

BOARD OF ZONING APPEAL FOR THE  
CITY OF CAMBRIDGE GENERAL HEARING

AUGUST 26, 2010

7:30 P.M.

in City Hall Ackerman Room  
2nd Floor, 795 Massachusetts Avenue  
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Brendan Sullivan, Member

Tad Heuer, Member

Slater W. Anderson, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:25 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call the meeting of the Zoning Board of Appeal to order. And as is our custom, we start with continued cases. And the first continued case I'm going to call is case No. 9893, 23 Sciarappa Street. Is there anyone here wishing to be heard on that matter?

(No response).

CONSTANTINE ALEXANDER: No one here wishes to be heard. The Chair is in possession of a letter from the architect of the project, Paul E. Fiore Architecture addressed to the Board. "This is a formal request to remove our application for 21-23 Sciarappa from consideration."

The Chair will make a motion that this case be withdrawn in accordance with the Petitioner's request.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Anderson.)

(7:30 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will now call case No. 9563, 12 Shady Hill Square. Is there anyone here wishing to be heard on that matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. We have a letter of request?

SEAN O'GRADY: I'm sorry, yes.

CONSTANTINE ALEXANDER: The Chair is in possession of a letter from Robert B. Foster an attorney with the firm of Rackemann, R-a-c-k-e-m-a-n-n, Sawyer and Brewster. The letter is dated July 9th, addressed to Mr. O'Grady. "On behalf of

the Petitioners and the land owner, Stonehouse Holdings, LLC, I'm writing to inform you that the parties have reached an agreement and closed the sale of the property that is the subject to these appeals. With the extent of Stonehouse Holdings, LLC, the Petitioner's therefore withdraw and dismiss the foregoing appeals." And he's referring to two appeals, so I guess I'll take them in order.

So, the first one, this one, this is case No. 9563, the Chair moves that this case be withdrawn.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor. Case withdrawn.

(Alexander, Hughes, Sullivan, Anderson.)

(7:30 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will now call case No. 9651, 12 Shady Hill Square. Is there anyone here wishing to be heard on that matter?

(No response.)

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

The Chair is in receipt of a letter from Robert B. Foster from the firm of Rackemann, Sawyer and Brewster dated July 9th addressed to Mr. O'Grady. "On behalf of the Petitioners and the land owner

Stonehouse Holdings, LLC, I'm writing to inform you that the parties have reached agreement and closed the sale of the property that is the subject of these appeals. With the consent of Stonehouse Holdings, LLC, the Petitioners therefore withdraw and dismiss the foregoing appeal."

The Chair will make a motion that this case be withdrawn.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor. Case withdrawn.

(Alexander, Hughes, Sullivan, Anderson.)

(7:30 p.m.)

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

CONSTANTINE ALEXANDER: Before we  
start our regular agenda, we're missing  
our fifth member. So as soon as he shows,  
we'll start the regular agenda.

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

(7:35 p.m.)

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

CONSTANTINE ALEXANDER: The Chair  
will call case No. 9976, 26 Seagrave Road.  
Is there anyone here wishing to be heard  
on this matter?

MAGGIE BOOZ: I'm Maggie Booz.  
I'm an architect of the project. And my  
client.

ZACHARY ST. LAWRENCE: I'm Zachary  
St. Lawrence. My other half couldn't be

here tonight. She's tucking in someone whose bedtime is right now.

CONSTANTINE ALEXANDER: You really want to go forward with four?

For the record, since now the transcript is going I'm going to repeat what I said to you before. We only have four members here. We can go forward tonight with the four or right now, or you can wait until that fifth member shows. The reason you have your choice is that if you go forward with four, you have to get all four of us to vote in favor of the relief you're seeking. If we have five, you still need four, but you have obviously an extra vote to spare. So you could have a decenter and still get the relief you're seeking. So it's your decision as to what you want to do.

ZACHARY ST. LAWRENCE: I think the request is fairly straight forward and

simple and we got agreement from all of the neighbors, so I see no reason not to proceed, just so things can keep on schedule.

CONSTANTINE ALEXANDER: Not to in any way to scare you or influence you, but I have to tell you just because you have the consent of all the neighbors it's not ipso facto you're going to get relief from us.

Okay. Do you wish to proceed?

MAGGIE BOOZ: Yes.

CONSTANTINE ALEXANDER: Then the floor is yours.

MAGGIE BOOZ: So, what we're proposing is two, third floor dormers to make access for a stair that exists there now in the house to a finished space that exists there now. We will be renovating the new space if we are allowed this relief. That is, it has wallboard up and

it has inadequate old insulation, but we're willing to modernize the installation and refinish the wall surfaces. So we're asking for relief for two, for permission to build two dormers. One over the existing stair and one over a space that we would like to use as an additional bathroom for the unit.

CONSTANTINE ALEXANDER: My sense looking at the plan is that, not entirely, but mostly you're in compliance with the dormer guidelines?

MAGGIE BOOZ: Yes. Yes.

CONSTANTINE ALEXANDER: Yes, you are entirely or yes, mostly?

MAGGIE BOOZ: We're not entirely because we exceed, we exceed the floor area ratio. But in terms of the dormer guidelines, they're shape, they're pulling them down a little --

CONSTANTINE ALEXANDER: The

dimensions of where they are from the edge?

MAGGIE BOOZ: Yes, exactly.

CONSTANTINE ALEXANDER: Okay.

MAGGIE BOOZ: We tried to minimize -- and this is the reason that the two dormers are not the same size, we tried to minimize the width of one of the dormers just to keep things as tight as possible up there and still allow us room to get up the stair. Right now you walk up the stair, and even though it's a finished stair and has newels and balusters and everything that match an original stair in the house, I mean, you literally have to go under the rafters at an angle to walk up the stair. It's peculiar to say the least.

And my clients own the entire house. They rent out the first floor as a rental unit and then the second floor, and third

floor they live in. They just had a baby and would like to --

CONSTANTINE ALEXANDER: Repeat that again.

MAGGIE BOOZ: They live on the second floor and the third floor space is also contiguous with --

CONSTANTINE ALEXANDER: And they rent the first floor?

MAGGIE BOOZ: And they rent the first floor.

And what we're seeking is a fairly minimal increase in the floor area ratio which already is exceeded --

CONSTANTINE ALEXANDER: Right.

MAGGIE BOOZ: -- which already exceeds the allowable on the site. But my argument would be that the basement space which we are required to include in the floor area calculations, because it's seven feet high, is first of all, not

contiguous with the owner's unit, the second and third floor unit, but also the fact that it can't really be habitable space because we can't get egress windows into it. The site is very tight. It's a very narrow site. And because we have five-and-a-half feet on one side and nine-and-a-half feet or so on the other, we don't have room for window wells in order to have egress out of the basement. So I would argue that it's very hard to make habitable space in that basement.

ZACHARY ST. LAWRENCE: Something worth noting, that we are in a flood zone so the basement does flood when the Mystic River overflows its boundaries and runs over 16. So the basement isn't --

MAGGIE BOOZ: That's true.

CONSTANTINE ALEXANDER: What do you use the basement for now, storage?

MAGGIE BOOZE: Mechanicals.

ZACHARY ST. LAWRENCE: Yeah, mechanicals.

MAGGIE BOOZ: I was there during -- I visited, we had a client meeting in it must have been March during the terrible rains, and all of Alewife Brook Parkway was completely under water. And it took me an hour and a half to get to their house due to flooding in that area. It's -- you know, it's severe. And that the basement is -- though we count it, it shouldn't have to be counted in terms of how much space is occupied in the house. So, that's the relief we're seeking.

CONSTANTINE ALEXANDER: Just for the record and for the edification of other Board members, I mean, true you're going to increase the FAR a small amount, but the house right now is substantially over the permitted FAR.

MAGGIE BOOZ: It is.

CONSTANTINE ALEXANDER: The district is 0.5 and you're now at 1.19. And you'll be going to 1.21. So, you would be two and a half times for what's permitted in the district.

MAGGIE BOOZ: Right. That's correct.

CONSTANTINE ALEXANDER: But the purpose is again for additional living space for a growing family and the third floor to make it basically more habitable than it is right now.

ZACHARY ST. LAWRENCE: Making it more accessible. I mean, it is accessible, we do use it right now. It's just difficult going up and down especially carrying a baby. And then having the growing family, rule of thumb of one bathroom per woman in the household and the number of women have just

increased.

MAGGIE BOOZ: Yeah, and also the increased floor area has no affect on density in the neighborhood. I mean, it's absolutely simply for a -- I've never seen it, there's no way to make a unit out of it. There's no intention to do that. No desire to. So in terms of it increasing density in the neighborhood, it would have absolutely no affect on that.

CONSTANTINE ALEXANDER: And you mentioned you have support of the neighborhood?

ZACHARY ST. LAWRENCE: Yes.

CONSTANTINE ALEXANDER: Do you have letters by any chance?

ZACHARY ST. LAWRENCE: I have letters from all of the abutters. Let's see, the left and right door neighbors. And then the -- there's an abutter on the back that would be able to see the dormer.

CONSTANTINE ALEXANDER: The Chair is in receipt of letters, one letter is from the resident at 130 Whittemore, Tom Lynott, L-y-n-o-t-t. "To whom it may concern: My property is an abutting property to 25-26 Seagrave Road. I've had the opportunity to review the plans for a dormer construction at 26 Seagrave Road and have no objections to these plans."

Identical letters have been furnished to us from Margaret Kelly at 23 Seagrave Road. And from -- well, it's not signed, but I assume it's been filled out. And also a letter, identical letter from Sue Seeger, S-e-e-g-e-r who apparently resides at 28 Seagrave Road. I'll put these in the file as part of the record.

Questions from members of the Board at this point?

Does anyone here wish to be heard on this matter?

(No response).

CONSTANTINE ALEXANDER: The Chair would note there is no one here who wishes to be heard. We'll close public testimony.

Comments from members of the Board.

BRENDAN SULLIVAN: I guess what struck me was that it seems to be an honest petition. Sometimes people come down and ask for a dormer again for increased headroom over an existing stairway and they want a ten-foot dormer.

CONSTANTINE ALEXANDER: You're right.

BRENDAN SULLIVAN: This is a very honest petition. The reason for it is very justified, and I think it encourages families. I think you're probably a long-term resident so it seems to be very reasonable and very worthwhile.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: Those are my thoughts.

CONSTANTINE ALEXANDER: Anybody else have issues or comments?

TIM HUGHES: I'm good.

CONSTANTINE ALEXANDER: The Chair will make a motion. The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of our Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that they have a third floor that cannot readily be used for living space and is not available to the needs of a growing family.

That the hardship is owing to circumstances relating to the unusual shape of the lot, and that the fact that the structure is already non-conforming. So any modification would require Zoning relief.

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

The Chair would note that there seems to be unanimous neighborhood support of the project.

That the project complies with our former guidelines, and that the structure as so modified would not be inconsistent with other structures in the neighborhood.

On the basis of all these findings, the Chair moves that a Variance be granted to the Petitioner to construct a Variance proposed on the grounds that the --

SLATER ANDERSON: May I ask one question? I'm sorry.

CONSTANTINE ALEXANDER: Oh, sure. Go ahead.

SLATER ANDERSON: I'm just

thinking about the basement. It's true that it's not contiguous with your unit. But you own the whole building, you own the first floor unit.

ZACHARY ST. LAWRENCE: Yes.

SLATER ANDERSON: Should we condition it on the fact that the basement -- can we condition it on the fact that the basement is not at a later date converted to space? I know it's got, you know, there are practical limitations potentially but they don't seem insurmountable.

CONSTANTINE ALEXANDER: Well, I guess I'm somewhat reluctant. They're already in the FAR calculation. So today if they want to do with the basement and make it liveable, they could do it but they'd have to come before us.

SLATER ANDERSON: Enough for me.

CONSTANTINE ALEXANDER: The Chair

moves based on these findings, that a Variance be granted to the Petitioners to construct the dormers as proposed on the grounds that the work proceed in accordance with the plans prepared by Smart Architecture, they are two pages, numbered A-3.0 and A-7.0 bot of which have been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Anderson.)

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

(7:50 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9977, 30 Upton Street. Is there anyone here wishing to be heard on this matter? Please come forward.

JEFFREY BARON: My name is Jeffrey Baron. I'm with Patricia Wada and Timothy Monroe. Patricia owns the property and Timothy is married to Patricia.

I met them a few months ago and they took me to their house, which is an historic house that was built in the 19th century. And it's on a property where there are town houses on one side and there's single-families on one side and on

the back. Very, very dense neighborhood in Cambridgeport. They hired me because there were two issues that were coming up:

One is that because Tim actually works in California and flies back and forth. And actually when he is in Cambridge, he actually works in an office in the house. And between a combined marriage, I think what, three children?

PATRICIA WADA: Four children.

TIMOTHY MONROE: Four children.

JEFFREY BARON: So four children, two adults and two home offices. And there is one bedroom right now which is just slightly larger with what the code requires, the building code. And when they introduced me to the problem, I found that there's an addition that was put on the house probably I suspect over 100 years ago. But it was built on a very, very bad foundation. And a contractor and

my structural engineer came out, and I looked at it, and we sort of assessed and it realized that the existing condition of the building is they need a new foundation. And what Patricia and Tim want is they want to add on a second floor on top of the -- and just extend it about a foot and a half beyond the existing foundation -- or new foundation wall. It's not going to impact the setbacks. We're still going to be within the required setback. The setbacks on the side right now we are way beyond them. The whole house is over the FAR.

CONSTANTINE ALEXANDER: You're on the setback, I thought the house right now is non-conforming --

JEFFREY BARON: It is. It's non-conforming on all setbacks except for the rear yard.

CONSTANTINE ALEXANDER: So you do

need relief because you're not going to get any closer to the lot line?

JEFFREY BARON: That's correct.

CONSTANTINE ALEXANDER: But you're going to increase the bulk.

JEFFREY BARON: The FAR.

CONSTANTINE ALEXANDER: Both the FAR and setback is what you technically need?

JEFFREY BARON: Correct.

And so we submitted some drawings with photographs. And Patricia and Tim are here to answer any questions you have for them.

TAD HEUER: I have a question. You have in your amended plans say there's a Variance needed for a skylight?

JEFFREY BARON: Yes.

TAD HEUER: Is the skylight --

JEFFREY BARON: What's going to happen is the first floor is approximately

9-feet-by-13-feet. The second floor above that will still be 13 feet but it's going to be 11 feet. It's going to be slight cantilevered.

TAD HEUER: Before we go there the only thing I want to get clear, and this is just procedural, is the skylight in the setback?

JEFFREY BARON: No, it's not.

TAD HEUER: Then, I don't think you need -- you certainly don't need a Variance.

JEFFREY BARON: Okay.

TAD HEUER: Because I don't think there's any way you can get a Variance. I don't think you need a Special Permit because a Special Permit is only required if the skylight's in the setback.

JEFFREY BARON: It's not in no setbacks.

TAD HEUER: So I think, my sense

is that could be done by right.

JEFFREY BARON: Okay. I thought that it might because the house is non-conforming you had to have the -- the skylight is not in any setbacks.

CONSTANTINE ALEXANDER: The non-conformity is the point that Tad was making. But if you're non-conforming in the setback and you're going to put a skylight in that setback --

JEFFREY BARON: Right, I understand.

CONSTANTINE ALEXANDER: -- then you would need a Special Permit. But otherwise you don't.

JEFFREY BARON: But I wanted to put a skylight into the bulk of the house which are all in violation of setbacks, and I had a problem. But there's no setback problems in the bump in the back of the house.

CONSTANTINE ALEXANDER: The FAR issue, again, for the record, is right now the district has got a max of 0.6.

JEFFREY BARON: Right.

CONSTANTINE ALEXANDER: The structure is 0.74.

JEFFREY BARON: Right.

CONSTANTINE ALEXANDER: And you wish to go to 0.79.

JEFFREY BARON: Correct.

CONSTANTINE ALEXANDER: A slight increase in a somewhat slightly non-conforming structure as to FAR and also setbacks, too.

JEFFREY BARON: Right. It's 124 square feet.

CONSTANTINE ALEXANDER: And the purpose of this, I'm sorry, one more time the second floor?

JEFFREY BARON: Right now the bedroom that we're replacing is, I think,

seven-foot nine inches by 12 feet. So we want to actually build a bedroom over this addition so there's a nice bedroom. And then we're going to take and make this section that's off the bedroom is going to become one of the home offices for Patricia. And Tim is already working with one of their children using their room in the front as an office. So we're trying to basically have places for everybody in this family to live there and also for them to do their work.

TAD HEUER: I have two questions and they're going to be contrary to one another, but I think that's just ends up being my right to be able to ask them.

Can you tell me why you want to cantilever instead of a straight up/down, what's the reason not pushing the house, and this is going to be directly in contrast to my next question, but is the

reason of pushing out the first floor that you're presumably taking off and replacing; is that right?

JEFFREY BARON: Yes, because it's defective.

TAD HEUER: Is there a reason you just don't a single plane? What's the thought of cantilevering out?

JEFFREY BARON: So, how can I put this without sounding like a porn director? We're trying to make the width of the bedroom that's got the cantilevering to be able to accommodate a queen-size bed.

TAD HEUER: And did you not think about just asking for an extension of the first floor to make your plane even? By presuming that the bedroom is the size you need a bedroom to be, is there a reason you didn't bring it out another, looks like a foot and a half maybe, 18 inches?

JEFFREY BARON: Yes, it's 18, 19 inches. Only because I was trying to stay within the foundation of the building.

TAD HEUER: Which is going to be dug out anyway, right?

JEFFREY BARON: Yeah. I mean, if we were allowed to take the whole thing out to the -- the first floor out to the 18 inches, the two people next to me would be thrilled. And also my engineer would be thrilled because I don't have to worry about cantilevering and --

TAD HEUER: That's more of my question. This seems to be a really complex solution to something that might not be --

PATRICIA WADA: I think also was that we didn't realize until later, right?

JEFFREY BARON: Yeah.

PATRICIA WADA: We had to replace the foundation.

TAD HEUER: Okay.

JEFFREY BARON: I had done all the sketches and submitted them. And then I had John come out and was -- he's the contractor that does all my work in Cambridge. And he walked out there and he said, we're replacing this. And he took me down and he took a flashlight and he said, this isn't going to support a second floor. And then I took some photographs and showed them to John Born my structural engineer, and he said, it's coming down.

But as to an architectural point of view, your recommendation would actually be much nicer looking. It would go more in fitting with the house without the cantilever.

PATRICIA WADA: Yes, that would be great.

TAD HEUER: So, and here's my other question which is going against

that. So you're in a 0.74 in a 0.6, and you want to go to 0.79. Don't we really say you're lucky to have between 0.6 and 0.74 right now? Like, you shouldn't have it under the Zoning Code. Why do we give you even more from what you shouldn't have under the Zoning Code? Like, you're already over. You've already got more square footage than you should have on the lot anyway. It's kind of a bonus because you've bought a grandfathered house. Why should we give you even more?

JEFFREY BARON: That's why we're asking for a Variance. Because it's a hardship with six people living in the house that's basically 700 square feet.

TAD HEUER: Why not a bigger house?

PATRICIA WADA: Well, I've lived in that house for 25 years and I really love Cambridgeport. I love my street.

Upton Street is a one block street. I know all my neighbors on the street. It used to be that I was the -- that I was the newest neighbor who lived on that street up until just about maybe five years ago. So, you know, I don't want to leave. I mean, I did think about it -- we did think about that. Because we could get, you know, we could solve some other problems, too. But, we thought this was a -- that we should try this because we would really love to be able to stay there.

JEFFREY BARON: I also asked Pat and Tim to go around and speak to their neighbors and the have some letters of support from them.

CONSTANTINE ALEXANDER: We have some in the file now. And we'll have those letters as well.

PATRICIA WADA: I have -- so we

have three direct neighbors on our right and our left. Directly behind us is a garage. And then we have another neighbor sort of in the back. And all three have offered their support for this Variance.

CONSTANTINE ALEXANDER: Further questions?

Anything else?

JEFFREY BARON: I assume you guys -- everybody is aware of the stretch energy code that went into effect about eight weeks ago in Cambridge. And the building right now, I would say it's a generous two-by-four wall on the first floor. And I know I can't put a two-by-four wall because it has to be a two-by-six filled with Isomine (phonetic) or, you know, Salos (phonetic). And the good news is that we -- and I'm going to be cutting back because I think the walls are cutting back that's actual usable

space. And so if we were allowed to have the Variance with that addition, it would be terrific because I can put the energy code stuff and it would tie in. I think you're right, even though I designed it, I think it would be better if it was a straight wall.

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

Anyone here wish being to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. The Chair is in receipt of various letters which I will read into the record.

BRENDAN SULLIVAN: I'm sorry, can I see the drawings?

CONSTANTINE ALEXANDER: You want to see the drawings? Sure. I have a

question about the plans when we get to that.

We have a letter from Allison M. Crump, C-r-u-m-p and David J. Salomon, S-a-l-o-m-o-n who reside at 58 Pleasant Street, addressed to this Board. "We are direct abutters to the subject property at the corner of Upton and Pleasant Streets. We have had the opportunity to review the plans of our neighbor to extend her living space with very minor impact. While we understand that any change is subject to review, because of the grandfather condition, we fully support this application for a Variance. The impact is non-existent to the public and minimal to any abutters." And then they state that they're not able to be here in person due to prior commitments.

The same letter from the Crumps. We have a letter in the file from Stansbury,

S-t-a-n-s-b-u-r-y Themea, T-h-e-m-e-a and Ora, O-r-a Themea who reside at 28 Upton Street addressed to this Board dated August 25th. "We are direct abutters to 30 Upton Street. We have had the opportunity to review the plans of our neighbor to extend her living space with very minor impact. While we understand that a change is subject to review because of the grandfather condition, we fully support this application for a Variance. The impact is very minimal to us." And they also state that they're unable to be here in person.

And lastly we have a letter from Carolyn P. Ingales, I-n-g-a-l-e-s who resides at 60 Pleasant Street. It's addressed to this Board. The letter is dated August 24th. "I am a direct abutter --" And it's the same letter that I've read before, the other two letters. And

this person is also unable to attend the hearing. You must have a busy neighborhood.

That is the sum and substance. There are no letters of opposition. Has any neighbor expressed orally to you any opposition to the project?

PATRICIA WADA: No.

CONSTANTINE ALEXANDER: When we do grant relief, we tie the Variance to specific plans and that's it. You can't modify the plans. The plans we have in our file are the final plans. Okay. You understand that? If you decide to change them later on, you might have to come back before us.

JEFFREY BARON: Right.

CONSTANTINE ALEXANDER: Okay. There's a whole set of plans and then there are some separate pages that were submitted later. Can you explain that to

me?

BRENDAN SULLIVAN: You mean this here?

CONSTANTINE ALEXANDER: That.

