEUER: Have you thought at all of switching the signs so there would be a net decrease in the amount of signs on the building but giving you the preferable location, so essentially asking for relief here but then possibly removing the one on Third Street?

JOHN PALMIERI: We would prefer to keep the one on Third because one, the building will have a bunch of holes in it, and, two, it's really if you look at it, it's really not offensive at all.

CONSTANTINE ALEXANDER: In fact, if you could put this building less than 20 feet from the ground, you could have legally two signs. It's the number of signs is not a violation. It's the height of this sign.

JOHN PALMIERI: Exactly.

CONSTANTINE ALEXANDER: So.

BRENDAN SULLIVAN: That's sort of my thought also. One sign works. I thought that the two signs were somewhat....

JESSICA ERICKSON: I did go through the city and took within that square --

CONSTANTINE ALEXANDER: I think there's something to be said for the arguments that were made in the Petitioner's filing about the balance of the building

actually. I mean, having a sign on each side, to me, it looks better than having just one sign. And given it's also in my mind we're talking about not a residential district, or we're not looking out on a residential district. I don't see any impact on the aesthetics of the City of Cambridge or the streetscape of the City of Cambridge being affected so long as the sign is consistent with the sign, and you proposed that.

JESSICA ERICKSON: Exactly.

CONSTANTINE ALEXANDER: With the sign that Archemix has. And you're current with the sign. You look at this photo sim, it's not too terrible to have these signs.

THOMAS SCOTT: And it's backlit. It's not illuminated. It's backlit.

JESSICA ERICKSON: Yes.

CONSTANTINE ALEXANDER: I could live with this. I hear you. I can live with

the proposal that the Petitioner has made.

Let me open it up to public testimony. There are no letters in the file. Do you have any letters in for it or in opposition?

JOHN PALMIERI: No.

CONSTANTINE ALEXANDER: We do have a letter from the Planning Board.

First of all, does anyone here wishing to be heard on this matter?

(No response.)

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

We do have a memo from the Planning Board dated August 11th. "The Planning Board reviewed this Variance request" -- referring to this case here -- "for a corporate sign above the height limit at the second floor and leaves the case to the BZA for determination. The Planning Board sees this as an appropriate location as it is symmetrical with the existing sign also

above the height limits. This location is visible to the public and visitors to the business."

Okay. Further comments or questions from members of the Board.

TAD HEUER: I have a question, but I don't know if it's more for Inspectional or for the Petitioner. In either the Archemix Variance or the Alnylam Variance that granted the sign you have now, was there a condition that no further signage be placed on the building?

JOHN PALMIERI: No.

CONSTANTINE ALEXANDER: And on Alnylam when you were granted the Variance, you must have had a sign there before on the condition that with the new sign you remove the existing sign.

JOHN PALMIERI: Right, because we had one that was like at the very top of the building. And it was a lot larger. And this

one, what we did was we put a smaller sign and we brought it down to a lower level.

CONSTANTINE ALEXANDER: I didn't sit on that case. I didn't know what the nature was. But I did see that in your decision to remove an existing sign.

JOHN PALMIERI: Yes. And we did. We took that sign down. And this is just much more aesthetically pleasing, the sign that we replaced the old sign with.

CONSTANTINE ALEXANDER: Tim, did you say you had a comment?

TIM HUGHES: I feel like the one size fits all, the 20-foot height limit is ridiculous because, you know, the architecture on buildings really dictate sign placement more than some arbitrary rule about height. So I don't have a problem with this at all.

CONSTANTINE ALEXANDER: I concur. I think that the 20-foot is an odd

requirement. We're forever giving Variances from it. And I find the sign not to be offensive. Although it's the second sign. I would prefer only one sign. I think under the circumstances this sign is okay given it's location, given the nature of the design. And I think the symmetry of the sign being the same size and same obviously the same lettering style as the other sign to me is okay. So I would support the Variance.

Further comments from members of the Board. Ready for a motion.

The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of this Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that it would be insufficient identification of the Alnylam in the building that it's located at. And necessary for visitors to find the location.

That the hardship is owing to circumstances relating to the shape of the building. And namely, its architecture is such that placing a sign 20 feet or lower on the facade of the building is impractical, if not probably impossible.

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

The Chair would note that the sign being proposed would replace a sign that was subject to a Variance granted by this Board. The sign is at least in size is, and in terms of illumination, is quite similar to that sign. So this Board has already made a determination of hardship with regard to the structure.

That the area in which the sign is located is a non-residential district. It

will have minimal impact on the streetscape of the abutting areas.

On the basis of these findings the Chair moves that a Variance be granted on the condition that the work proceed in accordance with the photo simulations submitted by the Petitioner and initialed by the Chair. Being specifically noted that the new sign that we would permit by this Variance will be backlit, that would be the nature of its illumination, and that it will be consistent with size and in lettering with the existing Alynlam sign on the other side of the building so that the visual impact is quite similar to what is now the case with regard to the Archemix sign and otherwise would be aesthetically pleasing addition to the structure itself.

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

BRENDAN SULLIVAN: What about in

case the tenant leaves so the sign is abandoned or no longer in any use to restore the area.

CONSTANTINE ALEXANDER: We never imposed that on a sign case. I'm not saying we shouldn't. I'm just thinking out loud. If they leave, like Archemix left -- I would think, if another sign comes in, don't they have to get -- if they're left and Genitech wants to move into this building, wouldn't Genitech have to get a Variance if they want to put a sign here or not more than 20 feet high?

SEAN O'GRADY: It depends on your finding.

CONSTANTINE ALEXANDER: And the conditions are -- the new sign would have to be the same size as the old sign. It has to be backlit so they couldn't put twice as big sign, a new tenant couldn't be a twice as big sign on the building.

SEAN O'GRADY: No, the best they can do, and I don't even know they can go this far, we've gone back and forth in the department on this, the best they can do is like for like. That is, a different company.

BRENDAN SULLIVAN: Dimensions.

SEAN O'GRADY: Same dimensions, same everything.

CONSTANTINE ALEXANDER: But the conditions I'm proposing is such that the appearance must be consistent with the current Alnylam sign. Can't change the illumination. They can't change the location on the building.

