

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, AUGUST 24, 2017

7:00 p.m.

in

Senior Center

831 Massachusetts Avenue

Basement Conference Room

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Vice Chair

Janet Green, Member

Douglas Myers, Member

Alison Hammer, Associate Member

Sisia Daglian, Assistant Commissioner

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PROCEEDINGS

(7:05 p.m.)

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Board of Zoning Appeals to order. At the outset let me read a statement.

After notifying the Chair, any person may make a video or audio recording of our open sessions or may transmit the meeting through any medium, subject to reasonable requirements that the Chair may impose as to the number, placement, and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the Chair will inform other attendees at that meeting that a recording is being made.

And I wish to advise that a recording -- or actually two recordings are being made. Our stenographer tape records the meeting to assist her when she types up the minutes of the meeting. And a citizen of the city is also taping the meeting. His tape recorder is right in front of

me so be advised.

With that, let's turn to the continued cases.

These are cases that started -- or one continued case and one extension actually. The continued case is a case that started at an earlier session and for one reason or another has been continued until this evening.

* * * * *

(7:05 p.m.)

(Sitting Members Case BZA-013173-2017: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case

No. 013173, 273 First Street.

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

(No Response.)

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

The Chair has been advised that the petitioner, maybe there's even a letter here to that effect. Yeah, there is a letter from the petitioner or from Dan -- I'm just going to spell it. B-I-L-E-Z-I-K-I-A-N, the site acquisition specialist for the petitioner. And the letter reads: AT&T, who is the petitioner, was granted a hearing continuance to August 24, 2017, for the referenced BZA application. Unfortunately we need to complete our Planning Board hearing before we can appear before the BZA and there are no available Planning Board dates available between now and the 24th. Therefore, we respectfully request a further continuance to the first available date in September.

What is the first available date?

SISIA DAGLIAN: That is the 14th.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until seven p.m. on September 14th subject to the following conditions:

One, that the petitioner signs a waiver of time for decision. And the petitioner has already done that.

Two, that the posting sign of the petitioner be modified to reflect the new date and the new time and it be maintained for the 14 days required by our Ordinance.

And three, to the extent that the petitioner wishes to modify or submit new dimensional forms, photo simulations, plans or the like, these must be in our files no later than five p.m. on the Monday before the hearing date.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case

continued.

(Alexander, Sullivan, Green, Myers, Hammer.)

* * * * *

(7:05 p.m.)

(Sitting Members Case BZA-010464-2017: Constantine

Alexander, Brendan Sullivan, Janet Green, Douglas Myers,

Alison Hammer.)

CONSTANTINE ALEXANDER: The other case we have is
a -- well, let me call the case first. The Chair will call
case No. 010464, 46 Parker Street.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not.

This is a request for an extension regarding a
Variance we earlier granted to the petitioner, and the

request which -- the request states that -- you gave me the old case I think. I'm looking for the letter from the petitioner. Maybe I missed it. I'm going to try it again.

DOUGLAS MYERS: There was a letter in the file.

CONSTANTINE ALEXANDER: I've seen it. I know. I probably just missed it.

Anyway, can I summarize the letter. Basically the petitioner said that they have run into some construction issues and are not able to complete the construction for which the Variance was granted by the termination date, so they're requesting a six-month extension -- no, they're requesting -- I wish I had the letter.

DOUGLAS MYERS: Six months is correct.

CONSTANTINE ALEXANDER: Six months isn't it? A six-month extension.

Discussion or ready to grant the extension?

JANET GREEN: I'm good.

CONSTANTINE ALEXANDER: The Chair moves that we

grant the requested extension for six months. All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Six in favor. Extension granted.

JOHN HAWKINSON: Mr. Chair, did you just say six in favor?

CONSTANTINE ALEXANDER: I said all in favor.

JOHN HAWKINSON: It sounded like you said six.

JANET GREEN: Six months.

(Alexander, Sullivan, Green, Myers, Hammer.)

* * * * *

(7:15 p.m.)

(Sitting Members Case BZA-013766-2017: Constantine

Alexander, Brendan Sullivan, Janet Green, Douglas Myers,
Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will open up our
regular meeting and call our first case, 582 Franklin
Street. Case No. 013766.

Is there anyone here wishing to be heard on this
matter? Please come forward.

Have a seat and give your name and address to the
stenographer, please.

MARGOT KEMPERS: My name is Margot Kempers. I
live at 582 Franklin Street in Cambridge.

FRED SCHOLZ: And I'm her husband Fred Scholz and
I live at the same address.

CONSTANTINE ALEXANDER: Floor is yours.

FRED SCHOLZ: We are interested in changing the
orientation of a window and replacing it with two small
windows which are shown in the drawings that we've
submitted.

CONSTANTINE ALEXANDER: Right. Pretty simple.

FRED SCHOLZ: I hope it's simple.

CONSTANTINE ALEXANDER: Just more out of
curiosity, why?

FRED SCHOLZ: It's part of a bathroom renovation.

CONSTANTINE ALEXANDER: Okay.

MARGOT KEMPERS: And do you want me to go into
detail?

CONSTANTINE ALEXANDER: No.

FRED SCHOLZ: The current window sits right in
front of the toilet.

CONSTANTINE ALEXANDER: Have you heard at all from
your neighbors who received notice of your petition?

FRED SCHOLZ: We talked to them and they said they
might send a letter to you guys. The people who are
directly affected are Kyle Schveinhaut (phonetic) and his
wife --

CONSTANTINE ALEXANDER: Well, they're not here

tonight. Well, we'll find out when I open it up to public testimony.

Questions from members of the Board?

JANET GREEN: No.

DOUGLAS MYERS: Simply further along those lines, have you heard anything from any of your neighbors or abutters in the nature of an objection?

MARGOT KEMPERS: No.

FRED SCHOLZ: None whatsoever.

MARGOT KEMPERS: A slight bewilderment as to why it might be necessary if we're just making a smaller window and it's one of two windows, but no, no objections, just curiosity about the way the city works.

CONSTANTINE ALEXANDER: Okay.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. As I

mentioned, we don't have any letters in our file so I'll close public testimony.

Ready for a vote?

JANET GREEN: Yes.

CONSTANTINE ALEXANDER: Okay. Before we take the vote. You submitted a plan which shows where those windows are. When we, and I think we will approve, it will be tied to this plan. So this plan has got to be your final plans. If you decide to make some changes in the plan of a material nature, you're going to have to come back before us.

FRED SCHOLZ: Okay.

CONSTANTINE ALEXANDER: You understand that?

FRED SCHOLZ: Yeah.

CONSTANTINE ALEXANDER: All right.

The Chair moves that we make the following findings with regard to the Special Permit being sought:

That the requirements of the Ordinance cannot be met without the Special Permit.

That traffic generated or patterns of access or egress resulting from what is proposed will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of or development of adjacent uses as permitted in the Ordinance will not be adversely affected by what you are proposing.

That no nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the occupant of the -- you folks, or the citizens of the City.

And that in general what is being proposed will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of our Ordinance.

So on the basis of these findings, the Chair moves we grant the Special Permit requested on the condition that the work proceed in accordance with a drawing submitted by the petitioner and initialled by the Chair prepared by Black

River Architects, Inc.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor, Special
Permit granted. Good luck.

(Alexander, Sullivan, Green, Myers, Hammer.)

MARGOT KEMPERS: Thank you.

We have a sign. Do we return that to the city?

FRED SCHOLZ: It has to be posted.

CONSTANTINE ALEXANDER: Legally you're supposed to
maintain that sign until the time for appeal has expired.
The way it works is that after tonight, at some point in the
next several weeks a written decision will be put together.
I will sign it. That will be filed with the city clerk. At
that point the decision becomes final. The decision's not
necessarily final today. We could change our mind if we
wanted to. But once it's filed with the city clerk, then
there are 20 days, and any interested party has 20 days to

file an appeal in the court. If that doesn't happen,
Special Permit granted. That's when the sign should come
down.

FRED SCHOLZ: Okay.

MARGOT KEMPERS: Thank you.

CONSTANTINE ALEXANDER: Sure.

* * * * *

(7:30 p.m.)

(Sitting Members Case BZA-013852-2017: Constantine

Alexander, Brendan Sullivan, Janet Green, Douglas Myers,

Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 013852, 38 Essex Street.

Is there anyone here wishing to be heard on this matter? Please pull up a chair or chairs.

ATTORNEY PETER COHEN: Where would it be appropriate to put boards that we want to use?

CONSTANTINE ALEXANDER: Say it again, please.

UNIDENTIFIED SPEAKER: Just a place where we can see it and the audience can see it and without too much trouble.

CONSTANTINE ALEXANDER: And you may have to pull another chair up. I guess we're okay.

And if anyone in the audience has problems seeing the board, feel free to move around and to get closer to see them.

Name and address, please, for the record.

ATTORNEY PETER COHEN: Good evening, Mr. Chairman,

members of the Board. My name is Peter L. Cohen.

JANET GREEN: Can you hear in the back? Can you speak up just a little bit more? Because we don't have our usual microphones.

ATTORNEY PETER COHEN: I will certainly do my best.

CONSTANTINE ALEXANDER: And please try to speak up as best you can.

ATTORNEY PETER COHEN: I apologize, I have a bit of a voice disorder and if it's not loud enough, please --

CONSTANTINE ALEXANDER: Apology not necessary, we'll just let you know. And, please, anyone in the audience having trouble --

JANET GREEN: Just move forward a little bit if you need to hear more.

CONSTANTINE ALEXANDER: Anyway, go ahead, Mr. Cohen.

ATTORNEY PETER COHEN: Good evening, Mr. Chairman,

members of the Board of appeal. My name is Peter L. Cohen. I live at 11 Donnell Street in Cambridge where I maintain a solo law practice. I appear before you this evening as legal counsel for Elizabeth J. Peoples and her husband James J. Peoples. I'm joined by Heather Hoffman, our title examiner, and Keith Giamportone of Next Phase Studios. Keith is an architect. I had the pleasure of knowing the Peoples family for 24 years, including their son Willy and their daughter Emily who attended schools and many Cambridge youth sports with my other three children. During the time that I've known the Peoples they have owned three different residences, and each one is a little bit of an upgrade to the next. Jeff's an entrepreneur who founded and runs WindowBook, Inc., a local business based in Harvard -- sorry, Central Square which provides gainful employment for Cambridge residents. Jeff walks to work when he can, but like many business people, he travels frequently and frequently needs a car. Liz works for LexisNexis and

often needs a car for her business-related travel as well as personal uses. Their daughter Emily also currently works in Cambridge and lives at home and shares her parents' two cars. And when their son Willy comes home, he also shares in those two cars.

One reason why 38 Essex Street was so attractive to them when they first found it was because of its proximity to Central Square and the opportunity to walk to work whenever possible. Another was because it was a completely rundown single-family house that was first built in about 1870 and in just terrible shape and it was crying out for a restoration from somebody who had a vision. Prior to its purchase, two of the banks that were looking at a loan opportunity declared the condition to be uninhabitable to give you a sense. And actually I personally visited right after the closing and walked in and I just -- it seemed like Armageddon had come and gone and I was interested to see how it would work out.

Despite its poor condition, the Peoples felt a gut rehab that allowed them to build the house according to their tastes and provide them and their family for what, you know, a place that could really be their last home as, you know, adults. And they did a masterful job.

The Peoples are mindful of the fact that Zoning Variances should be sought sparingly and are difficult to obtain. Early on in the renovation process they considered a number of potential changes to the house that would require one or more Variances. It's really a testament to their architect Rick Ames and his colleagues at Next Phase Studios that they were able to achieve their renovation goals moving things around, designing cleverly so that they were able to get what they wanted without a Variance and without having to trouble you folks.

CONSTANTINE ALEXANDER: I'm sorry to interrupt you, but I tend to do that. You say your clients were zoning -- were very much aware of zoning issues when they

undertook the project. Why didn't they or did they consider the parking issues, the issues you're here for us tonight. You know you need a Variance for that, but yet they went ahead nevertheless did the rehab and then now here tonight.

ATTORNEY PETER COHEN: I would just acknowledge that it's a fair point. I don't know exactly the reason, but there are very few houses like this that are available in the Central Square area, and so it would have been better if the lot already had parking on it or could easily have some established that hadn't been and have it conform. But it's what they bought.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY PETER COHEN: Approximately 18 months ago they finished their internal renovation and moved in and started enjoying the fruits of their labors. And not long thereafter they turned their attention to improvements on the outdoors. Liz is an avid gardener. A lot of the lot now is covered by sort of broken up asphalt and isn't very

nice. And they do want to establish parking, and so what they would like to do is have the blessing of the City to establish parking and then to establish that in an attractive way and also then do the external plantings and new fence and all the things that will really make the project seem complete.

So the Peoples' house is on a very small lot. The lot was created by a subdivision done in the 1860s during the Civil War, not anything that they did. We think the house is built about 1870, but not completely sure. But due to the dimensions of the lot, the house and due to its placement on the lot and the fact that it's a corner lot, the proposed parking scheme does not meet the literal requirements of the Zoning Ordinance and thus requires zoning relief in the form of a Variance.

CONSTANTINE ALEXANDER: Actually three Variances to be precise.

ATTORNEY PETER COHEN: Three Variances, thank you.

The petition you have before you today follows more than a year of discussions with interested neighbors on Percy Place and on Essex Street.

CONSTANTINE ALEXANDER: Yeah, would you elaborate on that? I'm very interested in hearing that part of it.

ATTORNEY PETER COHEN: I personally attended at least three meetings to which all interested persons were invited, and I met many of the neighbors, and we've tried in each of these meetings -- at each of these meetings, one of the architects was there, and at least one of the Peoples were there and I was there, and we tried to understand exactly any concerns or objections that they might have and then to be able to come back with reasonable answers to those.

The -- there's, in the application you'll see there's actually two, two versions of what they could potentially receive, and the one that has a B on the end of it is the last one that was responsive to some particular

concerns whereby some of the neighbors expressed a preference that in coming into Percy Place, the one back down in backwards and then that would make it then safer to exit head first again.

That was one of the concerns mentioned. Not every neighbor was at every meeting. Some -- but we tried to encourage people to come. And also there were opportunities for meetings outside of the formal ones.

I think that the proposal that you have before you is now a better proposal for those discussions, but there's only so much you can do, tweaking one way -- we think what we came up with is a good plan.

DOUGLAS MYERS: In the course of those discussions was reduction of the application to one parking place ever discussed openly with and in between discussions between the applicant and the neighbors?

ATTORNEY PETER COHEN: I can't honestly say that anybody ever suggested it. Nobody ever said we're even

against parking altogether. There were expressions of concern. We tried whenever possible when something was concerned, to address it head on. Nobody ever said we could support one but not two. It was always let's see, let's have more meetings, and then we'd schedule meetings and people wouldn't necessarily come to the meetings.

CONSTANTINE ALEXANDER: And am I correct that even if you go to one parking space, you still need zoning relief, a Variance?

ATTORNEY PETER COHEN: That is true. That's correct. And the Zoning Code does --

KEITH GIAMPORTONE: Could I just -- I would point out that there is already an existing asphalt driveway there that had been parked in by a previous owner. So there's already one that's been there forever. And this Variance is asking for a second one as well.

ALISON HAMMER: Do you have any Affidavits or --

JANET GREEN: And the existing is which -- oh, I'm

sorry, Alison.

CONSTANTINE ALEXANDER: One at a time. Go ahead,
Alison.

ALISON HAMMER: Do you have any Affidavits to
support that?

KEITH GIAMPORTONE: I don't. I'm just saying that
there's an existing asphalt driveway that's there.

ALISON HAMMER: Well, there's an existing asphalt
area. It doesn't mean it's a driveway.

KEITH GIAMPORTONE: Sure.

CONSTANTINE ALEXANDER: Is there a curb cut?

KEITH GIAMPORTONE: Yes. Where that is, I'll find
it.

ATTORNEY PETER COHEN: If I could answer that
question in my own way. I would say there's -- we don't
know that the direct --

KEITH GIAMPORTONE: No.

ATTORNEY PETER COHEN: -- predecessor ever parked

there systematically. There's -- my interpretation just to the sort of archaeology of it is that, probably somebody parked there at some point and they may have stopped parking there. From what I understand the previous owner liked to park across the street. It's, it's very unclear.

CONSTANTINE ALEXANDER: Did you find is there a curb cut?

KEITH GIAMPORTONE: There is not a curb cut.

CONSTANTINE ALEXANDER: Not?

KEITH GIAMPORTONE: There is not, but there is asphalt there.

ATTORNEY PETER COHEN: I should probably just mention, it's a private way. And one of the first questions we came into was the question of curb cuts and who, who would issue them and under what circumstance? And we were -- we were given to understand that on a private way a curb cut is not required. A curb cut permission from the city is not required rather. It's just considered to be a

private matter.