BRENDAN SULLIVAN: Well, this is specific to the relief being requested, and this is more existing and proposed.

JEFFREY BARON: The second set of drawings were prepared after my structural engineer and my contractor came out there.

CONSTANTINE ALEXANDER: Right.

JEFFREY BARON: And I had to show that as building a new foundation and that I was rebuilding the first floor. And the original drawings is just showing they're preexisting and to remain. All that's showing is that we're going to be doing that whole thing.

CONSTANTINE ALEXANDER: So, the relief is really to be tied to these, these three pages?

JEFFREY BARON: Right.

CONSTANTINE ALEXANDER: Sean, you've looked at them, they're sufficient for your purposes?

SEAN O'GRADY: I just don't remember them, but I'm sure I do.

CONSTANTINE ALEXANDER: He has to enforce our decision and I want to be sure he's comfortable.

BRENDAN SULLIVAN: Some are lacking in dimensions.

CONSTANTINE ALEXANDER: It looks like it.

BRENDAN SULLIVAN: Which should be helpful around in trying to scale the drawings so I think I would want numbers put on there just so it's a lot easier to track exactly.

SEAN O'GRADY: The foundation coming up there's just no way to determine what's what.

BRENDAN SULLIVAN: Right. So that would be one prerequisite is that we have some dimensions there. It's a lot easier to measure it with a yardstick.

JEFFREY BARON: I believe we submitted a survey with measurements on the survey.

CONSTANTINE ALEXANDER: Can you put the dimensions on these right now?

JEFFREY BARON: Absolutely.

CONSTANTINE ALEXANDER: Okay. We can recess this case.

BRENDAN SULLIVAN: That's part A. Now, part B would be go back to Tad's original query that -- I guess my thought is I think that the cantilever, the second floor, looks like an addition. Looks to me out of place. And so I think I would say yes, to bumping out the first floor even though it does bumps that number up.

TAD HEUER: I think what my

comment is going to be is that I would probably generally oppose the relief because I don't see the hardship, but the Board, which I believe, and I can hear the Chairman's motion in my mind right now, is inclined to grant relief, I would prefer the relief to be granted in a way that makes the building face plainer rather than cantilevered. So I'm saying while I prefer no additional FAR, if the Board is going to grant FAR, I would prefer the slightly different FAR to make the building --

CONSTANTINE ALEXANDER: Well, if we're going to go that route, and I certainly have no objections, that we need a new set of plans.

BRENDAN SULLIVAN: Well, that's correct.

CONSTANTINE ALEXANDER: And which means we have to continue.

BRENDAN SULLIVAN: Continue this and have you redo the drawings if it's your wish to proceed with that, to move that first floor out in line with the second floor, and also throw some dimensions that are easily trackable on the drawing.

CONSTANTINE ALEXANDER: Just so you understand what's going on. We could take a vote tonight on these plans, but what you're hearing is probably two members that are opposed. As you know, you need four votes. So you're going to lose. However, if we continue the case and you modify the plans in accordance with the comments you've received, I think your chances of getting the necessary votes are greatly enhanced. It does mean a delay in the project. So we'd have to come back another night for this hearing.

JEFFREY BARON: Do you know when

the next hearing is going to be?

CONSTANTINE ALEXANDER: Well, because this is a case heard, we started with all these five. All five need to be present the next time.

What's the first available date? And then we can see if the five of us are available that date.

SEAN O'GRADY: Let's see. We're all the way out to November 18th.

BRENDAN SULLIVAN: It would probably be quick.

CONSTANTINE ALEXANDER: Okay. Coming forward since it is a relatively quick case, can we squeeze in an earlier date? What's our continued case agenda like between now and November?

SEAN O'GRADY: Just if I could make a suggestion and I'm speaking a little out of school here.

CONSTANTINE ALEXANDER: Yes, go

ahead.

SEAN O'GRADY: The plans are pretty simple, drop in the wall. I think you can probably do in ten minutes. It would satisfy me if there were dimensions on it, and that wall dropped and I knew where the window was. And I would be willing --

CONSTANTINE ALEXANDER: You're suggesting we recess this case, you can go in another room, half an hour or so or however long it takes you, you come back with modified plans, we look at them, and we can take care of this tonight.

BRENDAN SULLIVAN: You have to redo the dimensional form, too.

CONSTANTINE ALEXANDER: You follow that? You have to redo the dimensional form because you're extending the size of the addition.

JEFFREY BARON: Yes. Probably

like a half hour to do?

CONSTANTINE ALEXANDER: We have other cases to hear.

TAD HEUER: We'll be here all night.

CONSTANTINE ALEXANDER: The Chair moves that we recess this case until later this evening. When you're ready, come on back and we'll take you through.

JEFFREY BARON: Is there a set of drawings I can take to modify?

CONSTANTINE ALEXANDER: These are the ones that will be in the file.

SLATER ANDERSON: You've got one shot.

CONSTANTINE ALEXANDER: Put these letters in the file, too.

PATRICIA WADA: Thank you.

(Case recessed).

(8:05 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9978, 27 Corporal Burns Road. Is there anyone here wishing to be heard on this matter?

Okay. For the record, do you have a card to give to the stenographer?

CAMPBELL ELLSWORTH: I may. My name is Campbell Ellsworth. I'm an

architect. I live at 267 Norfolk Street. I'm here with my client Jessie English of 27 Corporal Burns Road.

CONSTANTINE ALEXANDER: You're looking for two forms of relief, a Variance and Special Permit?

CAMPBELL ELLSWORTH: Yes, indeed.

CONSTANTINE ALEXANDER: So, we'll take them separately. Let's start with the Variance.

CAMPBELL ELLSWORTH: Okay, the Variance.

Jessie's lived in this house since 2004. It's a single-family home on Corporal Burns Road. Some years back, I'm not sure, before Jessie was there, some builder or architect got a hold of this thing and really reconfigured the inside which makes, makes living there sort of rather complex and very inefficient. What we're proposing to do, and the request for

the Variance is actually to take the front entry, the little platform and the stairs and the canopy and move it over to the other side mirrored onto the other side of the house.

CONSTANTINE ALEXANDER: And the dimensions of the new one are the same as the dimensions of the old?

CAMPBELL ELLSWORTH: Exactly.  
That is correct. That is correct.

CONSTANTINE ALEXANDER: So you're now a non-conforming structure in terms of front yard setback and FAR?

CAMPBELL ELLSWORTH: Yes.

CONSTANTINE ALEXANDER: And moving that -- according to the file, you're a 0.6 is a 0.5 --

CAMPBELL ELLSWORTH: Yes, sir.

CONSTANTINE ALEXANDER: In FAR?

CAMPBELL ELLSWORTH: Yep.

CONSTANTINE ALEXANDER: So you're

not going to increase the non-conformity?

CAMPBELL ELLSWORTH: That is correct.

CONSTANTINE ALEXANDER: You're just moving it from one place to the other?

CAMPBELL ELLSWORTH: That is correct. And that's pretty straight forward.

And the Special Permit is because of on the left as you're facing --

CONSTANTINE ALEXANDER: Let's more or less get to the Variance and we'll vote on that first.

CAMPBELL ELLSWORTH: Oh, okay. Very good.

CONSTANTINE ALEXANDER: So out of curiosity, so what happened to this structure? You had an entrance where it is now, and the inside of the building was reconfigured at some point?

CAMPBELL ELLSWORTH: Well, we've actually been told by a neighbor who lives across the street, who knows this neighborhood well and knows this house, that the entry that we're actually trying to put to the right of the house was actually there at one point in the past and it was -- it had been moved. Under the current entry platform there is actually a basement window which is sort of also a clue to this. And there isn't one where we want to put it. So at some point it was moved, and we're actually trying to move it back.

CONSTANTINE ALEXANDER: And the entry now, it enters into what now into the house?

CAMPBELL ELLSWORTH: It enters into, I don't even know how to describe it.

TAD HEUER: A half foyer?

CAMPBELL ELLSWORTH: Yeah, sort of a half foyer. There's a little corridor that comes back to a half bath, three-quarter bath that was put here. There's sort of a long living room across the front. And then really what I think the major configuration that was done in the past obviously was that this stair was put in in the center of the house. Normally a house of this type would have had the stair running up on one of the exterior walls. So we're not, we're not taking on the stair right now, but we're taking on the removal, moving of the entry, which is your domain and then interior we're pushing some things around.

CONSTANTINE ALEXANDER: So now you enter into the living room?

CAMPBELL ELLSWORTH: That is correct. Right.

And so what we propose is that now

we can enter into a -- create an entry vestibule that actually creates what we're proposing is to, when it's over on this side, to come in, create a little entry vestibule. It sort of organizes the circulation here and it allows us to open this up. That half bath that's here will then move to here and we'll get much more usable interior space.

TAD HEUER: And that works with your plumbing that you've got a second -- right now the baths are stacked, right? Essentially.

CAMPBELL ELLSWORTH: The baths are not exactly stacked.

TAD HEUER: Okay.

CAMPBELL ELLSWORTH: They're not. One is in the middle of the house. And the one on the second floor is in the back. They're close to stacked.

TAD HEUER: Right.

CAMPBELL ELLSWORTH: No, we're going to have a little bit of, you know, venting and drainage challenges. But, you know, the major, the major work we're proposing is on the first floor. So we're right over the basement. So that kind of modification will happen more easily.

CONSTANTINE ALEXANDER: Further question from members of the Board?

SLATER ANDERSON: Is that a functional fireplace?

JESSIE ENGLISH: It's a gas fireplace. It needs to be repaired. I don't use it right now.

CONSTANTINE ALEXANDER: Anyone here wishing to be heard on this matter? No one?

UNIDENTIFIED MALE: Well, I wrote a letter.

CONSTANTINE ALEXANDER: I'm going to read the letters. If you have a

letter, I'll read it. If what you want to say is in the letter just sit there and be quiet.

JESSIE ENGLISH: We also have these neighbors here.

UNIDENTIFIED FEMALE: My letter's been submitted.

CONSTANTINE ALEXANDER: Your letter's in the file? Okay, thank you.

JESSIE ENGLISH: I have one letter that hasn't been submitted.

CONSTANTINE ALEXANDER: Okay. The Chair is in receipt of several letters. One is addressed to the Board. One is from Maria Ramirez who resides at Seven Corporal Burns Road. The letter is dated August 23rd. "This letter is in support of the Variance requested for 27 Corporal Burns Road. I'm a long-term resident/homeowner of Seven Corporal Burns Road located in the same block as 27

Corporal Burns Road. I reviewed the architect's drawings and have no issues with the proposed modifications. I believe the proposed remodeling will enhance this residence and thus be a positive change for the neighborhood. I welcome continued investment by our neighbors in their homes."

We have a letter addressed to this Board dated August 23rd from Robin Bonner, B-o-n-n-e-r and William N. Rideout, R-i-d-e-o-u-t dated August 23rd. The letter is identical to the letter I just read.

Again, we have a letter dated August 24th addressed to this Board from Robert and Elizabeth Camacho, C-a-m-a-c-h-o. It is the same letter as the one I read before, but there is a PS. "Bob Camacho here. When I was growing up at 24 Corporal Burns Road, I remember that the

original location of the front door at 27 Corporal Burns Road was on the right side of the front as is proposed in the modification."

And last a letter from Eileen T. Woodford, W-o-o-d-f-o-r-d, 25 Corporal Burns Road, dated August 26th. "I'm writing in support of the request by Jessie English for a Variance in the Special Permit to make exterior changes to 27 Corporal Burns Road. Ms. English has long talked about making these changes to her home and we have enthusiastically supported her planning activities. The plan changes would only have a positive effect on the Corporal Burns streetscape and neighborhood at large. I urge the Board to approve Miss English's appeal for a Variance and Special Permit."

And that's the sum and substance --

JESSIE ENGLISH: I faxed this, I

don't know -- it was an e-mail. So, Eileen is a renter and then there's the owners of the house that live in Maine.

CONSTANTINE ALEXANDER: Right.

JESSIE ENGLISH: I had sent them the plans so they could see it, and they sent me an e-mail saying they were okay with the plans.

CONSTANTINE ALEXANDER: Okay.

The Chair is also in receipt and this is part of a public file, an e-mail from Jennifer Wriggins, W-r-i-g-g-i-n-s who says, "This looks fine to us."

I will close public testimony.

Further comments, questions from members of the Board. We're on the Variance at this point.

TIM HUGHES: Who was Corporal Burns?

JESSIE ENGLISH: He's actually related to one of my neighbors. He was

like -- it was one of the family members that died in World War II. So she got the street renamed. It's been -- one of the neighbors on the other side, in honor of her family member who died in World War II.

TIM HUGHES: Okay.

JESSIE ENGLISH: There's actually a park named after him, too.

CONSTANTINE ALEXANDER: We ready for a vote. The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of this Ordinance -- we're talking about by the way the -- well, we'll make the following findings:

That a literal enforcement of the provisions of this Ordinance would involve a substantial hardship to the Petitioner. Such hardship being is that the house as presently configured, is not as usable, is

somewhat irrational in terms of its access to the outside from the rooms, and egress to the inside as presently configured.

That the hardship is owing to circumstances relating to the fact that it is an unusually shaped lot, and that the structure, I believe -- it is non-conforming currently to any modifications would require relief.

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

The Chair would note in this regard that we have unanimous neighborhood support.

That the exterior change will be no different in terms of Zoning non-compliance in the existing. Just removing the non-compliance from one side of the house to the other.

So on the basis of these findings, the Chair moves that a Variance be granted to the Petitioner on the condition that the work proceed in accordance with plans prepared by Ellsworth Associates. They are numbered EX1.1, EX3.1, A1.1, A1.2, A3.1, and A3.2. The first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

CONSTANTINE ALEXANDER: Okay, now let's move on to the Special Permit.

CAMPBELL ELLSWORTH: Okay. The Special Permit is having to do with if you're facing the house from Corporal Burns, the left side of the house is

non-conforming with respect to side yard setback. There is 6.3 feet instead of the required 7.5 that the Zoning requires. Therefore, any modification to any windows on the -- within that side yard setback would require a Special Permit. And because of the reconfiguration of what we're proposing in the house, the removal -- especially the first floor, the removal of this bathroom and opening up the space, it requires some modification of the windows. I'd like to point out if I could, that -- a couple of things. The drawings that were submitted -- so here is the elevation we're talking about. That's the existing elevation. What we -- the drawings you have and the ones after these drawings were submitted, there was a very minor modification that Jessie wanted to enact, and I will try to articulate that.

This is what is in your package in

terms of what is suggested, so that this then becomes that living room space with three windows. These two windows up on the second floor don't change. And there was a small window here from the small bathroom, the first floor, that's getting filled in. And I believe these two windows of the existing dining room remain the same.

What we are proposing, and just because I know these are tied directly to the drawings, is something extremely similar. It's only because of the interior configuration. If you can look at these two drawings, the one in my right hand here is now the current one so that those three windows slide down. We're still trying to -- I'm sorry. So that, again, we've got three windows again I'm drawing a line up and [\[align\]](#) these two. It also has to do with the fact that

Jessie would like to put in a gas, a small gas fireplace in that little living space there. Again, this entry of course has been now approved and moved over to the other side.

CONSTANTINE ALEXANDER: Isn't this the same as what's in the file here?

SLATER ANDERSON: This is moving over.

CAMPBELL ELLSWORTH: It's very similar.

CONSTANTINE ALEXANDER: Oh, yes, yes, I see now.

SLATER ANDERSON: This is a code issue. You have a vent for the fireplace I assume for the separation?

CAMPBELL ELLSWORTH: Right.

BRENDAN SULLIVAN: It's sliding over the width of one of these?

SLATER ANDERSON: The opening is the same.

CAMPBELL ELLSWORTH: Basically the window, the open window, That's correct.

TIM HUGHES: The size and number of the windows doesn't change from one plan to the other?

CAMPBELL ELLSWORTH: That's correct.

SLATER ANDERSON: Now, is that the revised one, is it A3.2 is it the same as you have there?

CONSTANTINE ALEXANDER: I have the old A3.2. This is the new A3.2.

CAMPBELL ELLSWORTH: There's a new A3.2.

CONSTANTINE ALEXANDER: This is dated 7/9/10.

CAMPBELL ELLSWORTH: Right. And this is 7/29. So I will submit these as part of the record.

CONSTANTINE ALEXANDER: It's just one page, right? Nothing else is changed?

CAMPBELL ELLSWORTH: That is correct. There was a change on the right side, but I don't believe because that's not -- we have enough setback there that that's not the subject of the conversation tonight.

BRENDAN SULLIVAN: So when these three windows just slide down --

CAMPBELL ELLSWORTH: Right.

BRENDAN SULLIVAN: -- what will that, which now is going to be here, what will that view when you look across the yard to the neighbor?

CAMPBELL ELLSWORTH: There's a house -- this is six-and-a-half feet and there's maybe another six-and-a-half feet on the other side. I mean it's --

JESSIE ENGLISH: That's Eileen Woodford, the one that --

BRENDAN SULLIVAN: Ms. English, have you showed them or discussed with

them the proposed change of sliding the window down?

CAMPBELL ELLSWORTH: Yeah, they've seen the most recent plan.

JESSIE ENGLISH: Yes.

BRENDAN SULLIVAN: And are you looking into another window? Are you looking out of a window or blank wall?

JESSIE ENGLISH: I'm trying to think what's on their side. They have a window on their house that's up high. It's not at eye level.

BRENDAN SULLIVAN: Okay.

JESSIE ENGLISH: In that part of the house.

BRENDAN SULLIVAN: So, I guess -- I'm correct in assuming that it's a negligible effect on them --

JESSIE ENGLISH: Yeah.

BRENDAN SULLIVAN: -- and your view of their house or something like

that? Privacy issues?

JESSIE ENGLISH: Yes.

BRENDAN SULLIVAN: Okay.

SLATER ANDERSON: So you're representing that she's seen the new plan with the windows?

JESSIE ENGLISH: Yes, Eileen has seen those. She's good.

SLATER ANDERSON: I would note her letter is dated the end of August and the plan is dated the end of August.

JESSIE ENGLISH: Yes.

CONSTANTINE ALEXANDER: A procedural question at this point. I mean, we have a requirement that plans be in the public file, in our files the Monday by five p.m., the Monday before the hearing. And you're submitting new plans to us tonight. The plans are very slight in difference of what's in the file. I'm prepared to go forward tonight and not ask

you to continue the case. But I want to know if other members of the Board feel the same way.

SLATER ANDERSON: It's de minimus to me and, you know, we have enough cases worthy of continuation and this one is not.

CONSTANTINE ALEXANDER: I agree. I just want to give everybody a chance to be heard. Tad, do you feel the same way?

TAD HEUER: I can.

TIM HUGHES: Did you say okay?

TAD HEUER: I said I can.

CONSTANTINE ALEXANDER: Let me have this for the file. This is the only one that's relevant to the Special Permit.

CAMPBELL ELLSWORTH: That is the only one relevant to the Special Permit, that's correct.

SLATER ANDERSON: I think you should probably substitute that.

CONSTANTINE ALEXANDER: Yes. This will be -- I'll mark it for the Special Permit.

Further questions or comments from members of the Board on the Special Permit or are we ready for a vote?

JESSIE ENGLISH: Can I make one comment? I just want to recognize that Beau is here to fulfill is Scout's certificate for going to a hearing.

CONSTANTINE ALEXANDER: Oh. We haven't bored you to death yet?

SLATER ANDERSON: Would you like to say anything before we vote?

BEAU RIDEOUT: All set.

CONSTANTINE ALEXANDER: I think we're ready.

TAD HEUER: Although, are you sure you don't want to say something so you're in the record? That's a great way to go and show them that you were here.

CONSTANTINE ALEXANDER: Do you want to testify?

CAMPBELL ELLSWORTH: Do you support it?

BEAU RIDEOUT: Sure.

CONSTANTINE ALEXANDER: Just give your name to the stenographer.

BEAU RIDEOUT: All right. I'm Beau Rideout. I live at 25 Corporal Burns Road and I support the change.

CONSTANTINE ALEXANDER: Make that part of the decision when we write up the decision that we have testimony of support.

SEAN O'GRADY: Very good.

CONSTANTINE ALEXANDER: Thank you. Thank you for coming down, too.

The Chair moves that a Special Permit be granted to the Petitioner to relocate windows on the basis of the following findings which are required in

our Zoning By-Law.

That the window relocation will not create traffic issues or affect patterns of access or egress or cause congestion, hazard or substantial change in established neighborhood character.

That the continued operation of adjacent uses will not be adversely affected by the proposed relocation of the windows.

That there will be no nuisance or hazard created to the detriment of the health, safety and/or welfare of either you or the citizens of the city.

And that the proposed change would not impair the integrity of the district or adjoining district or otherwise derogate from the intent or purpose of this Ordinance.

The Chair would note in this regard that the change in windows is slight in

nature. That the neighbors most affected by this have expressed no opposition to the proposed relocation of windows.

The Special Permit would be granted on the condition that the work proceed in accordance with a plan numbered A3.2 dated July 29, 2010 showing the new location of the windows. This plan has been initialed by the Chair.

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

(Aye.)

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

(8:25 p.m.)

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

CONSTANTINE ALEXANDER: The Chair

will reconvene the case numbered 9977, 30 Upton Street.

JEFFREY BARON: These are all the papers. I've modified the drawings and I've shown dimensions on all the elevations and on all the plans. And I've also on the dimensional form added 0.4 to 0.79 to 0.8. It's 19 feet more. On the dimensional form I put in blue pen and I put a box around it showing the new number.

CONSTANTINE ALEXANDER: Okay. And have you seen it, Sean?

SEAN O'GRADY: I have not.

CONSTANTINE ALEXANDER: Why don't you look over Brendan's shoulder. You have to live with it.

BRENDAN SULLIVAN: That's the existing and the proposed.

(Looking at the plans).

CAMPBELL ELLSWORTH: The existing

and then at proposed is nine foot six.

SEAN O'GRADY: That's fine.

CAMPBELL ELLSWORTH: It's on the plan the same way.

CONSTANTINE ALEXANDER: Can you just initial the change to the dimensional form? I see you made a change, just initial it.

CAMPBELL ELLSWORTH: Sure. Should I initial the drawings also?

CONSTANTINE ALEXANDER: No, I will initial the drawings.

CAMPBELL ELLSWORTH: Thank you.

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

That a literal enforcement of the provisions of this Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that this structure is insufficient in size to allow this

longstanding occupant of the structure to continue there without some modification.

That the hardship is owing to circumstances relating to the shape of the structure itself, it being a non-conforming structure on a small lot.

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

In that regard the Chair would note that there is unanimous neighborhood support for the project. That the departure from Zoning and increase in non-conformance is relatively modest.

And that the relief being sought will improve the housing stock of the City of Cambridge in terms of desirability of occupancy, and that's always in the best interest of this city.