SEAN O'GRADY: Right.

CONSTANTINE ALEXANDER: It's got to be the same spot.

SEAN O'GRADY: Right.

CONSTANTINE ALEXANDER: It's got to be roughly the same dimension as the existing Alnylam sign.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: If all those conditions are met and Joe's Bar and Grill's sign was going to be put up there --

BRENDAN SULLIVAN: Yes, it would probably be a hard mark to get to.

CONSTANTINE ALEXANDER: Okay. I think everybody's got the motion.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(9:30 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9975, 44 Harvey Street. Is there anyone here wishing to be heard on this matter?

You're seeking two types of relief, both a Variance and a Special Permit.

PETER SCHMID: Yes.

CONSTANTINE ALEXANDER: For the record, you've heard the drill about name and address and business cards.

PETER SCHMID: Yes. My name is Peter Schmid, S-c-h-m-i-d from Hardwick, Massachusetts, representing my client as the architect for this job.

MARIE CELESTE GUZELL: I'm next? My full name is Marie Celeste Guzell.

CONSTANTINE ALEXANDER:
Mr. Schmid.

PETER SCHMID: Yes, we have -- we'll take the Variance first for request.

CONSTANTINE ALEXANDER:
Presumption.

PETER SCHMID: We have a building which projects within 20 feet of the backyard. So, unfortunately the building is a little in the setback zone, so it's about five inches. On that we want to build an

emergency egress path from the second floor and the first floor down to grade.

CONSTANTINE ALEXANDER: Those are the same as these plans?

PETER SCHMID: Yes, they are. And to do that we're going to need --

TAD HEUER: Are they?

PETER SCHMID: Well, yes this is....

MARIE CELESTE GUZELL: They're the same.

TAD HEUER: Including these handwritten annotations? Do you have those in your plan?

PETER SCHMID: These were Marie Guzell's --

MARIE CELESTE GUZELL: Yes, I do.

PETER SCHMID: No.

MARIE CELESTE GUZELL: Those just added to -- the architect said they don't usually do them in two places because then they would have to erase them in both places.

And so I just wanted them so I could understand them. So those didn't change those figures, they just made it stand out a little more.

TAD HEUER: Right. That's my question.

PETER SCHMID: A6.

TAD HEUER: A6. All right.

I'm more wondering about, for instance, A5.

PETER SCHMID: Okay.

TAD HEUER: Okay. So, for instance, there's no No. 12 here on the porch rafter framing plan. There's no No. 12 in the plan that you have on your copy. I'm just wondering what's going on.

PETER SCHMID: Okay.

TIM HUGHES: What's No. 12 say?

TAD HEUER: The six porch staircase or 20.

PETER SCHMID: Foot four inches.

Correct. That was the overall dimensions.

CONSTANTINE ALEXANDER: That's you explaining the dimensions shown on the plans?

PETER SCHMID: Exactly.

CONSTANTINE ALEXANDER: Or a change? A footnote.

MARIE CELESTE GUZELL: That's all it was.

TAD HEUER: I just want to make sure we're going to sign these plans. So if you're not going on what's in these plans, you're going to have a problem. I don't care what's on your plans.

MARIE CELESTE GUZELL: May I make a comment?

CONSTANTINE ALEXANDER: By all means. One at a time.

PETER SCHMID: There's -- is that the same?

TAD HEUER: A4. It appears generally similar.

PETER SCHMID: Yeah, a back porch and stairs. It says back porch and stairs.

TAD HEUER: I don't care what's on your plan, but these are the ones that we're going to signoff on. So, in a sense we'd be working off a single set of plans. I don't know if these discrepancies are merely marginally that are irrelevant to what's actually going to go on, but to the extent that they actually deal with something that's going on, these are the ones that you're going to be looking at.

PETER SCHMID: Correct.

As the issue comes up, and if you could point to where it is, I'll make sure that it's also addressed here if we have an issue with it.

TAD HEUER: Right. I mean, I guess my, in looking at these plans there seem to be handwritten additions all over them. So I'm not sure -- it would one thing if it's just

a marking. You have handwritten notations on those.

MARIE CELESTE GUZELL: I did them all so I could understand them. They were just clarifications, that's all. They were clarifications on what his measurements already were.

TAD HEUER: Okay. All right.

MARIE CELESTE GUZELL: So it wasn't changing anything. It was just putting it in two places and making it so that personally I thought -- I didn't realize that you people do this for a living, but not for a living, but a lot.

TAD HEUER: Some of us do it for a living.

MARIE CELESTE GUZELL: So I wanted to make it more clear.

TAD HEUER: Okay.

PETER SCHMID: The projection of this emergency egress system comes out six

foot ten and it's the width of the building which is 20 foot four. It's a switch back staircase which was needed to get two doors, one on the second floor and the next one down on the first floor, a staircase just to meet at the same spot to get everybody down from both levels to grade which is two-thirds of a level below that. The level being the height of the floors.

BRENDAN SULLIVAN: And how do they exit the building now?

PETER SCHMID: On the back they don't. When my client bought the house 30 years ago, there was a porch but the staircase had been removed. So there was never a second means of egress. Well, within the time that my client owned it.

MARIE CELESTE GUZELL: There was never a staircase. I've owned it for almost 31 years.

BRENDAN SULLIVAN: So there was

always an exterior door to a porch.

PETER SCHMID: To a porch on both levels, first and second. And a basement staircase where you actually walked up a couple of steps before you hit the door.

BRENDAN SULLIVAN: Right.

PETER SCHMID: So, it was never there. And it should have been. It was never a second means of egress.

BRENDAN SULLIVAN: So the porches were removed?

MARIE CELESTE GUZELL: They were burned.

PETER SCHMID: The porches burned in December of last year. The house is now vacant.

BRENDAN SULLIVAN: So there is no interior staircase?

PETER SCHMID: In the front there is.

BRENDAN SULLIVAN: Yes, but I mean

in the back.

PETER SCHMID: In the back there is not. There never was.

CONSTANTINE ALEXANDER: You're all set?

BRENDAN SULLIVAN: Yes.