It's also worth noting that the net, that the property directly next-door, I believe it's One Percy Place, had a curb cut and that property actually had come before this Board I think about seven years ago and gotten a Variance, not for parking but for other things. And that they then removed the curb cut, the curb and I think put it in the backyard or something and have changed everything and have been parking there rather systematically ever since.

It's worth noting that probably if you walked up and down the street and looked carefully at all of the parking arrangements, you probably discover that half of them are half on the street and half on the property. That the ones that are parked in driveways are all in somebody's front yard. So one of the things we're saying is the result -- if we get what's applied for here, it's not gonna result in any great change in the pattern. It really will fit in very nicely with the conditions that were basically

handed to us from our ancestors in the 1860s.

CONSTANTINE ALEXANDER: Excuse me, Janet, you had a question?

JANET GREEN: No, I'm okay.

CONSTANTINE ALEXANDER: You're okay?

JANET GREEN: Yeah, thanks.

CONSTANTINE ALEXANDER: I want to go back to your neighborhood meetings and who attended and what came out of these meetings. And in particular -- to get to the chase, you know there's some opposition to your request for a Variance. Can you tell us about whether those, the petitioners -- not the petitioners, the opponents attended the meeting? I'll ask them anyway, but I would like to hear from you first.

ATTORNEY PETER COHEN: Sure.

Mr. Jeffrey Keating who is in in the audience with his counsel did attend all of the meetings that I attended. I believe Arlene -- what is Arlene's name?

UNIDENTIFIED MEMBER FROM THE AUDIENCE: Henry.

ATTORNEY PETER COHEN: Henry. I believe she attended at least the first meeting. I know she attended one meeting and then not the ones I was at subsequently, and I was disappointed that she didn't come. But her concerns were actually the easiest to understand and also the easiest to address.

I should just say in passing that one thing that was unusual in this whole thing is that there was an assertion made by a couple of people to the effect that Percy Place is somehow a private association, that there's some agreement that -- and that there are certain things in the deeds that provide parking rights to the people who have Percy Place addresses. Now the first meeting that I attended was -- I was had about an hour's notice so I didn't have any time to do any title work and I hadn't known about this claim until I attended the meeting. However, this is where Heather Hoffman came in. I asked her to examine the

titles of all the relevant properties. And it's my understanding that there was nothing in the chain of title that gives any special rights to anybody. That each person who has frontage on the street has a right to pass and repass. They probably have a right to park in front of their own home as long as they're not blocking anybody, but there's no, there's nothing in the chain of title that specifies anything or creates any associations or deals with any maintenance things. And, you know, I know that I mentioned in some of these meetings, well, if there is something, show us what you think there is. And so far I have seen nothing.

BRENDAN SULLIVAN: Peter, if I can interrupt you. Either you or Heather can answer this. What is the legal status of a private way? If you can go back to -- I remember my sister lives on a private way, and at one point the City never maintained it, the City never plowed it, you know, it was up to you people. It was like, again, like an

association as you say. Even though it was less legal documents as it was sort of a gentleman's/gentle lady's agreement to do this, and then you used to own out to the middle of the street, directly in front of your house. Now I don't know if that has gone by the boards or how -- what is the legal status vis-a-vis the City now with private ways?

HEATHER HOFFMAN: Well, the -- the law used to pay a whole lot of attention to how you described the meets and bounds of the lot. So the question was whether you said "by the line of the way" or "by the way". "By the line of the way" meant you had no title in the way itself. But "by the way" meant that you owned out to the middle. And in fact these deeds, the first deeds of each of these parcels say "by". And in fact they describe it as a common passageway in some of them. So, then in, you know, about 40 years ago the Commonwealth passed a statute that's commonly referred to as the Derelict Fee Statute that essentially codified

because they were tired of having ways that were by the line of. So everybody said, not my problem, I don't own this way. So the Commonwealth said yes, you do, out to the middle. And there are some nuances that don't apply in this situation. So if you really want a greater disquisition, I could do it outside of the hearing. But in this case, this is the original subdivision plan. So you can see that the way runs down the middle.

BRENDAN SULLIVAN: All right.

HEATHER HOFFMAN: And so everyone fronting to the way owns to the middle of it with the same rights to use it as everybody else has. The most restrictive version of that that I know of is that sometimes, and you'll get this sometimes in subdivisions where they didn't bother to pave all of the streets, they'll say well, really your rights are to get from your place out to a public way.

DOUGLAS MYERS: So applying what you've said exactly then to the property 38 Essex Street, what is that

property's present right to park on Percy Place?

HEATHER HOFFMAN: The same as everybody else.

DOUGLAS MYERS: On the side, in other words, where the curb is, what exactly are the rights of that property to park on Percy Place? And I mean to say where the curb is now.

HEATHER HOFFMAN: Yes, everybody -- nobody has more rights than anyone else and nobody has fewer rights than anyone else except that you are not allowed to block somebody else's driveway for very obvious reasons. And you have to leave enough space for everybody to get in and out. The city standards for emergency vehicles, and they don't -- they have a list of private ways that they have announced that they care about this on, but the general rule is you have to leave ten feet free so that the ambulance and the fire engine can get in there.

DOUGLAS MYERS: Broadly speaking, if a car were parked -- if a car owned by someone at 38 Essex Street were

parked along the curb on Percy Place, would there be adequate freeboard left on the street for vehicles to pass?

HEATHER HOFFMAN: Well, the plan sets it out as 20 feet wide. The people who have actually measured things ought to answer that question and not me.

JANET GREEN: Can I ask a question, Heather, before you move to that?

HEATHER HOFFMAN: Yeah.

JANET GREEN: And that is the address that we're looking at is 38 Essex Street?

HEATHER HOFFMAN: Yes.

JANET GREEN: But that's considered part of Percy?

CONSTANTINE ALEXANDER: It's a corner lot.

HEATHER HOFFMAN: Yes, it's this one right here.

JANET GREEN: Even though it has the address of Essex Street it's part of the Percy Way group of housing?

HEATHER HOFFMAN: Percy -- and in fact, these corner lots because their long side is on Essex Street, they

actually have considerable frontage. Now, it's a little hard to see because as happened a whole lot with plans in, oh, say the 19th century, once they got around to conveying them, they said well, yes, we drew it and, yes, we paid to record it, but we've decided that that's not really what we want to sell. So they redescribe it especially on our side of the street. So it's hard to see -- Peter marked this up nicely in color, but I don't have a color printer to, so that you can see. But this is us here. And, you know, I'm happy to pass it around if you like.

CONSTANTINE ALEXANDER: Should we, and underscore the word should, should we grant the relief you're seeking tonight, will that improve the ability of the other residents of the street to go in and out, I mean by taking cars off the street and putting them in this driveway you're proposing?

ATTORNEY PETER COHEN: I would say it certainly wouldn't adversely affect anybody on the street.

CONSTANTINE ALEXANDER: I would think that's right.

ATTORNEY PETER COHEN: We think it would actually improve vehicular -- emergency access and that other things that have already been done by the people have already improved the emergency access. I think -- I believe ten feet is the minimum standard, and I believe they'll have more than that with what we're describing. And having the Peoples' cars wholly on their own lot can only help that.

To the question that you propose, Mr. Myers, if you had cars parked on both sides of the street where they were, I don't think there would be enough space to squeeze, certainly that would be a problem. And, you know, so there's a sort of equitable question in there somewhere, why was parking established on one side and not -- where that isn't, not on the other? My answer is that the tree that's located at 40 Essex explains part of that. It's very nice, it's probably a hundred year old tree, it bumps out, it

makes sense to sort of squeeze in behind it.

DOUGLAS MYERS: So in other words, again, on this direct point, you would be saying that even you believe there would be adequate passageway left in the middle of Percy Place for cars to get by even if in general, most cars were parked on the curb along 38 Essex Street, but you're saying that if a car were to straddle a curb, over the curb and into the side yard of 38 Essex Street and be partially parked on Percy Place, then there would almost certainly be enough freeway for people to pass on Percy Place, is that a corollary of your position?

ATTORNEY PETER COHEN: I want to make sure that I understand your question correctly. I would put it this way: On plan -- the proposed architectural site plan option 2 which is A002B, which is I think everybody's preferred plan, it shows two cars both wholly within the Peoples' lot line, and then a couple of feet more to you even get to the street. And right now there's enough space for emergency

vehicles to go down Percy Place. So, if you were to move the car, however, the cars towards the street, closer to the street, the more of a problem it's going to be.

DOUGLAS MYERS: I was going exactly in the opposite direction. I was saying that if you are saying that if you park wholly in the street, wholly on Percy Place, that is not touch the curb at all, you're saying there's still enough --

ATTORNEY PETER COHEN: No I'm saying the opposite.

DOUGLAS MYERS: There's not enough if you park wholly on the street?

KEITH GIAMPORTONE: Correct.

ATTORNEY PETER COHEN: That's one of the reasons for --

DOUGLAS MYERS: What about if you straddled over the existing curb? I'm really trying to understand exactly where you stand under present law before I assess whether or not a Variance is required. That's really what I'm trying

to do.

KEITH GIAMPORTONE: So, can I show you --

JANET GREEN: Yeah.

CONSTANTINE ALEXANDER: By all means.

DOUGLAS MYERS: Because also further you mentioned that some people straddled further down Percy Place everyday.

ATTORNEY PETER COHEN: That's right.

KEITH GIAMPORTONE: I want to see if this is to scale as well. But I can point there. But this one's to scale and I just measured all of these things so I can tell you.

Right now if there's a car here, there's enough for emergency vehicles to get -- sorry. If there's a car parked here in this, where it's already set back for parking, then you can't park fully outside of the curb there because that would block egress.

If there's a car parked here, you might be able

to, and I measured it quickly, stick out two feet or two-and-a-half feet to have ten feet left, which would be a tight squeeze. If you park just inside the curb but over your property line, that would leave adequate space, which as you can see this car does here and this car does here that are already parked on the street. We chose to push the car further away to be off the property line so that even when people open doors, it's not swinging it out into the street. So at this point we're -- it's narrowest because of the tree, nobody can park, because you can only fit an emergency vehicle. There's a couple of feet left over, so it's about 14-and-a-half feet.

Here it's 19-and-a-half feet, so if you park one car, you can get emergency lane and you could hang over but just barely. So those are the two conditions.

Has that answered --

DOUGLAS MYERS: It does. Thank you very much.

ATTORNEY PETER COHEN: If I could just say one

thing in connection with this whole thing, you know, history has given us a little bit of a mess. And what we would hope is that after receiving appropriate zoning relief, the Peoples could then work with the neighbors to establish some kind of long-term agreement about what the parking and other maintenance issues -- how those --

CONSTANTINE ALEXANDER: Usually that would occur, though, before we take action. We would be part of the support of a case why we should grant you the relief. And so I'm a little troubled by that. But I also want to --

ATTORNEY PETER COHEN: I can explain it though.

CONSTANTINE ALEXANDER: I'm sorry?

ATTORNEY PETER COHEN: I could explain.

CONSTANTINE ALEXANDER: And then I have a question I want to pursue.

ATTORNEY PETER COHEN: We have suggested such a thing, but nobody has shown any interest in it. I don't think there's a lot of maintenance issues to discuss, but

we're happy to discuss whatever there is. We would have been very pleased to come with you with some prepackaged deal that ties it up.

CONSTANTINE ALEXANDER: Right.

ATTORNEY PETER COHEN: But that has not been the response of the two people who are opposing this.

One of the beneficiaries of such an agreement that would be recorded in the Registry of Deeds is it would make jobs of people like Heather much easier because then subsequent people who buy or refinance, there would be some kind of agreement that just lays it all out.

CONSTANTINE ALEXANDER: Right.

ATTORNEY PETER COHEN: And that has been done in other communities and places and it doesn't have to be done, but it seems like a, it would be a good thing to do.

CONSTANTINE ALEXANDER: You just touched on something that I'm -- the question that I want to get at. The two persons who are apparently opposed to the relief

you're seeking tonight, have they expressed to you why they are opposed to the relief? They're going to tell us, I'm sure. I'm going to ask in any event. I would like to hear from you, what is your belief as to why they are opposed and why you can't meet their objections, satisfy them?

ATTORNEY PETER COHEN: Well, the question about emergency vehicular thing is very -- access is very clear, and we have a clear answer to it, which is that there's nothing in this proposal that would make anything worse, and we think it arguably might make it better. And in the letter that was sent to us on Monday and sent to you, there's a mention of, quote, maintenance issues but it doesn't describe what they are. To the extent that there's any disruption to the road, the process of moving things around, the Peoples will, you know, fix anything that needs to be fixed in connection with that. There's a mention of, quote, legal ramifications, but I don't -- nothing is explained as to what they mean.

CONSTANTINE ALEXANDER: What happened at the hearings, though? What was said orally at the hearings by these persons as to the relief you're seeking?

ATTORNEY PETER COHEN: No specific objection has been made that I'm aware of other than there was some discussion of what would be safest for kids in the street. But then that, that was something that was addressed in the revamped proposal, that we think that moving, having cars back in probably is better. So I mean, there's been no resistance to any specific proposals. There just haven't been any --

CONSTANTINE ALEXANDER: No huzzahs from the people in the audience? We love what you're doing. That's what you're saying? Okay.

ATTORNEY PETER COHEN: One thing that's clear I can tell you the business about easing parking congestion on Essex Street is very real. And a good example of that was at the last meeting, which was about a week ago, I was

supposed to be there and I was driving there and I was a couple of minutes late, and I saw people on the walk, and usually I've been able to park but there was no parking. I went all the way around and I was about to go all the way around again. And one of the Peoples had to get up and move their car so I could park at the end of the street so I could come to the meeting. You know, the parking convenience thing it doesn't just affect them, it affects their family, and visitors. And it's not just personal to them, it's something that anybody who would live in that house, you know, as a tenant or a subsequent owner would have the same issues. People just, when they have nice houses, they like to have some reasonable parking. And we think that this particular parking arrangement where you can have an electric car is a particularly good thing. You know, the City has a goal of electric cars in our future, and so we think it's a good thing. I don't want to go on too long.

CONSTANTINE ALEXANDER: Could you turn to the three requirements for a Variance and why you believe your client satisfies those?

ATTORNEY PETER COHEN: Yeah, I think that in the, I think in the -- would you like me to read the application?

CONSTANTINE ALEXANDER: No. We've read them. Summarize them, maybe you sharpen your thoughts since you've seen the letter from the persons who are opposed to the relief you're seeking.

ATTORNEY PETER COHEN: Yeah, I believe it's a kind of a hardship for the particular people, the Peoples family and also for the property itself. One of the points that's made in the letter opposing it is, well, it can't just be something that's perfect, it's completely subjective. Well, it's not completely subjective. Any person who would live in this house has a problem that runs with the land, if you will, and establishing parking and it will help -- will also be a solution.

CONSTANTINE ALEXANDER: People have lived in this house since the 1860s, now cars haven't been around that long, but people who lived in the house presumably had cars and didn't need to have off-street parking.

ATTORNEY PETER COHEN: So one of the -- so one of the things I mention in the application is how -- helping minimize neighborhood stress would be an incidental benefit of this whole thing. One of the things that we've learned in this whole thing is that there hasn't always been agreement about who can park in the various parking places on Percy Place. So Mr. Jonathan King who is here and who is interested in giving a statement can talk about that. Because in front of his house now there are in fact two parking places. The previous owner, Mr. Hilliard (phonetic) I believe, sometimes parked there, other people on the street told him he shouldn't park there, that they had rights to park there. They told Mr. King he didn't have rights to park there. That there was some mysterious

agreement that nobody could ever produce. There's been a lot of -- this is one of the reasons that I think this is a problem that could be solved. If their application fails, you know, the aggravating, the aggravation about who can park where, and especially on the King's property may only intensify.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY PETER COHEN: I'm tempted to ask you whether it would be appropriate to let some of the witnesses speak and then.

CONSTANTINE ALEXANDER: At some point. First you put your case on and then we'll take comments from the audience. So why don't you turn to the second condition, why you believe you satisfy them, your client satisfies them.

ATTORNEY PETER COHEN: Yeah. Well, we think that there are -- that their case, their property really is uniquely affected by this tree that's across the way, the

tree that's at 40 Essex Street. Everybody -- the tree -- everybody sees it, everybody benefits, but because it causes this -- it's placed in the place that causes this bump out, it probably is responsible for the history of why there's no parking on that side of the street but there is on the other.

KEITH GIAMPORTONE: You can see it on the large board there.

CONSTANTINE ALEXANDER: Yeah, but what I'm looking for is I wanted to get the exact wording of the statute. The second condition is the hardship that you've already described, is owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting those. I'm not sure how the tree fits into those soil conditions, shape, or topography.

ATTORNEY PETER COHEN: Well, it's in the common way. The common, the private way is shared by everybody. And I think that this -- I think it's fair to characterize

this as a topography question where it's directly abutting.

CONSTANTINE ALEXANDER: Okay.

And move on to the third, the third condition for granting.