The Variance will be granted on the condition that work proceed in accordance with plans numbered A-5, A-6 and A-7, all of which have been prepared by Baron and Associates, Inc. and all of which have been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Anderson.)

CONSTANTINE ALEXANDER: All opposed? One opposed.

(Heuer.)

CONSTANTINE ALEXANDER: The motion nevertheless carries.

CAMPBELL ELLSWORTH: Can I ask a question? I know there is a 21-day period for more additional public response. When

does it get to the clerk?

SEAN O'GRADY: About five or six weeks.

CAMPBELL ELLSWORTH: So the earliest we can get a building permit is probably the middle of October?

SEAN O'GRADY: You should be able to apply in about two months.

CAMPBELL ELLSWORTH: Thank you very much.

(8:30 p.m.)

(Sitting Members: Constantine Alexander,

Tim Hughes, Brendan Sullivan, Tad Heuer, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9979, 1131 Mass. Ave. Is there anyone here wishing to be heard on this matter? For the record.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board. For the record, James Rafferty. I'm an attorney with the law firm of Adams and Rafferty, located at 130 Bishop Allen Drive in Cambridge. Seated to my left is Attorney Jeffery Tocchio, T-o-c-c-h-i-o. Attorney Tocchio represents the owner of the hotel along with me. An LLC entitled Veritas at Harvard Square, LLC. And to my left is Richard Monagle. And Mr. Monagle is a member of the LLC and actively a principal in the ownership entity, and was actively involved in the construction of the building.

Mr. Chair, I'm sure the Board is aware of the background of this case. This is a property that was before the Board a few years ago at that time. It's a property that it was rather prominent. It received a Variance for setback relief which essentially allowed for removal of the existing structure here, a somewhat neglected residential structure in the front, and a very active automotive repair garage. It was a busy corner dominated by asphalt, no open space. And as I said, less than appealing street conditions. Mr. Monagle initially acquired the property and retained an architect for permitting to permit the property as a hotel. And that project received Historical Commission approval because it involved the removal of an existing building. The original intention frankly had been to refurbish the building, and to

our great surprise it was suggested actually by the Historical Commission that we consider taking the building down, which turned out to be the route that they took. In addition, the project received Planning Board approval under the Special Permit elements of the Overlay District. And then finally it was necessary to come to this Board for setback relief. And that was granted in case 9460. The project proceeded to construction. And what happened, and the reason that we're here tonight is a change in the GFA between the time the project left the Zoning Board and sought the Certificate of Occupancy. And that change really occurred in two distinct areas.

I have for the Board a copy of a relevant section of the floor plan. And the floor plan at that time, the feature in the floor plan that brings us here,

when I draw your attention to the ramp of the garage.

CONSTANTINE ALEXANDER: This is on the right-hand side as you face --

ATTORNEY JAMES RAFFERTY: That's correct. As you look at the picture, it's on the right-hand side.

And the plans as approved involved a ramp for that entire area, and the back space there was intended to be mechanical space.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: During the course of construction, and even prior to the issuance of a building permit, it became apparent that the depth of the garage ramp didn't need to be -- the depth was such that it didn't need to be as long as it did. So ultimately that ramp was -- the area above that ramp was extended such that the ramp itself, the volume of the

ramp got reduced as floor was brought across. And a building permit was issued but allowed for a deviation from that, a slight deviation, with a representation that the balance of this space that would be required to be used as mechanical space.

After the building permit was issued, during the course of construction, while the ramp was being constructed, opportunities were explored to find additional space. Mr. Monagle sold the project after it was permitted. The developer that came in and joined him with the project then worked with a hotel operator, and it's a very tight building, a very tight site, and they looked for every opportunity to create some of the operational space that would be needed for the hotel. And the contractor and others were able to determine that they could

even extend that a bit further.

They did so, unfortunately, without a full understanding I would suggest of the implications of that move. And that is as they created that gross floor area, as they extended that floor, they were creating GFA. And the building was already maxed out. They did not achieve any FAR and did not seek any in the original design of the hotel. So what happened as the construction was completing and the applicants sought a Certificate of Occupancy, it was discovered this discrepancy. This is what the space looks like now. That's the floor plan.

CONSTANTINE ALEXANDER: But Mr. Boyes-Watson who was the architect at least who was before us originally, is he still the architect throughout this project?

ATTORNEY JAMES RAFFERTY: I believe he was, yes.

CONSTANTINE ALEXANDER: So, he's a sophisticated architect obviously, and he's very knowledgeable in our Zoning Laws. And he wasn't aware of the fact that what he was doing, modifying the plans that we had approved was going to create additional FAR and put the project out of compliance?

ATTORNEY JAMES RAFFERTY: Well, I've discussed this with Mr. Boyes-Watson, and I think the conclusion that he had reached was that if the space that was being achieved was to be used for mechanical purposes, it would not -- because the area devoted to mechanical equipment necessary for the operation of the building is excluded.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: I know

there were changes made in the field by the contractor, development project management team that were not reviewed with Mr. Boyes-Watson. So, I don't want to sit here tonight and say it's Mr. Boyes-Watson's fault. But it's clear that this deviation occurred.

Mr. Boyes-Watson wouldn't suggest that he doesn't understand that. In fact, I discussed this with him extensively in preparing the new floor plans. And I would say the best way I can characterize this, having spoken to many of the principals, is there was a failure on the part of the project team to understand what is meant by mechanical equipment. They thought that they could simply take this area and put a lot of what might be considered back of the house, hotel operational items in it, as long as it wasn't being used for rooms or for public

space, that it met some definition of mechanical space.

Now, Mr. Tocchio can speak to this because he worked more closely with the contractor. The project fell considerably behind schedule, considerably over budget. And the decisions were made, I would say, without proper consultation with either Mr. Boyes-Watson, certainly with the Building Department.

When this was discovered at the end, when time came for the CO and this discrepancy was created, there were a couple of solutions. One was well, this needs to become honest to goodness mechanical space. So there was an effort to relocate equipment and put water heaters -- and it started to feel a bit foolish. Every week there was a new plan, and we were going to put this here and that here. And it was, it was -- but the

applicant was desperate. The hotel was due to open. They needed to get a CO. What are we going to do? It became more and more clear that this move, this unilateral move had a tremendous implication on the hotel.

So working with the Building Department, it was agreed that a temporary CO would be issued. The two rooms are not allowed to be used to accommodate for the GFA disparity. But the reality is that the space has been built. It's all occurring within the four walls of the hotel. I dare say that had the applicant proceeded in a proper sequence, that they might have been able to come in and achieve a result and not have to deal with the implications of coming here after the fact and understandably encountering the sentiment that I suspect is prevalent in the room that someone has, you know,

doesn't have clean hands in this and therefore they might suffer in the eyes of the Board in terms of the relief they're seeking. That isn't something that can be changed at this juncture. All I can say is there was an extensive effort to see within the context of the Zoning Ordinance how can this be addressed.

The temporary solution -- there's also a square footage implication here because an awning was put up in front of the hotel which didn't show on the plans, but I'm sure that's not the issue or concern for the Board. But there was a deviation, not overly significant, but a deviation in this particular area that involved space that was recovered from the ramp. There was a belief that it was no big deal, that it could be done and what's the problem? And that thinking may even have persisted once it was under us quite

frankly and there was a question of what can be done? But the reality is it does have a significant implication. It does create a need for an additional Variance. There isn't any clear way to remedy this. To remove -- I mean, simply to lock the door doesn't make it not space. So, there's a very practical consequence not granting this Variance, which is what is to become of the space.

One of the ways that the issue has been dealt with in the context of the temporary CO is there are two balconies on two of the upper rooms, fourth floor, they're not allowed to be used. Because it was necessary to find a rationale to justify the issuance of the temporary CO. So by closing off two rooms and locking two balconies, so that space is not being treated as balconies. And rooms are not being used. That seems like a very

illogical outcome.

It might be seen as placing the Board in an unfair position to say you have to grant this Variance. Well, you certainly don't have to grant it.

CONSTANTINE ALEXANDER: That's true.

ATTORNEY JAMES RAFFERTY: The hardship really is related to the structure. And it came about as a result of changes in construction. It was originally intended to be a -- was it steel to wood or wood to steel?

RICHARD MONAGLE: It went from wood to steel.

ATTORNEY JAMES RAFFERTY: Wood to steel. And that resulted in the change in a height that allowed them to make this change.

CONSTANTINE ALEXANDER: This hardship if we grant it is self-imposed,

though. This hardship was not created by the structure. It was created by the changes to the plans that we saw and approved.

ATTORNEY JAMES RAFFERTY:

Admittedly, it didn't exist at the time, and there's no question that the hardship came about because the newly-constructed structure then wasn't properly accounted for in the building. So while that is generally the case not to grant a hardship in and of itself, I do think there is a unique and somewhat compelling logic in this case that suggests that if one were to take a step back from this small piece of the picture and look at the larger macro-urban design, city picture of the creation of this hotel and what is probably some of the most difficult, economic and financial conditions, there were huge challenges. And my advice to my

client was to not to come here today and cry about all those things, and the pressure that they were under and how they did all they could, and everywhere they turned running into -- this building shrunk in some ways. With all due respect to Mr. Monagle, without hotel experience he got a set of plans approved. When you get into where do you put the brooms, the mops, and you bring in an operator to run the hotel and they say in their -- they're spending every week changing floor plans. They developed an understanding that if we're within the four walls and it isn't public space, then there isn't a Zoning implication. And they didn't get that advice from Mr. Boyes-Watson. Certainly never got that advice from me.

CONSTANTINE ALEXANDER: I have no doubt.

ATTORNEY JAMES RAFFERTY: But

that's what came about here.

TAD HEUER: So, are you saying we permitted a non-functional hotel?

ATTORNEY JAMES RAFFERTY: Not non-functional. I mean I think what happened --

TAD HEUER: If it's non-functional, then you don't need to be here, right? If it's functional without that space, then it's functional with the space. So, what you're saying is we permitted a non-functioning hotel with many rooms that can be used and many public spaces that are attractive, but essentially at the end of the day what you're saying is we permitted something that can't be used for its purposes. Is that really what you're saying?

ATTORNEY JAMES RAFFERTY: No, that's not what I'm saying at all.

TAD HEUER: Then why are we here?

ATTORNEY JAMES RAFFERTY: I don't think it's that stark a choice, it's non-functioning or it doesn't function. I think the reality is that there's a tremendous demand for space to operate the hotel, and the floor plan as approved, probably didn't make adequate accommodations for that to maintain the room count. So, an opportunity presented itself in the course of construction involving that ramp. It doesn't have any impact upon the exterior or any other discernable dimension of the hotel. And one of the results here would be to, through the use of water heaters and air coolers and air handlers, you could load up this area with mechanical equipment. And I suspect if the outcome here is less than favorable, that's one of the options they'll need to explore. And the question is, we sometimes look to the purpose of

the Ordinance which talks about the logical use of properties. And when that exercise was really going way down the road, I said you know what, I would recommend to you that you come into the Zoning Board, that you make your case around the hardship and you try to get a Variance here, recognizing that this shouldn't have happened, but is it a venial sin or is it a mortal sin? Obviously the Board will ultimately decide. And one can have different views of theology, but not all sins are mortal. This was a mistake that could have been avoided. The implications continue to this day.

There are two rooms that are out of use. So the notion that they're going to be rewarded by this, isn't true. This hotel brings people into the city. It employs people. It changes a use that

really was not compatible at all with the residents, and has done an awful lot of good things. And it's regrettable that what should be a source of great satisfaction for the City, for this Board and for others who permitted, because it's, it's well-regarded. It was well executed. It's beautifully designed. We all know the improvement to that corner, is now suffering under this taint. So it really comes down to, you know, there's a story about how this happened, and then there's a story about what should happen next. And if the Board's view was to be punitive about it, one can say well, that's too bad and they should live with the consequence in this space. And if you see in the floor plan, it gives them a little kitchen here and a couple of back rooms for employees and maybe a place to change and a locker room or something.

That will go away, and it will become -- in some fashion it has to be removed. I don't think it physically can be removed. I think it's illogical to expect that that will happen. So that's the dilemma.

CONSTANTINE ALEXANDER: I disagree with the characterization if we were to deny relief it would be on a punitive basis. That's not what this is all about. This is about the integrity of our process. We had a case before us. We had plans represented to us showing we had to comply with FAR. The plans were modified with sophisticated personnel and not yourself. You're sophisticated, but you weren't involved in this case. They were modified, and part of the story -- and you talk about the story about what happened and the story of what we do now. I want to go back to the story of what happened.

How did this come -- when whoever

was knowledgeable in this found out we may have a Zoning problem, did anybody go to the Building Department? Did you go and say, listen, we just discovered this problem?

ATTORNEY JAMES RAFFERTY: No.

CONSTANTINE ALEXANDER: No. So, it was sort of a gotcha kind of thing. If I can be simple and blunt about it.

ATTORNEY JEFFERY TOCCHIO: That's when we went to them and they said, Whoa.

CONSTANTINE ALEXANDER: Well, you went to --

ATTORNEY JEFFERY TOCCHIO: We went in for the CO.

CONSTANTINE ALEXANDER: Well, you know, that doesn't sit well with me either.

ATTORNEY JEFFERY TOCCHIO: Right, I know that.

CONSTANTINE ALEXANDER: Okay? I

spend and every one of us here spend two long Thursday nights a month sitting here trying to do the best for the city.

Beyond that we spend hours at the Zoning office and visiting properties. I don't want to feel that I'm wasting my time here. When I approve plans and try my best and then people go out and say screw this, I'm sorry. Screw this, we're going to do what we want to do because we can improve the structure and see if whether we get caught. And that's what I see here, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: Well, I would disagree. I mean, I understand that sentiment. I talked to the principal involved. I think there was an honest failure to understand the implication of what mechanical space was.

BRENDAN SULLIVAN: But you know, Boyes-Watson comes down every Thursday

night and he is very, very astute when he has to get below a certain number, that he has got this down to inches for mechanical space. And an architect that's fully involved in this project from start to finish, and I think any changes is going to involve the architect. And at some point a bell has got to ring off, whoops, we are capturing mechanical space.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: And I think to follow your line, it's almost like well, you know, let's ask for forgiveness instead of permission.

CONSTANTINE ALEXANDER: Right.

TAD HEUER: Here's my thing why this is any different from Yerxa Road matter that I believe you represented the Petitioner in and came to a resolution that is sounding like many of the Board members are going in. We had a building

was bringing many people in, very exciting, lots of, you know, construction, it was going to be great for the neighborhood, revitalize a disused school. And they wanted to build what I seem to recall was a bump out, and they, we said no, no bump out. And what was built was a bump out. And I believe that the Petitioner came to this Board and said I thought it would be a great thing. I didn't really understand that no bump out really meant no bump out. And that's, you know, you're not going to make me take it down, are you? And we, I think, to a person found that argument to be specious.

ATTORNEY JAMES RAFFERTY: Well, at the risk of speaking ill of another client in this proceeding, I think it has no parallels. In that case that was a GFA Variance to build in an area of a notch. The initial filing, and the initial filing

called for the bigger addition. The Board said no, and they scaled it back. And that case what was built was the bigger addition.

With all due respect, this is in the building. They're building the building. They're creating this ramp. They realized the ramp doesn't need to be as deep as it does. They hadn't been here and asked for something that was denied and then went ahead and did it. They frankly don't think they understood, when I say they, I mean the contractor and the development team, I know both, they're really, I have to tell you, that really in terms of flagrance -- and I should stop talking, but this case did not involve a case where we came in and asked for X amount of GFA and then section it. We didn't need GFA relief. We came in for setback only, and it was typed and you're right.

CONSTANTINE ALEXANDER: The contractor, when you started to build, you didn't need all that space for the ramp, someone had to talk to the architect, we can modify the structure. And then the architect at that point says, wait a minute, we're going to be creating additional FAR and we're tight as it is, and we may have to go back to the Board or at least sit down with the Building Department. And they never did that.

ATTORNEY JAMES RAFFERTY: If I could, Mr. Tocchio is a very accomplished land use lawyer, does a lot of practice in the South Shore. And in his understanding in the Town of Hingham of how this would have been dealt with, and he shared it with me, and would you talk about the process that you had there and how you thought this was going to be resolved?

ATTORNEY JEFFERY TOCCHIO: My

education has come, you know, when we said after the fact, we said we need more, you know, mechanical space. I was generally aware of yeah, we need, you know, we need a space for the front desk. Instead of being next to the door, we're going to add a room. If we put it over here instead of the trash bin, you know, we can have two people at it, etcetera. And that goes to whether it's usable or not. We had a question of the way it was designed when we actually got there, people would walk in, there would be nowhere to put their luggage to actually check in. So it was operational changes like that that were happening.

And what I was hearing was well, what we're doing is we're swapping that with mechanical on the back. I generally find out about, you know, mechanical, I looked at it, I said, okay, that makes

sense. Generally in other towns, you know, we don't have Harvard, Genzyme, etcetera, what we typically do is --

TIM HUGHES: We've got MIT.

ATTORNEY JEFFERY TOCCHIO: MIT.

Which I think with Historical I mentioned MIT. But what happens is you folks are much more sophisticated than other towns with respect to capturing space, design, etcetera. Typically what we do is we go in for a certificate of consistency, where at the end if it's within, you know, such and such, you know, X number of a hundred feet for the swap, they'll look at it and say, you know, that's consistent. Give us as-builts, and typically things are typically cemented down with as-builts.

From my perspective, I was not aware -- I've been informed by numerous people in town, the nice version of it is, we know what we're doing. We tell people

what to do, they do it. Understood. You know, so from our perspective, I talked to the basically our project manager who is the fellow who didn't necessarily get the original permitted set, but he got something that was further advanced. You know, he's working with the steel guys to basically figure out, you know, where that overhang goes over the garage. He's literally there and they're talking about, you know, if this beam goes over in here, you can use one continuous beam, you know, instead of X, Y and Z. I'm hearing some of these pieces, and that's how we started to develop. Our focus at that point was, you know, do we have enough for a kitchen? Because with the alcohol license this was a big concern at the time. We learned we had to serve food. And, you know, when we came in, we're not experienced operators in Cambridge. So, we had a certain

business model with respect to what we were going to serve. We found out that we needed a kitchen. What is a kitchen? So then going before the Licensing, we understood that we needed, you know, microwave oven. And all of a sudden things started to change on us at that point on top of trying to swing around where the front desk is.

So, from our perspective, it wasn't a how can we, you know, how can we trade and steal space, etcetera, because frankly had we been aware, I would have come in here contemporaneous with dealing with the Licensing Board in talking about all these issues with them very openly, but we weren't cognizant of the fact that we should say come back in here and go through the pieces. If we had, I mean we put so much time into this, so much money into it. I mean, not to say it's a

beautiful place, give us a free pass. But if you look at it and you'll see the attention to detail, I think, you know, it's not that we followed it in spirit. We followed all the design cues to the letter. We're proud of it. It's nice. We're getting great feedback. We would have gladly come back in and said, we're changing this front desk. We're doing X, we're doing Y. I just -- I wasn't catching it. I wasn't catching it in conversations. Had it been pointed out, you know, that would have been, you know --

CONSTANTINE ALEXANDER: Sir, I have no doubt of that. But the fact of the matter is the project also had people, advisors, experienced advisors who are very knowledgeable about the Cambridge scene, and those persons did not -- went ahead and made the changes to the plans.

Did not bring it to the attention of the Building Department and now you're here before us tonight with Mr. Rafferty's comment with unclean hands.

ATTORNEY JEFFERY TOCCHIO: And you've said is this a gotcha? It was a gotcha, because, you know, we went in and what we were doing is coming into the spring, here comes graduation, and we're thinking everything is great. And it was no, no, what are you doing with this space? So then that's when the Building Department was really good to work with us so that we could come up with a temporary in taking some of the space out of commission so that's, you know, that's basically that, you know, the status quo with respect to, you know, the financial implications. My instructions are not to moan and groan about money. With that said, it's a very small, super small

property. It's designed to be super-efficient kind of, you know, these aren't rooms that we just, you know, for example the kitchen. We didn't go in and just build a big box and say we don't care. Everything's, you know, tight. Really, you know, small in its design. The rooms are small. We don't have a whole lot of them and we're not an operator. This isn't our 20th hotel. This is something that, you know, we saw as an opportunity when Mr. Monagle had it. We saw an opportunity to come in, be able to add to the situation. And the economy where it is, it's there, it's built. You know, we're real proud of it. You know, we're not happy about this. We apologize. It's, you know, it's really unfortunate.

ATTORNEY JAMES RAFFERTY: And it should be noted. I mean, it's in the 250 square foot range. The number here that

totals this, a piece of that is the area under the canopy.

CONSTANTINE ALEXANDER: I wanted to pursue that, because I did want to ask about that. How much of this, of the non-conforming FAR is canopy -- because of the canopy? And would you, if you just -- the only issue --

ATTORNEY JAMES RAFFERTY: We have the plan, Mr. Boyes-Watson in the file. The space of the canopy is 78 square feet or something.

CONSTANTINE ALEXANDER: If you were just on the canopy, would you have been able to comply with the FAR? In other words, did you have enough --

ATTORNEY JAMES RAFFERTY: There was a point where we were 100 feet off.

CONSTANTINE ALEXANDER: 100 feet too much?

ATTORNEY JAMES RAFFERTY: 100 feet

too much.

CONSTANTINE ALEXANDER: Okay.

This is the original project?

ATTORNEY JAMES RAFFERTY: When we finally narrowed everything down in a desperate attempt to get a CO and show compliance with the GFA number because we did not have an FAR Variance, if we took off the canopy and we put in some mechanical equipment, we came within 100 feet. But, you know, it's like being a little bit pregnant, it's still a hundred feet. So, then the thinking was well, you know what, since we have to go to the Board, we might as well -- and it was starting to become a little silly, this area of the mechanical, and we'll distribute the water heaters. Why don't you be logical, and why don't you lay out the space the way you would really like to use it? So doing that, plus the 75 feet

in the canopy and recapturing the two balconies, which were always in there, got us to the number of it's about 400 square feet over.

CONSTANTINE ALEXANDER: To me the canopies is a far -- speaking only myself, are far different than the so-called mechanical space issue. The canopy is something you discover after you put the building in condition. Oh, my god, I need something in the front to protect people from the elements.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: And there it's a small amount of an addition. I can understand that being done. Interior modifications of this sort that were done and the creation of the additional floor area is what sticks in my craw. I got to tell you that.

ATTORNEY JAMES RAFFERTY: No, I

understand.

CONSTANTINE ALEXANDER: That's enough.