PETER SCHMID: So to go ahead and do this is a life safety issue that we need to attend to, but it --

CONSTANTINE ALEXANDER: And the Variance is required because of the rear yard setbacks. You're going to go within -- your you're now 15.5 feet from the rear yard lot, the rear lot line. You're going to go to 12.9. And the district requires 25 feet. So you're non-conforming now. You would be a little bit more non-conforming.

PETER SCHMID: Correct.

CONSTANTINE ALEXANDER: Otherwise, that's on the Variance. That's why you're here before us.

PETER SCHMID: Yes.

TAD HEUER: What's the square footage of the landings where the porches used to be?

PETER SCHMID: The top landing is the largest of the two, it's 11 by 7, let's say. Six foot, six foot ten with a total of 77 square feet. We have eight-by-seven for 56 square feet. And of course the width of these porches are the width of the staircase. So they --

TAD HEUER: I guess the reason I'm asking is because a staircase down won't count into an FAR. I have to say I don't even -- the dimensional form is a bit confusing to me because there's a lot of changes to it and it's not necessarily complete. And I don't even know what you're FAR is or what it is allowed to be because none of those are here. But, adding a staircase would be different than adding a porch that

allows you to get down to the ground I guess is my question. And, you know, to the extent that the staircase can't be used as a porch, that's one thing. Essentially you're re-establishing porches and adding some stairs that seems to be a slightly different request.

PETER SCHMID: I understand that. There were porches there. There was no staircase.

TAD HEUER: Right.

PETER SCHMID: And my client would love to have the porch back. The porch on top is admittedly larger than the one that burned.

TAD HEUER: Right.

PETER SCHMID: But it --

MARIE CELESTE GUZELL: The other porch is actually smaller. Oh, excuse me, in length. Not in-depth. Sorry.

TAD HEUER: And what's the allowable

FAR at this district?

SEAN O'GRADY: It's 50 percent up to 5,000. 30 percent, 35 percent after 5,000 square feet.

TAD HEUER: And you want to go from 1601 to -- does this read 1821; is that right?

PETER SCHMID: Yes.

TAD HEUER: Which makes your current FAR what?

(Side discussion regarding form.)

TAD HEUER: So you're at a 1.0 FAR in a district that allows 0.5, 0.3?

TIM HUGHES: 0.3 doesn't trigger.

SEAN O'GRADY: I'm confused because I was running under the impression that we had no FAR increase.

TAD HEUER: That's kind of where I'm going, but I don't need to have the numbers to make a determination.

SEAN O'GRADY: Okay.

TAD HEUER: My only question is that

if this is really a porch, it adds to an FAR issue. If it's large enough that the Board feels that this is not just an egress system, but it is a porch, that adds to an FAR that is already well over.

TIM HUGHES: How big is the lot?

CONSTANTINE ALEXANDER: The size of the lot is on the dimensional sheet. It should tell you right there.

TIM HUGHES: We're not sure that --

BRENDAN SULLIVAN: It may have been the reality of the situation that the previous porches were inadequate. And now is an opportunity going through this entire exercise to make them adequate. And if that is stretching them a bit....

TIM HUGHES: Well, this is suggesting that the lot area is 8.2.

THOMAS SCOTT: Adequate for egress?

TAD HEUER: No, usage. But they're not asking for FAR is my question. That's my

problem.

CONSTANTINE ALEXANDER: Well, they're asking for relief under 5.31 so that's comprehensive --

BRENDAN SULLIVAN: That's dimensional, that's setback.

CONSTANTINE ALEXANDER: No, no. It's also FAR isn't it?

SEAN O'GRADY: That's the whole kit and caboodle.

CONSTANTINE ALEXANDER: It's properly advertised the case. I guess where I would comment is --

BRENDAN SULLIVAN: Well, 5.32 is a very large tent. Now we're concentrating on one room of that tent.

CONSTANTINE ALEXANDER: I guess I would say even if there's FAR, I would not find that -- it wouldn't change my judgment on the case generally. I think what's being proposed is to make the porches more

adequate, more -- and going along the way for safety reasons, a second means of egress.

BRENDAN SULLIVAN: I think you're correct. It does, but noticeably I think maybe not. And for the use and occupation of the occupants of the structure it will make a little bit more of a difference.

TAD HEUER: I'm not disputing any of that. I'm just having difficulty figuring out what I'm being asked to do.

BRENDAN SULLIVAN: Right.

CONSTANTINE ALEXANDER: But assume you're being asked to grant a Variance from FAR.

BRENDAN SULLIVAN: From the size of the porches and the --

TAD HEUER: I don't know if my Variance in FAR is on the form.

BRENDAN SULLIVAN: The number may be incorrect.

TAD HEUER: Is there a plot plan?

CONSTANTINE ALEXANDER: Yes, we do.

SEAN O'GRADY: Do you want me to --

TAD HEUER: Yes, please.

TIM HUGHES: Crunch the numbers.

SEAN O'GRADY: You want to recess them? I'll have to sit with the architect and go through the numbers.

CONSTANTINE ALEXANDER: Sure.

We're going to recess this case to allow you to confer with Mr. O'Grady. And we'll hear the other cases.

(Case was recessed.)

(9:50 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will now reconvene case No. 9972, 128 Cherry Street.

Okay. You've had a chance to chat a bit and what is your pleasure?

ATTORNEY JAMES RAFFERTY:

Mr. Chair, in light of the comments of the Board particularly with regard to the frontage and the width of the house, Mr. Olivera, the Petitioner -- his intention would be to step the house back and to in effect, retain as much of the original facade as possible. Even the window line I suggested there might be some preference for that, and that this addition be seen as not co-planar. So, he does -- he sees the benefit of that and we're hoping that's consistent with the comments that we were hearing.

So he has great confidence in my abilities to convince you that we can do all this and you should approve it with these plans, but I told him even I probably am not capable of persuading you of that.

TAD HEUER: I would be disinclined to vote on this this evening with wholesale

changes to plans --

CONSTANTINE ALEXANDER: I don't think you're proposing that.

ATTORNEY JAMES RAFFERTY: I was throwing it out there. And someone said well, you know, I think that's good enough. But I did want to demonstrate that it's not for a lack of effort. But I understand the Board's practice.