ATTORNEY PETER COHEN: Yeah. I think this is easy. There's no -- I can't discern any detriment to the public much less a substantial detriment to the public by the granting of the requested relief. And there's substantial pluses to granting it. As of four o'clock in the afternoon there were at least four letters in the file from people who live very nearby saying that this Peoples' application makes sense. It would provide parking relief for those on Essex Street, and that it would be a good thing, you know, and you know, each letter is very individual.

CONSTANTINE ALEXANDER: As I said, they'll be read into the file, into our record in due course.

ATTORNEY PETER COHEN: And then some of the

writers s of those letters are here. And Mr. King has not submitted a letter but I know he wants to make a statement.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

BRENDAN SULLIVAN: Peter, where are the Peoples, how many cars do they have now, one, two?

ATTORNEY PETER COHEN: Right now I believe they own two.

BRENDAN SULLIVAN: Two. Where are they parking now?

ATTORNEY PETER COHEN: It's my understanding that they park on Essex Street to the extent possible.

BRENDAN SULLIVAN: In front of the house or wherever they could find a spot?

ATTORNEY PETER COHEN: Yeah.

BRENDAN SULLIVAN: And so also on Percy?

ATTORNEY PETER COHEN: No, they have not been parking on Percy Place because they've been told they should

not park on their property.

BRENDAN SULLIVAN: All right. So they're riding around trying to find two places to park?

ATTORNEY PETER COHEN: Yes.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Any other questions from members of the Board at this stage?

JANET GREEN: I had a question about whether all the other people on Percy Place park on -- in the street right in front of their house or do they have other parking situations in the neighborhood?

ATTORNEY PETER COHEN: I can't -- I don't know everybody's individual situation. I can only speak to what I know about Percy Place. I know that Josh Flex (phonetic) who lives at One Percy Place was parking one of his cars on Jonathan King's property at least until recently. I heard that as of this afternoon maybe Mr. Keating is parking his car there. I don't know why that should be, but whether

they have other parking on Essex Street or other places I don't know.

JANET GREEN: And that's a street parking place or that's an actual off the street parking place?

ATTORNEY PETER COHEN: It's on the street but right --

JANET GREEN: It's on the street, maybe there are two and maybe there isn't?

ATTORNEY PETER COHEN: It's right in front of 40 --

JANET GREEN: Okay.

ATTORNEY PETER COHEN: -- 40 Essex Street which is on the corner with Percy Place.

JANET GREEN: Right, thanks.

HEATHER HOFFMAN: I believe there's -- that board there shows existing parking patterns.

CONSTANTINE ALEXANDER: Right.

ATTORNEY PETER COHEN: I would also say that, you

know, I've been there personally many times and each time I go I take pictures, and each time the parking pattern is a little bit different, I believe that the plans that are there are generally accurate in a kind of average way, and I -- and my own calculation was that, you know, roughly all the other, on an average there was about two parking places as actually practiced.

DOUGLAS MYERS: To the best of your knowledge have the owners or occupants of 40 Essex Street ever evidenced any interest in parking on Percy Place?

ATTORNEY PETER COHEN: Well, again, Mr. King who lives there parks one of his cars there now, and he can explain why he doesn't park another one there when he testifies. I think he's trying to be neighborly, but he can --

DOUGLAS MYERS: But he owns or lives at 40 Essex Street?

ATTORNEY PETER COHEN: Yes.

DOUGLAS MYERS: Okay.

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

(No Response.)

CONSTANTINE ALEXANDER: I'm going to open the matter up to public testimony. I know we have a number of people here in the audience who are interested in this case. I'm going to start with those who are in support of the petition. Sir.

JONATHAN KING: Good evening. My name is Jonathan King. I live at 40 Essex Street, which is on Percy Place and Essex Street. My wife, two sons, and I have lived there for 28 years. We are immediately across from 38 Essex Street and we are the most impacted by them having two cars there. Nonetheless, we fully support their proposal to generate two parking spots on their rear and side lots as in the drawing.

Percy Place is too narrow for cars to be parked on

both sides. Before we moved in, a collective decision had been made that parking would be on the north side. There's no written documents, but no one has ever objected to that because it's so obvious that two cars would absolutely block parking. So as a result, those people on the south side, like 38 Essex and One Percy Place, they are deprived of having a spot on Percy Place. And we are lucky, we have the longest frontage, and I believe that we have two legal parking spots. And, yes, the old former resident of 38 Essex Street Bob Hilliard, he used to park completely illegally on the curb obstructing actually. And then finally at some point after many years I wrote to him and I said it's illegal, you can't do this. It doesn't have anything to do with personal relationships on Percy Place, it's illegal according to the city law.

All right, so when Josh Flax and Kate Anderson moved into One Percy Place which is right before 38 Essex, they paved over their front yard and side yard and they have

two parking spots there. We did not object to that.

Apparently this Board didn't either because informally in these meetings they said that they got your approval. I think they didn't ask them. I don't know what that history is.

CONSTANTINE ALEXANDER: My guess is that it never came before the Board.

JONATHAN KING: Okay. We did not object to them parking two cars on their property. Given that they're parking two cars on their property right adjacent to 38 Essex Street seems to me only fair that the Peoples be able to park two cars on their property, which as we've said, doesn't obstruct ambulances and fire engines going in. Now, it makes life a little more difficult for those of us like my wife and I who park on Essex Street because when they go in and out, we go in and out, we're going to have to be more careful. So be it, right? It's the middle of Cambridge. So we think that they should be allowed permission.

Now I want to note that Essex Street is very much in the center of Central Square. Intense parking pressure from shoppers, commuters, the charter school, the church, as well as the residents. We have an Essex Street Neighborhood Association, the issue of parking is a constant issue. The transitory parking parents from the charter school pulling into a spot to wait to pick up their kids.

CONSTANTINE ALEXANDER: Has the neighborhood association discussed this very case?

JONATHAN KING: The neighborhood association has not discussed this because this -- originally because the Percy Place addresses claim that that was a separate kind of domicile. And even though I was pretty sure, because when we bought the house I looked at the deeds, too, and it looked to me like, now everybody on Percy Place has equal rights. But Essex Street neighbors have not formally gotten involved.

ATTORNEY PETER COHEN: May I clarify something.

At the last meeting a notice was sent around --

JONATHAN KING: That's right.

ATTORNEY PETER COHEN: So everybody in on the mailing list for the Essex Street was invited.

CONSTANTINE ALEXANDER: I understand that. Were invited. I was just wondering if it was a formal decision by the association and it wasn't.

JONATHAN KING: No, we didn't take it up.

CONSTANTINE ALEXANDER: Okay.

JONATHAN KING: So, I think that --

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

DOUGLAS MYERS: May I ask Mr. King one question?

CONSTANTINE ALEXANDER: Go ahead, of course.

DOUGLAS MYERS: Use you as a kind of a Historical resource. I had a question about the curb alongside 38 Essex on Percy Place, you referred to it. Based on my observation that's the only curb on Percy Place?

JONATHAN KING: No, both sides of Percy Place.

The curb comes in on our side a little passed the tree.

DOUGLAS MYERS: Passed the tree.

JONATHAN KING: And then cuts in and then on the other side. I have not been able, and we did not engage the legal profession, I personally have not been able to determine the technical legal status of that curb which continues in the public sidewalk whether that is public way or not, but we treat it as a curb, you shouldn't be parking over there. But the other problem is that if you park on that curb, as I said, the car sticks out. It's much harder to get in and out.

DOUGLAS MYERS: Thank you.

CONSTANTINE ALEXANDER: Okay, thank you again.

Anyone else wishing to speak in favor of -- I'll see him.

Ma'am, you can come forward, please.

ELIZABETH PEOPLES: Thanks. Hi.

CONSTANTINE ALEXANDER: Good evening.

ELIZABETH PEOPLES: So hello, my name is Elizabeth Peoples, and I'm a joint owner with my husband Jeffrey Peoples of 38 Essex Street, Cambridge. And over the past year I have organized meetings with the neighbors on Percy Place to show them our plans to both landscape and create off-street parking at 38 Essex Street. In addition to working with our Percy Street neighbors, I've also reached out to the Essex Street neighbors to share our plans, to create off-street parking, and landscape the property to complete our home at 38 Essex Street. In the meetings with neighbors on Percy Place this past year to share our parking and landscaping plan, I've listened to their concerns, especially being mindful of the activity of young children on Percy Place. As although my children are now older, they too played in and around our street and our Cambridge home. I'm an avid gardener and I've been giving a lot of thought to the plantings that I will put in, such as bushes,

flowering trees to create a greener space on the street as well as replace and improve the existing chain link fence to make it more attractive. And in seeking to create off-street parking we also just do have a place for family and friends to visit who are not Cambridge residents.

So in closing I just want to thank you for your time and attention to -- that you've devoted to our case.

CONSTANTINE ALEXANDER: Thank you.

ELIZABETH PEOPLES: You're welcome.

CONSTANTINE ALEXANDER: Anyone else who wishes to speak in favor? Sir.

JAMES JEFFREY PEOPLES: My name is James Jeffrey Peoples, a joint owner with my wife Elizabeth Peoples of 38 Essex Street in Cambridge, Mass. and I support the Variance.

CONSTANTINE ALEXANDER: I should hope so. If not, we can get rid of this case very quickly.

JAMES JEFFREY PEOPLES: It really does gives more ability to us. You know, I'm socially conscious and I like

to -- I've already actually put a deposit on an electric car. It reduces the demand for the very in demand Essex and all the other Harvard Street and surrounding street, and it really makes a quality of life better. You know, my father has had multiple surgeries and, you know, he would like to come to visit, and it's very much something that's not as easy for him now. And, you know, one of the things is it's -- I would like to just clarify that the rights of Percy Place are to the abutters, not because -- the postal address. Now my clients produce more than half of all American mail. I mean, I know postal very, very well and, you know, if it was just a matter of me getting a Percy address, that's something, you know, I could do. You know, I own also 300 Franklin which is the same as 18 Pleasant, and we just applied and we got 300 Franklin from Eduardo Catalano (phonetic). And so it's -- part of it is just to make it so that the abutters, you know, the people that have property have the same rights as the people just because of

the postal address. And, you know, I think that we've already improved the emergency access. You had asked earlier about, you know, what Arlene Henry had asked, and she, you know, just by us lowering the curb cut, which we haven't done yet, but we will. You know, we intend to lower the whole curb cut so that any vehicle going down doesn't get damaged by the side of the vehicle. And the -- that whole area, we removed the tree that was mostly on our property but, you know, also expanded into the joint public way. And that also makes it so that there's, there's more access. And, you know, I just think that it's the right thing to do. Just because you have an Essex Street address doesn't make you a lesser citizen, you know?

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishing to speak in favor? Ma'am, please come forward.

EMILY PEOPLES: Hi, I'm Emily Peoples, daughter of Liz and Jeff.

CONSTANTINE ALEXANDER: Okay. Please, I don't mean to cut you off, but we have a long evening and we got to address the legal issues here and if you're just going to repeat what your mom and dad said, thank you anyway.

EMILY PEOPLES: No. I just -- I wanted to point out that the actual parking how it goes on Percy Place is very unique and also often it does not pan out the way that it is stated to pan out. Many times people park mostly further back, they park mostly on the front, but the cars would come out to the side and we just wanted to make it so that we could put a driveway in that would fully have our cars. Yeah, that's slightly different but, you know.

CONSTANTINE ALEXANDER: Thank you. Anyone else wishing to be speak in favor?

(No Response.)

CONSTANTINE ALEXANDER: Apparently none.

I'll now turn to -- sir.

KEITH GIAMPORTONE: IF I could, I just wanted to

note, aside from working on this project in the architecture firm, I lived for two years at 34 Essex Street.

CONSTANTINE ALEXANDER: Oh, okay.

KEITH GIAMPORTONE: 34 Essex didn't have any parking and every single day I had to find a parking spot on Essex Street. And many times I would have to go around the block multiple times to even get on Essex, and even then sometimes I'd have to park on Harvard or the Norfolk adjacent streets and so on. And I can tell you that anything that would get additional cars from not joining that, and I'll keep it short just for that.

CONSTANTINE ALEXANDER: Okay, thank you.

And now we'll take comments from people who are opposed to the relief being sought.

Anyone wishing to be heard? Mr. Heuer.

ATTORNEY TAD HEUER: Good evening, Mr. Chairman, Members of the Board. Tad Heuer from Foley Hoag on behalf of Jeffrey Keating and Arlene Henry, the owners of Three and

Four Percy Place. The Board has in its file correspondence from Mr. Keating via me. I am happy to go over that at some level.

CONSTANTINE ALEXANDER: Do it as you wish. We need to know why? And I really want to -- speaking for myself, I want to know why, not just legally why we shouldn't grant relief, but what's going on here? To be blunt, why are you or why you -- not you, your client, opposed to this relief given what seems to be a lot of support in the neighborhood. I just want to understand.

ATTORNEY TAD HEUER: Sure, I'm happy to have my client speak. He's probably best to do so.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY TAD HEUER: But I would point out, as the Board well knows, whether or not there is neighborhood comity or not is not a condition of the statute nor is it a basis on which the Board grants or denies a Variance.

CONSTANTINE ALEXANDER: Absolutely.

ATTORNEY TAD HEUER: The Board is here to make a legal determination based on the provisions of Chapter 40-A in the City's Ordinance.

CONSTANTINE ALEXANDER: We do. But our Board as you know, having been a member of this Board, is that Cambridge is a complicated city and we tend to be -- we look at the Zoning Ordinance and we don't -- we don't apply it like we do like a suburban Zoning Board would do it. We listen to the neighbors. We look at the situation of the city, and we have to follow the law, but there's some rubber in the law, and we do the best we can. So I do think it's important for us to understand not only, we know the law, but some of what's going on behind the law to get a better feel for what's -- why we should grant relief. That's not the only reason we'd grant relief. I want to make it very clear. We do have to return to the law.

ATTORNEY TAD HEUER: Right. I think it's important to start with the law because that's the charge of

the Board.

CONSTANTINE ALEXANDER: Right, exactly.

ATTORNEY TAD HEUER: And as the Board knows there are three large conditions in the Ordinance, actually in the State Statute, the Ordinance is always subordinate to the statute.

There needs to be a substantial hardship.

Needs to be owing to the soil conditions, the shape or the topography of the lot or the structures they're on especially affecting the petitioner and not affecting the zoning district in general. And, again, that notion of the zoning district in general is an important one.

And it has to be not substantially detrimental to or derogating from the intent and purpose of the Ordinance.

CONSTANTINE ALEXANDER: Right.

ATTORNEY TAD HEUER: As we've stated in our letter, you need to reach all three of those. It's not a multiple choice. We don't believe that the petitioners have

achieved their obligations legally on any of those.

On the notion of substantial hardship, there are four substantial hardships that the petitioners have put forth in their petition.

The first one is they'd like to park an electric vehicle. As we've pointed out, personal hardships are simply not a basis for, and again as we noted in our letter, all of these are supported by the Courts in Massachusetts which tend to view Variances as indeed granted sparingly. I remember from my time on this Board that we grant Variance perhaps more liberally than many jurisdictions and perhaps rightfully so given the preexisting nonconforming nature of many of the parcels and structures the in the city. But nonetheless, the courts in the Commonwealth have not always been as forgiving.

First condition has to be one that is not a personal hardship. In other words, it has to be something that, as Mr. Cohen notes, runs with the land. Owning an

electric car and being able to plug in your electric car with proximity to your structure is essentially the paradigmatic personal hardship. It's not something everyone in this structure would want to have or need to have.

Second, they noted that they have no, they like to have conventional parking. As the Chair has mentioned earlier, they were aware of the zoning. Certainly you were entitled to seek a Variance even if you were aware of the zoning conditions, but they purchased the property knowing full well that it didn't have parking. And indeed that's impounded in the price. When you are purchasing a property without parking in the middle of Cambridge, you're probably paying less for it than a property with parking. That would lead me to the third point. But to stay on the second point about the notion of needing conventional parking, it needs to be a problem, the hardship, that is not one that is generally shared in the zoning district. It's not about who your immediate abutters are. Whether your immediate

abutters have or don't have off-street parking is not a relevant legal condition for the persons of this Board's analysis. The relevance is whether it's prevalent in the zoning district. And as we've heard repeatedly from Mr. Cohen, many residents on Essex Street do not have off-street parking. It is a prevalent condition that affects many structures in this district, not just a few. Therefore, it just cannot as a matter of law, a condition that it creates a substantial hardship.

The third is that they might see a diminished property value. There are numerous cases. We've cited them in our memorandum. It's not really up to debate --

CONSTANTINE ALEXANDER: Right.

ATTORNEY TAD HEUER: -- that any more that diminution of property value, potential of loss of value on resale is simply not a substantial hardship.

And the last is neighborhood comity, even the petitioner's can see that that's not really a legal

standard, it's something that's more for the neighbors to work out amongst themselves. Having conceded it themselves, it can't be a substantial hardship.