ATTORNEY JAMES RAFFERTY: And I hear you. And I don't think there is much more to say. I think the reality is that it has happened. I think one of the things that gets considered is there an impact? I would be hard pressed to understand how any abutter or anyone else could be adversely affected by the grant of this Variance. I think had it come in in the proper sequence, its likelihood of success might -- it's conjecture on my part, would have been greater. So we're here now. And I use the word punitive not because I think that's your motive, but it's hard not to think, okay, this shouldn't have happened, so if you'd come in sooner, maybe we would have treated it differently. I understand the natural

sentiment where that might emanate from. But I think at some point in time, looking a bit beyond it and looking at -- in terms of going forward, how does this get remedied? We thought and we are hoping and remain optimistic that the Variance approach would allow for this modest increase in FAR to allow for a better functioning operating hotel.

And I think we probably said enough about it. There are some letters in the file because the hotel as we all know, has been well received and really is a fine addition to the neighborhood.

CONSTANTINE ALEXANDER: I would like to read those letter in the file at this point and then Board members can resume their discussion.

ATTORNEY JAMES RAFFERTY: All right.

CONSTANTINE ALEXANDER: We are in

receipt of a letter from Americo Andrade, A-n-d-r-a-d-e dated August 11th addressed to this Board. "I'm writing in full support of a Variance requested by Veritas at Harvard Square, LLC and as described in your recent notice of public hearing regarding this case." And the address for Americo Andrade is 1130 Massachusetts Avenue.

We have a letter in the file dated August 26th from Franziskus, F-r-a-n-z-i-s-k-u-s Lepionka, L-e-p-i-o-n-k-a at 58 Eustis, E-u-s-t-i-s Street. "I'm writing to express my strong support for the issuance of the requested Variances for the Veritas Hotel. I resided in Cambridge for seven years and am the owner of residential property at 58 Eustis Street. For years I have cycled through this portion of Massachusetts Avenue and the property, and I am familiar

with the prior uses, the hotel construction, and the final product. I am delighted with the completed Hotel Veritas and the effect that it has and will have on that stretch of Massachusetts Avenue and Remington Street. The hotel building's frontage is a faithful representation of period architecture which mirrors a previous residential structure. And the building form incorporates a former cement block garage. The hotel also includes tasteful outdoor areas which encourages guests to interact more closely with the immediate neighborhood. Moreover, from a financial position, the hotel attracts visitors to Harvard Square who visit our unique restaurants and shops which generate revenues which allow us to fulfill our goals as a community. To me, the completed hotel project represents what

can be accomplished when a municipality experienced and sophisticated and historic development is presented with a project owned by a development team which has a track record of creating and operating beautiful and successful projects. In addition to the positive exterior attributes of the hotel, the owners have concentrated on the efficiency of the hotel interior. The Variance application appears to be extremely modest given the scope of the project, and will serve to strengthen the project without causing any adverse consequences. I strongly encourage the Board to grant the requested Variance and continue the process which has resulted in such a beautiful asset to our community."

There's a letter in our file from a Roger O'Sullivan at 1105 Massachusetts Avenue dated August 25th. "I live

next-door to the new Hotel Veritas and I think it is a great addition to our neighborhood. When I received a notice about this hearing, I contacted the Building Department to find out what it was about. I have since learned that the Variance only involves changes to the interior of the building and the installation of an awning. If that is correct, then I fully support this Variance since I believe it is important for this hotel to be a success. We are in a tough economy and there are not many new hotels opening. We are fortunate to replace an auto repair garage with a beautiful new building in our neighborhood."

There is a letter from David Maher, the Mayor. "I'm writing to voice my support for the above-captioned matter, Hotel Veritas. Hotel Veritas is a welcome

addition to Harvard Square, bringing both beauty and new jobs to the neighborhood. Its appearance has helped preserve the unique character of the area while drawing tourists, providing new revenue to the city. Furthermore, I find the requested Variance to be very reasonable. The proposed canopy will help identify the premises as a hotel, in addition to providing shelter for patrons. The reassignment of space designed for mechanical use from the first floor of the building to the garage, seems both safe and logical. I hope you will consider these points when making your final determination. Thank you for your time and commitment to the City of Cambridge."

We have a letter from a John O'Connor. It's handwritten. I have trouble reading it. I'll do the best I can. Who apparently resides at 10

Remington Street, apartment 107. "I have no objection to the Variance, both issues. It amuses me to think you would deprive them of a canopy. It enhances the area. It looks like Park Avenue." I don't know if that's good or bad. But anyway. "I say that because direct across the street from the Veritas entrance on Remington is the garbage bin for 1105 Mass. Ave, the sidewalk is permanently stained with oil and grease. There's new garbage --" something liquid -- what a F slash --

TIM HUGHES: I think at some point you can give up on it.

CONSTANTINE ALEXANDER: You can't have a canopy. Whatever.

ATTORNEY JAMES RAFFERTY: It is clear that description doesn't apply to the hotel.

CONSTANTINE ALEXANDER: No, no.

We have a memo from Mr. Singanayagam

which is says, "Michael Sullivan from 42 Huron Avenue called to express his full support for granting the Variance of Veritas Hotel at 1141 Mass. Ave."

We also have a letter from Michael A. Sullivan. I guess for completeness I should read it into the record. We also have a letter from Jessie English who was just here before.

Anyway, Michael A. Sullivan, 42 Huron Avenue. It's a letter dated August 24th. "I'm writing to express my support for the above-captioned Variance of the Veritas Hotel. I grew up around the corner of this location on Putnam Ave. and thus am very familiar with the automotive repair garage that occupied this site. The change to this block of the Massachusetts Avenue as a result of the construction of this hotel, has been remarkable. As former City Councillor and

mayor I was inclined to support Variance applications that were logical and did not have any adverse impact on abutters. I strongly believe this application meets that criteria. The Veritas Hotel was quite small, and being able to utilize space within the building to support the hotel's operations will help ensure its success. This hotel is a welcome addition to our city. It has significantly improved the streetscape along this section of Massachusetts Avenue to bring visitors to Harvard Square and generate hotel, motel tax revenue for our municipal budget. For all these reasons I urge you to grant this Variance."

And a letter from Jessie M. English who resides at 27 Corporal Burns Road. Oh, this is in the wrong file. It's not relevant.

We also have something from the

Historical Commission that I just saw for the first time tonight that we should deal with. We have a memo from the Historical Commission saying, "The property is located" -- we're talking about 1131 Mass. Ave." -- in the Harvard Square Conservation District where exterior alterations are subject to review and approval. On August 5, 2010 the Historical Commission received an application for structures previously installed without CHC approval, including changes to an entrance canopy, a non-conforming, free-standing sign and installation of a pad-mounted transformer. The application for the canopy was approved. The application for the non-conforming sign and transformer were denied but enforcement on the violations were suspended for up to three months to allow the applicants to investigate other

alternatives and reapply."

I might add this looks like another example of where you people, you're not complying with our City Ordinances. This time with Historical you put on changes and you didn't go back before Historical and again a gotcha situation. How does this happen?

ATTORNEY JAMES RAFFERTY: Well, those were again done out of ignorance. Working with NStar, a vault was installed on the property.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: It was not known by the Applicant that the vault required approval.

So the canopy, the canopy came along after the hotel was about to be done, and I think frankly people -- the understanding they had it was not permanently affixed to the hotel. It was

on four posts into the ground. And frankly, that they simply weren't aware that the canopy needed approval. So that --

RICHARD MONAGLE: Jack Sullivan did approve it.

ATTORNEY JAMES RAFFERTY: Yes, I know. The question was why didn't we go to Historical.

So as the correspondence indicates, that that did get approved.

But we're still working with NStar about the location of a vault. Really to be honest, that one was -- even I was a little surprised. But as I thought about it, I understood why I suppose that was correct. And the Historic Overlay District ends at Remington Street. So 1105 isn't in -- this is, they're trying to get juice for the hotel. NStar comes along and the vault's got to go somewhere

and the decision to place the vault there.

TAD HEUER: You have extra room for mechanical stuff perhaps.

BRENDAN SULLIVAN: You're going to go to public comments.

CONSTANTINE ALEXANDER: I know.

ATTORNEY JAMES RAFFERTY: So that's what that's about.

CONSTANTINE ALEXANDER: I'm going to open this up to public comments. Is there anyone wishing to be heard?

BRENDAN SULLIVAN: The banner is the other issue.

CONSTANTINE ALEXANDER: I'm sorry?

BRENDAN SULLIVAN: The banner is the other issue, too.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: We didn't seek relief. It's being resized.

CONSTANTINE ALEXANDER: I notice that the banner is an issue with

Historical.

ATTORNEY JAMES RAFFERTY: Well, what it is the sign ordinance. The Historical Commission has jurisdiction to modify the dimensional requirements in the Historic Overlay District. And they filed a two-page -- and that's being resized. That's a rather easy fix. But I wouldn't call it patent, but unfortunately it's another something that should have been -- I think there was decisions made -- you can imagine a project this size and scale as they're rushing towards completion, a management company has been identified, staff is being trained, things happen at the eleventh hour.

CONSTANTINE ALEXANDER: I'm sorry, Ma'am, you can come forward and give us your name address.

JOY VON STEIGER: My name is Joy von Steiger. I live at Nine Remington

Street. I'm an abutter to the Veritas Hotel. And I'm in complete agreement that the building is beautiful. The staff, it is really hospitable. I'm really happy to have the hotel next-door. I think it's a wonderful addition to the neighborhood.

My concern is that I've had an ongoing relationship with these folks and will continue to have a relationship with them because my understanding is they'll continue to own the building moving forward. And I'm concerned about the building phase of what they're doing being over, because I have a mitigation agreement with them. And I have made multiple attempts, multiple. I mean, I have reams of e-mails in my bag to engage them in conversation about the mitigation work that's in the mitigation agreement as well as making me whole from the demolition and destruction that was done

because they have an easement on my property. I have not been able to engage them in constructive conversation on this. We finally, Jeffery and I finally had a brief conversation today in anticipation of this meeting, which I'm hoping is going to lead to us finally being able to complete our business and be able to relate to each other as just purely neighbors.

But my concern is that if they are -- if everything is written off on and they no longer have a relationship with any governing board or any overseeing boards here in the City of Cambridge, that I'm going to be in the position of having to hire a lawyer, which I have been really not -- I've been trying everything I can since we have a very clear agreement.

SLATER ANDERSON: If I might. What's the mitigation? What's the nature

of the mitigation agreement?

JOY VON STEIGER: Well, the nature of the work that still has to be completed is there are a number of items. I have it with me. I think there are maybe 12 items, most of which have been touched on. A couple have been completed. But a number of them haven't been brought up to the point where they should be.

I have a yard which they had an easement on, and none of the work to the yard that needed to be done has been done. I have an irrigation system that it cannot be used at this point. What else?

SLATER ANDERSON: So, are you the abutter behind where the garage --

JOY VON STEIGER: I'm the abutter right next-door.

ATTORNEY JAMES RAFFERTY: On Remington as you move up from Mass. Ave, yes.

SLATER ANDERSON: Isn't that where the garage entrance is?

ATTORNEY JAMES RAFFERTY: Yes.

BRENDAN SULLIVAN: This won't be the end of the process. Should, and again I'm not giving you legal advice, but should the Board grant, before it becomes effective, there is a 20-day appeal period. You will receive notice of that. Needless to say, you will have their attention during those 20 days.

JOY VON STEIGER: Okay.

BRENDAN SULLIVAN: This is not the end. There's still....

JOY VON STEIGER: That's helpful to hear. But I mean --

BRENDAN SULLIVAN: But again, this is not legal advice. You need to consult a --

ATTORNEY JAMES RAFFERTY: I would only say I've heard about -- it is a

private agreement. It does involve landscaping issues. I know there's been lots of exchanges. The hotel has a license and it's subject to review of License Commission, operational uses. I appreciate the abutter's acknowledgement that it's been done well. My understanding from Mr. Tocchio is there is an intention to abide by the agreement presented into in good faith. Construction is now over. No reason to anticipate that that's not going to be addressed.

JOY VON STEIGER: Well, I think that that is the question as I'm listening to the comments today. The question is good faith. And that's something that I'm straining to see. And I'm hoping that we're going to be able to come to some agreement. But I also recognize that I've been to a number of these hearings, and

the kinds of conversation that's happening today is not an unusual kind of conversation to be hearing. And I think that for all of us living on that street, and particularly for me as an abutter, I'd like to know that there are ways that we can ask people to stay honest throughout this process and moving forward.

CONSTANTINE ALEXANDER: You want to respond to the comment?

ATTORNEY JEFFERY TOCCHIO: Right. We have an agreement between -- what we've done is we've installed a shed, bluestone patio, repaired skylights and roofing areas, lattice, porches, redone the driveway, restored all brand new fencing. So, the last issue has to do with hydrangea bushes which were growing up against the block wall. My understanding, and we've had some e-mails over the summer, we're waiting -- what we're going

to do is to actually -- we healed in plants. It's too early to have them go in. Our plan is in fall when it's planting season, to address it at that point. Not just get those, but to also find out how many more additional plants that we can put in. It's just too early and I'm not in a position right now without getting the advice and seeing what happens there to be able to make a judgment. But there's a contract and we will continue to -- you know.

CONSTANTINE ALEXANDER: This is a private agreement, and it's not within the purview of our Board. But what I'm hearing, I can't resist commenting. What you've said and what she said are two different stories. She has said you're not responding to her.

JOY VON STEIGER: Right.

ATTORNEY JEFFERY TOCCHIO: Right.

CONSTANTINE ALEXANDER: And this looks like --

ATTORNEY JAMES RAFFERTY: But, Mr. Chairman, what Mr. Tocchio did was give you a list of what's been done to date.

CONSTANTINE ALEXANDER: I know.

ATTORNEY JAMES RAFFERTY: Which the prior speaker didn't. So, I think -- and be mindful. There has been, and I don't know if the speaker cares to acknowledge this, lots of money spent on the abutter's property. Lots of money. Patios, porches, windows. Tens of thousands of dollars to date. I just don't think the speaker had made that known to the Board. It's a scenario that the Board --

JOY VON STEIGER: But if we're going to have this conversation, we're

going to have to talk about how many feet of my property you used for three years.

ATTORNEY JEFFERY TOCCHIO:

Exactly. And we bargained for that and that's why we did it.

CONSTANTINE ALEXANDER: Yes, you partially performed your agreement, maybe substantially performed it. You haven't fully performed it.

ATTORNEY JEFFERY TOCCHIO:

Correct.

CONSTANTINE ALEXANDER: It's the same issue.

ATTORNEY JAMES RAFFERTY: I have to --

ATTORNEY JEFFERY TOCCHIO: But I can't plant the bushes now, they'll die.

ATTORNEY JAMES RAFFERTY: It requires to bring in the agreement. And there are timelines in the agreement.

CONSTANTINE ALEXANDER: No, I

don't want to get into that. I wasn't going to get into the agreement. I want to move from the agreement.

ATTORNEY JAMES RAFFERTY: Right. Well, I would encourage no characterizations about the status of the agreement and who is in compliance.

CONSTANTINE ALEXANDER: Fair enough. I accept that.

ATTORNEY JEFFERY TOCCHIO: And then we've also discussed as recently as today coming up with a sum of money to sever our relationship which will result in no plantings, etcetera. You know, things that you don't want to hear about, I'm sure.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JEFFERY TOCCHIO: But we have an agreement.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JEFFERY TOCCHIO: And we

have done a tremendous amount of work. We just can't make all the bushes there today.

CONSTANTINE ALEXANDER: I would return to Mr. Sullivan's comment about her rights to take an appeal.

ATTORNEY JEFFERY TOCCHIO: Right.

CONSTANTINE ALEXANDER: And let's end the discussion now. You've had your say and I appreciate you telling us this, and I heard your reply. I think we can go back to the merits of this case.

JOY VON STEIGER: Thank you.

CONSTANTINE ALEXANDER: Anyone else wishing to be heard?

(No response).

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

I think I've read all the letters in the file. Any further comment, Mr. Rafferty, before we close public

discussion?

ATTORNEY JAMES RAFFERTY: No thank you. I appreciate the opportunity. I understand the argument of this. I would urge the Board to focus on the solution that is practical and logical.

TAD HEUER: So what is the solution that is practical and logical? That's where I'm trying to go, too. I agree with everything that's been said, that the building is beautiful. It is a fantastic upgrade on that site. Anything would have been an upgrade. This is a truly fantastic upgrade. I think it's exceeded everyone's expectations of what could be done on that site. And when I saw that water running out of there for 18 months, I had no idea what was going up there. And I'm thrilled. All right?

Here we're in a situation where yes, we're looking at this. We're also looking

at a precedent of can you come in and be really contrite and get shouted at for half an hour and then go away with what you want? But I think we're also looking at what you presented to us, which is you've got 400 feet of very usable space that make the rest of the building, which is tightly packed in, usable. What I'm looking at is in a similar way to the previous speaker, how does the City of Cambridge get made whole if we are here granting a Variance for something that should have been done, as everyone acknowledges I think, two, three years ago? One thing that I think of, and I'm not sure where it goes but I appreciate counsel's thoughts on it, this is a highly unusual property in that its square footage is monetized in a very clear way. You've taken two rooms out of commission because you need that two rooms worth of

space. And you desperately want that two rooms of space because you're not wanting to take two rooms out of commission because you want it where it is on the first floor. Is there a condition that is either agreeable or plausible or opinion of counsel, legal, and I don't know, I'm putting this out there, where and you can say no --

ATTORNEY JEFFERY TOCCHIO: No, I think the Nolan case, but --

TAD HEUER: It's not a taking if it's voluntary.

ATTORNEY JEFFERY TOCCHIO: Yeah, true.

TAD HEUER: If you voluntarily agreed to it, you're not in Lucas and you're not in Nolan situation. Those are regulatory takings that are involuntary. You know, is there a situation where you would provide the room rate at market rate

for an X period of time in exchange for having a Variance that would allow you to take the space you want, and in that way make the city whole, somewhat punitive? But here we're also in a situation where you're asking for something you have no right to. Is that --

ATTORNEY JAMES RAFFERTY: I don't understand the concept of making the city whole. How is the city any less whole if the garage had a higher -- if the garage entry had a higher volume than what it has now?

TAD HEUER: The city is less whole because it's the Board's precedence and Board's opinions on what is good for the city, which is the obligation they make inspection in the Section 1 of the Ordinance has been violated, and you're asking us to overturn that and giving you a second bite of the apple.

ATTORNEY JAMES RAFFERTY: Well, I mean I think under that characterization I suspect someone doesn't grant the Variance. One of the things I think might be beneficial in terms of where do we go from here, is for a Board member to -- I mean, if a Board member reaches a conclusion I would have granted this Variance eight months ago, but I will not grant it now because they should have come in here when this change was discovered, I would suggest that the merits of the case are either there eight months ago or they're not versus today. That's what leads to the notion of okay, well then what is this exercise about?

TAD HEUER: But we don't have particulars in the room who could have come in and said wait a second, I think this is fine at 1.75, but 1.82? That's not acceptable. The abutters may say this

is a huge change. I'll let it go for what's allowed for that site, but anything over that is where I draw my line. That's significant information that we don't have in exactly the same way that we don't hold trials years later --

ATTORNEY JAMES RAFFERTY: Well, with all due respect you do have that because this was noticed, and anyone who had that view could have appeared tonight and expressed that view. And even the abutter who has concerns about the agreement hasn't shared that. So, you don't need to speculate as to whether there was adequate notice or not. I mean, there's a record established here. There's been a notice of this Variance. There isn't a single piece of testimony, evidence to suggest that the granting of this Variance will have an adverse impact on anybody's property. So you're

speculating now. There's a record here. There's no evidence to that effect. If you want to reach that conclusion, you shouldn't speculate that a year and a half ago this Variance might not have got through if it had an extra 400 square feet.

ATTORNEY JEFFERY TOCCHIO: And I can even short circuit that.

CONSTANTINE ALEXANDER: Excuse me, Mr. Hughes wants to speak.

TIM HUGHES: It just seems like an opportune time for me to read my comments because of what Mr. Rafferty just said. And personally I'm not a lawyer, so I don't like necessarily the banter back and forth over the table between the lawyers because it doesn't mean anything to me. I'm a contractor. And I think, you know, as a contractor, I understand that, you know, that there are -- never can you

actually build something. It's unavoidable that you can build something all the way through with perfect adherence to a plan. That's why I kind of think the terminology should be substantial at the conformance to the plans as submitted by, you know, exact performance. I don't think exact performance is doable. It's not an imperfect world.

When we have a situation like this where the variation offer the plan creates a zoning problem, and I have to ask myself, if this had been anticipated and asked for initially, would I have granted relief? And what we're looking at is 0.07 over what is allowable in this area. And we've already granted relief in three cases tonight that far exceed 0.07. So my answer is yes, I would have granted relief if this was anticipated and asked for in the first instance. And that's the common

sense approach that I want to take to this tonight. You know, I guess that's enough.

SLATER ANDERSON: Sean, can I ask you a question?

SEAN O'GRADY: Yes.

SLATER ANDERSON: In a project of this scale it would seem to me, is there an architect who is responsible for overseeing this work in some capacity through construction and, you know, interfacing with Inspectional Services? Who is, is it the general contractor solely? I mean, I've been involved in a similar project in Somerville, it was an eight-unit residential building, and the architect, and I can't remember the right terminology, the architect is required to be involved through the whole inspection process. Is that not the case in Cambridge?

SEAN O'GRADY: My knowledge is

anecdotal. I understand that certain projects of certain sizes are controlled construction where the architect --

SLATER ANDERSON: Mr. Rafferty, do you know if this was a construction controlled project?

ATTORNEY JAMES RAFFERTY: My understanding is it would probably meet that definition. So, I think to the points here, I think there was an understanding -- it's just what Mr. Hughes said. It's regrettable what the deviation here, and deviations do occur. This deviation pushed it over the allowable limit. I think the expectation was that you could use space for mechanical. And I think what was not properly understood, in the fairness to the architect, I think he did make it clear that if the space was used for mechanical purposes -- and we do have that exception under GFA, then that

could happen.

As Mr. Tocchio explained it, there were changes made in the field between the project manager and the construction people. When those moves were made, the architect was not consulted. The architect I would say became aware of them after the fact, and the project at that point yeah, they should have come in and I think everyone would agree.

ATTORNEY JEFFERY TOCCHIO: And the mechanical, the project manager it has to be mechanical? Absolutely, you know. No -- absolutely. And then we came back and Inspectional Services said no, we have requirements. You know what I mean? And that's when we said -- that's when it was gotcha, you can't work this out.

BRENDAN SULLIVAN: The answer to your question is yes.

SLATER ANDERSON: Yes. Thank you.

Someone answered the question.

My opinion is I agree with Mr. Hughes. That this is -- it is relatively de minimus. It was something that should have come before us a long time ago. If it had come -- if the plan had been, you know, the way it was built at the time of the -- I wasn't on the first case. It probably wouldn't have been an issue at all. You know, the punitive aspect of this that I see is that frankly the construction controlled negligence of the architect. And that's beyond our Board. But, you know, it's -- I don't know where that goes. But, you know, somebody was asleep at the switchboard or chose to look the other way, and said, you know, just go back and see if you can get them to remedy it down the road. That bothers me. I don't think we have any capacity to punish the

architect. But I do find it somewhat amusing that the architect was apparently absent on the job site as well as this evening.