CONSTANTINE ALEXANDER: Let me just say to take Mr. Rafferty off the hot seat a bit. We would never under any circumstances, be it Mr. Rafferty or anybody else, do that. We like to see plans and not concepts.

NELSON OLIVERA: No, I understand. But I just make sure it's a recess to understand you recess the four feet over here would be sufficient, that's what you're looking for or that space you're looking for and that recommendation.

CONSTANTINE ALEXANDER: We can't tell you exactly what it is. We're not going to design it for you tonight.

NELSON OLIVERA: I understand that.

CONSTANTINE ALEXANDER: The idea is we want you to -- we think you'd get better reception from this Board if you did bring that back as you talked about, and keep the original facade on the street as it is now. And with the setback minimizing the impact of the addition.

TAD HEUER: And I would suggest that Mr. Rafferty comments about the windows would also be better received if the front facade is maintained in --

ATTORNEY JAMES RAFFERTY: I thought that as well.

TAD HEUER: -- its current --

CONSTANTINE ALEXANDER: And lastly, we would very much welcome Mr. Sullivan's input once you redesign the plans and modify

them.

NELSON OLIVERA: The dormers up there.

ATTORNEY JAMES RAFFERTY: Yes, we'll be able to get that. We'll do a little bit.

CONSTANTINE ALEXANDER: I think we said the 14th? Sean's out. First of all, can everybody make it on the 14th? This will be a case heard.

TAD HEUER: October 14th?

CONSTANTINE ALEXANDER: Yes.

The Chair moves that this case be continued as a case heard until seven p.m. on October 14, 2010, on the condition that the Petitioner sign a waiver of time for a decision. And on the further condition that the sign be modified, the sign advertising this hearing be modified just to reflect the new date of October 14th.

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, Scott.)

ATTORNEY JAMES RAFFERTY: Thank you very much.

CONSTANTINE ALEXANDER: I didn't give you the drill about this, you know, that they need to be in the file by five p.m. on the Monday before the hearing date.

ATTORNEY JAMES RAFFERTY:
Understood.

BRENDAN SULLIVAN: Unless they are presented to us, No. 1. But also that the dimensional form should reflect accurately whatever relief is being granted. So, it's the number has to be correct.

CONSTANTINE ALEXANDER: We need to know.

BRENDAN SULLIVAN: They may say to us we don't think we need FAR. You know, we're not really adding square footage but this, that and the next thing, but that number has to be --

TAD HEUER: A sentiment I think I expressed earlier this evening with 15 Buckingham.

BRENDAN SULLIVAN: So, it's a broad statement but it really has to have a really narrow application.

(9:50 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9973, 1432 Mass Ave. Is

there anyone here wishing to be heard on this matter? Before we get into the merits of this after you introduce yourself, I want to get into a procedural matter.

ATTORNEY JAMES RAFFERTY: Thank you. Good evening, James Rafferty on behalf of the applicant Mashed, LLC doing business as Enzo Pizzeria.

CONSTANTINE ALEXANDER: Before we get into that let's get into a procedural matter which we may make the rest of this case for now moot. And I would call to the Board's attention that this property is located in the Harvard Square Overlay Zoning District which is governed by Section 20.50 and succeeding sections of our Zoning By-Laws. 20.53.2 states that a reviewing applications for Variances Special Permits, which is what we have before us, the permit or Special Permit granting authority, that's us, shall be guided by the objectives and criteria

contained in the publication Harvard Square Development Guidelines, in addition to the requirements of the Zoning By-Law. The Harvard Square Development Guidelines state in the section entitled, "Jurisdiction and Procedures" as follows: Any construction containing more than 2,000 square feet, and any development requiring a Special Permit or Variance regardless of size must be reviewed by the Harvard Square Advisory Committee for an advisory opinion.

And I don't see anything in our files about receiving such an advisory opinion. And I don't know whether we can -- in my judgment I don't think we can proceed until we have received such an opinion. So, sum and substance to me would require us to continue this case and to allow you to seek and to obtain such an opinion and that's just one person's point of view. I'll open it up to --

ATTORNEY JAMES RAFFERTY: Where does one find these guidelines that you're referring to?

CONSTANTINE ALEXANDER: You know about them. I don't know where they come from. We had these guidelines when we did the Veritas case.

ATTORNEY JAMES RAFFERTY: Well, I was here a few weeks ago and the guy was doing a sub shop and Holyoke Center.

CONSTANTINE ALEXANDER: You're trying to embarrass this Board.

ATTORNEY JAMES RAFFERTY: And I do recall Veritas but frankly --

CONSTANTINE ALEXANDER: I want to be persuaded is how I read it. And I checked with Mr. Singanayagam and he thought he was of the same opinion.

ATTORNEY JAMES RAFFERTY: So the interpretation, guided by the objectives and criteria means that the Board can't act upon

an application for a Special Permit in the Harvard Square Overlay District.

CONSTANTINE ALEXANDER: We can if we get an advisory opinion. We need additional input from another body as I read these development guidelines. This refers us into, this section of the Zoning Ordinance, gets us into the Harvard Square Development Guidelines. And those guidelines require us to get an advisory opinion from the Harvard Square Advisory Committee which we don't have.

TIM HUGHES: Do we know that the Harvard Square Advisory Committee is a body?

CONSTANTINE ALEXANDER: It was when we did Veritas -- I don't know.

ATTORNEY JAMES RAFFERTY: I do recall the Veritas. And in the Veritas I contacted Mr. Barber, and he said, Oh, yeah, that we haven't met, they haven't met for years. And I think at the time my memory is

he then circulated an e-mail or something and asked people to provide some comments. And a few of the people, frankly one or two of them are no longer alive, but they don't exist. But I didn't think it was that hard and fast. I certainly knew that was the case. And, you know, my familiarity with the guidelines is they go through a lot of architectural features.

CONSTANTINE ALEXANDER: They do.

ATTORNEY JAMES RAFFERTY: Which in the case of Veritas we're not making a facade changes here. It's strictly a use issue. And I don't look to -- and I'm not trying to embarrass, but I'm thinking of a litany of fast food over the years, I just don't recall any commentary, whether it was the, there's another pizza shop down there Upper Crust.