Those are the four. None of those four meet the legal standards. Even if they did, we have to move to the hardship being one owing to one of the three narrow conditions in the Ordinance. And those are soil conditions. There's been no contention, nor do I think there could be one that soil conditions are at issue here for any of the substantial hardships.

Second is shape and -- of the lot or the structure. Again, as we noted in our memorandum, shape is not size. Shape means it's a triangular lot or it's a hexagonal lot or it's a -- there are pork chop lots where you have a small bit of frontage and then it widens out behind it. Size is different. That's saying I have an undersized lot. My lot's not big enough. If I had more space on my lot, I'd be able to put a parking space in.

That may be true, but that's not a condition on which the Ordinance or the statute recognize as a cognizable, legally cognizable basis for the grant of a Variance.

Finally there's the issue of topography, as the one that they have raised. And as they have mentioned here, they believe topography is dealing with this tree that is in the bump out on Percy Place. As we've pointed out in our memo, there is case law stating that the position of trees, even if on the lot of the petitioner, is not a substantial hardship that meets the definition of one of the three conditions for topography.

It is also not the way, as we've pointed out in our memorandum, that the courts have viewed the term topography. Topography, in the courts, is almost uniformly, and I haven't found another case, I'd be happy for Mr. Cohen or Mr. Rafferty to point one out to me, where it hasn't meant hills. It means the, you know, the fact that you are going to have problems building on your lot because of the

natural topography. My understanding, having seen the lot, is that this essentially flat as a pancake.

The larger issue, afar from the fact that the word topography doesn't mean what the petitioners have contented it does, although they have made a reasonably admirable approach to work their concerns into the requirements of the Ordinance and the statute, is that it has to be owing to the land that is being petitioned for. Here they have made a concession that it is owing to land that it is not being petitioned for. The hardship apparently that is owing to the condition is on 40 Essex. The tree is on 40 Essex. They're 38 Essex. Merely being in proximity to someone else's problem is not something that meets one of the three conditions of the requirement of a Variance.

The last is the substantial derogation point. And here I think I would point out that the petitioners have said that the Ordinance was designed for setting standards for new construction. As we've pointed out, there is a long

purpose section in the Ordinance intended to deal with this, and that is not one of any of the multiple purposes. The purpose of the Ordinance is to ensure that the City has regularized use of land. And in that respect this is a significant problem. They're asking for front yard parking in an area where there's already highly built up. They're not in a position to be able to ask for a Special Permit because the City Council didn't see fit to do so. This is a situation in which the City Council passed the parking ordinance in the 1960s. It applies equally to all uses of parking from that point forward, that were not pre-existing nonconforming. At this point there's no claim of pre-existing nonconforming use. As a matter of fact, my hearing from the petitioners was that there may have been use in this rear paved area, but it was abandoned. As the Board knows abandonment of a use after two years, means that it's abandonment going forward. So there's no claim that there's a pre-existing nonconforming use of that paved area.

But the City Council very clearly said we're gonna apply this to all the structures that we have in the City of Cambridge, knowing full well that many of them were pre-existing nonconforming. The City Council could, as it has done many places in the Ordinance, say this is a Special Permit. If you come to us with a reasonable reason, it's not gonna create problems, the Special Permit is a way to go. But it didn't. It said, this is a Variance situation. We dislike front yard parking in these narrow areas so much, we're going to prohibit it outright unless you can get proof that you've met the conditions for a Variance. And here, the petitioners simply haven't done so.

A few small points to mention on the presentation of the petitioners, and specific that wasn't in their application or in their letter:

One is on this question of who has the rights to park on Percy Place? I'm not sure quite frankly is relevant to this Board's determination. Because, again, it's got to

be something relating to the hardship, owing to this particular lot, and it has to be something that the petitioner's can show as running with the land. With that being said, there's a difference between a pre-existing nonconforming use for parking and the request to add a new nonconforming use to a place where it does not already exist. I think that's the key difference here that the rest of the parking on Percy Place already exists and we believe preexists the provision of Section 6 of the Ordinance.

The other questions about the easement. Certainly a private way, even acknowledging that the derelict fee statute. You go to the center line of the way. If that's true, you have an easement to pass and repass. It also means you have the right to park in front of your house if you have a place to park it and you're not gonna impede that easement. It's not quite clear to me, although I will admit I haven't looked at the derelict fee statute in excruciating detail, that the right to pass and repass also includes the

right to park in someone else's front yard, which they own by virtue of the derelict fee statute on Percy Place.

So while the petitioners may indeed have the right to pass and repass on Percy, I don't believe it is clear at all that they have the right to park in someone else's front yard on Percy.

I think the point was well made that in terms of the concerns about on-street parking and the availability of it or the off-street parking availability of it, this structure has existed for 150 years at this point without any off-street parking whatsoever. It is in about as close proximity to Central Square as you can imagine. It's a five minute walk, walking leisurely. There is ample public transportation. People moving into this area are well aware that parking is at a premium. Everyone wishes there was parking. Everyone wishes they had more parking on their lot. Everyone wishes that they had the ability to park as many cars as they could. Cambridge just doesn't afford that

opportunity except in places where it is already allowed or was pre-existing nonconforming. It's a position that I think of my client that we shouldn't be introducing more nonconformities for that purpose.

So I think I'll stop there. If the Board has any questions, I'm also happy Mr. Keating is here. He can address some of the issues of concern to them. My understanding is that they concern issues about parking and traffic. But largely for the intensification of the use. You've heard from the petitioners they have two adults, they have two, from what I understand, grown children, that's four individuals trying to use two cars. This is a very tight space. As I think the Board you've gone and seen the site, can attest. Saying we're going to add two cars to the mix moving in and out of Percy Place is, you know, not just two cars because there are many cars, there are perhaps eight cars, ten cars parking there at most now. Adding two more cars to this mix, moving in, out, up, and down in order

to turn around, come back around, I think is a concern. I think also there are concerns about maintenance, snow removal, the standard types of things which quite frankly the reason why the City has asked not to have front yard parking. These are some of the reasons why front yard parking is prohibited by the City.

But, again, I think I'd point and reiterate to the Board that whether or not there could be reasons whether or not there are reasons that the Board views that it would take if it were my client as to why they're concerned, the Board at the end of the day must come back to the law which says it's the burden of the petitioner to demonstrate why a Variance should be granted because Variances are granted exceptionally sparingly. And unless they've met those tests, asking the abutting neighbors to explain their specific reasons for why they think it shouldn't be done, puts the burden on the abutters rather than properly where it should be which is on the petitioners.

CONSTANTINE ALEXANDER: I'm going to take exception to that.

ATTORNEY TAD HEUER: Sure.

CONSTANTINE ALEXANDER: I mean, they have presented their case. I think it's fair for us to know the other side of the case.

ATTORNEY TAD HEUER: Absolutely indeed. It's quite fair for you to know, I'm just saying it shouldn't be a dispositive factor in the Board's determination nor do I believe the statute allows it to be.

CONSTANTINE ALEXANDER: We know what the law is.

ATTORNEY TAD HEUER: Indeed.

BRENDAN SULLIVAN: Tad, the Keatings live at what number?

ATTORNEY TAD HEUER: 3.

BRENDAN SULLIVAN: No. 3. Okay, thanks.

DOUGLAS MYERS: Mr. Chair, before he leaves one question?

CONSTANTINE ALEXANDER: Go ahead.

DOUGLAS MYERS: In terms of the analysis of the Ordinance that you've just made to the Board with regard to the front yard parking, are you satisfied that the type of parking we're talking about in this application is front yard parking as opposed to side yard parking? Is there any basis for the front yard analysis to be framed in this case in terms of side yard parking since the frontage of the property is on Essex Street rather than the number of frontage of the property is on Essex Street?

ATTORNEY TAD HEUER: So --

CONSTANTINE ALEXANDER: Before you respond to that, I was going to raise and make the same point, but I figured we'd move the evening on. First of all, we have granted Variances for front yard parking. It's not a never, never happens. But you're right, we do it very sparingly.

Second of all, this front yard is technically a front yard because it's a corner er lot. The front yard is

a side yard on a narrow private street. That's quite a bit different than a front yard on a public, on a public way where if we grant front yard parking, we're going to take away, we're -- a curb cut will follow and we're going to take away from the citizens of the city one parking place and grant it exclusively to the person we granted the relief for. So I think you over -- to my mind, you overpush the question of the notion of a front yard parking. That's not really the issue here I don't think.

ATTORNEY TAD HEUER: So if that were true, then the petitioners wouldn't be requesting a Variance for front yard parking, right? At the end of the day, the Ordinance says it's a front yard. Whether or not that's true or not --

CONSTANTINE ALEXANDER: You're not listening to my point. We do grant front yard Variances if there are special circumstances that meet the requirements of the Ordinance. To say that's front yard, therefore you can't do

it, is a little too black and white.

ATTORNEY TAD HEUER: Of course not. We're saying if there's front yard, you need to meet the conditions set forth in the statute for the granting of a Variance.

CONSTANTINE ALEXANDER: Right. And you've addressed those.

ATTORNEY TAD HEUER: Correct. And I think the real issue for Mr. Myers' point is that whether or not this is a front yard or not. ISD has determined that it is a front yard. But I'll also point out it is not quite clear on the face of the petition what relief the petitioners are seeking. Usually the Board has a very clear indication of what relief it is granting because it is intending to grant the minimal amount of relief possible that will meet the petitioner's requirements.

In reviewing this application, I can kind of discern and glean what I think the conditions are that require it. I presume it's front yard parking.

I presume it's parking within a first or basement window.

I presume there's a setback issue, but it's not really stated in the petition which is usually the mere minimum that you would expect from a petition of this type. In addition to the dimensional form, you'd expect to know what relief is being requested so you know what relief you are granting.

I would say that from my review of this and my experience in reviewing petitions before the Board in the past, I'm not quite clear what relief is being sought.

CONSTANTINE ALEXANDER: Okay.

DOUGLAS MYERS: So, again, this is not a new question just asking about the question I asked before. So you're saying that as far as your client is concerned, that the fact that even though the parking requested faces Percy Place, it is still front yard parking in terms of the Ordinance?

ATTORNEY TAD HEUER: I'm not sure it's really up to me or not. ISD has made the determination because otherwise they wouldn't be here seeking a Variance, right? If it were a side yard, they wouldn't need Variance for front yard parking and they'd be requesting two variances, not three.

CONSTANTINE ALEXANDER: The evidence is clear that on a corner lot you have two front yards.

ATTORNEY TAD HEUER: Correct.

CONSTANTINE ALEXANDER: And that's been the conventional interpretation by ISD forever. There's no question I think that this would be at least technically, or maybe actually, a front yard even though you and I might consider it a side yard.

It's not your turn.

Anything else?

ATTORNEY TAD HEUER: I don't believe so. Would you like to hear from Mr. Keating himself?

CONSTANTINE ALEXANDER: I would like to hear if he wishes to speak. He doesn't have to obviously.

ATTORNEY TAD HEUER: Obviously.

CONSTANTINE ALEXANDER: Just a request.

JEFFREY KEATING: Hi. I'm Jeffrey Keating. I'm the owner of Three Percy Place. Bear with me I'm a little under the weather.

CONSTANTINE ALEXANDER: Sorry to hear that.

JEFFREY KEATING: So and my neighbor Arlene could not make it tonight, neither could my wife. But, you know, I would like to say that, you know, the Peoples, you know, they seem like lovely people. We're very pleased with, you know, the fact that they took an interest in the neighborhood and wanted to, you know, rehabilitate the structure. And I'd say, you know, 18 months ago they first floated the idea of parking and, you know, at that time they kind of asserted that this was just their right to do it and they wanted to do it. And all four -- and let me be clear,

the owners of One Percy Place are in Europe, so I can't speak for them. And the owners of Two Percy Place apparently they are temporarily relocated to Canada on a fellowship or something like that. But I can sort of recount I think the common discussions that we had. And so initially I think we were all very sort of cool and raised various concerns about the amount of -- they're trying to put two cars in this space here. I know for me one of them is snow removal. The city does not, is not responsible for removing the snow on Percy Place. I happen to have one of those jobs where I'm an essential personnel unfortunately except for on pay day, and I have to be at work whether it's snow or not. So I have a snowblower and I take responsibility for removing the snow. And that strip there between the Peoples' property line and the curb, to remove all the snow there is really the only place I can put that snow. That was a concern that was raised. And I think they said, well, we can, you know, help pitch in and get a snow

removal contract. Well, you know, that's gracious of them, but I mean that's sort of a temporary thing. And, you know, snow is permanent unfortunately. You know, what happens if a new neighbor comes and decides no, we're not going to participate with snow removal?

Drainage was a concern. That when it does snow or when we get the thaw that there's a large amount of ice, and the curb is essential for helping guide the water down towards Essex Street into the storm drain. This was not necessarily a concern of mine, but I know that Two Percy Place and One Percy Place they have younger children than I do, both houses, they were concerned about the safety of children if you have more cars kind of coming in and out of Percy Place.

My concern was just more overall congestion. As a courtesy when the Peoples were constructing, doing reconstruction on the house, we said well, listen, if it makes things easier, we do have an interest in seeing the

house rehabilitated, you could park the -- why don't you park the construction vehicles on the side yard. And it, it made access considerably more difficult. At one point we asked them, well, listen can you do a parking test to demonstrate putting the cars in? And it was not shown to my satisfaction nor my wife's satisfaction nor Arlene's satisfaction that they could realistically really fit two cars in this space. What if the next owner wants to get a Hummer or a van? And that really the only -- and that this turn would be very, very tight. And that, you know, the only way really to get a car in this way would just basically to pave the whole area.

CONSTANTINE ALEXANDER: Well, if someone gets a -- successor owner gets a much bigger car, then what's going to happen is de facto those two spaces will become one. It's not a matter that they have to park two cars. The person who owns the property will have to make a decision, I want this, I want this Hummer and I'm going to

have to give up my other parking space for my Mini Cooper.

JEFFREY KEATING: Well, except that the car then intrudes into the alleyway space. It's a very, very tight space. Because in practice what happened with the construction vehicles is that in order to actually be able to open the door, they had to park further -- far enough away from the house so that they were literally almost on the curb.

But, you know, in any event, you know, at various points, you know, we've expressed these concerns and no real changes ever really came about. And I would say also, too, that one of the things that I think we sort of were upset about is it was very hard to have substantive discussions because at, I think there were four meetings, I went to all four, and somehow the argument came up that well, if you don't let us do this, then we're gonna go after you and make sure that you can't park in the alleyway either. And --

JANET GREEN: Excuse me, somebody said that to

you?

JEFFREY KEATING: It was raised by Mr. Cohen. I have, you know, it was strongly insinuated in one of the first letters that we received, and one of the land -- I think it was one of the landscape architects, you know, made, you know, sort of strongly insinuated, well, like well, if they can't park there, then you can't park there. And we're, you know, we're gonna complain to the city and have your parking removed. And I thought it's just very difficult to negotiate under those circumstances. Or to even have a substantive conversation. But ultimately I would say that, you know, what is now, the plan that they now have really is almost unchanged from what they originally were proposing. And, you know, I think everyone appreciates that parking is tough on Essex Street. We only park one car in the alleyway in front of our house. I park my other car on the street. I know very well what the difficulty is.

I do want to point out that, you know, the usage of parking has worked its way over the years, and it seems to work, has worked just fine. Each person has one parking spot in or partial to the alleyway. On this graph here it shows, or this layout here, there's two cars here that really are not parking spots. I mean, it doesn't make any sense because otherwise I'd be blocked in. And so, I would conclude by saying that -- and I think at the last meeting that we had, which we finally said listen, you know, we don't think this is conforming. We would like you to seek a Variance. And, you know, and furthermore, too, instead of us being threatened about the removal of our parking or you pointing out why, you know, we shouldn't have parking if they can't have parking, why don't you just go to each individual house as neighbors and just talk and let's see if we can work something out? And that never really materialized.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: Going back to your original statement about snow removal. So you're the guy in charge of removing the snow?

JEFFREY KEATING: Well, I wouldn't say I'm in charge, but I do it.

BRENDAN SULLIVAN: Well, you take a lead in it I guess maybe at some point because you have to get out. But what struck me was that you said that where they are proposing to park two cars, that you needed that spot in order to pile snow?

JEFFREY KEATING: That's -- yes. This between --

BRENDAN SULLIVAN: Now, do you blow the snow in front of No. 1 Percy? In other words, to clear snow in order to get out?

JEFFREY KEATING: So the pattern of snow removal generally is -- so, back here --

BRENDAN SULLIVAN: Because obviously it appears -- maybe I'll answer my own question that you can't

pile it in front of No. 1 Percy because they park a car there.

JEFFREY KEATING: They do not park a car here. So usually what I do is the snow goes here, some snow goes here, snow goes here, and then snow goes along here.

BRENDAN SULLIVAN: Okay.

JEFFREY KEATING: And that's the -- I mean I've lived there since 2002, and that's just the way it's always been done at least since I've been there.