TIM HUGHES: I must say in defense of the architect something that Brendan pointed out earlier is that Mr. Boyes-Watson always gets it right. You know, he dots his I's. He crosses the T's.

BRENDAN SULLIVAN: He's been encouraged to get it right.

TIM HUGHES: Right. And he knows he's going to come before this Board again. And, you know, maybe he was asleep at the switch on this one, but it doesn't seem like he would have created this giant problem for himself for one project knowing that his whole livelihood depends on coming before this Board.

ATTORNEY JAMES RAFFERTY: There's

another unique factor here. Is that the entity that permitted the hotel, it was sold as a permitted project. A new owner came in, they have experience with other architects and construction methods. This is a company that's a development company based out of Quincy, and they've done other projects. They took it. And so there was a little bit of a gap. So all of a sudden the architect who worked for Mr. Sayson (phonetic), a new attorney arrived. New ownership. They executed the plan. I just have to say, and I'm not being Polly Annish about it. I have the highest regard for Mr. Boyes-Watson, I do. And saying what -- you wouldn't put your client in this position knowingly.

Sometimes a client may hear one thing and think okay, yeah, okay. Some people go to their accountants and they hear different things when they prepare their tax return.

I know for a fact that Mr. Boyes-Watson at a relevant point in time expressed some concern about this. I will not kid you. I know that, and everyone will acknowledge that. I think the understanding was not fully appreciated. So, should he have run down and reported a client to the Building Department? I'm not sure that's consistent with -- I'm sure he's not happy that his reputation is suffering as a result of this. But I would only say that this came about because of a variety of factors. With a mistake and assumption that mechanical space had a much broader definition. That back of the house hotel operation, storage racks, coats, the whole thing, that's all -- it's all under the definition of mechanical space. And we don't really define it, but if you want to, you know, you could have found out what the answer was. People here chose

not to. And they're living with the consequences of it and we'll soon see what the long view --

CONSTANTINE ALEXANDER: My view is it's contrary and I think you can expect this. Contrary to Mr. Hughes, I don't know how I would have -- I was on vacation originally. I don't know how I would have voted whether if you showed 1.82 FAR rather than the 1.75. But that's not the issue. To me that's beside the point. The issue here is as I've indicated before; the integrity of our process, the integrity of how we run our business. We approve this sophisticated project, sophisticated advisers. And this is not about Mr. Boyes-Watson, too. The fact of the matter is the plans got changed. No one took -- and when I'll take your comment, Mr. Boyes-Watson expressed some concern, no one at that point went to the

Building Department or tried to be proactive in dealing with a problem.

ATTORNEY JAMES RAFFERTY: True.

CONSTANTINE ALEXANDER: There was no -- and, therefore, it's a situation where I hate to use it again, gotcha. And if we reward gotchas by saying okay, after the fact, yeah, we'll let it go. Then there's no incentive for people to comply with what we do down here. And that's my problem. I don't want to waste my time at least doing things and then seeing what happens afterwards and then blessing it after the fact. I still have a problem. I have every confidence that with the team you have, you'll come up with imaginative as of right solutions if we turn you down. I know it may not be the most desirable from your perspective, but you'll come up with a solution. But I'm not, myself, I'm not going to vote against this Variance

because I'm not going to jeopardize the integrity of our process. I feel strongly about that.

Other members of the Board. Well, we can take it to a vote if no one else wants to speak.

BRENDAN SULLIVAN: I don't need to be longwinded. I would support the Variance for a varieties of reasons, but I'll just -- I would support it.

CONSTANTINE ALEXANDER: Ready for a vote?

TAD HEUER: If Mr. Sullivan is willing to share them, I'd like to hear them because I'm on the fence. If he doesn't, that's fine.

BRENDAN SULLIVAN: I'm sorry?

CONSTANTINE ALEXANDER: He'd like to hear your reasons why. He's on the fence.

BRENDAN SULLIVAN: I guess it's

probably because it's within the envelope of the building. Yes, it does bump the number up. I may have some other ideas of what happened during the course of the project, and it may have been we'll deal with it later, and they realized that they couldn't fully deal with it later. But I guess it's probably the net effect. And does it, as Tim said, make common sense to deny it and then say well, you know, fix it? Or is it more common sense to just approve it and let the entity become pliable? And then coming down one way or the other, I would support it. It may not answer your question fully, and it may not give a full answer, but if I either have to say yes or no, I would say yes.

CONSTANTINE ALEXANDER: I want to make sure when we get to the motion, are those the plans? I want to tie it to the right one.

ATTORNEY JAMES RAFFERTY: The big change just so you know, it might be helpful, is that it became clear that this area in particular, this can obviously be storage. This is really the area in particular.

CONSTANTINE ALEXANDER: Right, I understand that.

ATTORNEY JAMES RAFFERTY: That it would need to be loaded up with mechanical equipment.

CONSTANTINE ALEXANDER: Which is what the original plan showed, the mechanical plan.

ATTORNEY JAMES RAFFERTY: Yes. But the problem in the original plan, the room was under the --

CONSTANTINE ALEXANDER: Oh, yes. No, no. I understand that.

ATTORNEY JAMES RAFFERTY: So the net area devoted to mechanical is about

the same. So what I had said to them, and that's why the number is frankly a little -- a lot bigger than it has to be. I said well, why don't you then -- you're in for a penny, you're in for a pound. Why don't you produce a layout of how you would like that space to function. Because if it can be concluded that this was an opportunity that presented itself during construction and you wanted to use it, so you are right in the notion that, you know, going back to what Mr. Sullivan said, adding mechanical equipment into an area that would otherwise want to function as a hallway, back way in and out to haul some bags, that would be the outcome. This is an attempt to avoid that outcome. But I respect the time and the views more importantly of the people here. I know they're strongly held. I wish this wasn't the case, but I'm hoping that....

BRENDAN SULLIVAN: And to expand a little bit more, Tad. My thought would be that the person most affected by this building, by this hotel, by the operation, is the next-door neighbor. And that possibly by granting the Variance, will allow the hotel building come to completion which will then also allow her issues to come to completion and fruition. And I think that's probably a win/win for her, and will have very little affect on the rest of us.

CONSTANTINE ALEXANDER: But you're speculating on that as well. That's pure speculation.

BRENDAN SULLIVAN: This whole night has been a whole bunch of speculation. Whether we turn the air conditioning on or off. It's a night of speculation.

CONSTANTINE ALEXANDER: This hotel

is not going to shut its doors if we were to deny relief tonight. Let's not kid ourselves. It's going to cause you some dislocations, some problems. But this is not a matter of -- and if that were the case, if I believed that, I might be persuaded a little. The hotel is going to continue. A very nice hotel it is. You're going to solve your problem. But I don't see why we should, as a Board, after the fact bless ignoring the restrictions of our Zoning, ignoring the terms of the conditions of the Variance we granted originally. And under this, all the circumstances, that I would again be more sympathetic if you had come to us, even after the fact and said, you know, wait a minute, we think we may have a problem here. It doesn't happen that way.

ATTORNEY JAMES RAFFERTY: No, I agree. But if I may and I'll end it.

CONSTANTINE ALEXANDER: Sure.

ATTORNEY JAMES RAFFERTY: You're right. And if the standard is the hotel -- it won't. By extension, it's not an easy fix in a sense we'll carve off a little space. So, we all know what the outcome would be here. It would be the return to this space to mechanical equipment. Pardon me if I can't help but feel that it's punitive, because I just don't know who at all has benefitted. But apparently the process has benefitted and I respect that. I disagree with it, but I can understand that view. But there is a reality here that suggests that that is an outcome that one could find to be somewhat illogical.

TAD HEUER: When does the process not, or when does the process yield?

ATTORNEY JAMES RAFFERTY: Well, that's a good question. I mean.

TAD HEUER: I mean, to say --

ATTORNEY JAMES RAFFERTY: Maybe at Yerxa Road where you ask for something, you're told you can't have it and you go ahead and do it.

CONSTANTINE ALEXANDER: That's easy.

ATTORNEY JAMES RAFFERTY: Right. So here -- well, I was asked by Mr. Heuer. You think it's nice talking about another case I had?

ATTORNEY JEFFERY TOCCHIO: Yes, I mean, all that I can say and, you know, not necessarily to repeat myself, but we didn't, we didn't run this down to say, you know, we're going to grab X number of square feet, etcetera, and get away with something. I mean, we, I think we went through the fact that, you know, we weren't focussed on that. The project manager was telling us oh, we'll be caught

up in mechanical and that's at least where we were coming from. You know, not excusable, but I just want you guys to understand that my clients didn't do anything to Marina Bay or to the golf course, you know, two areas of Quincy that are just, they're fantastic. They're really nice. They're really, you know, their reputations go into everything. They wouldn't do something here to try to get away with something. It's illogical. It's irrational. And frankly, it doesn't make economic sense. This is all very costly. We have such a great project and have, you know, this mark with the city. They're not happy. Our instructions are, you know, frankly, you know, tell them, you know, everything that we did here, etcetera.

The other piece of the equation is that the cost of doing this, which is

tremendous. If I tell you how much, I was shocked per room. Construction costs are tremendous.

ATTORNEY JAMES RAFFERTY: Could I suggest, ask whether it's relevant, if you look at the nature of the space, they didn't add an extra barroom. They didn't add an extra hotel room. This is really back of the house space to the notion of, you know, what's the city going to be made whole? This wasn't an attempt about how can we make more money out of this. And I should stop. And it is true, if you look at that floor plan, we are talking about a back hallway that could either function as a hallway or has to have arranged mechanical equipment into it. They won't get an extra night. They won't make an extra buck on this hotel as a result of this. They won't sell an extra room or get someone to stay --

SLATER ANDERSON: They'll get two rooms back.

ATTORNEY JAMES RAFFERTY: No, that isn't a long-term solution. That was a short-term solution.

ATTORNEY JEFFERY TOCCHIO: We'll spend money putting in duplicative heating system or something which will just be --

SLATER ANDERSON: No. If you get the Variance, I would assume you get your rooms back.

ATTORNEY JAMES RAFFERTY: Well, either way we get the rooms back in a sense that if we have to turn it into mechanical equipment space, because that was only a short-term fix. Because they were ordering equipment and were going to put in air handlers and solar panels and all this stuff.

SLATER ANDERSON: Does this temporary deal run out sometime in the

near future?

ATTORNEY JAMES RAFFERTY: Yes, it's tied into -- there was discussions at the law department and all that, and we were given time to seek relief. And it's tied into items --

SLATER ANDERSON: I'm ready to vote on this.

TIM HUGHES: I need to say one more thing. I would suggest that it's the nature of our process as a Board to know when to yield. And we shouldn't let the process drive us. We should drive the process. You know, we need to -- that's what granting Variances is all about. Is when do you yield? When do you come off the Zoning, you know, the restrictions of the Zoning Ordinance?

TAD HEUER: But that's why we're here for every case. No one is in front of us saying I'm compliant with Zoning and

I'd just like to chat with you.

TIM HUGHES: The basis should be considered as a Zoning case.

TAD HEUER: Right, but at that point everything is a grant and that's not the case.

CONSTANTINE ALEXANDER: One at a time.

TAD HEUER: I mean, we're here on -- everyone comes in looking for relief from something. No one comes in to say hi, how are you doing, I have a fully compliant house. We're here because we're asked to draw a line once someone has said I want to go over it. When it's okay to go over it and when it's not okay to go over it. And that's what I'm trying to get at and the reason I'm going on because clearly I'm the one that's going to vote because everyone said how they're going to vote, so it's coming down to me.

I mean, and I appreciate -- tell me where the mechanicals are right now? Where are they physically in the building right now?

ATTORNEY JAMES RAFFERTY: I believe they're in the garage.

RICHARD MONAGLE: Yeah, they're in the first and second level of the garage. But two of those rooms by the way, have equipment that is moisture sensitive. One of the rooms has all the video equipment for the hotel. The other room has all the network and all the phone equipment.

ATTORNEY JEFFERY TOCCHIO: It's not hotel rooms.

RICHARD MONAGLE: These are the rooms that they're calling mechanical and they're all electronic sensitive and that's why the project manager put them up there and he justified that these are mechanical things.

ATTORNEY JAMES RAFFERTY: That's what's happening here. The rooms he just described are in this space.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: And they're treating that as mechanical equipment. You know it's -- I don't know what Mr. --

ATTORNEY JEFFERY TOCCHIO: Ranjit agrees.

ATTORNEY JAMES RAFFERTY: Yes. I mean, telephone rooms.

SLATER ANDERSON: There's a teledata room there. Yes.

ATTORNEY JAMES RAFFERTY: Right, exactly. So, I mean, that's the nature here. And when you back that out, you're down to less than 200 square feet frankly in there. But I suppose --

CONSTANTINE ALEXANDER: I can't help observing that we never really talked

about whether you meet the legal standards for a Variance. And we are, to your point, Tim, we are supposed to apply the legal standard in granting Variances. And I dare say, and I'll make the motion, but I dare say you do not satisfy the legal standard for a special circumstances under these circumstances, and I think that Board members should take that into consideration. We're not here -- we're not the City Council. We're not here to do justice according to our own discretion. We are held to a legal standard. And that legal standard would not be satisfied in my judgment.

ATTORNEY JAMES RAFFERTY: Well, I would say to the extent, and I appreciate to conclude with that. The plan had areas devoted to mechanical equipment as approved. It has now been determined that portions of that mechanical equipment can

be relocated into the garage, and in fact that has happened. So the basis of the hardship is the space does exist, and we're here seeking a modification to allow for space previously approved as mechanical to be used here. So the hardship has to do with the fact that the building is constructed, the opportunity has existed. It's related to the structure. It's not all that different than the setback relief that was granted in the original Variance. But it really is -- if technology changes in four or five years or ten years and there is a building out there and someone says you know what, we're going wireless and we don't need the telephone room and I'd like to convert it to an extra office in my suite. That person should come down to the Zoning Board, get that allowed because it is then being converted from GFA

because an opportunity was created. That's the context. It is space. It is built space. It is inside the building. It doesn't need to now be used for mechanical equipment because opportunities present itself in the garage. That's the nature of the hardship and that's why we're asking for relief.

TAD HEUER: In the garage is where mechanicals can be?

ATTORNEY JAMES RAFFERTY: There are. There's two levels of cooling equipment, heating equipment, water storage. There's a variety of stuff that's in the basement that had been contemplated as going up there.

TAD HEUER: And the space that now is in the basement, what was that called in the original application? Was that parking space? Or what was it, just empty?

RICHARD MONAGLE: That was mechanical as well.

ATTORNEY JAMES RAFFERTY: Yes, I think it was identified as that.

RICHARD MONAGLE: Mechanical.

TAD HEUER: So you found you can stuff more stuff into that space?

ATTORNEY JAMES RAFFERTY: Exactly. Put more items in that space. Don't forget, the MEP understanding of the space two and a half years ago was, you know, highly speculative.

CONSTANTINE ALEXANDER: You've changed that slope of the ramp down, didn't you?

RICHARD MONAGLE: No, sir.

ATTORNEY JAMES RAFFERTY: The slope didn't change, just the head height.

CONSTANTINE ALEXANDER: I'm sorry, I misspoke. The head height changed, you're right.

SLATER ANDERSON: Which is what allowed you to bring that space closer to the street?

ATTORNEY JAMES RAFFERTY: Yes, exactly.

CONSTANTINE ALEXANDER: Well, someone saw a solution here to find more space by the head space and, therefore, used that space to add more functions for the hotel?

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: The kitchen and the elevator.

ATTORNEY JAMES RAFFERTY: Right, right.

CONSTANTINE ALEXANDER: But no one's decided to --

ATTORNEY JAMES RAFFERTY: Right, but factually that is exactly what happened, yes. And that is the nature of the hardship, is that space that was

designed and intended for mechanical is now available to be used for the operations of the hotel. And the nature of the relief is that it's -- the hotel is tight on space and we're looking that the hardship is that that space is there and available.

TAD HEUER: And my last question is given that we have limited resources in Inspectional Services, how, if we granted this Variance, are we assured that we're not in a situation as the Chairman has said, where we have -- we essentially need double inspections. That we send people out and then they've got to go out and again and they come back again and then you double our agenda? I mean our continued cases are up to November now, and we're about to start September. What, you know, in this -- you can say it's pretty horrible and that may be true, but

--

ATTORNEY JAMES RAFFERTY: But the nature of this use, unlike an office building or a residential building, this building receives a certificate of inspection annually from the Building Department and from the Health Department and License Commission. So there is regular -- there's a task force team, it includes the fire department, License Commission and the Building Department that visits licensed establishments every year. So, if I understood your question, what's to say to make sure that they would

--

TAD HEUER: Well, to prevent a situation like anyone else who comes in and says well, we did it and we felt we wanted to do some other stuff, and then we send out another -- we have to send out an inspector to make sure that they're

granting the Variance not only to when they did it the first time, but when they went out the last time and maybe the time after that. I mean, given we have limited resources and we're essentially basing our approach on trust.

ATTORNEY JAMES RAFFERTY: You can always use that same guy that checked that all those six-foot-eleven basements around here to make sure no one's using them for storage.

TAD HEUER: And most of what we do is on trust.

BRENDAN SULLIVAN: Trust by verified.

TAD HEUER: Veritas.

ATTORNEY JAMES RAFFERTY:  
Absolutely.

CONSTANTINE ALEXANDER: Ready for a vote?

TAD HEUER: Yes.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the structure would be non-compliant with our Zoning By-Laws in view of the work that was done.

That the hardship is owing to circumstances involving the nature of the structure. The structure itself, the building itself and the way it's configured now can be configured for mechanical space.

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

The relief being sought would be

modest in nature.

It has support from various individuals, private and public of the city.

On the basis of the foregoing, the Variance would be granted on the condition that the work be completed, I guess that's the word, and go forward on the basis of the plans submitted by the Petitioner prepared by Boyes-Watson Architects, just one page. It's dated 6/15/10 Variance and initialed by the Chair.

TAD HEUER: Is that with the canopy?

CONSTANTINE ALEXANDER: Yes, right here. Proposed entry.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Hughes, Sullivan, Heuer,  
Anderson.)

CONSTANTINE ALEXANDER: Opposed?  
One opposed.

(9:55 p.m.)

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

CONSTANTINE ALEXANDER: The Chair  
will call case No. 9980, 535-545 Cambridge  
Street. For the record, name and address  
and if you have a business card, give it  
to the stenographer.

MARC RESNICK: My name is Marc  
Resnick, R-e-s-n-i-c-k. The address in  
question is 535-545 Cambridge Street in  
Cambridge.

CONSTANTINE ALEXANDER: And you're  
here before us because you want a Variance  
to use an existing driveway and curb cut

for parking two cars in tandem as well as for a bicycle lane for access to indoor bicycle parking. I'm going to the latter part, why do you need Zoning relief for bicycle lane?

MARC RESNICK: Well, we don't need relief for the bicycle lane. We had to have the bicycle lane because the Zoning relief, included indoor parking for the bicycles. So we had to supply the driveway as well. And in order to maintain a bicycle lane for people that lived in the building --

CONSTANTINE ALEXANDER: Because we have Zoning requirements for indoor parking, you need Zoning relief for a bicycle lane?

MARC RESNICK: I needed to not use the bike lane for the parking. Because when I came before you first, I had a bike lane but no parking spaces. So now if I'm

going to have parking spaces, I have to maintain the bike lane and the parking spaces.

CONSTANTINE ALEXANDER: And you'll have room for both parking --

MARC RESNICK: Yes.

CONSTANTINE ALEXANDER: -- and the bicycle?

MARC RESNICK: Yes.

CONSTANTINE ALEXANDER: How many residential units are going to be in this structure?

MARC RESNICK: Four.

CONSTANTINE ALEXANDER: Four. Is there any on-site parking?

MARC RESNICK: That's it.

CONSTANTINE ALEXANDER: So you want to have two parking spaces in a very narrow area?

MARC RESNICK: Right.

CONSTANTINE ALEXANDER: Abutting

your next-door neighbor virtually. How does -- tandem parking to me works in a single-family home or perhaps a two-family home, because you've got to coordinate with other people in the structure to move your car, move their car. How are you going to do that with a four-unit --

MARC RESNICK: Well, only two people obviously can have the parking. And so if you would not share, you probably wouldn't get the parking.

CONSTANTINE ALEXANDER: So you're going to give two units parking?

MARC RESNICK: Right. I can only give two. I wish I could give four, but I only have room for two. So, it's a pre-existing condition. When I went to get Zoning relief, part of my Zoning relief that I would work with the Transportation Board to create two tandem parking spaces, to arrange, satisfactory

arrange for two parking spaces. So we've done that. We've provided the drawing to -- I don't know if you all have -- I have a copy if everybody wants one.

So the little checkerboard is the little bike lane, and they're 18 feet long parking spaces. They're not short. You know, they're full length. There's plenty of -- it's a long driveway. Basically I would assume that people have been parking their cars there for the last 50 or 100 years.

SLATER ANDERSON: So there has been parking would you say in those two spaces?

MARC RESNICK: Yes. Well, we could not find proof that they were used as parking spaces.

UNIDENTIFIED FEMALE: There was evidence of parking space.

CONSTANTINE ALEXANDER: One at a

time only because we're keeping a record.

MARC RESNICK: So, I mean all we -- we just have a driveway there, I can't tell you what was already there.

CONSTANTINE ALEXANDER: It is such a tight area. You don't really add too much in terms of relieving these on-street parking, and I've been concerned about the impact on the people who live at 24, I think it's 24 Seventh Street because you're going to be parking virtually --

TAD HEUER: 26.

CONSTANTINE ALEXANDER: Part of this plan is 24. 26, you're right. I'm sorry.

You're going to be going almost right up against the wall. I assume there are windows on that --

MARC RESNICK: It's commercial space on the first floor.

CONSTANTINE ALEXANDER: The home.

MARC RESNICK: If there's a window, there's only one if I remember correctly. There might be one window there. See, there it is.

ATTORNEY ALISSA DEVLIN: Is that a window?

MARC RESNICK: There's one little window on the side of the house.

ATTORNEY ALISSA DEVLIN: That would be the side of the house and that's the window.

MARC RESNICK: And so, it's just between the two buildings.

(Discussion over the plans.)

MARC RESNICK: If you want to see what the driveway actually -- this is a good example of what the driveway really looks like. There's a car in there now. And we took a picture. There's room to open the doors on both sides. And the other house does have I think one window.

CONSTANTINE ALEXANDER: By the way, your dimensional form shows that as a result of this project, you're going to increase your gross floor, why is that? It says you're going to go from 9,416 to 10,002 by putting the end of parking. Why are you increasing your total --

ATTORNEY ALISSA DEVLIN: That might have been an error. When I filled that form, I may have indicated --

CONSTANTINE ALEXANDER: Well, what did you have in mind when changed the number?