CONSTANTINE ALEXANDER: We had Upper Crust. We had Johnny Be Good. Dobra came before us. We had Clover. And we had

the last guys across the way in Holyoke Center.

TAD HEUER: Al's.

ATTORNEY JAMES RAFFERTY: Yes, that's the guy I most recently remember.

CONSTANTINE ALEXANDER: We didn't ask for that. But, you know, I read the Zoning Law. I said, wait a minute, should we have asked for it? I asked Mr. Singanayagam. He agreed. He thought we were getting that advisory opinion through the Planning Board comments. But I said on most of these fast food cases we get no Planning Board comments. So that's where I'm torn.

And I throw this up to other members of the Board. If you agree then I'll accept it. But I think we have to deal with it. We can't sweep it under the rug.

ATTORNEY JAMES RAFFERTY: Can I take a peek at the guidelines? I honestly don't

have a copy of it.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: I'm
sorry.

TAD HEUER: One thing, at least those guidelines appear to be draft. I don't know if they're the final guidelines or even if final guidelines even exist. And my other question, and this is essentially a question of statutory interpretation, is that the Ordinance says that we shall be guided by the objectives of the criteria. Looking at the guidelines themselves, presuming that those guidelines are indeed the guidelines, they say -- I believe, Mr. Rafferty, if I can look at those, they say --

ATTORNEY JAMES RAFFERTY: I think you're right, but I think you're right for a different reason. If you look under paragraph 2 responsibilities of the advisory committee in the Ordinance itself, 20.54.1.

Right there, No. 2 responsibilities.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: I think it says they shall receive.

CONSTANTINE ALEXANDER: Receive all applications for Variances and Special Permits -- committee shall undertake and shall receive all -- undertake large projects --

ATTORNEY JAMES RAFFERTY: I think what we then decided Veritas is we would send -- the applicant should send the application to CDD, and if the Harvard Square Advisory Committee doesn't do anything or doesn't exist, nothing happens.

CONSTANTINE ALEXANDER: All right. And they did comment. I don't remember the exact.

ATTORNEY JAMES RAFFERTY: But I mean in that one there was honest to goodness architectural elements about a building and

all that.

TAD HEUER: I would see it going that way. I'm not as convinced by 25.3.2 because it would suggest that guidelines supersede the Ordinance where the Ordinance says we shall do something. It's mandatory that we do something of thinking about things and we may or may not do it. Even though it's required in the guidelines, we seem under 25.3.2 not to be required to, although we may be guided by those guidelines. And I would never be one to say that the guidelines you serve our authority to act under the Ordinance.

CONSTANTINE ALEXANDER: You can't.

ATTORNEY JAMES RAFFERTY: But it says this shall be guided by the objectives and criteria.

CONSTANTINE ALEXANDER: I don't know what they are until I hear from the committee. You're right. Most of these

guidelines are architectural issues, but they also talk about the objectives and the goal of the district.

TAD HEUER: It can't be true. We can't wait for the committee to tell us what the guidelines are. We have to be acting --

CONSTANTINE ALEXANDER: We need communication from the committee. It may be that they have no comment. I think we cannot proceed without even giving the committee an opportunity to comment.

TAD HEUER: But if that's the case, that's only 10.54.1.

ATTORNEY JAMES RAFFERTY: Presuming the committee even exists.

CONSTANTINE ALEXANDER: We give them an opportunity to comment. If they don't comment because they don't exist, so be it.

TIM HUGHES: It also says these guidelines are also intended to assist in

shaping and contemplating any physical change.

CONSTANTINE ALEXANDER: No, that's also -- that's that alternative doesn't come into play in this case.

ATTORNEY JAMES RAFFERTY: I understand it's a matter of interpretation for the Board. There has been again not intended, there has been a practice where these cases have been heard. It seems to me that if the Board were now cognizant of this in going forward, was going to as a policy adopt the guidelines as --

CONSTANTINE ALEXANDER: If we decide, if other members of the Board agree with my interpretation and we require you to get an opinion, at least contact the advisory committee, that will be our procedure for every fast food establishment going forward in the Harvard Square District.

ATTORNEY JAMES RAFFERTY:

Understood. But I guess my question is whether the Board would consider in its deliberation whether that policy should be adopted this evening for this application or whether given the nature of this application, what an advisory committee in the past, members on it are appointed by the city manager. They have three or four property owners and three or four citizens. So, I was wondering if the Board wanted to consider a prospective application of the policy or starting tonight.

CONSTANTINE ALEXANDER: I don't see a basis for approving in this basis. We know it now. I think we should find out. I don't why we would give a free pass, and I don't mean it derogatory. A free pass for you people tonight because we discovered it now and not because we didn't know it in other cases.

ATTORNEY JAMES RAFFERTY: And I understand that. In light of that and the

time we have, would it be possible for the Board to hear this case as a case not heard --

CONSTANTINE ALEXANDER: Oh, yes.

ATTORNEY JAMES RAFFERTY: -- at the second hearing in September? I mean, Mr. O'Grady tells us we may have to go to November to come back. In light of this eleventh hour discovery, would it be possible to --

CONSTANTINE ALEXANDER: The only question to reflect on, the Harvard Advisory Committee whoever and wherever they are, sufficient time to be contacted to consider the matter.

ATTORNEY JAMES RAFFERTY: I'm confident the living members can be contacted in that amount of time.

CONSTANTINE ALEXANDER: And the burden would be on you.

ATTORNEY JAMES RAFFERTY: I think we would be required to demonstrate that

we -- tomorrow we will contact Community Development. I remember how we did it now for Veritas. Asked them to circulate say we would like a comment. And I can tell you my recollection is Mr. Diogiovanni is on it. I think Hugh Russell is on it who is the Chair of the Planning Board. I think there is also a questionable whether it's Ginny Mason. But you're right.

CONSTANTINE ALEXANDER: I'm prepared as a case not heard. I'm prepared to hear the case for the second hearing in September which is what, 20 something? What's the date?

SEAN O'GRADY: Second --

CONSTANTINE ALEXANDER: Second hearing in September.