CONSTANTINE ALEXANDER: Okay.

Any questions people may have for --

DOUGLAS MYERS: No questions. Thank you.

CONSTANTINE ALEXANDER: -- Mr. Keating. I guess not. Thank you for taking the time to come down even though you're not feeling well.

Anyone else who wishes to speak in opposition to the relief being sought?

(No Response.)

CONSTANTINE ALEXANDER: The Chair would note there is no one else.

We are in receipt of various correspondence which I will read into the public record. I'll read these letters in no particular order.

ATTORNEY PETER COHEN: Mr. Chairman, I have a procedural question.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY PETER COHEN: Would I be given an opportunity to respond to some of the --

CONSTANTINE ALEXANDER: Yes. Oh, yes. After we do that, I'll close public testimony and I'll give you a chance to make concluding remarks.

ATTORNEY PETER COHEN: Thank you.

CONSTANTINE ALEXANDER: We have a letter from Andrea Duchesenau D-U-C-H-E-S-E-N-A-U who I think -- yeah. (Reading) We respectfully submit this letter in support of Liz and Jeff Peoples at 38 Essex Street for case number such

and such. We currently reside at 33.5 Essex Street, have lived in the neighborhood for over six years, and have longstanding ties to Cambridge. To that effect we are extremely conscious of the changes that have undergone both Cambridge and Essex Street in recent years, and we are acutely aware of the benefits of building and maintaining a true neighborhood as opposed to a transient passthrough. Since purchasing their home, the Peoples have been exemplary neighbors. The pride and care taken in the renovation of a crumbling home notwithstanding, they are the kind of neighbors everyone would wish for; friendly and welcoming, kind and engaging. Essex Street benefits from their presence. We often see Liz walking their beagle -- I'm going to stop. Keep going.

(Reading) The unfortunate reality of living on Essex Street, however, is that it is a nightmare when it comes to parking. Residents use street parking, of course, but the street is inundated for those hunting for parking

often without a permit to go to work, take the T, or shop at H-M. The challenges are worse when snow enters the picture. While we understand curbs and parking are heated topics in Cambridge, when one would not only allow resident owners to -- when one would not only allow resident owners to remove one, if not two cars from a busy street, but also allow them to charge an electric vehicle at their home, the decision is easy. They are on a corner of a private way that benefits greatly from the community from Essex Street snow removal and from all other neighborhood services provided by Cambridge. This curb cut, if approved, will reduce parking concerns on Essex Street, reduce snow removal concerns in the winter, and serve as an illustrative example of our neighborhood's commitment to divesting from a reliance on fossil fuels. It might also make daily living easier for the Peoples encouraging them to stay and continue to be part of a neighborhood that truly benefits from long-term residents.

We have a letter, I cannot read -- it's a handwritten letter and I cannot read the person's, the signatory's name, but I believe it's a she. (Reading) She writes I am giving my support to Elizabeth and James Peoples. They intend to place two off-street parking places on their property. I think this, when finished, will enhance their property. Percy Place will not be narrowed by placing two off-street parking places on their property. I wish them the best.

And then we have a series of letters, they're identical letters, and I will read the letter and then I will identify the persons who have signed this letter. (Reading) We are writing to you today in support of the Variance application of our neighbors Liz and Jeff Peoples. The Peoples are long-term Cambridge residents who took a very rundown property and performed a beautiful gut renovation that has helped rejuvenate the neighborhood. We can confirm that competition for on-street parking on Essex

Street is frequently fierce. And it is no secret that because it is a private way, on-street parking on Percy Place is limited to those property owners whose properties abut Percy Place. Because of the stiff competition for on-street parking on Essex Street and because of the prevailing parking practices on Percy Place, we believe it would be both appropriate and desirable for the BZA to grant the Peoples a Variance that would allow them to park two cars on their property and to access those parking spaces from Percy Place. The Peoples have provided us with copies of their Variance application, and they have made themselves and their architect available to answer any neighborhood concerns. We note that there is a large and attractive tree on the northern corner of Essex Street and Percy Place next to 40 Essex Street. While this tree is an asset for the neighborhood, we acknowledge that the bump out of the curb necessary to protect the tree has caused the mouth of Percy Place to be narrower than it would otherwise have been with

no tree there. We believe that this condition uniquely affects the Peoples' property at 38 Essex Street as it reduce the possibility of on-street parking on Percy Place adjacent to 38 Essex Street. The fact that the Variance would enable the Peoples to purchase electric car -- I'm not going to get into that. As Mr. Heuer correctly identified, the ability to have an electric vehicle is not a justification for a zoning relief.

(Reading) We note that granting the requested -- back to the letter. We note that granting the requested Variance will not be just good for the Peoples, it will also benefit the entire neighborhood as it will reduce the competition for parking by two cars. In sum, we believe the Peoples' Variance application should be granted as it meets all the required criteria and will enhance the parking situation in our neighborhood.

This letter has been signed by Barbara, I believe it's Hume, H-U-M-E, 33 Essex Street; by Laurie A. Friedman,

F-R-I-E-D-M-A-N, 32 Essex Street; by Quinton Sullivan, 35.15
Essex Street.

And there is one other letter from Cynthia Frude,
F-R-U-D-E, 42 Essex Street. (Reading) I am writing in
favor of the petitioners, Elizabeth and James Peoples. If
granted, their cars would park on their own property and
would not need to use the limited space on Percy Place. The
plans indicate an attractive driveway and parking space.
These combined with the work done to their new home, will
attribute to the Essex Street neighborhood.

And that's it. I don't see any other letters in
our files. So I'm going to close public testimony.

ATTORNEY TAD HEUER: Mr. Chairman, is our letter
in the file that was submitted on Monday?

CONSTANTINE ALEXANDER: Yeah, basically it's a
legal brief. It's six page in length. I'm not going to
read it. And you very adequately summarized it.

ATTORNEY TAD HEUER: I just wanted to make sure it

was in there. Don't read it. Please don't read it.

CONSTANTINE ALEXANDER: Sir.

JEFFREY KEATING: May I just add one more thing?

And that is I would just point out that, you know, obviously the very nice presentation was made for the neighbors on Essex Street. I would just say, you know, and I'm sure everyone has an interest in reducing the competition for on-street parking. I would just point out the four households most directly impacted One, Two, Three, Four Percy Place, there's no support for this. I think the silence from One Percy and Two Percy speaks for itself. And in the case of Three and Four Percy Place, we oppose this. We are the ones who are going to be impacted and I hope that's considered.

Thank you.

CONSTANTINE ALEXANDER: Let me ask the question that I think we always have to ask and to both of you. Is there any possibility if we continue this case and you

started further conversations, you could come to a resolution that would be acceptable to both of you? Do you think it's possible?

JEFFREY KEATING: I'm perfectly happy to continue talking. I can't -- I can speak for myself.

CONSTANTINE ALEXANDER: I'm not asking to you commit to --

JEFFREY KEATING: Yeah, I'm perfectly happy to continue with conversations. And as I said at the last meeting we had, that was expressly the wish that Josh F had presented which is, you know, let's just meet as neighbors, you know, maybe even without the attorneys and see if we can work something out.

JONATHAN KING: But he had no proposal.

CONSTANTINE ALEXANDER: Sir, sir. You can't speak out of order, please.

JEFFREY KEATING: But it's not my responsibility -- I can't.

CONSTANTINE ALEXANDER: All right. You don't have to respond to that comment.

JEFFREY KEATING: I can't design the parking for them, you know.

CONSTANTINE ALEXANDER: Is there any interest on your part to continue or have further discussion? Do you think it could be fruitful?

ATTORNEY PETER COHEN: I would say no, and I'd like to explain why.

CONSTANTINE ALEXANDER: Okay, feel free to -- okay. And now this will be also your final comments because then we're going to end the discussion.

ATTORNEY PETER COHEN: If there were a concrete proposal that one could engage rather than some vague jello-like concept, I'd be very happy to engage it. The problem is that Mr. Keating has just misstated a number of things.

One of them is he said he went to all the

meetings. Well, we had a meeting just about ten days ago which he didn't come to. We had submitted the paperwork to the Board, and we were hoping to clarify any questions, address any concerns. And there was a complete silence from Mr. Keating and from the other neighbors.

JEFFREY KEATING: I was out of state.

CONSTANTINE ALEXANDER: Now, sir, please.

BRENDAN SULLIVAN: Any hope of reconciliation has now ended.

CONSTANTINE ALEXANDER: I think you've answered ed the question.

Move on to your final comments.

ATTORNEY PETER COHEN: So I -- it's interesting that Mr. Keating is purporting to speak for two of the neighbors who are not present who've chosen to be silent. That we asked for support. We believe that in the case of Alison and Max that we had addressed their concerns about safety in the last design of the proposal. If they didn't

like it, they could have said so. They could have come to the meeting. They didn't. So I think Mr. Keating is trying to have it both ways. I think he could speak for himself, maybe for his -- for Arlene but I think it's wrong. Josh Flax knew this was coming.

I want to point out again, Josh Flax had his own case before you seven years ago. I believe at least two of you were on that particular panel. I believe Mr. Heuer was also on that panel and voted in favor of Mr. Flax's proposal finding it, quote, minimal. You know, you know, I understand that as a zealous advocate for his client, he has to be prepared to do battle. But I have to say that I, I don't agree with a lot of his legal conclusions. I looked at a number of those cases he cited, and I think those cases for the most part were in different communities with different zoning codes, different sets of facts. I believe you here in Cambridge and this Board --

CONSTANTINE ALEXANDER: It's true. And you have

to understand, as I'm sure you do, there's only one standard for a Variance. It's a state standard.

ATTORNEY PETER COHEN: I understand that.

CONSTANTINE ALEXANDER: The fact they were in different communities, they have to satisfy the legal standard.

ATTORNEY PETER COHEN: I have no dispute with that at all. Let me give you a small example. One of the cases he cited was a case from some suburban location where the property owners had, I don't know, 38,000 square feet and they subdivided or wanted to subdivide into two lots and each one was required to have 20,000 square feet. And so by their own action the proponents in that case were going to have a nonconforming use to put a second house on it.

This is very different. Here we have a situation where the Zoning Code actually requires off-street parking and where the house that is requesting has no existing parking. So arguably while there may be dimensional

nonconformity by your approval of zoning, you could say it's making it more conforming if it allows them to have what would be certainly required in any new construction. So it's a very -- and also this house has been there and there's nothing that they could do with the lot or the house that would really change the facts. In his opening of his letter, you know, Attorney Heuer says: As currently proposed. Which makes, it makes it sound like some other formulation on these sorts of facts could get the job done. I say, no, it's a small, it's a small house on a small lot. There's very little you can do with it. And I also want to point out that, again, what's happening on the ground is something that I think the Board has every right to be aware of. It may come up in the future. The next work property No. 1 which obtained a Variance within the last ten years has just changed their parking practice without coming before you. I would like to say that if we obtain the requested relief, we would like to support any legalization

efforts that they choose to make or any other neighbors.

It's in everybody's interest to not have this be an ongoing issue year after year and have, you know, six people coming before you.

I just would point out on the issue of snow removal, I'm glad that Jeff Keating mentioned that, because as it was related to me the first encounter between Jeff Peoples and Jeff Keating was shortly after Jeff Peoples moved into his property and Jeff Keating rushed over and said, you can't drive on the street. You can't park here, you can't do this, and was very agitated for reasons having to do with snow. Snow is a real problem and is one of the issues that I personally said to Jeff Keating, if you've got some proposal or issue, let's talk about it. But I would have been very happy --

CONSTANTINE ALEXANDER: Again, we're getting away from the zoning issues for our decision. Anything else? I have one question for you before I'm going to close public

testimony absolutely.

ATTORNEY PETER COHEN: I just say that I think there are many cases that have been cited here speak of kind of an originalism, too much literalism in terms of the law. I believe that any decision you make here will be upheld in the face of any legal challenge.

I just want to point out also the construction of which was complained about as long as it's over. I know that Heather Hoffman has a thing or two to say.

HEATHER HOFFMAN: Yeah, I just wanted to address a couple of title issues.

CONSTANTINE ALEXANDER: Are they relevant to the --

HEATHER HOFFMAN: Yes, they are.

CONSTANTINE ALEXANDER: You know the zoning well so I take your word for it.

HEATHER HOFFMAN: Well, there's this discussion of, you know, what rights various people have? As you may

or may not know, one of the lots is registered land which makes our lives so much easier on the question of rights, and I will read to you directly from what the Land Court says. That's No. 2 Percy Place which abuts 40 --

CONSTANTINE ALEXANDER: And which we've been told is a person who objects to the relief you're seeking tonight?

HEATHER HOFFMAN: No.

CONSTANTINE ALEXANDER: One, Two, Three, and Four.

HEATHER HOFFMAN: As I understand it, Two has not spoken.

ATTORNEY PETER COHEN: Two and One are absent and have not spoken.

JANET GREEN: We only have Mr. Keating's statements about their --

CONSTANTINE ALEXANDER: He said they would have opposed but they're not here tonight.

KEITH GIAMPORTONE: He didn't say that.

CONSTANTINE ALEXANDER: My mistake then. I apologize.

Go ahead.

HEATHER HOFFMAN: But let me just read to you: There is a pertinent to the above-described land, the right to pass and repass over said Percy Place as shown on said plan in common with others entitled thereto. That's a 1923 registration. And there's, there's nothing to add to that over the succeeding merely 100 years. You know, on the registered land side. So I think it's fair to assume that there's nothing on the record that affects anyone's rights. And as I said in the original deeds, everyone was granted similar rights to use the way.

And the one other thing is the idea that being on a private way is different from a public way in that a private way let's you exclude the rest of the world from in front of your property is wrong. You share it. And by custom and good neighborliness people generally do not park

in front of other people's houses on many private ways, but that is not the law nor is it the practice on every private way.

CONSTANTINE ALEXANDER: Okay, thank you.

My one question for you and I'll ask other Board Members when we get around to taking a vote, you submitted two different parking plans. And when we make a motion to grant the relief, we will, we will tie it to compliance with a plan that we've initialled. Let's for a second assume we're going to grant you the Variance. Which of the plans would you prefer before Board Members express what they prefer?

ATTORNEY PETER COHEN: I think we would prefer the same plan that we understood that the neighbors who talked to us about this issue preferred which is option 2 listed as A.

CONSTANTINE ALEXANDER: 002B?

ATTORNEY PETER COHEN: 2B.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY PETER COHEN: That said, we would take whatever you --

CONSTANTINE ALEXANDER: I know, you'll take either one. I understand that.

I am now finally going to close public testimony.

ATTORNEY TAD HEUER: Mr. Chairman, I apologize.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY TAD HEUER: Can there be a clarification. If it is option 2, does it change the dimensional form?

CONSTANTINE ALEXANDER: I'm sorry, say it again, please.

ATTORNEY TAD HEUER: If that's option 2, which has more paving, does that change the dimensional plan as at least coverage?

CONSTANTINE ALEXANDER: I have no idea.

ATTORNEY TAD HEUER: It would be an important question to know if you're going to grant relief on that.

CONSTANTINE ALEXANDER: Do you have an answer to that?

KEITH GIAMPORTONE: What's the question?

HEATHER HOFFMAN: Does option 2 change the dimensional form because of open space?

CONSTANTINE ALEXANDER: The dimensional form was pretty sparse as I recall.

ATTORNEY TAD HEUER: The ratio of open space in particular.

CONSTANTINE ALEXANDER: Yeah. I'm pulling it right now.

KEITH GIAMPORTONE: The square footage of paving?

HEATHER HOFFMAN: Yeah.

KEITH GIAMPORTONE: Is your question the amount of permeable pavers increase?

ATTORNEY TAD HEUER: No. My question is whether the ratio of usable open space of the lot area on the dimensional form change if you're using No. 2 rather than

No. 1? Because if it does, you're already perilously close to the Ordinance minimum.

CONSTANTINE ALEXANDER: Yeah. The form says that currently you have 62 percent open space. That if we grant you the relief you're seeking. And I presume it was for either parking plan. You would go to 44 percent, but the minimum, the required minimum required by the Ordinance according to your dimensional form is 40 percent. So assuming it's 44 would apply for both parking plans, they still would be in compliance with open space.

ATTORNEY TAD HEUER: Well, how could that be, because one of them has more paving than the other one does?

CONSTANTINE ALEXANDER: Well, the one that has more paving, does it reduce the open space below 40 percent?

KEITH GIAMPORONE: I didn't do the calculation myself for this. Just give me one second and I'll try to answer your question.

CONSTANTINE ALEXANDER: Sure, take your time.

BRENDAN SULLIVAN: So this is the add?

ALISON HAMMER: I think the property line -- some of the paving is happening outside the property line as well it seems like?

DOUGLAS MYERS: Since either plan is acceptable to them, wouldn't it make sense to just choose the plan that has less paving?

CONSTANTINE ALEXANDER: Yeah, that's a good suggestion.