ATTORNEY ALISSA DEVLIN: I may have just been transposing it from the applications we used from the Variance.

MARC RESNICK: The other application we used for the Variance.

ATTORNEY ALISSA DEVLIN: From the Variance. That was my error.

MARC RESNICK: I think that's

actually the increase was the staircase that you approved --

ATTORNEY ALISSA DEVLIN: Right, yes.

MARC RESNICK: -- that shouldn't have been on that form.

ATTORNEY ALISSA DEVLIN: Yep.

MARC RESNICK: -- I think we forgot to wipe it out.

TIM HUGHES: Oh, I see.

MARC RESNICK: So this is another good picture of the building. This is our building here (indicating). And there's a long drive, you know. I think it's 36 feet, plus another five or ten. So it's over 40 feet.

TAD HEUER: Are you allowed under the state building code to block an egress with a parking space?

MARC RESNICK: I don't think you can block it totally. But in other words,

the bike lane would still provide, you know, a clear walking path. Just to walk out you mean?

TAD HEUER: Yes.

MARC RESNICK: The bike path would be a walking path as well. So there's enough room to have a clear path. In other words, if you can walk by with a bicycle passed the cars, you can easily pass without a bicycle.

TAD HEUER: I'm not worried about walking in. I'm worried about someone -- do those doors open in or out for instance? They look like they open out, correct?

MARC RESNICK: Correct.

TAD HEUER: So if a car parks too close to that and you've got a fire for instance, and somebody goes to run out that exit, I can't get out that door, there's a car there. That can't be right,

right?

MARC RESNICK: Well, there's actually like a -- the picture doesn't show it. But there's a false front right there.

ATTORNEY ALISSA DEVLIN: Oh, that's right.

MARC RESNICK: There's an extension. That piece you're looking at in the grey is a false front. That five feet behind that is actually like a garage door, and that that would give you room to come out of the building. Or I could put a post, you know, so you couldn't pull forward all -- you know, to touch the building.

TAD HEUER: Right.

MARC RESNICK: You could put, you know, like a post mounted in the ground to stop you. You only need three feet, you know, the proper clearance.

The idea to have two of them would be to just get -- in other words, I need four in theory. I have four apartments. If we can get two people off the street, then we've got two people off the street.

BRENDAN SULLIVAN: Are these rentals or condos?

MARC RESNICK: They're for condos, so they would be homeowners.

CONSTANTINE ALEXANDER: Questions at this point or should I take it to public testimony? I don't think there's anything in the file in terms of letters. I'll take public testimony.

Is there anyone here wishing to be heard?

STEPHANIE FALZONE: Yes.

CONSTANTINE ALEXANDER: Yes, go ahead.

STEPHANIE FALZONE: My name is Stephanie Falzone (phonetic). I'm

representing a number of the residents on the street.

We have no problem with you putting in tandem parking. The problem we're concerned about is that coming out of that driveway it's a very -- as you know, our street is so narrow. We get 12 cars on that street if everybody parks correctly. Coming out of that driveway, it is very, very shallow. We're concerned that people are going to complain that it's very hard to make that turn. We don't want to lose that one parking space across from that driveway by people complaining we can't get out or we have to make it a loading zone or something else, and we end up losing a space. We've got four units going in, and nobody in the face of this earth owns one car anymore. So we're looking at possibly eight cars moving into the neighborhood, okay. Which is

impossible because we've got the condos on the other side of Gore Street that they don't use their parking lot, they use on street parking because the extra space costs them \$100 a month. So they don't want to pay for it. So those of us who have to use on street parking, really have a problem with finding someplace to park. So, you know, again, we have no problem with the tandem parking going in there if they fit. We wish you could fit four cars in there. But we wish you could fit more cars in there, we'd rent spaces. But we're really concerned of the turn coming out of there is so shallow. You just -- and especially if they front in and then try to back out, they're going to have a hard time getting in and out of there.

CONSTANTINE ALEXANDER: So I take it from that, you're opposed to the relief

being sought?

STEPHANIE FALZONE: Not really. We're just concerned that if the relief is given and the spaces are provided, that at some point the people who have the spaces are going to complain they have difficulty coming in and out of their driveway and we would lose this parking space directly across so that they could get in and out easier.

MARC RESNICK: If I could interject.

STEPHANIE FALZONE: This parking space right here (indicating).

ATTORNEY ALISSA DEVLIN: Right across.

STEPHANIE FALZONE: Because making this turn, okay, especially if they're backing out, and people come around that corner, that's really dangerous, okay. Because they come flying down our street.

And then if they back in, and then coming up -- no one can make it out in one turn. They have to come out, back in. Okay, it's like (indicating).

ATTORNEY ALISSA DEVLIN: Like this? (Indicating).

STEPHANIE FALZONE: And, you know, it's really that tight. And especially because you're only basically a car and a half in from the corner, that ends up being really, really, really tight. That was never, when Gacey (phonetic) built that warehouse in back to store -- because that used to be a furniture store.

MARC RESNICK: Right.

STEPHANIE FALZONE: And all that ever was in there was trucks dropping off furniture. It was never actually a driveway.

MARC RESNICK: And that's only the thing is the trucks I think used to go in,

furniture trucks.

STEPHANIE FALZONE: Right.

MARC RESNICK: And we're using a dump truck. We don't have a dumpster. So we're driving a dump truck in and out of that driveway two and three times a day right now.

CONSTANTINE ALEXANDER: What's going to happen if you make it available for parking for your residents of the structure? What's going to happen to the garbage trucks going in and out?

MARC RESNICK: It's for a dumpster. In other words, we don't have a construction dumpster.

CONSTANTINE ALEXANDER: Oh, construction dumpster?

MARC RESNICK: Yeah. So, we have a giant dumpster to throw it off the roof and putting it in this giant truck, and he's making that turn for the last 45 or

60 days. Have you had any problem with anybody so far?

STEPHANIE FALZONE: People -- a couple people have complained that they thought oh, my God -- you're talking to somebody who drives for a living, okay? You watch these people get in and out of spaces that are incredible. We're talking about, you know, the little old lady trying to get a car out. Again, we're, you know, we've seen on all the open driveways on that street, it is difficult. And unless everybody is parked correctly, it's hard for -- even the spaces that are two doors up, there are two driveways and it's real difficult for people to get in and out of those.

TIM HUGHES: I understand your concern, but I mean for somebody to yank a space off the street, wouldn't come before us. It would come before the parking and

traffic, you know, that somebody was trying to get something changed through a loading zone or to a handicap space. It's not something that we have any control over.

STEPHANIE FALZONE: Well, we didn't know. I mean, we got the letters.

TIM HUGHES: But there are other regulatory bodies in the city.

MARC RESNICK: Because we're not looking for a city -- we don't want a loading --

ATTORNEY ALISSA DEVLIN: In other words, a special --

MARC RESNICK: We did contact the Transportation Department about removing one of the meters in front of the building and providing a commercial space, and we're working with the Transportation Department on that. That would be not -- there's no Variance or Zoning Board for

that. Just if they agree.

STEPHANIE FALZONE: That becomes a problem again. In the neighborhood when they did the condos, that was supposed to all be parking. They put meters there, everything was great, and now they took away six spaces because we have to have loading and unloading. And again, I mean, we are so tight in that end of East Cambridge for parking that, I mean, it's impossible. And especially when, you know, they build multi-family things like the condos and those people don't want to spend the extra money to pay for the parking space, which the condo won't rent to me which I'm not a condo person which doesn't make any sense. But that's another story. But it's a problem because they're now parking on the street in any resident parking space. So we really end up with a lot of difficulties over there.

MARC RESNICK: I just think at least if we get two cars off the street, that will leave two more spaces for the other residents. If not, there will be at least two more cars out there.

CONSTANTINE ALEXANDER: Slater.

SLATER ANDERSON: Just a couple of clarifications. There's an existing curb cut here?

MARC RESNICK: Correct.

ATTORNEY ALISSA DEVLIN: Yes.

SLATER ANDERSON: This is historic. This is before us because it's -- one of the tandem spaces is in the front yard setback, is that why?

SEAN O'GRADY: Yes.

TAD HEUER: Might be.

SLATER ANDERSON: That's why we're hearing this?

SEAN O'GRADY: Well, no, there's a whole series of issues.

SLATER ANDERSON: Well, but for the parking.

SEAN O'GRADY: For the parking there's --

TAD HEUER: It's the second front yard.

SLATER ANDERSON: Well, there's other stuff about on street parking and off street and the bicycle space.

TIM HUGHES: Is this being asked to grant relief from the necessity to have four parking spaces to two?

CONSTANTINE ALEXANDER: No.

TIM HUGHES: No.

SEAN O'GRADY: No. There's tandem spaces, which is --

CONSTANTINE ALEXANDER: They cannot have tandem space in this district. And they're asking to be able to do tandem parking in and of itself.

SEAN O'GRADY: Yes.

The next issue is front yard parking.

CONSTANTINE ALEXANDER: Right.

SEAN O'GRADY: I notice that the dimensional form said that the front yard was zero. And in that zone for commercial uses it is zero. And for residential it's ten feet. So I'm not sure if you're aware of that.

ATTORNEY ALISSA DEVLIN: Yeah, we're not aware of it.

MARC RESNICK: We're mixed now.

SEAN O'GRADY: And then I wasn't sure what the bike --

ATTORNEY ALISSA DEVLIN: I wasn't either. If there's a -- we weren't sure if there was natural regulation on the size of the bike lane. What, I've been working with Community Development on that and it didn't really have the exact number.

TAD HEUER: I don't think there's anything about the bike lane. I think the issue is that you're making the space or are you making the space narrower?

ATTORNEY ALISSA DEVLIN: I think it is slightly narrower than what the regulation may be.

SEAN O'GRADY: You still may run into a building code problem because you need three feet or three and a half feet. I forget. I'm zoning.

BRENDAN SULLIVAN: What's that for?

SLATER ANDERSON: From a window?

SEAN O'GRADY: No. You need eight and a half for the width of the parking pad. You need ten feet for the driveway. But if you're going to walk around it, you need a walk path. And some people here probably know the building code better than I, but it's at least three feet.

MARC RESNICK: What we think is the room you need to open the door would be in the bike path so it doubles. Unless we whack the bicycle, and there's only two cars and you're not just going to whack the bicycle.

ATTORNEY ALISSA DEVLIN: It's a passage lane.

MARC RESNICK: Right, it's a passage lane.

CONSTANTINE ALEXANDER: Let me point out by the way, if there is a setback issue, this case is not properly advertised. Because there's no reference here to Article 5 which is where the setbacks are.

SEAN O'GRADY: That's -- well, no because --

BRENDAN SULLIVAN: It's space.

SEAN O'GRADY: It would be Article 6.

CONSTANTINE ALEXANDER: Article 6 is the front yard setback?

SEAN O'GRADY: Article 6 would say you can't be in your front yard setback.

CONSTANTINE ALEXANDER: And there are sections that are cited here?

SEAN O'GRADY: I don't know that. I'll look at that, now.

CONSTANTINE ALEXANDER: 4.2 and 43.2?

While you're looking at that, I continue to believe that there is a need for off street parking. This ain't the place for it. It's too close to the corner. I think there's some safety issues. It's too tight of a space in terms of nearness to neighboring residential structures. It's just -- it's going to cause problems when people back out. I think it's just going to cause more problems than it's going to solve.

MARC RESNICK: I'm just thinking if you don't use the two spaces, those two cars are going to be on the street. And I think if you ask the neighbor -- I'm hoping that you would say it's better in a tight driveway than on the street again. The street seems to be the worst because everybody already tells us there's nowhere to go. So, I'm been introduced two less cars. That's the best I can do is two less.

CONSTANTINE ALEXANDER: Not properly advertised?

SEAN O'GRADY: Well, the section is not cited.

SLATER ANDERSON: Which section is that?

SEAN O'GRADY: 6.44.1 (c) which would refer you back to Article 5, but I think if it had been cited, that would have been okay.

SLATER ANDERSON: It's not clear to me what I'm voting on.

CONSTANTINE ALEXANDER: To allow to park two tandem parking spaces in that area that's there right now.

SLATER ANDERSON: The 9-by-18 I assume that's the footprint of --

ATTORNEY ALISSA DEVLIN: One space.

SLATER ANDERSON: The box. So it's -- there's a little bit of space on this wall side here and then there's this bike.

MARC RESNICK: We couldn't center it if we wanted to leave a wide bike path. So, we left a wide bike path --

ATTORNEY ALISSA DEVLIN: Two and a half feet.

BRENDAN SULLIVAN: Two feet in width I believe.

SLATER ANDERSON: It says two and

a half. Bike lane two and a half feet wide.

BRENDAN SULLIVAN: I don't know, if I lived at No. 26, I think I'd be screaming.

CONSTANTINE ALEXANDER: What?

BRENDAN SULLIVAN: Screaming. But the Delgato's live there?

STEPHANIE FALZONE: Yeah. They keep very much to themselves.

CONSTANTINE ALEXANDER: They were here before though when you were going to build a roof deck. And they did come down.

ATTORNEY ALISSA DEVLIN: Right, they did. And we withdrew it.

CONSTANTINE ALEXANDER: Well, you withdrew your proposal for the roof deck.

ATTORNEY ALISSA DEVLIN: Yeah, absolutely.

MARC RESNICK: That's why I think

now the neighbors would rather have the two cars. And that was part of our Zoning was to work it out with the Transportation Department and come back and ask for the two spaces so that we can get the two cars off the street.

ATTORNEY ALISSA DEVLIN: Right.

STEPHANIE FALZONE: Actually, we're hoping you turn that concrete building into an indoor parking lot.

MARC RESNICK: We looked at trying to get even one more car inside, and with the bike path and the structural and it got too complicated to get another car in there. And tri, triple parking gets to be like no one can get out. Where two people can sort of swap easy in terms of doing that.

CONSTANTINE ALEXANDER: Two and a half feet.

MARC RESNICK: You mean to open

the car door?

TAD HEUER: That's just two and a half feet of pure width.

TIM HUGHES: This thing wasn't properly advertised let's not belabor the point.

CONSTANTINE ALEXANDER: Well, if it's not properly advertised I guess we would just continue the case as a case heard. And you would have to re-advertise the case and come back.

TIM HUGHES: In the meantime you might want to check out if the building code is going to let you do this at eleven and a half feet, because I think you might have a problem. It's not just a Variance.

MARC RESNICK: I thought it was okay.

TIM HUGHES: No, no, we can't supersede the building code. We can only supersede the Zoning Ordinances.

MARC RESNICK: So what permit -- what ISD regulation would be in violation of?

CONSTANTINE ALEXANDER: The point is that -- let me try it and then Sean can make it right. You needed relief for several things from our Zoning Code. One was just tandem parking itself.

ATTORNEY ALISSA DEVLIN: Right.

CONSTANTINE ALEXANDER: But also you were parking in a front yard setback under our Zoning Code. Because this is residential use in a commercial district. And for that purpose you have to have a ten foot front yard.

ATTORNEY ALISSA DEVLIN: I'm sorry, what makes it a --

MARC RESNICK: Is this my side yard or my front yard?

ATTORNEY ALISSA DEVLIN: Yeah, I was just going to ask that.

TIM HUGHES: Well, if you're on the corner, you basically have two front yards.

MARC RESNICK: Okay. So two front yards.

ATTORNEY ALISSA DEVLIN: Oh, okay.

MARC RESNICK: We're on Cambridge Street. So we thought that the front yard was Cambridge.

TIM HUGHES: It's an honest mistake.

MARC RESNICK: No, yeah. So it really, if you have a corner, you have two front -- either side is called a front?

ATTORNEY ALISSA DEVLIN: Even though your address faces the front on Cambridge.

TIM HUGHES: In terms of Zoning.

TAD HEUER: Because you're facing two streets.

CONSTANTINE ALEXANDER: And

there's a section in our Zoning Code which allows you to get relief from that front yard setback. But you have to tell the world that's what you're trying to do.

ATTORNEY ALISSA DEVLIN: Is that Section 6.45?

TAD HEUER: 644.1 (c), right? Okay.

CONSTANTINE ALEXANDER: I think what you're hearing is we're going to continue this case to -- well, I guess you'll continue this case, you have to re-advertise.

SEAN O'GRADY: Yes, just continue the case and I'll put a new case in.

CONSTANTINE ALEXANDER: To keep it live.

MARC RESNICK: Do you want us to do that? If you want to vote no, we won't bother to reapply.

TAD HEUER: This is the other

thing --

TIM HUGHES: In the meantime you have to check with the Building Department and whether or not you actually have enough space for a bike path and a parking, you know, the width. And then if the Building Department says you have enough space there, then we can entertain this Variance again. But --

TAD HEUER: But that's under the state building code for some of this.

TIM HUGHES: Some of it might be, yes. We have our own building code.

TAD HEUER: We have our own building code, but we also make sure you're within the state building code which doesn't have anything to do with us. Even if we say this is great and we approve it, if there's a state building code for this, you still have to meet their code and we don't have anything to

do it.

BRENDAN SULLIVAN: And the most important one would be an exit out of the building.

TIM HUGHES: And you also have to make sure you're not parking too close to an operable window on your own property.

SEAN O'GRADY: That's on their property?

TIM HUGHES: This is their window here (indicating). I mean, it looks like it's second story, but I don't know if it's far enough away. And I don't know if it's operable either. I can't tell from this. It looks like some kind of sliding.

SEAN O'GRADY: Is that second story?

TIM HUGHES: It looks like it.

MARC RESNICK: All the windows are on the second story. That's the back of a commercial store. So there's no windows

in it.

TIM HUGHES: That's clear. If it's up high enough, it's okay.

SEAN O'GRADY: Only for basement and first story.

TIM HUGHES: Okay.

CONSTANTINE ALEXANDER: So what we're trying to say is to --

MARC RESNICK: Re-advertise.

CONSTANTINE ALEXANDER: Yes. Hold this case by continuing. But really what you're going to do is start a new case by re-advertising with the right sections.

ATTORNEY ALISSA DEVLIN: Yes.

CONSTANTINE ALEXANDER: And also in the meantime you have to make sure you don't have any other issues --

MARC RESNICK: With the building code.

CONSTANTINE ALEXANDER: Well, with both state and city or other zoning

issues. Do a little more homework. And then we'll hear the re-advertised case. And then this case will just disappear. I don't want you to lose your rights by withdrawing it right now, that's the point.

MARC RESNICK: All right. So we're just going to postpone it?

CONSTANTINE ALEXANDER: We're going to postpone to some date in the future.

MARC RESNICK: And come back. And we're going to amend it?

TIM HUGHES: The re-advertised case will probably get on the docket before this continued case will anyway because we have so many continued cases.

ATTORNEY ALISSA DEVLIN: Do we need to reapply then?

CONSTANTINE ALEXANDER: Yes.

TIM HUGHES: More or less.

BRENDAN SULLIVAN: Talk to Sean.

CONSTANTINE ALEXANDER: Sean will help you with that.

MARC RESNICK: All right. We'll be back then.

CONSTANTINE ALEXANDER: When should we continue this case as a case heard? We have to make sure all five of us can be here then.

TIM HUGHES: Sometime in November, right?

SEAN O'GRADY: I'm thinking the latest --

TAD HEUER: Can we continue it to February?

SEAN O'GRADY: I'm thinking the later we continue it, then that way we won't take up a slot.

MARC RESNICK: So you're going to continue it because we're only going to reapply and come back --

CONSTANTINE ALEXANDER: Yes, you're probably never going to hear this case again. You're going to hear the new case.

SEAN O'GRADY: The reason that we're continuing this case and rather than just killing it now so you'll avoid repetitive petition issues. It's a technical thing. You're going to get a new hearing well before this case and this is just going to die in the water.

ATTORNEY ALISSA DEVLIN: Okay. Thank you.

CONSTANTINE ALEXANDER: What's your date?

SEAN O'GRADY: Let's push that out to December 16th then?

CONSTANTINE ALEXANDER: Okay. Do they have a waiver of time for decision?

SEAN O'GRADY: Yes, we do.

CONSTANTINE ALEXANDER: Okay. The

Chair moves that this case be continued as a case heard until seven p.m. on December 16th, the waiver of time for a decision having been signed, on the condition that the sign that's posted there now -- you have to modify it with a magic marker. Put the new date and new time, seven p.m. not whatever time it says tonight. So, on the basis that would be the -- I make that motion to continue the case on that condition.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

TAD HEUER: You'll have two signs and you'll have the case for the new one and the old one.

MARC RESNICK: We'll put them in the window for you.

(10:20 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9981, 330 Mount Auburn Street. Is there anyone here wishing to

be heard on this matter?

We have a telecom Special Permit case in a residential district. And as you -- may be while you're here tonight, this Board has been increasingly antsy about how these projects are going ahead and the structures on there.

ATTORNEY RICARDO SOUZA: That's my understanding, Mr. Chairman.

CONSTANTINE ALEXANDER: Okay. So you're going to tell us how you are going to meet our concerns.

ATTORNEY RICARDO SOUZA: We believe we have. And just by way of background, for the record, Ricardo Souza from Prince, Lobel, Glovsky and Tye on behalf of the Applicant Clearwire. And with me tonight is also Anne Malone my associate. And Anoop Jaikumar who is a radiofrequency engineer for Clearwire. And Anoop is helping us trying to improve

these designs, and trying to minimize the visibility of these antennas as best we can.

When we first filed this application at Mount Auburn Hospital, we did what we thought was sort of a consistent design for these antenna installations. To try to use the existing brackets that were there already and install the antennas on the open brackets and facade mount them. That was -- that did not go over well with the Planning Board.

TAD HEUER: From their letter.

ATTORNEY RICARDO SOUZA: That's right. Their recommendation, which I think is actually a little ambiguous to tell you the truth, because I think they're suggesting not necessarily a fix, but they're suggesting that we need to make -- do a better effort of designing these installations and trying to

coordinate the location of these antennas so that we can accommodate not only our antennas but maybe future antennas as well of other carriers. I think that's what they're getting at. And so between that Planning Board hear and this hearing we went back and redesigned those four proposed antennas. And we redesigned them I think in a way that really tried to minimize visibility as much as possible. So what I'd like to do first is just generally describe the initial design that was proposed to the Planning Board, and then the new design which we did submit by noon on Monday. That's correct. And we placed that into the file so that you would have the benefit of it in time for tonight's hearing.

TAD HEUER: The Planning Board has not seen it?

ATTORNEY RICARDO SOUZA: The

Planning Board has not seen it, that's correct. Their recommendation was simply go back and improve it. So we think we've done that. But what I'd like to just first do if I could, with your permission, is just show you the original design. Once again, there are existing panel antennas, facade-mounted on the brick here. Actually, this is existing conditions facade-mounted on that brick. And there are two open brackets in each of those spots. And we were going to take advantage of those and put two dishes here and two dishes here (indicating). And they felt, I think, that it was just too obtrusive and stuck out too much, and probably don't like the fact that on these flush facades you probably shouldn't put any dishes. And so we went back and we think -- we've essentially gotten rid of these four dishes, and we've placed them

in other locations on the roof. What I'd like to do is just hand out those photo sims because that's the most helpful.