SEAN O'GRADY: September 30th.

TAD HEUER: I would also suggest to the Board that this is -- given the somewhat inchoate state of the Harvard Square Advisory

Committee, or however they are styled, that we consider some reasonable length of time for if the request is made to them, if the application is proffered to them, that it be deemed reviewed with no comment made if no comment is received at a certain period of time. I would hate to see that Harvard Square Advisory Committee hold non-existent perhaps as it is or inchoate as it is being able to delay perhaps indefinitely.

CONSTANTINE ALEXANDER: I would suggest 30 days.

ATTORNEY JAMES RAFFERTY: Right. And the advisory committee has a staff person in Community Development who does their coordination. I'm confident that either the committee or a staff person at Community Development will be able to send a communication; a communication is the committee doesn't exist anymore or they don't meet. I would presume that would be

satisfaction of the requirement.

CONSTANTINE ALEXANDER: And I would say 30 days. I mean to be specific.

ATTORNEY JAMES RAFFERTY: Yes. Well, that's why I picked the second meeting in September to give us time.

CONSTANTINE ALEXANDER: And that 30 days fits in with the schedule. So that in the future that when the committee is contacted for their advice, that if we don't hear within 30 days, then we're deemed to have -- the 30 days is a comment by them that there is no comment, and we don't have to further worry about their input with regard to relief being sought. That's your point.

TAD HEUER: That's fair.

ATTORNEY JAMES RAFFERTY: So, going forward, all applications for Variances and Special Permits in the Harvard Square District -- and maybe this will prompt some of the writers of the Ordinance to address

that.

CONSTANTINE ALEXANDER: I think they should, and until they do --

ATTORNEY JAMES RAFFERTY: And maybe this will be a great opportunity to revive the Harvard Square Advisory Committee.

I'll tell you what Mr. Barber's comment was that at the time this was written and adopted, the Harvard Square Historic Overlay District had not yet been created. So that the advisory committee was really doing design review at a level that the BZA wouldn't typically do when you're dealing with dimensional and use issues. And that since the creation of the Historic Overlay District which made all of Harvard Square neighborhood historic district -- conservation district. There was a big issue whether this was going to be a historic district or a conservation district. Harvard Square is now a neighborhood conservation district, but the

review body for it is the Historical Commission as a whole, not one of these neighborhood conservation districts. And Mr. Barber's comment at the time of the Veritas which was extensively reviewed by the Historical Commission was that, you know, now that we have the Harvard Square Historic Overlay District, this Advisory Committee is kind of with it on the vine. So, whether there's a communication to that effect or maybe the easier thing to do is to modify the guidelines. You wouldn't have to change the Ordinance if the guidelines were modified to suggest that in light of the historic overlay make it an historical issue.

CONSTANTINE ALEXANDER:

Absolutely. Again, I wanted to apologize to you. And we have no choice, it's the way the Zoning By-Law was written.

ANTHONY ALLEN: We understand.

CONSTANTINE ALEXANDER: I

understand the business consequences, financial consequences to you, but we have no choice in my judgment.

ATTORNEY JAMES RAFFERTY: Well, you know, it is interesting. I had this wonderful presentation, because in the Central Square Overlay District there is a cap on fast food uses at 14. And yet for some members of this Board they've created their own Harvard Square cap on fast food. And I was going to say, you know, I think that's best left to those who create those. But that's a discussion for another day.

TAD HEUER: The legislature has spoken affirmatively as to one means that it stays the other to stay silent?

ATTORNEY JAMES RAFFERTY: It has demonstrated applicability to exercise its views when necessary.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued as a case

not heard until seven p.m. on September 30, 2010, on the condition that the Petitioner sign a waiver of time for decision.

On the further condition that the sign in the window be modified to reflect the new hearing date. And being part of the motion to continue, for purpose of the continuance is to allow the Petitioner to seek as required by Article 20.50 to provide an opinion or seek to obtain an opinion from the Harvard Square Advisory Committee. Being noted that so long if the request is made within 30 days prior to the hearing and there is no response, that that will deem to be a response. We'll hear the case in any event. And the reason we do hear, we do need to have that opinion in the file by five p.m. in writing, on the Monday prior to September 30th.

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, Scott.)

(10:10 p.m.)

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

CONSTANTINE ALEXANDER: We're going

to reconvene case No. 9975, 44 Harvey Street.

TIM HUGHES: We have a dimensional form that's readable?

CONSTANTINE ALEXANDER: Do we have a new dimensional form, now Sean?

SEAN O'GRADY: Yes, we do.

CONSTANTINE ALEXANDER: Why don't I advise us.

TAD HEUER: Okay. So existing conditions are 2445, request is 2588. An increase of 143. It's currently a 1.35. Requesting to go to a 1.43 in a 0.5.

CONSTANTINE ALEXANDER: Didn't you say. The 0.5 for the first 5,000 feet.

TAD HEUER: 0.5.

SEAN O'GRADY: The big swing in the number was the basement.

TAD HEUER: Basement? But it's also a habitable space. It's not just nominally habitable.

SEAN O'GRADY: It's not finished and

that's why they didn't count it. But it is over seven feet, and that's why it was fed back in and the number went up so much.

TAD HEUER: Okay.

TIM HUGHES: The actual additional square footage is what?

TAD HEUER: 143.

SEAN O'GRADY: And that's the difference between what's code minimum egress which is not FAR and the remainder is the number reported.

TAD HEUER: So code egress is not included in this number?

SEAN O'GRADY: That's torn out of that number as known FAR.

TAD HEUER: This is 143 square feet of desirable deck space?

SEAN O'GRADY: Yes.

TAD HEUER: In two decks.

SEAN O'GRADY: On two floors.

CONSTANTINE ALEXANDER: Okay.

TAD HEUER: This also indicates that there is not, as was suspicious in the first go round, an increase of 12 and a half percent of usable open space, usable open space remains the same at 46 percent.

SEAN O'GRADY: And that's a little bit of an estimate based on -- okay.

TAD HEUER: I was more confused by the presumption that it was going up.

SEAN O'GRADY: Right. Yes, that's confusing.