DOUGLAS MYERS: Since they profess that both are acceptable, wouldn't that obviate the question?

CONSTANTINE ALEXANDER: I think that's a good solution.

ATTORNEY PETER COHEN: If Mr. Keating had a preference, we would be interested to know what that was.

CONSTANTINE ALEXANDER: No, enough's enough.

DOUGLAS MYERS: This is a question for you.

CONSTANTINE ALEXANDER: Okay, I think the solution

is unless other members of the Board feel differently, is that if we should, and I put -- underscore if, if we should approve the Variance request, it would be you have to use the plan that has lesser use of paved space so there's more open space.

KEITH GIAMPORTONE: If both of them comply with the --

CONSTANTINE ALEXANDER: No. They both comply. But one is let's say 44 percent and one is 52 percent. I want the 52 percent one assuming we're going to approve it. Do other members of the Board feel otherwise?

ALISON HAMMER: I mean the petitioner suggested that the one with the more paving was possibly more acceptable to abutters because it allowed for better maneuverability in and out, but nobody is here to attest to that.

CONSTANTINE ALEXANDER: Yeah, we don't know.

ALISON HAMMER: I mean perhaps if you could

explain to us why it's safer.

JAMES JEFFREY PEOPLES: The neighbors had simply asked us that you park this way and you basically back in here and that's just safer, because the neighbors have said they prefer people backing in as opposed to doing multiple turns.

BRENDAN SULLIVAN: Plan 1 is a little bit more constrictive and restrictive.

CONSTANTINE ALEXANDER: Which one?

BRENDAN SULLIVAN: Plan 1 is more restrictive and constructive --

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: -- as opposed to plan 2 which has a little bit better access and egress.

KEITH GIAMPORTONE: This keeps the car further away from the other properties as well.

CONSTANTINE ALEXANDER: Right, okay.

I think my suggestion to the Board is that when we

get to the motion some day, we will do it subject to doing plan 2.

ALISON HAMMER: 2 versus 2B?

CONSTANTINE ALEXANDER: I'm sorry, 2B. I said the wrong -- 2, yeah.

JANET GREEN: The one where they back in?

CONSTANTINE ALEXANDER: Yeah, where they back in.

ATTORNEY PETER COHEN: That's 2B.

JANET GREEN: 2B.

ALISON HAMMER: 2. The one with more paving or less paving? Less paving.

CONSTANTINE ALEXANDER: Less paving is 2. Just eyeball that. So that would be the Board's wish, plan 2? The one that has the lesser paving? I just want to get that straight before we get to the discussion.

BRENDAN SULLIVAN: Well, I'm looking here by option No. 2 which has -- which is this; is that correct?

CONSTANTINE ALEXANDER: That's not 2.

HEATHER HOFFMAN: That's 2B.

KEITH GIAMPORTONE: That's 2B.

BRENDAN SULLIVAN: 2B?

HEATHER HOFFMAN: Yes.

BRENDAN SULLIVAN: Not 2B. That is the question.

CONSTANTINE ALEXANDER: It might be easier to,
Brendan, if you put these side by side. Here's 2 and here's
2B.

BRENDAN SULLIVAN: Well, I guess my thought is
that I would go for the one that is, that's easier access.

CONSTANTINE ALEXANDER: I think --

BRENDAN SULLIVAN: -- and egress.

CONSTANTINE ALEXANDER: -- 2B is the one that has
easier access and egress.

BRENDAN SULLIVAN: Correct. So that would be --

CONSTANTINE ALEXANDER: That would be your
preference?

BRENDAN SULLIVAN: That would be mine. That this

is easier access and egress; is that correct?

ATTORNEY PETER COHEN: Yes.

KEITH GIAMPORTONE: That plan was modified based on comments from the neighbors.

CONSTANTINE ALEXANDER: And it is your representation that if we went, again, we're assuming approval, that went with plan 2B, that you would meet the minimum open space requirements? I don't want the 44 percent as Mr. Heuer --

KEITH GIAMPORTONE: I can't calculate it in the condition --

CONSTANTINE ALEXANDER: Say it again.

KEITH GIAMPORTONE: I said I can't attest to it because I didn't do the calculation or --

CONSTANTINE ALEXANDER: Well, if we're going to approve it, if --

KEITH GIAMPORTONE: Right. I'm saying we can make it contingent that the amount would not exceed what the

requirement is.

CONSTANTINE ALEXANDER: You'll comply with your dimensional form?

KEITH GIAMPORTONE: Yes.

CONSTANTINE ALEXANDER: But then we don't know what plans that we've approved.

HEATHER HOFFMAN: Does -- I know that one can create pavers that you can drive on yet that have grass so that it's, you know --

CONSTANTINE ALEXANDER: I don't know whether those kinds of pavers --

HEATHER HOFFMAN: And that's my question.

CONSTANTINE ALEXANDER: -- satisfies open space.

ALISON HAMMER: They do not because driveways and parking are excluded from open space calculations.

BRENDAN SULLIVAN: Patios is one thing.

ALISON HAMMER: Right.

BRENDAN SULLIVAN: And driveways.

ALISON HAMMER: So if this is part of the maneuvering for the car to get into the space, then it's driveway.

BRENDAN SULLIVAN: What we have done in the past is to approve a plan, a scheme of a plan and that it's incumbent upon the petitioner then to bring the dimensional form to reflect that plan that we have approved.

CONSTANTINE ALEXANDER: Right. And that to the extent of the plan that we approve would violate the open space requirements, they'll have to come back.

BRENDAN SULLIVAN: That would be correct.

CONSTANTINE ALEXANDER: Understood?

BRENDAN SULLIVAN: So you may have to shoehorn something somewhere but not to have to come back.

CONSTANTINE ALEXANDER: Now that we've beaten the death something we don't know whether we need to beat to death, discussion as to whether -- on the merits of the case with respect to the variances being requested? Anyone wish

to speak? Don't everybody speak up at once.

DOUGLAS MYERS: Well, let Brendan speak first.

BRENDAN SULLIVAN: Well, to me I think the legal argument by the opposition is solid and that going by the second paragraph of counsel is the strict interpretation of the zoning. Yes, that cases cited which I'm familiar with quite a lot of them, would be fatal I think to the petition should a Court have strict interpretation of granting of a Variance. However, the Courts have in the past left it up to the discretion of the local Boards to decide what was the right thing to do or not, even though they haven't always done the right thing. My feeling on this is that is the requested relief inconsistent with the established neighborhood character and the modus operandi. And I look at Percy Place and I see that there is parking next-door and that the next-door, the actual parking, actually comes onto Percy Place more than this proposal will. That other houses on the Percy Place park two cars, one on the side and one in

the front. This particular site is incumbered, maybe not a hardship, but it's incumbered by having two front yards. And that will the public good be served in this? And I think that if you can get a car, two cars off the street in a very congested area and put it into an area on your lot, that is not inconsistent with the modus operandi of the adjoining neighbors. I think it's probably benefit -- the public does reap some benefit of that.

CONSTANTINE ALEXANDER: I concur with that analysis by the way.

Doug.

DOUGLAS MYERS: My feeling is that, I think a lot of -- well, to make it brief, I feel that two cars are excessive. I think one car is justifiable. I think that listening to all the arguments that have been made, I think that conclusion is compatible with the type of arguments that I've heard. I also would say that two cars, the front car is going to be plainly visible and very near to Essex

Street and will be visible from a public way in a way that this -- it is undesirable in terms of the policy objectives against front yard parking. Whereas other front yard parking, cars on the street that is further down Percy Place is not visible from the public way. It's the character of the street. But I think of a car that is looking out headlights first into Essex Street is a sort of front yard parking that this Board would find objectionable. Or as a car going into a one car driveway at the rear of this lot is not objectionable side yard/front yard parking but is compatible, I think, with the wake of the arguments that have been presented here tonight. So while I'm open to persuasion, I do want to, I did want to express my feeling that two cars are too much, but one car is acceptable.

CONSTANTINE ALEXANDER: So I take it just to rephrase what you're saying, that if the petitioner were to continue the case, come back with a plan for one parking, one car parking not two, that you would be in support of

granting relief?

DOUGLAS MYERS: I would. But that would, you know, the petitioner should consider the position of other board members.

CONSTANTINE ALEXANDER: Oh, no, no, I just wanted to make sure your position is clear.

DOUGLAS MYERS: Yeah. And even though this is deliberations, I would not exclude the parties from taking that approach if they so desire.

CONSTANTINE ALEXANDER: Throughout this I've been trying to see if I can get people to sit down and work something out, but obviously that's not meant to be.

Other members want to express opinions or we can go to a vote?

JANET GREEN: I'm comfortable with two cars and I agree with Brendan's comments and the Chair's comments.

CONSTANTINE ALEXANDER: Alison, you wanted to add anything? It's up to you.

ALISON HAMMER: I feel like a little bit like Doug, that one car is reasonable. I mean, even if we go to your argument about parking being a requirement, the requirement is for one space for one unit. I would love to have two parking spaces of course, and my boyfriend wouldn't have to park on the street. So I take it and he parks on the street. But I think that also seems by some -- the legal arguments notwithstanding based on the personal arguments of the opposition, it seems that if we just had the one parking space in the side and front yard rather than one that's fully in the front yard, that that would hopefully ameliorate some of their concerns. So that's my feeling.

CONSTANTINE ALEXANDER: I would just point out that you well know, maybe those in the audience don't know, to get relief you need four votes. It's supermajority. I think you've heard two people express opposition but only to two parking spaces. If you were to come back with a

proposal for one parking space, I think your chances of getting at least four votes are very good.

Now, we can go one of two ways: We can take the vote tonight, and if the motion, if the relief is denied, I have to laugh because I'm thinking of the &pizza place, you can come back with a different proposal with one parking space and claim it's a significant -- I forget what the words are, change to what we turned down and we could take a vote on that. Otherwise you're out for two years. That's one possibility.

Or you can decide tonight to -- you're rolling the dice. We turn you down perhaps, or I think most likely, and that you may not be able to come back for two years, maybe. And if you do, you get more relief. Or you can just continue the case tonight and come back with a new proposal, modified proposal. Probably you should file a new application, and -- with one parking place and see how it goes.

ATTORNEY PETER COHEN: So, we can't do it on the fly here and now and saying take this proposal and --

CONSTANTINE ALEXANDER: With one parking space?

We'd like to see a plan how that one parking space is going to be laid out. So I don't think you can do it on the fly.

BRENDAN SULLIVAN: The dimensional form then if you're going to go through that exercise --

CONSTANTINE ALEXANDER: You can continue the case. On the fly can be you just continue the case maybe for a month, you come back with the new plans, new dimensional form, as Brendan has pointed out and we then take a vote.

ATTORNEY PETER COHEN: Same case, same Board?

CONSTANTINE ALEXANDER: Correct.

JAMES JEFFREY PEOPLES: Yes, continue.

CONSTANTINE ALEXANDER: Continue the case on that basis?

ATTORNEY PETER COHEN: Yes, please.

CONSTANTINE ALEXANDER: I said about a month. We have to have the same five of us sitting on the case, because it's a -- we call it case heard.

Sisia when's the --

SISIA DAGLIAN: So 9/14 you have one continuance and eight regular cases.

CONSTANTINE ALEXANDER: We're not going to do it. We're not doing it with &pizza.

SISIA DAGLIAN: 9/28, no.

CONSTANTINE ALEXANDER: No.

SISIA DAGLIAN: 10/12.

CONSTANTINE ALEXANDER: 10/12?

SISIA DAGLIAN: 10/26.

CONSTANTINE ALEXANDER: 10/12 we have room?

SISIA DAGLIAN: Yeah.

CONSTANTINE ALEXANDER: Can members make it 10/12?

BRENDAN SULLIVAN: What about the first one is September? Are we loading up that night?

CONSTANTINE ALEXANDER: I thought that maybe that would be too quick.

DOUGLAS MYERS: I can't do it on the 14th, I'm sorry.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: 10/12.

ALISON HAMMER: I can't do 10/12.

SISIA DAGLIAN: 10/26.

DOUGLAS MYERS: Fine by me.

CONSTANTINE ALEXANDER: It's okay with you?

DOUGLAS MYERS: Yes.

CONSTANTINE ALEXANDER: All right by you? Me, I'm okay.

ALISON HAMMER: Yes.

CONSTANTINE ALEXANDER: Unfortunately we're going to have to go to October 26th as I explained --

JANET GREEN: Let me take a look. Sorry, I'm trying to....

DOUGLAS MYERS: It's important.

JANET GREEN: I want to make sure I got that.

Okay. Yes, I could do 10/26.

CONSTANTINE ALEXANDER: Okay. All right.

The Chair moves that we continue this case until seven p.m. on October 26th subject to the following conditions, this being a case heard, so the five of us who are sitting here now must be here on the 26th.

One, that the petitioner sign a waiver of time for decision. It's a standard. Otherwise we have to turn you down tonight.

Two, that the posting sign be modified, or get a new one obtained, to reflect the new date and the new time and that sign be maintained for the 14 days prior to October 26th as required by our Ordinance.

And lastly, to the extent that there will be new plans, and there will be, reflecting the parking, those must be in our files together with any modified dimensional form

reflecting the new plans no later than five p.m. on the Monday before October 26th. If that is not done, we will not hear the case. So you've got plenty of time, but I want to make sure -- sometimes petitioners miss that. Five p.m. on the Monday before October 26th new dimensional form and new plans.

ATTORNEY PETER COHEN: And what will the status be in terms of further testimony? Will there be further testimony?

CONSTANTINE ALEXANDER: Oh, yeah.

ATTORNEY PETER COHEN: As if there's a new case?

CONSTANTINE ALEXANDER: Well, hopefully there won't be too much to say. Presumably people are going to comment on the new plans. And I will try to restrict the discussion at that hearing to the new plans since we've had ample opportunity to talk about neighborhood affairs on Percy Place tonight.

ATTORNEY PETER COHEN: I would just say that we

are, we are certainly open to talking to Mr. Keating and his neighbors and counsel before then if there are issues that will help get unanimous support.

CONSTANTINE ALEXANDER: Hopefully you will reach some sort of agreement and it will be a five minute discussion on October 26th, but we're not going to hear the case any earlier than October 26th.

ATTORNEY PETER COHEN: I understand that. And I was just saying that in the interest of avoiding duplicative testimony if we can get some kind of agreed plan --

CONSTANTINE ALEXANDER: I'll do the best I can to narrow the discussion on October 26th. We don't enjoy sitting here to late hours of the night.

ATTORNEY PETER COHEN: You have my undying admiration for your patience.

CONSTANTINE ALEXANDER: Okay.

All those in favor of continuing on the basis I mentioned say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued. See you on the 26th.

(Alexander, Sullivan, Green, Myers, Hammer.)

* * * * *

(9:30 p.m.)

(Sitting Members Case BZA-013852-2017: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case

No. 013852, 58-60 Roseland Street.

Is there anyone here wishing to be heard on this matter? I hope you don't need parking spaces.

DOUGLAS BORCHARD: No, no, thankfully not. I'm Doug Borchard resident at 58-60 Roseland Street.

JANET GREEN: Just speak up. We don't have the microphones over in this part.

DOUGLAS BORCHARD: Doug Borchard, resident of 58-60 Roseland Street.

CONSTANTINE ALEXANDER: And you wanted a Special Permit for -- to relocate windows in a setback?

DOUGLAS BORCHARD: Correct, yes. It's a second floor renovation of a master bedroom and bathroom and there were three windows there and we're replacing those with two windows; one which is in pretty much the same place and the other is moved slightly, and I think that's the one that requires the Special Permit.

CONSTANTINE ALEXANDER: And have you talked to the

neighbors, particularly those who are facing your new windows?

DOUGLAS BORCHARD: Yeah. There's nobody -- it faces out to the backyard --

CONSTANTINE ALEXANDER: Oh, okay.

DOUGLAS BORCHARD: -- and then the garage. So it doesn't -- we had, when we did the plans, we spent a lot of time talking with the closest abutters at 64 Roseland, which is very close. And so it was with Jolene and Art. We talked to them a lot. And I had an e-mail with Four Frost Street which is the backyard and the garage there, and there had been no problems. I'm not aware of any objections. And certainly Jolene was really fine with it.

CONSTANTINE ALEXANDER: Okay.

Questions from members of the Board?

(No Response.)

CONSTANTINE ALEXANDER: The Chair will open this matter up to public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently no one wishes to be heard. I don't believe we have any correspondence in our files, no.

And you so there we are. The Chair will close public testimony.

Any discussion or ready for a vote? Ready for a vote.

JANET GREEN: Ready.

CONSTANTINE ALEXANDER: How come I knew that.

The Chair moves that we make the following findings with regard to the Special Permit being sought:

That the requirements of the Ordinance cannot be met without the Special Permit.

That traffic generated or patterns of access or egress resulting from what is being proposed will not cause

congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of or development of adjacent uses as permitted in the Ordinance will not be adversely affected by what you're proposing.

No nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the occupant of the proposed use or the citizens of the city.

And that generally what is being proposed will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

On the basis of these findings the Chair moves we grant the Special Permit requested on the condition that the work proceed in accordance with plans submitted by the petitioner, the first page of which has been initialled by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special
Permit granted.

(Alexander, Sullivan, Green, Myers, Hammer.)

* * * * *

(9:35 p.m.)

(Sitting Members Case BZA-013861-2017: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 013861, 31 Hawthorn Street.

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

ADAM GLASSMAN: How are you? Adam Glassman, architect, Two Worthington Street.

SHIKHAR GHOSH: Shikhar Ghosh, 31 Hawthorn Street.

JULIE ENGEL: Julie Engel, 31 Hawthorn Street,
E-N-G-E-L.

ADAM GLASSMAN: Okay, so we're here seeking relief in the form of a Special Permit to modify two existing rear facing windows and convert them into French doors connecting the main living space on the first floor to the rear

backyard.

CONSTANTINE ALEXANDER: And you're seeking a Variance, too.

ADAM GLASSMAN: And we're also seeking a Variance. I didn't know if you had to call that one separately.

CONSTANTINE ALEXANDER: We're going to vote separately. Let's start with the Variance. Talk a little bit about the Variance and then the Special Permit and then we'll go into --

ADAM GLASSMAN: Sure. So the Variance is required because we're proposing to create what's technically a partially covered entry. It's really almost ornamental 18-inch projection off the house just to create a bit of a visual threshold between the deck landing and the interior of the house.

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

(No Response.)

CONSTANTINE ALEXANDER: And the Special Permit?

Let's talk a little bit about that.

ADAM GLASSMAN: Special Permit are for the windows which are in an existing non-conforming wall.

CONSTANTINE ALEXANDER: Pretty brief, succinct.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. We are in receipt of a letter from Don McInnes M-c-I-N-N-E-S. Well, actually more than one letter. It's addressed to the petitioner. (Reading) Thank you for providing me with a copy of your plans showing the proposed improvements to your house for which you need a Variance and a Special Permit. As you know, I am the manager of Hawthorne Planned Investments, LLC, the entity which owns the abutting property at 35 Hawthorn Street, and I have no objections to your plans. And indeed I believe those improvements to your

house, coupled with your landscaping plans, will significantly improve the appearance of the area between the houses. As manager I have lots of authority and power over the affairs of the LLC. He's not modest. I sent copies of your plans to the two voting members of the LLC, Ann Chantel Demuse (phonetic), I'm not going to, I don't read French. It's a French woman who lives in Brussels, Belgium, and Stefan Bortnowski B-O-R-T-N-O-W-S-K-I, who lives in Bucharest, Romania. (Reading) I have heard nothing from Chantel who generally takes very little interest in this kind thing. I talked by telephone this morning to Stefan who assured me he had no objection to what you're proposing. As you may know, Stefan is a practicing architect with a degree from MIT. He takes lots of interest in this type of thing. The records of the BZA still list me as trustee of Hawthorne Clan Nominee Trust. That trust is a former owner of 45 Hawthorn. However, several years ago we transferred title to Hawthorn Clan Investments, LLC of which I am the

manager. And Chantel and Stefan are the two voting members, their children being nonvoting members. Also as you know, I live at 48 Hawthorn Street so I am also an abutter. Thank you for improving the neighborhood.

And we have a letter from Stephen --

DOUGLAS MYERS: Is that a letter in favor or in opposition?

CONSTANTINE ALEXANDER: I don't know. You have to go to Romania to find the answer out.

A letter from Stephen Mugford, M-U-G-F-O-R-D who resides at 23 Ht Street. (Reading) Kristen, apparently his wife because she has the same last name as his, Kristen and I would like to offer our support for the Variance sought for Mr. Shikhar Ghosh for the property at 31 Hawthorn Street. As one of the two immediate abutters who would be most affected by the proposed project, we feel like the project will not be a distraction in any way, and in fact think Mr. Gosh's design will add to the neighborhood.

A letter -- a lot of letters. Two more letters.

A letter from Holly H-O-L-L-Y Levenkron, L-E-V-E-N-K-R-O-N.

(Reading) As one of the abutters to 31 Hawthorn Street, Cambridge, I am writing in complete support of the changes outlined in Mr. Shikhar Ghosh's plans. The changes will be tasteful improvements to the house.

And last but not least is the letter from Tracey Jean-Chronberg, J-E-A-N-C-H-R-O-N-B-E-R-G, who resides at 35 Hawthorn Street. (Reading) Burtell, who apparently is her husband, and I would like to offer our support for the Variance sought by Mr. Shikhar Ghosh for the property at 31 Hawthorn Street. As one of the two immediate abutters who would be most affected by the proposed project, we feel that the project will not be a detriment in any way, and in fact we appreciate the thoughtful design that Mr. Ghosh has developed.

And that's all she wrote. I'll close public testimony.

Any final comments?

ADAM GLASSMAN: None.

CONSTANTINE ALEXANDER: None.

Discussion or ready for a vote? I think we're ready for a vote.

JANET GREEN: I'm ready.

CONSTANTINE ALEXANDER: Okay.

I'm going to start with the Variance first.

The Chair moves that with respect to the Variance being requested we make the following findings:

That a literal enforcement of the provisions would involve a substantial hardship. Such hardship being is that the structure, both as to window placement and doors covered entry, are significant and would run with the property and benefit whoever owns the property, and improves the situation for whoever owns the property.

That the relief being sought is owing to the fact that this is really a non-conforming lot, and therefore, any

relief required -- any change 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 this regard we note the relief being sought is modest and has unanimous neighborhood approval.

All those in favor please say "Aye."

I'm sorry, I went too quick. On the basis of all of this the Chair moves we grant the Variance requested on the condition that the work proceed in accordance with plans prepared by GCD Architects, each page of which has been initialed by the Chair.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

(Alexander, Sullivan, Green, Myers, Hammer.)

CONSTANTINE ALEXANDER: Turning to the Special

Permit, the Chair moves that we make the following findings?

That the requirements of the Ordinance cannot be met without the Special Permit being sought.

That traffic generated or patterns of access or egress resulting from what is being proposed will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of or development of adjacent uses as permitted in the Ordinance will not be adversely affected by what is proposed.

That no nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the occupant of the proposed use or the citizens of the city.

And that generally what is being proposed will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

So on the basis of these findings the Chair moves

we grant the Special Permit requested again subject to compliance with the plans referred to with regard to the Variance we just granted.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Sullivan, Green, Myers, Hammer.)

* * * * *

(9:45 p.m.)

(Sitting Members Case BZA-013738-2017: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 013738, 11 Appleton Road, No. 2.

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

JOHN VINING: Hello, hello. I'm John Vining with Feinmann, Inc. Designers and Builders with Zia the property owner.

ZIA SOBHANI: And S-O-B-H-A-N-I Z-I-A.

CONSTANTINE ALEXANDER: Well, we've heard many Special Permits for windows tonight, you're the last.

JOHN VINING: We're a typical easy company I hope.

CONSTANTINE ALEXANDER: What's the purpose of the relocation of the window and any impact or discussion with the neighbors most affected by it.

JOHN VINING: Zia can speak on behalf of the

neighbors.

ZIA SOBHANI: It's a new window.

CONSTANTINE ALEXANDER: Right.

ZIA SOBHANI: And the person most affected is an over the fence neighbor. I'm not sure of their address, but I have spoken in person Jay and over e-mail with his wife Jennifer. I just sent out a summary of what we wanted to do, and they both expressed no objection.

CONSTANTINE ALEXANDER: And they've written no letters opposing but are in support.

ZIA SOBHANI: I have an e-mail.

CONSTANTINE ALEXANDER: And apparently there is no problem.

ZIA SOBHANI: Right.

CONSTANTINE ALEXANDER: Your report is.

JOHN VINING: And in our opinion it doesn't affect -- there's no negative impacts on the neighborhood. It's in a location where it's actually not seen by anybody

due to growth and vegetation.

CONSTANTINE ALEXANDER: What's the purpose of the window? What's going on inside?

JOHN VINING: Living room and what is it's an architectural feature. We have a fireplace living room with a single window on one side and we're balancing out the room and natural light is a sought after commodity.

CONSTANTINE ALEXANDER: Okay.

I will close -- well I'll open the matter up to public testimony?

Anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. I didn't give board members a chance to ask questions, but I don't think we'll have any.

JANET GREEN: No questions.

CONSTANTINE ALEXANDER: There are no letters in our file so I think we're open to discussion or a vote.

Vote?

JANET GREEN: Vote.

CONSTANTINE ALEXANDER: Okay.

The Chair moves that we make the following findings with regard to the Special Permit being sought:

The requirements of the Ordinance cannot be met without the Special Permit.

That traffic generated or patterns of access or egress resulting from what is proposed will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of or development of adjacent uses as permitted by the Ordinance will not be adversely affected by what you're proposing.

No nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the occupant, you, or the citizens of the city.

And generally what is being proposed will not

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

So on the basis of these findings, the Chair moves that we grant the Special Permit requested on the condition that the work proceed in accordance with this plan which shows where the window's going to be which I've initialled.

JOHN VINING: Sure.

CONSTANTINE ALEXANDER: If you modify that, you're going to have to come back. Okay?

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

(Alexander, Sullivan, Green, Myers, Hammer.)

JOHN VINING: Thank you so much.

* * * * *

(9:50 p.m.)

(Sitting Members Case BZA-013866-2017: Constantine Alexander, Brendan Sullivan, Janet Green, Douglas Myers, Alison Hammer.)

CONSTANTINE ALEXANDER: The Chair will call case No. 013866, 10-12 Springfield Street.

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

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, Members of the Board. My name is James Rafferty. I'm an attorney with offices at 675 Massachusetts Avenue in Cambridge. I'm appearing this evening on behalf of M&R Hospitality Group, Inc. Seated so my immediate right is Mr. Radouan Ouassaidi. And to Mr. Ouassaidi's right is Mohammad Elzein. And Mr. Elzein and Mr. Ouassaidi are the

proposed operators of a fast order food establishment at this location on Springfield Street which actually has been the holder of a fast order food Special Permit since 2006.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: And two members sitting this evening --

CONSTANTINE ALEXANDER: That's right.

ATTORNEY JAMES RAFFERTY: -- actually sat on that case.

And here's a piece of BZA trivia, and also a member David Glenn. I don't ever recall David Glenn.

CONSTANTINE ALEXANDER: I think he came and went pretty quickly as a member of the Board. That's why we had his name.

ATTORNEY JAMES RAFFERTY: I thought okay, that's.... BZA trivia. I thought I knew every Board Member. I do my best to know who they are. But David Glenn I missed.

At any rate --

BRENDAN SULLIVAN: Some come and go and some of us never go home.

CONSTANTINE ALEXANDER: And you're stuck with the leftovers, the holdovers I should say. Not leftovers. Anyway.

ATTORNEY JAMES RAFFERTY: It's interesting because that was called Olecito and it was a bit of a satellite for the Ole Restaurant across the street that was there for many years, which was many years ago, the former Ding Ho Chinese restaurant some of us remember.

CONSTANTINE ALEXANDER: Oh, really?

ATTORNEY JAMES RAFFERTY: Oh, yeah, that was the home of the Ding Ho right there on Springfield Street. A lot of comedy legends were born in that restaurant a long time ago.

But at any rate, I don't know if the Board Members have had the pleasure, but Mr. Ouassaidi and Mr. Elzein

operate a very popular restaurant around the corner in the form of Rosie's Bakery location Muna.

CONSTANTINE ALEXANDER: Oh, yes.

ATTORNEY JAMES RAFFERTY: And if you've heard of Muna, it's been open for about a year.

CONSTANTINE ALEXANDER: I've eaten there.

RADOUAN OUASSAIDI: Oh, you did? All right, great.

ATTORNEY JAMES RAFFERTY: That could cut both ways but we'll see.

CONSTANTINE ALEXANDER: (Inaudible).

ATTORNEY JAMES RAFFERTY: On fast food we'd welcome that sometimes.

CONSTANTINE ALEXANDER: Touche.

ATTORNEY JAMES RAFFERTY: At any rate, the restaurant has been a great success there. But this is a proposed -- the concept, when the space became available, when the Ole Restaurant moved out, these gentlemen took a

look at it, and they're looking to create an Eastern Mediterranean type of operation. And I think Mr. Elzein on the menu side, on the cuisine side, I asked him if he could just give a minute or two. He's from Lebanon and it's a significant Lebanese focussed menu. And I asked him if he could just take a minute and explain the food part. Because as we know, this type of Special Permit is particular to an operator. So having an understanding of what this operation is, because we're going to suggest that there isn't another establishment in the neighborhood.

CONSTANTINE ALEXANDER: I was going to ask that question. You anticipated my question.

ATTORNEY JAMES RAFFERTY: I anticipated that. So at any rate, we thought we'd give Mr. Elzein a moment to just kind of tell you a little bit about what's anticipated or what they hope to create here.

MOHAMMAD ELZEIN: Good evening.

ATTORNEY JAMES RAFFERTY: Excuse me. And it's

going to be called Pita Cambridge, P-I-T-A. Pita Cambridge.

MOHAMMAD ELZEIN: Good evening, everyone. So what we're, you know, what we're going for is in our foods from the region, eastern Mediterranean. We're planning on doing a breakfast, lunch, and dinner. And we like to refer to it as fast casual as opposed to fast food. Muna is more of a fine casual concept. And so what we want to do things for breakfast, what we call man'oushe or flatbreads that are made Zaatar, made with cheese or labneh, different forms of flatbreads early in the morning that we're used to having. Shakshouka which is a North African based egg dish that comes with cilantro, tomato, what have you. But we wanted to do some breakfast items that you're not used to really seeing as much, you know, available in the neighborhood.

And then moving into lunch we wanted to do things that maybe you find now recently at Whole Foods such as Muhammara, you know, labneh and, you know, different forms of things that you could pick up really quickly from a deli

fridge. Or, you know, we have your Shawarma. And then we're going to have a few different things such as Moroccan --

ATTORNEY JAMES RAFFERTY: I hope you're hungry.

MOHAMMAD ELZEIN: -- Moroccan chicken, you know, Moroccan chicken tagine where you're going to be doing like Moroccan beef tagines as well over there. For lunch and for dinner it's just pretty much going to be like the lunch menu. But we're looking to do things not just your average, you know, typical, you know, falafel shawarma joint.

And then when we look at Central Square, there is a little falafel palace or two falafel places there. But when we're in Inman, we have the All Star Sandwich Place, All Star Pizza, Punjabi Dhaba right next to us over at Muna, but nothing really from our side of the Mediterranean really represented in the Inman Square neighborhood. So that's kind of what we're --

CONSTANTINE ALEXANDER: How much seating would you

have in the restaurant for those who don't want to take that out?

MOHAMMAD ELZEIN: Seating I would say probably around seven, maybe eight.

ATTORNEY JAMES RAFFERTY: It's very limited. There's a counter -- and there is an outdoor patio, but you know, and Rad can speak to this, but the space is somewhat limited, but there's going to be a huge emphasis on the kitchen and preparation and a lot of prepared foods. The anticipation in the evening, too, that you would take-home and dine in with that. As opposed they're not looking to create a dine-in experience. So it's not on the cusp of that 80/20. It's pretty much.

RADOUAN OUASSAIDI: It's more like a counter that is right inside the restaurant, you know, a lot of people if they -- it's about six probably stools that we're gonna have there. So that's why it's not going to be seating where people order or anything like that.

DOUGLAS MYERS: But how does the menu compare with Muna, for example? In terms of content, is there an overlap between what you just said and what's --

CONSTANTINE ALEXANDER: Well, Muna doesn't serve breakfast for one thing.

RADOUAN OUASSAIDI: No, Muna doesn't breakfast. And we don't have shawarmas in there. Like a lot of people, you know, I don't know if you're familiar with shawarma, it's the rotisserie kind of chicken layered and it's just like --

CONSTANTINE ALEXANDER: The Greeks would call it a hero.

RADOUAN OUASSAIDI: Yeah. Well, it has a lot of names. Gyro, gyro, hero everybody calls it --

MOHAMMAD ELZEIN: Good question, though. I mean there's, I would say a very, very, very small percentage of the menu would overlap. Like you can't not have (indiscernible) on the menu. You just can't, you know.

There's like your hummus, your humarnon (phonetic). I mean like these three things might, but we don't serve shawarma at Muna.

DOUGLAS MYERS: So not much?

RADOUAN OUASSAIDI: No, we don't have lunch in Muna.

MOHAMMAD ELZEIN: Exactly.