CONSTANTINE ALEXANDER: Same ones?

ATTORNEY RICARDO SOUZA: That's right. I just brought extra copies for you.

TIM HUGHES: We appreciate that.

ATTORNEY RICARDO SOUZA:

Absolutely. You're welcome. And I'll just walk you through what these look like.

So, here is the roof plan. And what we noticed right off the bat was that there's this big black penthouse in the middle. And we felt can we utilize that? It's not a brick facade. It's a black penthouse. And I think in the past this Board has taken well to facade-mounting on those black penthouses. They're mechanical penthouses anyway. And in

fact, there's quite a bit going on in this roof. You can see it from this photo here. There are humongous HVAC units in the back and throughout the roof here. Throughout the roof here, there's a huge vent pipe on one of the roof lines. There's a lot of equipment up there. And we felt why not try to take advantage of some of that existing equipment so that we can hide these really small dishes. In the context of this 116 foot tall building we're trying to place one foot dishes. But let's take them away from the facade that really is exposed and let's try to bring them to the center of the roof. So what we're proposing is to utilize this black penthouse, this is the roof plan, and install them on two antennas here, on the corners of that penthouse. And then put two more on a vent pipe on the inside wall of this other building. This

building is attached to our main hospital.

TAD HEUER: Is that the stealth cannister so described?

ATTORNEY RICARDO SOUZA: That's correct. The stealth cannister here. Yes.

And so I'll show you essentially where they're going to go. This is sort of the before and the after.

So if you take a look at those first photos, the black dishes are going to blend in really well to a black penthouse. And once again it's towards the center of the roof. You take it away from an exposed facade. You take it away from exposed corner, and you bring it towards the center of the roof which is I think what this Board is looking to do.

Here is another photo of it. Once again this is going to be -- the dishes are going to be right in that corner on

the black corrugated vertical seamed penthouse.

On this view you see our faux -- excuse me, vent pipe which is painted black. As you can see, it is a de minimus vent pipe compared to the chilling unit that's up there. The chilling unit is about I would say 20 feet tall. We went up on top of there. There are railings right on the top. We felt could we utilize the railings to install the dishes? And we just felt it would be too exposed. So why not bring it down to this lower roof line and put it in a faux black vent pipe. That vent pipe, you cannot even see it compared to this existing vent pipe. This existing vent pipe looks like it's 25 feet tall actually. There are some additional photos here.

TIM HUGHES: Are you going to make use of that existing vent pipe also?

ATTORNEY RICARDO SOUZA: We can't. It's a working vent pipe. So we just can't install our antennas on there. It's operational. In addition to that, it's on the side of the building that we're utilizing the black penthouse for so we don't need to have dishes on that side. So this black penthouse is here. The existing vent pipe is right here. We don't need to have any dishes on that side.

And here's another view. Here's the existing vent pipe on the far roof, and here's our proposed vent pipe. As you can see, it just barely sticks up above that side of the building.

CONSTANTINE ALEXANDER: Why didn't you bring these revised plans back before the Planning Board before coming to see us?

ATTORNEY RICARDO SOUZA: There was

no hearings, Mr. Chairman.

CONSTANTINE ALEXANDER: No hearing forever?

ATTORNEY RICARDO SOUZA: No hearing available. Not forever. But the -- one of the things that I would like to mention is that Clearwire has been working with this Board and the City of Cambridge for a number of months, and it's getting very close to launch time where we're about to launch our network. And so Cambridge is a very important demographic for us. It's a very important market. I think the residents and the businesses here in Cambridge want our service. What we essentially provide is high speed internet access everywhere. And so instead of -- if you want your iPad to work, you don't have to be at the Starbucks, you can be anywhere. And that kind of use is perfect for Cambridge. And

so we're in the middle of trying to launch our network on October 1st. We simply don't have time to go back to the Planning Board. We do think that these kind of changes are consistent with what we've proposed to the Planning Board. And I think this is a huge improvement over what we had originally proposed when we first filed this application.

TAD HEUER: You put white dishes on your black vent post; is that right?

ATTORNEY RICARDO SOUZA: No. Those will be painted black.

TAD HEUER: Do you have other antenna that are flush on the Mount Auburn Hospital wall or any of these antennas yours?

ATTORNEY RICARDO SOUZA: Yes.

TAD HEUER: That are flush.

ATTORNEY RICARDO SOUZA: Just the existing antennas that are -- we were

going to install adjacent to those existing antennas.

TAD HEUER: Right.

ATTORNEY RICARDO SOUZA: So those are Sprint's antennas.

TAD HEUER: Okay.

ATTORNEY RICARDO SOUZA: And these are Sprint's antennas.

TAD HEUER: All of them?

ATTORNEY RICARDO SOUZA: Two and two. Four. Four.

SLATER ANDERSON: But that looks like there's a couple of the brackets there.

ATTORNEY RICARDO SOUZA: Yes.

SLATER ANDERSON: Who's are those?

ATTORNEY RICARDO SOUZA: Those are our brackets.

SLATER ANDERSON: You're going to leave them on the building?

ATTORNEY RICARDO SOUZA: We

typically leave them for expansion purposes. If this Board makes it a condition and requires them to be taken off until their utilized, I think that's a condition that would be reasonable. And I think that would clean-up the design as well.

BRENDAN SULLIVAN: Well, I think the condition is if they become unusable or obsolete, then they are to be promptly removed.

CONSTANTINE ALEXANDER: We've always had that condition. I don't know when you got relief to put these on there. But that's typically the relief that we grant as far as I can remember.

BRENDAN SULLIVAN: To answer your question, yes.

ATTORNEY RICARDO SOUZA: Okay, very good. Very good.

TAD HEUER: Are the antenna that

are currently on -- I'm looking at photo location A --

ATTORNEY RICARDO SOUZA: Sure.

TAD HEUER: Is that the rear corner, I guess? So I see antenna, bracket, bracket, antenna.

ATTORNEY RICARDO SOUZA: Yes.

TAD HEUER: Are those your antennas?

ATTORNEY RICARDO SOUZA: These here? Or is it here?

TAD HEUER: Yes, here.

ATTORNEY RICARDO SOUZA: This top one?

TAD HEUER: Yes.

ATTORNEY RICARDO SOUZA: Those two antennas on the outside are ours. And the two middle ones are brackets but there are no antennas there.

TAD HEUER: Is it radiofrequency possible for those to be moved into the

black penthouse?

ATTORNEY RICARDO SOUZA: No. I think that would be too much of a move. First of all, we don't have the right to move Sprint's antennas even though we are an affiliate of theirs. It's entirely different technology.

SLATER ANDERSON: But the empty brackets you can move?

ATTORNEY RICARDO SOUZA: The empty brackets we can move. We can clean-up the empty brackets by taking out the empty brackets and consolidating the antennas so that the two that are there are adjacent to each other.

SLATER ANDERSON: So you got approval for those brackets to put some sort of cell on there but you never utilized them?

ATTORNEY RICARDO SOUZA: That's right. What happened was Sprint and

Nextel are two different companies, but merged I would say about four to five years ago. Most of their applications were initially for Nextel. Those were 12 antennas at every location. Four per sector. And so every approval was typically for four antennas per sector. And either the Iden the Nextel side of the house or the CDMA, Sprint side of the house would utilize those brackets. And in many cases both technologies would utilize those brackets. In this building those brackets are only being utilized by CDMA which is the Sprint side of the house. And they're also being used by Clearwire which is our side of the house.

TAD HEUER: Is that because Nextel doesn't expect to need them? Was there a change in technology?

ATTORNEY RICARDO SOUZA: Right now there's no need for them. And I would say

everything that I read is that maybe the Iden network is going to go away. And so I think over time some of those antennas are going to go away as well. They'll be taken down.

So, to answer your question, I think we could consolidate those and require that any brackets that are there that don't have antennas on them, have to come down.

TAD HEUER: Is that the same on your -- in that darker face that's where the shadow is on A it says the right most face?

ATTORNEY RICARDO SOUZA: Right here?

TAD HEUER: Same slide as A. Your upper left but right where you were, right there.

ATTORNEY RICARDO SOUZA: Yes.

TAD HEUER: You have four on the

facade that's facing the camera and then four in that off facade; is that right?

ATTORNEY RICARDO SOUZA: Yes. Actually, I have to look at the plans. Those are also Sprint, yes.

TAD HEUER: And are all four of those brackets being utilized, do you know? I just can't tell.

ATTORNEY RICARDO SOUZA: It's hard for me to tell. I would say they're not actually. Only two of them are similar to the other two brackets. So we would consolidate those as well.

TAD HEUER: And on the face of the building that says the words Mount Auburn Hospital, I wish I could tell you which --

ATTORNEY RICARDO SOUZA: Sure, right here actually. Yes.

TAD HEUER: Are those also yours?

ATTORNEY RICARDO SOUZA: Those are also ours.

TIM HUGHES: Haven't you figured out how to make antenna that spell out the name of the hospital?

ATTORNEY RICARDO SOUZA: That would be clever. I think you could make a lot of money.

CONSTANTINE ALEXANDER: What amazes me, I have to say, I think what you're showing us today is compared to what you showed the Planning Board is far better. Why do we have to go through this process? Why didn't you come up with this plan and show it to the Planning Board originally?

TAD HEUER: Ms. Malone has heard this speech before.

CONSTANTINE ALEXANDER: Say we're going to switch. Why do we always have to push you to solve problems?

ATTORNEY RICARDO SOUZA:  
Mr. Chairman, it's a good question. I

have to say it's all about lease rights. You know, we have spots on this building that are those 12 brackets. And so initially the hospital wants us to go on those 12 brackets. Try to get those approved as best as you can. And to tell you the truth, there's been a little by the of inconsistently between the Planning Board and this Board as to where you want us to go. And I think initially, and I've been doing this for 15 years. It's always been facade-mount, paint to match. And that's been the consistent message. And we've tried to live up to that, especially where there are open brackets. And it's obvious that's where we should go. But in this case after you really take a look at it and after you sit down with the Planning Board, I think we took the position that we had to go back. And so I personally went up on that roof. I

climbed those chillers. I went up there with Anoop. We looked everywhere, and I think we came up with a bunch better design. Did we have to get pushed? We did. And I think the result is a much better application for this city and it's an application that still works for us. You know, we're still able to hit our sight lines and our technology still works.

BRENDAN SULLIVAN: You know, from our perspective, you know, ten years there was a carrier coming down every once in a while for, you know, a cell tower and that's what it was, for bracket and an antenna.

ATTORNEY RICARDO SOUZA: Facade mount.

BRENDAN SULLIVAN: And now there, is you know, okay every once in a while you'd see them. And now there's been such

a proliferation of them, they're like mushrooms in a field. And the technology is requiring more and more and more. And now they're becoming an eye sore is what's happened.

ATTORNEY RICARDO SOUZA: Right.

BRENDAN SULLIVAN: So that's the push back you're getting from us.

ATTORNEY RICARDO SOUZA: And I understand that.

BRENDAN SULLIVAN: I drive around and I go to other communities, and I say I'm glad I don't sit on that Board. Because some of that stuff is horrendous that you see in other cities.

ATTORNEY RICARDO SOUZA: I think there have been a lot of irresponsible designs. I have to say. I see them, too. But I also think we have been party to a lot of responsible designs, too, that actually look really good especially

within the city.

BRENDAN SULLIVAN: With encouragement.

ATTORNEY RICARDO SOUZA: With encouragement, that's right, exactly. And what we're try to do is we're not putting up these antennas because we don't have to. There's a serious demand for 3G, 4G data services.

BRENDAN SULLIVAN: But I'm looking at the plan, too, and the location of your proposal, it seems like you're going down river, you're going over to VB&N and you're going across the river to where the stadium is.

ATTORNEY RICARDO SOUZA: That's correct. We are linking sites.

BRENDAN SULLIVAN: So none of this is --

TAD HEUER: For Cambridge.

ATTORNEY RICARDO SOUZA: No, no.

That's actually not the case, I'm sorry.  
We're shooting to 678 Mass. Ave.

BRENDAN SULLIVAN: It seems like  
it's like this, you know, down river,  
across the river and over VB&N.

ATTORNEY RICARDO SOUZA: Right.  
No, not at all. Not at all. In fact, the  
Wi-Max antennas, the panel antennas are  
servicing Cambridge in just a really  
small, I would say a quarter mile radius.  
So just that Cambridge area. And we're  
also shooting to 678 Mass. Ave. which we  
have antennas on. But 678 Mass. Ave.  
which is across the street from here, is  
linked to the hospital. And we're also  
shooting to Lesley College, 1815 Mass.  
Ave. And we have to connect -- and what  
the dishes do is they take bandwidth.

BRENDAN SULLIVAN: It just  
connects.

ATTORNEY RICARDO SOUZA: Right.

They take T1 line service and go from one site to another so that there's a loop of T1 lines always available to all customers. Up to 500 T1 lines in any one loop. So it's a significant bandwidth. And instead of doing this through fiber and digging up the streets and pumping copper through every building, we're able to do it through a wireless medium. It's something that really was not able to be done four or five years ago. But now it can be done with this technology. So, it's the pretty high tech. And once again this is the first 4G network. You hear of the 3G AT&T network. This is the first 4G network. But we are clearly servicing the City of Cambridge.

TAD HEUER: Is there a 5G network like my Mach 3 razor will soon to be a 5?

ATTORNEY RICARDO SOUZA: Yeah, Gillette would love that and so would we.

TIM HUGHES: Does the G stand for Gillette?

CONSTANTINE ALEXANDER: Let's deal with some of the findings we have to make.

TAD HEUER: I have two questions actually of the --

CONSTANTINE ALEXANDER: Go ahead. I'm not going to cut off questions. I want to make sure we cover some of the areas we have to touch on.

TAD HEUER: On the facade-mount that's black on the penthouse --

ATTORNEY RICARDO SOUZA: Yes.

TAD HEUER: -- it looks like it's a pipe mount; is that right?

ATTORNEY RICARDO SOUZA: It is a pipe mount.

TAD HEUER: I understand why we -- and you can tell me why this is technologically not possible, and I'll ask. I understand why on some mounts of

the brick those can't be drilled into the building because the building is there --

ATTORNEY RICARDO SOUZA: Right.

TAD HEUER: -- and recessed. I presume that penthouse is potentially hollow. Even though you need, I understand, to be able to have some kind of turning radius in order to peg where you're going with where you are.

ATTORNEY RICARDO SOUZA: Correct.

TAD HEUER: Is there any way to recess that into the structure of the penthouse in any way to even further reduce its visual impact when not viewed head on or wasn't there?

ATTORNEY RICARDO SOUZA: I know there is not I should say four dishes. And the reason is the radio head that's behind the dish. So unlike a panel antenna that has a flat back, we can use in certain instances what's called a zero

clearance bracket. If we can try to get it as flush as we can to the wall. You're still dealing with about seven inches of separation. But with the dish there's a radio head. There's a dish and then there's a radio head right behind it. And so that radio head is what gets connected to the pipe. And so that's why you can't flush mount that up against the wall. That radio head needs to be connected to a pipe that's connected to the wall.

TAD HEUER: Right. And my question is can you --

ATTORNEY RICARDO SOUZA: Recess the radio head into the wall?

TAD HEUER: Yes.

ATTORNEY RICARDO SOUZA: Yes. I don't think --

TAD HEUER: To make the face of the antenna more flush against the face of the penthouse. So essentially the pipe

mount is interior in what I imagine is emptying mechanical space that's why it's a penthouse.

ATTORNEY RICARDO SOUZA: Right. It is. I've walked into that room, it is empty. I do think, and I've run into problems like this, I've filed about 100 applications in the City of Boston. So I work very close with Matt Martin at the VRA. We've tried every way to do that kind of thing. And just from a structural perspective, it's impossible. We have not found a way to do it. You're going to jeopardize the structural integrity of that building by doing that, by punching a hole into that.

TAD HEUER: Is that what people do when they clean windows?

ATTORNEY RICARDO SOUZA: Probably but then they -- there needs to be some structural elements around the window. I

just don't think it was built for that. I think when you build a structure, you build it to accommodate a window potentially. I just have had problems doing that. The only way we could do it is perhaps we extend the screen wall and put the dish behind the screen wall.

TAD HEUER: Is that a penthouse as we think of a penthouse or is it just a screen?

ATTORNEY RICARDO SOUZA: No, it's a real penthouse with stairs walking into it with mechanical equipment inside with its own sub floor.

TAD HEUER: And a roof?

ATTORNEY RICARDO SOUZA: And a roof, absolutely. So it is actually a room in there. And right where we're putting these antennas is a stairway. I don't know if you can see it that well, but at that corner there's a stairway

right around the corner. You might be able to see --

TAD HEUER: Yes.

ATTORNEY RICARDO SOUZA: Yes, you can see the door actually in the top photo. And so I would be concerned about extending a wall beyond that doorway.

TAD HEUER: Right.

ATTORNEY RICARDO SOUZA: But once again, this is going to be up pretty high. We are going to paint it black to match. Compared to everything else that's going up there, I think it's going to be pretty de minimus. If you look at these chillers they're enormous.

TAD HEUER: Right. I guess the other comment I'd make is the one that Ms. Malone has heard me back and, you know, other people have heard me make, and I think you've done a fairly good job in making this de minimus here and I

appreciate that.

ATTORNEY RICARDO SOUZA: I appreciate that.

TAD HEUER: It's always kind of always seem to be pushes, pushes rather than pulls.

ATTORNEY RICARDO SOUZA: Right.

TAD HEUER: The one thing that we're looking at in particular with these facade-mount type antennas, you know, when we say we want to minimize the visual impact, it seems that the first thought is minimize means smaller. In that as you may have been here on 1815 Mass. Ave, the Lesley building, I can't remember.

ATTORNEY RICARDO SOUZA: I was. I was at 1815 Mass. Ave, right.

TAD HEUER: And we've had other carriers on the tower.

ATTORNEY RICARDO SOUZA: Right, there are a lot carriers there.

TAD HEUER: You know, the issue of reducing visual impact may not mean something smaller on a thinner pipe with fewer elements. It may in certain situations mean more replication of something so it looks like a visual pattern that's not unobtrusive. It may look like something that's more bulk but less obtrusive because there's more of it that doesn't sound out.

ATTORNEY RICARDO SOUZA: I see.

TAD HEUER: So be reducing obtrusiveness, although small is great, it doesn't mean necessarily making things thinner, neater, smaller the way that people think of less obtrusive cell phones perhaps.

ATTORNEY RICARDO SOUZA: Right.

TAD HEUER: That there is some creativity involved, perhaps bulking things up to make them, in this case,

stealth-type installations. But in other instances do you put, you know, dental type facades all around the building. And you have slots that look like it's building deck raised and they happen to be taken up by dummy antennas and real antennas as you need them.

ATTORNEY RICARDO SOUZA: Sure.

TAD HEUER: But looking at it people say that looks like a vertical fenestration or a vertical freeze rather than a couple of antennas. So as you go forward on these things, I encourage you to think not just about the smaller is better although working on it's great, but about these things, can we recess things in? Can we make it maybe less obtrusive by being more repetitive, things like that.

BRENDAN SULLIVAN: It's like what would Lexington do or Concord?

TAD HEUER: Well, they put up a monopole.

ATTORNEY RICARDO SOUZA: They would. We wouldn't propose that here.

We do think about that. You know, 1440 Mass. Ave. which is in Harvard Square. That's something that's a fairly exposed penthouse on the top with a center element. And we separate those antennas so they actually fit in from an architectural standpoint. So, that's something we worked with on with the Historical Commission, this Board and the Planning Board. So, we do think of those things. Not every building lends itself to this. This is not the most architecturally interesting building.

TAD HEUER: True.

ATTORNEY RICARDO SOUZA: So that's why I think I went away from the flat facade. I said let's get away from that.

Let's go up to where all the mechanical equipment is and let's put our antennas there. And I do think it works better, but I entirely understand your point.

TAD HEUER: And not necessarily on this building but in the future as we're going forward, as you think about these installations which I'm sure we are going to see more of.

ATTORNEY RICARDO SOUZA: Right. We do have a lot least a couple pending. Thank you.

CONSTANTINE ALEXANDER: Because you're in a residential district we have to make certain findings. So, let's touch on those.

You have to show that there's a demonstrated public need for the facility at the proposed locations. Deal with the existence of alternative functionally and suitable sites in non-residential

locations. The character of the prevailing uses in the area, and prevalence of other existing mechanical systems and equipment carried on above the roof of nearby structures.

And we have to say we can only grant a Special Permit only upon a finding that non-residential uses predominate in the vicinity of the proposed facility's location and that the telecommunication facility is not inconsistent with the character that does prevail in the surrounding neighborhood. So let us deal with the last part first.

ATTORNEY RICARDO SOUZA: Sure.

Mr. Chairman, I would say that this immediate area is not predominantly residential in the sense that it is occupied by a fairly large hospital building with numerous ancillary buildings as well. There's is Buckingham, Brown and

Nichols right across the road. I'd also say there's a river way with a little yacht club. So I would say predominantly it's not residential. Predominantly it's non-residential. But also add that in the past where there have been other existing carriers on the subject building, that this Board has also found that future applications, future co-location on the same building is consistent with Article 49. And we did submit -- with respect to the first elements, we did submit radiofrequency plots that showed the need, there is in fact a radiofrequency gap for Clearwire in this area.

CONSTANTINE ALEXANDER: Right.

ATTORNEY RICARDO SOUZA: And we've also submitted our FCC license which shows that we are licensed by the FCC to construct and operate this wireless network here in the City of Cambridge.

CONSTANTINE ALEXANDER: What about the alternative functioning suitable sites in non-residential locations in this area?

ATTORNEY RICARDO SOUZA: Sure. If you look at this area, there's one very large condominium building directly across from this building that's a residential building. I'm not aware of any wireless antennas on that building. In addition to that, right on Mount Auburn Street it is all single-family, two or three-family homes. And there are no other suitable structures with the height necessary for us to meet our coverage gap. So I would think this is the only viable alternative for us to meet this coverage gap.

TAD HEUER: Is that 1010?

CONSTANTINE ALEXANDER: That's 1010 Memorial Drive, yes.

ATTORNEY RICARDO SOUZA: Yes, 1010.

TAD HEUER: I don't think you're going to get an antenna on that building.

ATTORNEY RICARDO SOUZA: I agree. I very much agree. I think people have tried.

CONSTANTINE ALEXANDER: I think you better keep them on Mount Auburn than 1010.

ATTORNEY RICARDO SOUZA: I agree.