TAD HEUER: When the building being added to the lot. Which we added possible, but unlike -- okay.

TIM HUGHES: If you put a lawn on those porches, you can have open space.

TAD HEUER: What's the green roof ordinance now.

SEAN O'GRADY: You can add open space, not with those decks because they're covered. But in theory you can do that.

CONSTANTINE ALEXANDER: Okay. So, we now know what relief -- specifically what Zoning relief you need. And the argument and your hardship is you get the Variance you're seeking.

PETER SCHMID: Yes.

CONSTANTINE ALEXANDER: It's got to be to be owing to certain features: Shape, topography and structure of the lot.

PETER SCHMID: Yes. Correct.

CONSTANTINE ALEXANDER: Can you address that for us, please?

PETER SCHMID: Yes. The hardship is actually we don't have a second means of egress. We need one. And we have to stretch into the setback area to have that provided.

CONSTANTINE ALEXANDER: Safety issues in particular require a second form of egress. The only way you can do it is to intrude into the rear yard setback. And the intrusion is relatively minor as compared to

the increase in safety that your structure, you are going to create.

PETER SCHMID: Yes.

CONSTANTINE ALEXANDER: And you have additional FAR issues. The additional FAR is relatively minor, although it's quite high overall, minor to what's there right now.

PETER SCHMID: Yes.

CONSTANTINE ALEXANDER: And, again, your notion is that the safety issues should trump the FAR issues.

PETER SCHMID: Yes.

CONSTANTINE ALEXANDER: That's your position?

PETER SCHMID: Yes.

THOMAS SCOTT: And interestingly wasn't the porch and the stair was there when the house was originally built.

PETER SCHMID: It's assumed the staircase was there. But there's no

evidence of it at this point but there's been a fire since. But you're correct.

TAD HEUER: And it's the Board's opinion that the advertised 5.3.1 --

CONSTANTINE ALEXANDER: It is my opinion that 5.3.1 is sufficient to pick up FAR relief. The FAR is covered by 5.3.1. And I think we've -- in the past, I think it's been the position of certainly of the department that if you cite 5.3.1, you don't specifically have to get the subsections under 5.3.1 to have a proper notice. And certainly my view as well. But it's only my view.

Other members of the Board disagree on the notice?

For the record, is there anyone here wishing to be heard?

(No response.)

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

talked to your neighbors?

MARIE CELESTE GUZELL: Yes, yes, I have.

CONSTANTINE ALEXANDER: And their reaction is?

MARIE CELESTE GUZELL: That it's fine with them. And I also discussed windows with them.

CONSTANTINE ALEXANDER: We'll get to that in a second.

MARIE CELESTE GUZELL: Sorry.

CONSTANTINE ALEXANDER: No, no, that's fine.

MARIE CELESTE GUZELL: They had no objection to it.

CONSTANTINE ALEXANDER: I forget there's nothing in writing from them.

MARIE CELESTE GUZELL: No, I didn't even know I should get something from them.

CONSTANTINE ALEXANDER: You don't have to get anything. We just like to know

what the neighbors think. But we take your representation that you talked with them and generally they support the project.

MARIE CELESTE GUZELL: Yes, they do. They do.

CONSTANTINE ALEXANDER: On the Variance any questions or comments from members of the Board. Ready for a motion.

The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of our Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the Petitioner would be denied a second means of egress creating in turn safety and perhaps state building code issues.

That the hardship is owing to circumstances relating to the shape of the structure. It is a structure built in the 1890s and is situated as a non-conforming

structure. And so any relief, any modifications of the building, including adding rear stairs requires Zoning relief.

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

In fact, it would be beneficial to the public good in that the safety of the occupants of this building would be enhanced by a second means of egress.

The Chair would note that this a definite plus in view of the fact that there's been a fire to the structure already. So, there is a demonstrated need for improving the need of the safety of the structure.

On the basis of the foregoing --

TAD HEUER: Mr. Chairman, I hate to be technical on this. If the FAR does not include the required means of egress, that can't be the grounds for a Variance.

CONSTANTINE ALEXANDER: No, that's true.

TAD HEUER: Can you at least say something about the hardship that is in terms of the additional FAR?

CONSTANTINE ALEXANDER: In terms of the hardship with regard to the additional FAR is simply that this is an older structure with porches that could be improved upon, improved in nature and the inhabitability of the structure as it is. And in the not too distant past we have granted relief from FAR to allow improvement of porches in rear of structures to make the buildings more compliant with current living standards and need for space. That would be the hardship on the FAR. Thank you.

So on the basis of these findings, the Chair moves that we would grant a Variance to the Petitioner on the grounds that the work proceed in accordance with the plans

submitted by the Petitioner prepared by Peter A. Schmid, S-c-h-m-i-d. They're numbered A1, A2, A3, A4, A5, A6, A7, A8, and A9. The first page of which A1 has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: The Variance granted. Four in favor.

(Alexander, Hughes, Sullivan, Scott.)

CONSTANTINE ALEXANDER: One opposed.

(Heuer.)

CONSTANTINE ALEXANDER: The motion nevertheless still carries. You have four votes.

Now we go to the Special Permit. This is required because of the relocation of windows. And here's where the neighbors'

views, particularly those that are affected are important to us.

TAD HEUER: Literally their views.

MARIE CELESTE GUZELL: Yes.

CONSTANTINE ALEXANDER: And you've spoken to the neighbors that are going to be directly affected?

MARIE CELESTE GUZELL: Yes, on each side.

CONSTANTINE ALEXANDER: And they have no problems?

MARIE CELESTE GUZELL: They had no problem. We currently have windows on the first floor on the west side of the building that we could look right into each other's place. On the upstairs I wanted a window right above there which doesn't look on anything except their roof. I took her out and showed her where it would be, and she said she had no problem with that.

On the other side it's not eyeball to

eyeball. In the living room on the east side of the building in the middle of each living room there has been no window. And the place is so dark that I have to have lights on all the day long. There's absolutely no light in there. And I talked to the person on the west side of the building and they said they have no problem with that.

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

(No response.)

CONSTANTINE ALEXANDER: The Chair notes that no one wishes to be heard. There's nothing in the writing in the file one way or another with regard to this matter. I think we're ready for a decision. Comments or questions.