RADOUAN OUASSAIDI: When we were building Muna, we were walking around looking for places to eat; All Star Cafe. I mean, we had it but nothing like reasonably priced. We talking about 6.50 for a nice roll up, nice sandwich, lentil soup in the wintertime, you know. So when we start talking to people, I'm like, okay, there's Indian food, we liked it. I can't Indian food everyday, you know? So like when we talked to the people, they're like -- I'm like, what do you think about a place around here that you could have some falafel, hummus. They were like, please, you know, do it. You know? So that's why we got the idea when Olecito

was available we took it over.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: That's essentially it. We set forth the criteria in our application. We believe that the --

CONSTANTINE ALEXANDER: Did you? I missed it. I thought the application was rather sparse actually. I missed it.

Go ahead, I'm sorry. Just quickly touch the points that we have to -- the findings we have to make under Section 11.30 of our Ordinance.

ATTORNEY JAMES RAFFERTY: Right. Well, 11.31 specifically I think really focuses on congestion --

CONSTANTINE ALEXANDER: Yeah, yeah.

ATTORNEY JAMES RAFFERTY: -- traffic, parking. The extent it relies upon walk-in trade, will appeal for the location for the operators now having done business in this location now for a year is a strong sense --

CONSTANTINE ALEXANDER: That's A basically.

Physical design, etcetera, etcetera.

ATTORNEY JAMES RAFFERTY: The design is largely going to be unchanged from what the current facade is. So the design is -- it's in the -- I don't know if you've seen an image of it. I have a photo. It's in the ground floor of a residential dwelling. So it's a kind of typical East Cambridge storefront at the base of a multi-family dwelling. And that's, that's going to be unchanged. The openings, the awnings are all remaining the same.

The criteria beyond the physical line talks about the fulfilling a need for service of the neighborhood. As you heard from the menu and the food offering here, and to the extent one takes a narrow view of what need is or what the establishment is providing, one could say that on a cuisine or a menu basis that this certainly is unique in that respect.

CONSTANTINE ALEXANDER: But are there any other

fast order food establishments generally in Inman Square? I mean All Star Pizza, All Star Sandwich are basically not FOFE's. They're dine in places.

ATTORNEY JAMES RAFFERTY: Yeah. I mean, the S&S does a fair takeout business.

CONSTANTINE ALEXANDER: They're not what they call over the 80/20.

ATTORNEY JAMES RAFFERTY: Oh, agreed. Oh, no, right.

CONSTANTINE ALEXANDER: That's what I'm trying to say. The need for what is being proposed beyond the cuisine, just generally they're not a number of fast order food establishments in Inman Square.

ATTORNEY JAMES RAFFERTY: I would agree. As I go up and Cambridge Street and Hampshire Street I think about it, no, I agree.

RADOUAN OUASSAIDI: It's more like a sit down, waiter, you know, comes to you in a --

ATTORNEY JAMES RAFFERTY: Right, right.

RADOUAN OUASSAIDI: Besides the pizza place.

ATTORNEY JAMES RAFFERTY: I would be willing to say that's probably the case.

CONSTANTINE ALEXANDER: That's my view.

ATTORNEY JAMES RAFFERTY: Yeah. There's a pizza place over on Hampshire Street, iPizza or something.

CONSTANTINE ALEXANDER: We approved that some years ago.

ATTORNEY JAMES RAFFERTY: Yeah, it's got a funny --

CONSTANTINE ALEXANDER: A good distance away.

ATTORNEY JAMES RAFFERTY: It is. So the short answer is no. So none that -- I mean --

CONSTANTINE ALEXANDER: So you fulfill a need, therefore. Because we don't have -- there are no other FOFE's. You're fulfilling a need for such a service in the neighborhood.

ATTORNEY JAMES RAFFERTY: That's an acronym I've never used. FOFE, is that what we're calling them now?

CONSTANTINE ALEXANDER: I can't get my tongue around fast order food establishments.

ATTORNEY JAMES RAFFERTY: I like that.

CONSTANTINE ALEXANDER: You address that you will attract patrons primarily from walk-in trade as opposed to automobile-related traffic. The street itself doesn't lend itself to cars coming in and double parking --

ATTORNEY JAMES RAFFERTY: That's right.

CONSTANTINE ALEXANDER: -- and running in --

ATTORNEY JAMES RAFFERTY: There is a municipal parking lot across the street with metered parking. So short-term parkers have opportunities there as well.

The compliance with biodegradable.

DOUGLAS MYERS: Excuse me. Can you say anything further on what you expect the ratio or the percentage of

walk-in traffic to be in terms of either how much is your gross sales will be sold, approximately, to walk-in traffic? Or just what proportion of the business walk-ins will occupy as opposed to people who will arrive by vehicles.

ATTORNEY JAMES RAFFERTY: Well, I think in talking to both of these gentlemen, that having been in the neighborhood for a year now they're very impressed with the high level of neighborhood support they get, and we're pleased -- you'll hear later on in the hearing, the President of the Inman Square Neighborhood Association is here this evening.

UNIDENTIFIED MEMBER FROM THE AUDIENCE: The chair.

ATTORNEY JAMES RAFFERTY: The Chair. Oh, I'm sorry. Titles matter in many neighborhood associations. So the Chair of the neighborhood association. But we've been talking about the need that there's -- there's a close in residential neighborhood. He's on Fayette Street and all those long streets and he was -- well, I don't want to speak

for him. But the idea is that the whole appeal at this location for these gentlemen is the fact that there's so much walk-in traffic in the area.

DOUGLAS MYERS: And it will far exceed the number that arrive by vehicle? I'm just trying to get a sense in terms of a narrow -- Springfield Street is a narrow street. It can be congested. There could be a big back up from the traffic light on Inman Square. I'd just like to hear more on the subject, that's all.

ATTORNEY JAMES RAFFERTY: Well, to be candid, I'm not sure that there's been -- I'm not sure how one performs such analysis other than you look at the level of pedestrian activity in the overall Inman Square area, and you look at the surrounding uses, and there's a daytime population in the greater Inman Square area. The hospitals are nearby. The city hospital, Cambridge Health Alliance is about a block away up Cambridge Street. Spaulding Rehab is slightly further. There are a mix of office and residential uses

nearby, so I think the experience that they've seen in their own restaurant leads them to believe that it's going to be quite high. I think it would be speculation without much thought to go beyond that. I mean, I don't know how one could make such a claim.

Fine dining restaurants do attract an audience of customers beyond the immediate neighborhood, so that's why they've been encouraged that so much of their business is coming from this location. But I don't know if gentlemen have new.

MOHAMMAD ELZEIN: I was just going to say, you know, that we base our business on where Olecito was on Irwin's business who was the former owner. You know, we asked him about how much he did in sales? How much he did in foot traffic? What, you know, what he got on a daily basis. And when we were working on Muna, we would go there quite frequently because it was fast and easy and right next to us. And I think if thinking substantial was to happen in

the neighborhood like a new high rise building was to go up or, you know, they're closing one road or one lane and putting in an island which is gonna cause, you know --

DOUGLAS MYERS: You basically satisfied me about walk-in traffic.

The second question is, and I realize Olecito there, and was a comparable type of place. But nonetheless, I like to hear something further you about when people come running for your product, what do you foresee about the possibility of vehicular congestion if people want to pick up quickly a takeout order in your establishment? What I said about Springfield Street with the back up from the traffic light and so on.

RADOUAN OUASSAIDI: I mean, the way we do things -- I mean, I don't know if you've seen these kind of fast food places, it takes about two minutes basically to come grab and go, you know. It's not something that you linger for the food. I mean if you're having a shawarma,

shawarma is already cooked, shaved, you know, like with a knife and it's already on a steam table. You come in, basically you put a pita bread, some hummus, some chicken, you roll it, put it in the paper, thank you very much. It's nothing that you stay and wait like for some restaurants you have a number and you wait. So you will be kind of an in and out.

MOHAMMAD ELZEIN: So it's two things that we thought about from an operational standpoint. One was with Olecito, a line formed really quickly and the line would go out the door.

ATTORNEY JAMES RAFFERTY: Excuse me, we're talking line of customers not vehicles. Your question was vehicles.

DOUGLAS MYERS: If they arrive by vehicle. I understand that.

MOHAMMAD ELZEIN: You know, the number one thing that we think about from our operational standpoint is we don't want our customers and guests to be waiting outside,

especially in colder winter months. So what we've done inside the spaces is essentially, you know, make more of a space for people to be in there for ordering and move the counter back substantially. I don't know if you know or not, but a lot of the food that was at Olecito was being prepared at Ole.

CONSTANTINE ALEXANDER: I assumed so.

MOHAMMAD ELZEIN: And then brought over. And so we are actually putting in and building an entire kitchen facility right behind -- where -- in the same building where it is, and so that's going to allow us to move the counter space back and have, you know what I mean, more room so that way there wouldn't be congestion at all, you know, in terms of that line, and then add to it with what Rad is saying is to just kind of keep the same pace as Olecito. Because I thought they were pretty fast.

RADOUAN OUASSAIDI: Lunchtime that's the only time you can make your money. So you don't want even

people -- people sometimes they have a break. Like, let's say they work at a hospital, they gonna walk there for like ten minutes. They wanted to come in, five minutes, they need to take their sandwich, you know? So that's what we do, we --

CONSTANTINE ALEXANDER: Can you offer your food offerings quickly? I mean in nature of cooking.

RADOUAN OUASSAIDI: This nature of cooking, yes, because there is like for the plates?

CONSTANTINE ALEXANDER: Yeah.

RADOUAN OUASSAIDI: You have rice, salads. Salads are already pre-made in the three compartment container in the fridge. You grab the salad that is already made, you add the rice, you add the chicken. You see that the way I said it?

You add the chicken, you add the rice, you put the tahini sauce, boom, thank you very much. So that's the way we do it. You don't want to wait and start cooking and

lunchtime you know.

ATTORNEY JAMES RAFFERTY: And one of the reasons they told me that they were offering breakfast was frankly their kitchen help is in there at six in the morning doing all this prep to have this food ready, so it made sense to provide an offering. But a lot of the work goes in before the customers arrive in terms of this type of food service.

CONSTANTINE ALEXANDER: Except when you're making shakshouka, you got to poach the eggs.

RADOUAN OUASSAIDI: Well, the shakshouka what you do is -- well, you know about shakshouka? Okay. That's the breakfast items.

CONSTANTINE ALEXANDER: That's a breakfast item.

RADOUAN OUASSAIDI: It's just the ground beef and you put the eggs and tomatoes with it and there you go.

CONSTANTINE ALEXANDER: Any other questions?

DOUGLAS MYERS: I'm fine.

RADOUAN OUASSAIDI: Hungry anybody? Talking about

the food too much?

ATTORNEY JAMES RAFFERTY: Muna is staying open late tonight just to let you know.

DOUGLAS MYERS: What are your hours going to be?

CONSTANTINE ALEXANDER: Anybody here wishing to be to speak on this matter? Sir.

MATT CLOYD: My name is Matt Cloud.

CONSTANTINE ALEXANDER: Come forward and give your name and address to the stenographer, please.

MATT CLOYD: Sure. I'm Matt Cloud. I live at 54 Fayette Street.

ATTORNEY JAMES RAFFERTY: Matt, could you spell your last name.

MATT CLOYD: C-L-O-Y-D.

ATTORNEY JAMES RAFFERTY: Why don't you come up so she can hear you. She needs to get you.

MATT CLOYD: Okay. So I'm the Chair of the Inman Square Neighborhood Association, and when I saw the notice

about this hearing I wanted to come and express my full enthusiastic support. Before having met these two gentlemen, very excited about the idea of another food-related use that will attract a lot of foot traffic to Inman Square. Olecito, yeah, the line used to be out the door. And as far as I could tell I never saw anybody with car keys or looked like they got out of a car to come there. It seemed like mostly local neighborhood people. One of the prime issues that the neighborhood association is working on addressing this year is the lack of foot traffic in the square and the moving out of a lot of high traffic businesses. And so to see a high traffic business come to the square, is something that's really important for the neighborhood. And then to have a, you know, an already established business offering a different kind of food, especially one that will give me a breakfast option besides the 1369 egg sandwiches is very exciting.

CONSTANTINE ALEXANDER: As you well know, there is

talk about reconfiguring Inman Square, the traffic pattern.

MATT CLOYD: Yes.

CONSTANTINE ALEXANDER: For safety reasons and the like. Any thought that that might impact traffic that would in turn cause traffic backup for the people who patronize the establishment?

MATT CLOYD: Nothing that I can think of. The only thing that comes to mind is if they move forward with moving Volicci Plaza in part to in front of Punjabi Dhaba, that that will be additional seating for people who get takeout from the place. From Pita.

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

MATT CLOYD: Thank you.

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

(No Response.)

CONSTANTINE ALEXANDER: Apparently not. We are in

receipt of two letters. One.

Is from City Councillor Timothy J. Toomey, Jr.

(Reading) I am writing to lend my support to BZA case such and such, an application by M&R Hospitality Group for a permit to operate a fast order food establishment serving Mediterranean cuisine on 10-12 Springfield Street. This space has a history of this type of use with no negative impacts to the area. I have not heard any opposition, and I believe this would be a great addition to the neighborhood. Thank you for your attention to this the matter and I hope you will find favor with the applicant's request.

We also have a letter from Jason Alves, A-L-V-E-S, the Executive Director of the East Cambridge Business Association. (Reading) I am writing on behalf of the East Cambridge Business association to lend our support for this current application by M&R Hospitality Group to operate a fast order food establishment serving Mediterranean cuisine. The applicants are proprietors of another popular Inman

Square establishment, and their expansion would be a welcome addition. Inman Square can benefit from additional daytime options that would help maintain a lively business district. The location has a history of similar use and we would assume have no negative impacts to the abutters. Thank you for taking this into consideration and we hope you will find favor with this application.

And that's it.

Any final comments?

ATTORNEY JAMES RAFFERTY: No, thanks.

CONSTANTINE ALEXANDER: Discussion or ready for a vote?

Okay. This is a -- we can go through a lot of votes for a Special Permit.

Turning first to Section 11.31, the Chair moves that we make the following findings:

That the operation of your establishment will not create traffic problems, reduce available parking, threaten

the public safety in the streets or in sidewalks, or encourage or produce double parking on the adjacent public streets.

That the physical design, including color and use of materials of the establishment, will be compatible with and sensitive to the visual and physical characteristics of other buildings, public spaces, and uses in the particular location.

That the establishment will fulfill a need for a fast order food establishment in the neighborhood since there is currently none at least nearby.

What is being proposed will attract patrons primarily from walk-in trade as opposed to drive-in or automobile-related trade.

That -- we didn't ask you this question but I assume the answer is yes -- that your establishment shall, to the greatest extent feasible, utilize biodegradable materials in packaging the food and utensils and other items

provided for consumption.

Can you confirm that --

RADOUAN OUASSAIDI: Yes.

CONSTANTINE ALEXANDER: That you will provide a convenient, suitable, and well-marked waste receptacles to encourage patrons properly to dispose of all packaging materials, utensils, and other items provided with the sale of food.

MOHAMMAD ELZEIN: Yes.

CONSTANTINE ALEXANDER: And that you will comply with all state and local requirements applicable to ingress, egress, and use of all facilities on the premises for handicapped and disabled persons.

RADOUAN OUASSAIDI: Yes.

MOHAMMAD ELZEIN: Yes.

CONSTANTINE ALEXANDER: And then turning to the general requirements for a Special Permit the Board moves that we make the further findings:

That the requirements of the Ordinance cannot be met without the Special Permit you're seeking tonight.

That traffic generated or patterns of access or egress resulting from your operation of your proposed FOFE will not cause congestion, hazard, or substantial change in established neighborhood character.

That the continued operation of or development of adjacent uses will not be adversely affected by what is proposed.

No nuisance or hazard will be created to the detriment of the health, safety, and/or welfare of the occupant of the proposed use or the citizens of the city.

And that generally what is proposed will not impair the integrity of the district or adjoining district or otherwise derogate from the intent and purpose of this Ordinance.

So on the basis of all of these many, many findings the Chair moves that we grant the fast order -- a

Special Permit for the fast order food establishment
proposed by the petitioner.

All those in favor say "Aye."

DOUGLAS MYERS: Is there a plan?

CONSTANTINE ALEXANDER: There no plan, really for
these. We could tie it to the physical design that's in the
file.

DOUGLAS MYERS: Up to you.

CONSTANTINE ALEXANDER: I don't think it's
necessary given the nature of the business.

All those in favor please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Special Permit granted.

(Alexander, Sullivan, Green, Myers, Hammer.)

(Whereupon, at 10:15 p.m., the

Zoning Board of Appeals Adjourned.)

* * * * *

ERRATA SHEET AND SIGNATURE INSTRUCTIONS

The original transcript and Errata Sheet has been delivered to Inspectional Services Department.

INSTRUCTIONS

After reading this volume of the Zoning Board of Appeals transcript, note any change or correction and the reason therefor on this sheet. Sign and date this Errata Sheet.

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I have read the foregoing transcript of the Zoning Board of Appeals, and except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statement(s) made by me.

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 the hearing herein before set forth is a true and accurate record of the proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of September, 2017.

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

My Commission Expires:
April 29, 2022

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