The Chair moves that a Special Permit be granted to the Petitioner on the basis of the following findings:

To relocate windows as set forth in the plans that I will subsequently identify. On the basis of the following findings:

That relocating the windows as proposed will not impact traffic to the property or patterns of access or egress or cause congestion, hazard or substantial change in established neighborhood character.

That the continued operation or development of adjacent uses will not be adversely affected by the relocation of the windows.

That no nuisance or hazard will be created by relocating the windows to the detriment of the health, safety and/or welfare of the occupant or the proposed use or the citizens of the city.

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

Ordinance.

In fact, that the proposed relocation of the windows would improve the integrity of the district in that we have a better window configuration in an otherwise older structure.

On the basis of the foregoing, I would move that we grant the Special Permit on the condition that the work, including the relocation of the windows, proceed in accordance with plans previously identified by me with regard to the granting of the Variance.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted. Good luck.

(Alexander, Hughes, Sullivan, Heuer Scott.)

(10:25 p.m.)

(Sitting Members: Constantine Alexander,
Tim Hughes, Brendan Sullivan, Tad Heuer,

Thomas Scott.)

CONSTANTINE ALEXANDER: I'm going to bring before the Board a case No. 9939 which we previously heard. It involves 150 Erie Street. It was a Comprehensive Permit decision, and as it turns out, the Petitioner I guess was the Cambridge Housing Authority. And they want to modify the plans that we approved, which we conditioned the granting of the Comprehensive Permit on.

And, Sean, could you help me as to what the modification is so I don't have to read this whole letter? I know it has to do with the number of parking spaces or bicycle spaces.

SEAN O'GRADY: My understanding, and I'm going a little bit on memory, is that there was spaces in the garage and there were spaces on the surface, and that when they made their application, they only referred to spaces either in the garage or the surface but

not the other one. And that carried through all the way to the finding which only talked about the one group of those parking spaces. But both groups of those parking spaces were, I believe, discussed and they were certainly in the plans. So it was more of an oversight.

CONSTANTINE ALEXANDER: Yes. And summarizing from the letter your memory is good. Is that Cambridge Housing Authority has pointed out that our decision notes the reduction of the four garage parking spaces. But makes no reference to the full reduction of seven spaces. And I'm quoting from the letter we have from the Cambridge Housing Authority dated August 10th, the Authority says, "We have been advised by our attorney to seek a correction of the BZA decision to confirm that the relief granted on the project's parking requirements was to allow a reduction of four garage spaces and three surface spaces. More specifically we have

been advised that this correction is necessary to obtain the necessary legal opinion required by the project financier. Our attorney has advised that the correction would be akin to correcting a Scribner's error and can be approved without requiring a public hearing or new appeal period. Since the project is funded with funds from the American Recovery and Reinvestment Act, that must be obligated by mid-September. Time is of the essence in resolving this matter."

And the Chair would note that it is under the regulations of the Department of Housing and Community Development. There is a section dealing with changes after the issuance of a Comprehensive Permit. And it says that changes that -- whether the Board deems to be insubstantial can be done without a public hearing or advertisement.

So the Petitioner is before us claiming that, certainly that the relief that they're

seeking which was not addressed by our Board is insubstantial in nature and, therefore, we can do it tonight without a public hearing or advertisement.

Speaking for myself, I believe that's correct. I believe that what we're being asked to do is granted an insubstantial change to the permit that we granted before.

Open for discussion.

BRENDAN SULLIVAN: Well, it was shown on the drawings. The drawings were correct. The decision was insufficient, lacking.

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: Okay, but it was shown on the drawings. It would be different if they didn't show up on the drawings or something. I think that they have a deadline of September 15th, and short of allowing it tonight, they're not going to meet that deadline.

SEAN O'GRADY: No.

CONSTANTINE ALEXANDER: Even if we grant relief, just out of curiosity, if we grant relief tonight, it's going to take a while to write up a decision, file it to the 20 day appeal period. Until that happens, this thing is --

SEAN O'GRADY: This is a beautiful little thing for Comprehensive Permits. As soon as you go boom, it's done.

CONSTANTINE ALEXANDER: There's no appeal period?

SEAN O'GRADY: Nothing.

CONSTANTINE ALEXANDER: Okay. They can do it by September. Anyway, any further comment or discussion?

BRENDAN SULLIVAN: Well, I feel it's okay because it's shown on the plans.

CONSTANTINE ALEXANDER: Good point.

THOMAS SCOTT: The reduction of spaces was discussed at the meeting?

SEAN O'GRADY: Yes, I'm going on memory but I believe both of those things --

CONSTANTINE ALEXANDER: It wasn't the focus of our discussion, but it's on the drawings and it was touched upon in the meeting.

BRENDAN SULLIVAN: It would had to have been in their presentation.

CONSTANTINE ALEXANDER: Tim, any thoughts or problems?

TIM HUGHES: I remember the discussion. I just don't remember the specific numbers but I'm fine.

TAD HEUER: The discussion was that they've done surveys of who's using the parking. That they've counted anywhere from 12 to 15 empty spaces overnight. Meaning that they felt the parking was underutilized in terms of full capacity and, therefore, they could reduce the number of spaces to that parking on-site.

CONSTANTINE ALEXANDER: I'm going to make a motion. I hope I get it right.

The Chair moves that the Comprehensive Permit granted with respect to the property at 150 Erie Street granted on June 25, 2010, be modified to confirm that the Comprehensive Permit that was granted should allow a reduction of the four garage spaces and three surface spaces. In other words, that there was a reduction of seven parking spaces, all of which were consistent with the plans, that were shown to us at the hearing leading to the granting of the Comprehensive Permit.

SEAN O'GRADY: Just ask you to use the magic word substantial change.

CONSTANTINE ALEXANDER:
Insubstantial change. I'm sorry.

We would grant, we make the finding that this change is an insubstantial change -- thank you. And it doesn't require further advertisement or public hearing and

that the effect of it would be immediate.

All those in favor of granting this modification, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Done.

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

(At 10:30 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 24th day of August 2010.

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

My Commission Expires:
April 23, 2015

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