TAD HEUER: The tenants of that building --

CONSTANTINE ALEXANDER: They're condo owners.

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: Let me put the matter open for public comment.

Is there anyone who wishes to be heard on this matter?

(No response.)

CONSTANTINE ALEXANDER: We are in receipt of a memo from the Planning Board,

but it is a memo commenting on earlier plans, not the plans before us so I don't think it's necessary or appropriate to read it into the record. And there seems to be nothing else in the file touching on this. So, I'll close public testimony.

Questions, further comments from members of the Board.

BRENDAN SULLIVAN: I think it's probably a good attempt. I would add, though, that we continue to pawn unused obsolete equipment being used.

TAD HEUER: And consolidation of the equipment that remains.

CONSTANTINE ALEXANDER: I will add that to the condition of the Special Permit. As you've pointed out, this condition has been there before and it looks like it hasn't been honored. It's not a good practice.

ATTORNEY RICARDO SOUZA: Okay. I

will pass that on to the company,  
Mr. Chairman.

CONSTANTINE ALEXANDER: I'll frame  
the motion. Ready for a motion? I assume  
we are.

The Chair moves that a Special  
Permit be granted to the Petitioner to  
erect a telecommunications equipment as  
proposed in this application on the basis  
of the following findings:

That the Petitioner has demonstrated  
to us a demonstrated public need for the  
facility, the location. That there are no  
alternative functioning suitable sites in  
non-residential locations.

That what has been proposed is not  
necessarily inconsistent with the  
prevailing uses in the area.

And that further finding that  
non-residential uses predominate in the  
vicinity of the proposed facilities

location, both non-residential uses have been enumerated by the Petitioner.

And we further find that the telecommunication facility is not inconsistent with the character that does prevail in the surrounding neighborhood. As pointed out, the surrounding neighborhood has a number of ancillary buildings to the hospital itself as well as a very large apartment type structure at 1010 Memorial Drive.

The Board would also find, we do for any Special Permit, that the proposal will not impact traffic or patterns of access or egress or cause congestion or hazard or substantial change in established neighborhood character.

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

That no nuisance or hazard would be

created to the detriment of the health, safety and/or welfare of the occupant of the proposed use or of the citizens of the city.

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

The Special Permit would be granted on the condition that -- I'm also going to make the further finding, we do have to make, that the Petitioner has made reasonable efforts to modify the visual impact of the equipment to be added.

The Special Permit would be granted subject to the following conditions:

That the Petitioner to the maximize extent, mainly by use of paint minimize the visual impact of the proposed addition.

That to the extent that there exists on the building now structures or without antennas, that they be removed promptly.

To the extent that this facility is not used, ceases to be used for any period of six months or more.

That the equipment be removed and the structure itself be restored to its previous condition to the extent reasonably possible. I think those are the conditions we usually impose. Anybody have any other conditions?

SLATER ANDERSON: Removal.

CONSTANTINE ALEXANDER: I did the removal.

TAD HEUER: That the antennas as the brackets are removed, consolidated I believe toward the corner.

ATTORNEY RICARDO SOUZA: That's correct.

CONSTANTINE ALEXANDER: Okay.

That will be added to the motion.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

ATTORNEY RICARDO SOUZA: Thank you, Mr. Chairman, members of the Board.

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

CONSTANTINE ALEXANDER: In the future give it your best shot.

ATTORNEY RICARDO SOUZA: I will.

CONSTANTINE ALEXANDER: I know what I've forgotten.

On the further condition that the work proceed in accordance with photo simulations dated August 19, 2010. The first page of which has been initialed by the Chair. And also that the work proceed in accordance with plans submitted by the

Petitioner numbered T1, G1, C1, A1, A2, A3, A4, S1, and E, E1. How do they number these?

ATTORNEY RICARDO SOUZA: It's structural, electrical.

CONSTANTINE ALEXANDER: Thank you. They all appear to be dated most recently as of August 19, 2010.

ATTORNEY RICARDO SOUZA: That's correct.

CONSTANTINE ALEXANDER: And the first page has been initialed by the Chair as well.

On that basis, we have a motion to approve the Special Permit, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(10:55 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9982, Three St. Gerard Terrace. Is there anyone here wishing to be heard on this matter?

WILLIAM WINDER: This is Joan Mullarky. This is Jennie Devereaux, her

daughter. And I'm William Winder,  
W-i-n-d-e-r. And I'm at 11A Meachum Road  
in Cambridge.

CONSTANTINE ALEXANDER: You're  
before us seeking a Variance to add a  
one-story addition on the right side of  
the house.

WILLIAM WINDER: Yes.

CONSTANTINE ALEXANDER: Tell us a  
little by the about it and why you're  
entitled to the Variance that you're  
seeking.

WILLIAM WINDER: I've got all this  
information I think the --

CONSTANTINE ALEXANDER: This is in  
the file?

WILLIAM WINDER: Yes, yes. I just  
enlarged it. And I took this picture, and  
this is a picture looking up, looking up  
the street and this is north at the top.  
And looking at the front of the house.

And the No. 6 is across the street here. And there's a parking lot across next adjacent to No. 6. This is the right side of the house and I think this is in your package. I tried to draw in an approximate, you know, location where this addition attaches to the house.

This is looking across the street. That's No. 6 with the house on the right here.

CONSTANTINE ALEXANDER: You're going back to the top. The drawing, the plans on the top, what's sticking out on the right is the addition?

WILLIAM WINDER: Right. That's the addition right here. And this is looking actually --

SLATER ANDERSON: I've seen that picture somewhere in here. Here's the plan.

WILLIAM WINDER: Right. This

picture you don't have because I took it after the submission. It's actually looking -- it's actually looking from Craig Kelly's at No. 6 from his porch across. And he was the only abutter that had some issues with what we were doing.

CONSTANTINE ALEXANDER: Have you resolved those by the way? I got a letter back saying we'll make some changes but not all the changes you want.

WILLIAM WINDER: Right. The original addition that we started with was several feet wider and it was 13-by-11.

CONSTANTINE ALEXANDER: What was the response to your letter back to him because there's nothing in the files?

WILLIAM WINDER: Well, he wanted us to get rid of -- can I come back to that?

CONSTANTINE ALEXANDER: Sure.

WILLIAM WINDER: Because I think

it helps to sort of explain what our thinking was.

CONSTANTINE ALEXANDER: Right.

WILLIAM WINDER: And

Mrs. Devereaux had a back injury years ago and it's gotten so she can't climb stairs. And you have a letter from Mr. Toomey I believe, which explains it quite well. And my -- and the biggest was problem, I mean the main setback issue was the rear setback which really is, you know, just about the side of her rear -- existing side door. And, you know, got the existing stairwell in the house which is up front. And so to move that forward really created a tremendous problem. And part of my criteria was to do this. And theirs was to, if possible, to do something where Mrs. Devereaux wouldn't have to move out. And by adding a bathroom on the side, bringing the laundry

up from the basement, the washer and dryer and to get it, and to be able to have -- and there's also electrical, the electrical attachment to the house, and the meter is right here. And to try to sort of minimize the financial damage and make it so that she would have, you know, a reasonably accessible bathroom. And, you know, handicap accessible bathroom; shower, tub and toilet facilities. And there was really no -- I mean, the kitchen is quite small and, you know, the circulation patterns make it very difficult to do anything in the kitchen. She's now residing in the dining room. And she has a living room. And I -- Mr. Kelly was, you know, basically wanted us to get rid of the closet but -- and he wanted to actually have us get rid of the side entrance. And, you know, pull the bathroom sort of minimal bathroom right up

tight to the house. And I -- and, you know, because of the constraints and not trying to further exacerbate the setback violations that we have and not cause a lot of upheaval inside the house itself, I felt we came up with a fairly minimal, and I went through several iterations to squeeze it. And, you know, it's conceivable, you know, if we got rid of the washer dryer and stacked them as he suggested, that you know, I might be able to save a foot. But I can't even imagine doing that and still be able to have some reasonable access. And I've gone back and forth. I've got the -- I've got correspondence going back and forth. He's said that he was going to take it to some architect friends. And I asked him if he would sit down and review that. But he's backed off that. And I think I reasonably explained that it was not without, you

know, without adding tremendous more, you know, a lot more expense and upheaval that it really wasn't possible to do that.

CONSTANTINE ALEXANDER: I'm puzzled by the setback issue. I'm looking at your dimensional form, and to the extent that the building is non-conforming in setbacks, you're not increasing that in any way.

WILLIAM WINDER: Not increasing the existing, not -- we're not -- no.

CONSTANTINE ALEXANDER: Your bulking up the intrusion into the setback?

WILLIAM WINDER: Yes, yes.

CONSTANTINE ALEXANDER: But that's it. It's not like you're closer to the lot line as before.

WILLIAM WINDER: No. You know, the setback is really right, you know, the rear setback is right this side of the door.

CONSTANTINE ALEXANDER: Right.  
And the rear setback is now 8.4 and it  
will be 8.4.

WILLIAM WINDER: Right.

CONSTANTINE ALEXANDER: And you're  
supposed to have 25 feet minimum. So  
that's the least of your Zoning issues.

WILLIAM WINDER: Right.

CONSTANTINE ALEXANDER: Your  
bigger issue is the fact where you have an  
FAR you're going from conformance to  
non-conformance.

WILLIAM WINDER: Right.

CONSTANTINE ALEXANDER: Right to  
0.52.

TAD HEUER: It's about 200 square  
feet.

CONSTANTINE ALEXANDER: I'm sorry?

TAD HEUER: About 200 square feet.

CONSTANTINE ALEXANDER: Yes, about  
175 square feet. And I see according to

your form you also are falling short of the ratio of usable open space. You're now 0.42. And you're supposed to be at least 0.4 and now you're going to 0.37. These are not overwhelming problems but these are the real Zoning issues that we have to be aware of if we grant relief.

WILLIAM WINDER: Yes.

CONSTANTINE ALEXANDER: But I think you've demonstrated and suggested very much the hardship that's involved here as to why you need to build this addition.

TAD HEUER: Does your basement count in FAR? Are you at height?

WILLIAM WINDER: No.

TAD HEUER: So that's a hundred and -- what's the current? Somebody have the file?

SLATER ANDERSON: Gross floor area?

TAD HEUER: Yes.

SLATER ANDERSON: 1728.

CONSTANTINE ALEXANDER: 1728.

Going to 1911.

TAD HEUER: Right.

And all of that's what people would reasonably consider real space?

WILLIAM WINDER: Yes.

TAD HEUER: I mean not basement space.

WILLIAM WINDER: Yeah, and it includes the -- it includes the -- we're covering the stoop.

TAD HEUER: Right.

CONSTANTINE ALEXANDER: And the 1911, according to your dimensional form, the maximum you're supposed to have of gross floor area is 1,844. And you're going to go slightly greater than that.

WILLIAM WINDER: Yes.

CONSTANTINE ALEXANDER: By 1,911.

You need a number of pieces of Zoning relief, a small thing here, a small thing there. In my mind small. That's what you're about.

WILLIAM WINDER: Yes.

CONSTANTINE ALEXANDER: The yard setbacks which I think is Mr. Kelly's problem is the least, to my mind, the least of your issues.

WILLIAM WINDER: Yes.

CONSTANTINE ALEXANDER: Anyway. I don't know if I got a response. He's going to talk to his architect friends is the last I heard?

WILLIAM WINDER: Yes. I didn't hear back from him and I was away for about two days. And then I believe it was, I believe it was, it was over the weekend that I picked up his e-mail and --

CONSTANTINE ALEXANDER: What e-mail?

WILLIAM WINDER: Last week -- well, I e-mailed him because he hadn't responded when, you know, I suggested he have them do what they would do, and I would gladly sit down with them, Mrs. Devereaux and myself and to review that. And then he came back and said basically well, my architect's going on vacation and so it doesn't really make any sense.

CONSTANTINE ALEXANDER: The fact of the matter is he's not shy about communicating with us and he hasn't communicated with us. I take it as de facto acceptance of what you want to do.

Questions from members of the Board at this point?

TAD HEUER: Is there a reason that you didn't build the lift into the existing vestibule off the other side of it? So when I look at your plan, let's

see your plan again. Is there -- I mean, part of what is somewhat troubling me is the size of this addition which is 190, which is I disagree with the Chairman, I think it's more than minimal. I think it's building additional room, you're about 13-by-14, right, in terms of space?

WILLIAM WINDER: I'm like 10-by-13, right?

TAD HEUER: Are you? Coming this way into your porch? The bulk your adding. What's your footprint including your porch?

WILLIAM WINDER: Including my porch it's like, yeah, 13.

TAD HEUER: Right.

WILLIAM WINDER: I don't have my glasses on.

TAD HEUER: How about 13 and a half by 14?

WILLIAM WINDER: Right.

JENNIE DEVEREAUX: You can see it from there.

TAD HEUER: A guess. Is there a reason you couldn't build that lift in into the back of the existing what's marked as vestibule? Not south.

WILLIAM WINDER: This way?

TAD HEUER: No, the bottom. You have a stairway? Yes, right there. Is there a reason the lift can't go into the existing vestibule is my question, there off the back? And then you would be allowed to pull the bathroom in toward the house and you don't need that -- the entryway because you're doing double duty from where the existing vestibule is from the stairway where you get your new vestibule with your lift.

WILLIAM WINDER: The nature of the lift are that, you know, you would probably want to cut the porch back in

order to get the lift in. Or, you know, to create, you know, to create the circulation space on either side of it. You know, the lift, you know, you enter the lift and then you come out the other side. These are the minimal lifts that go a maximum of about four feet.

TAD HEUER: Right.

WILLIAM WINDER: And then this floor, this floor is, you know, seven inches below this floor. So you raise the floor and it adds, it adds, you know, substantial construction involvement to carve this space out of that porch where, you know, the porch is generally not built that well and this is not an exception. So to, you know, cut into their -- into that porch, that's one of the things we were dealing with with Craig Kelly, that it meant, you know, raising the floor up in that space and to get an entrance in

here down the ground floor and then have a lift come up, you basically, you know, it's not --

TAD HEUER: So you're saying your floors aren't at grade to each other?

WILLIAM WINDER: No.

TAD HEUER: And they're off by about half a foot?

WILLIAM WINDER: Right.

TAD HEUER: So from the vestibule in the main house?

WILLIAM WINDER: Right.

TAD HEUER: All right.

WILLIAM WINDER: Also depending on when you do it, if this is your main -- if you chop this off and then put your lift in, you have to do the lift, you have to modify this first before you do this because then you wouldn't have any entrance at all in construction.

TAD HEUER: I'm not sure I follow

that.

WILLIAM WINDER: If you get rid of this side entrance, you then, you know, and then you're trucking your groceries from the front, you know, through the house that way. But if you get rid of this entrance and you try to do this construction --

TAD HEUER: That's nominally true. I don't know how difficult it is to do. I don't think you would be -- I don't think it's a huge inconvenience but that's beside the point.

WILLIAM WINDER: It's not huge, it just adds a -- you just have to --

TAD HEUER: Construction is in and of itself an inconvenience. I don't think it's any more or less an inconvenience.

WILLIAM WINDER: We're not sure that we have the budget to do the lift at this point. So once you do it, then you

have to be, you know, to get, to lift this floor up and, you know, to raise the floor in there and to open up the side of the house, I think make that happen.

TAD HEUER: So you're proposing essentially to get relief for everything, but right now all you're actually looking to build is the extension out the back with the bathroom?

WILLIAM WINDER: Yes.

CONSTANTINE ALEXANDER: Further questions or comments at this point?

I know we have a lot of people in the audience. Anyone here wishing to be heard on this matter?

JOAN MULLARKY: I'm glad to say a few things about the house and everything about my mom. She's been a resident here all her life. She was brought up here. Her grandparents grew up here. This is the house that my father grew up in. It's

been in this family for over 100 years now. My mother wishes to live the rest of her life here. And we want to make it -- wanted to do anything possible to keep her in there for as long as she wants to be. She deserves this. She's worked for the City of Cambridge for 33 years as a nurse. She's still volunteering as a foster grandparent at the Peabody School.

JENNIE DEVEREAUX: The Peabody School.

JOAN MULLARKY: And she's given to this community a lot.

CONSTANTINE ALEXANDER: Thank you.

JOAN MULLARKY: And she's worked very hard. And I think at this point she's -- she's going to the bathroom in a commode which is nothing short of a bucket with a seat on it. We just want to give her back her dignity and, you know, that's it.

CONSTANTINE ALEXANDER: Thank you.  
Appreciate that.

Anyone else wishes to speak?

PHYLLIS PALMEL: I will. I'm --

CONSTANTINE ALEXANDER: You have  
to give us your name.

PHYLLIS PALMEL: My name is  
Phyllis Palmel (phonetic). I live at 17  
Rindgefield Street. My house -- I'm sort  
of catty-corner from Mrs. Devereaux. And  
I look right onto, you know, right into  
her backyard. I live on the second floor.  
And I have seen absolutely nothing wrong  
with the plans that, you know, have been  
brought up. I think it's -- my mother's a  
94-year-old woman and is in as, you know,  
as healthy as Mrs. Devereaux. But we've  
had to do some things for her, too. And I  
think, you know, and when somebody needs  
some help so they can stay in their home,  
I think it's very important. And I know

all the other neighbors that I've spoken with that live, I guess pretty much abutting, I never spoke to Mr. Kelly, but everyone else has had no problem at all with it. And I think you have a gotten all the forms. No problem as far as I'm concerned and I think it would be a beneficial to Mrs. Devereaux.

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

(No response.)

CONSTANTINE ALEXANDER: We have letters in the file which I'll allude to or read in a second. But if anyone wants an opportunity, since you've spent all this time waiting for this case, you know, I don't want to cut anybody off.

JOAN MULLARKY: This is all her family.

CONSTANTINE ALEXANDER: Okay. Tad, could I have the file when you're

done because I want to read some of the letters that are in the file.

The Chair will read into the record a letter from City Councillor Toomey dated August 26th. "I'm writing to lend my support to BZA case 9982 requesting a Variance at Three St. Gerard Terrace to add a one-story addition to the right side of the house to provide a bathroom and access via wheelchair lift.

Mrs. Devereaux is a long-time Cambridge resident who has spent her life on St. Gerard Terrace. This addition will allow her to continue living in her home for many years to come. As Ms. Devereaux has gotten older, it has become a hardship for her to navigate the stairs in her own home. Accessing the second floor bathroom is becoming increasingly difficult. And allowing this Variance will help her achieve her goal of aging in place.

Making it easier for Cambridge residents to age in place has become a hot topic on the City Council as well, and was incorporated into the City Council goals for this term. Diversity in our city not only includes racial and cultural mix, but a mix of ages as well. This is a great example of ways to help our residents achieve an aging in place plan. Thank you for your attention to this matter. I hope you will find favor with the Petitioner's request and allow for what is a very modest addition designed to merely accommodate an aging resident."

The Chair is in receipt of a series of letters. They're all the same. They all say, "I have viewed the plans for the addition at Three St. Gerard Terrace and am in agreement with these plans." And it's signed by residents of 19 Rindgefield Street, 29 Rindgefield Street, 11 Hollis

Street, 27 Hollis Street, One St. Gerard Terrace, Unit No. 1. Another resident at One St. Gerard Terrace, Unit No. 1, 17 Rindgefield Street, 22 Hollis Street.

There's also a letter from Mr. Winder to Craig Kelly apparently dealing with some concerns that Mr. Kelly has raised, but there's no communication from Mr. Kelly. And there are further letters here.

TIM HUGHES: Some are duplicates.

CONSTANTINE ALEXANDER: They're probably going to say the same. I'm not going to read any more. I think it's clear there's unanimous neighborhood support for the project.

At this point I'm going to close public testimony. I'll give one more chance for anyone who wants to say anything. So public testimony is closed.

Any concluding remarks you'd like to

make?

WILLIAM WINDER: I think the idea of moving the handicap lift which we would like to do at this time, is just you know, it's economics, it's the only consideration. That's why we left it in. Is that, you know, closing off the access to the side yard just seems, you know, just a difficulty to do that. You know, eliminate that, you know, kitchen access to the yard. And that, you know, the -- and there's no additional expense to the construction. And I fail to see why that would be beneficial to the project.

TAD HEUER: Well, it's largely because you're coming here asking for a Variance and the Variance means you haven't done -- you're looking for a Variance from what the law allows. The law doesn't allow you to go over 0.5 without our say-so.

WILLIAM WINDER: Right.

TAD HEUER: What I'm looking for is some evidence that you can look at alternatives that minimize the amount of relief that you need. Because anyone can come in and say this is my perfect addition, this has everything I want, you know, it could be a bathroom or it could be a whole new wing to their house. This is what I love to do. And when it comes, and that's fine as long as you have the space and the law allows you to do it. But I'm when you come to us, I'm looking for some sense why things could not be done otherwise. You know, not just a hardship of it's difficult for me to move around which is clearly a hardship. But we're also looking for hardships is this just the easiest, fastest, quickest way for us to do it? Have we thought of all the other options and this is the only one

that really works? I'm looking for can you put the lift somewhere else? Can you reduce the FAR that you're going above? Is there a way that we can keep you within the parameters that are set forth by the code or do you really need to go beyond them?

WILLIAM WINDER: Okay.

TAD HEUER: Because not going beyond them means not getting any value out of it whatsoever.

WILLIAM WINDER: Yes, and the only way we found we can do that is to eliminate that side entrance because -- and, you know, it would eliminate some square footage no question about that. I think it --

TAD HEUER: And all you're saying is that eliminating that square footage to get you to 0.51 or to 0.5 would essentially nullify everything that you're

trying to do by putting the addition on there anyway. That imbalance you would come out worse rather than neutral.

CONSTANTINE ALEXANDER: The plans we have in here are the plans you showed us?

WILLIAM WINDER: Yes.

CONSTANTINE ALEXANDER: If we grant relief, we tie them to plans. You can't modify the plans without coming back before us again.

WILLIAM WINDER: Correct.

CONSTANTINE ALEXANDER: I want to make sure in your mind this is the plans, not preliminary.

WILLIAM WINDER: Yes.

CONSTANTINE ALEXANDER: Questions or comments from members of the Board? Ready for a motion?

The Chair moves that the Board make the following findings:

That a literal enforcement of the provisions of our Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the structure that she and her family have lived in for more than 100 years, she may not be able to continue to live in the structure.

That the hardship is owing to circumstances relating to basically the non-conforming shape and nature of the structure and lot.

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

In regard to that, the Chair notes that there is unanimous neighborhood support for the project. That as Mr. Toomey has pointed out, the project will allow the city to maintain or increase its diversity, this time in terms of age, which is an important function for

an important element of the City of Cambridge. And so it furthers the general goals for relief you're seeking. Further, the general goals of our city.

So on the basis of that, the Chair moves that a Variance be granted to the Petitioner on the condition that the work proceed in accordance with six pages of plans submitted by the Petitioner, prepared by William C. Winder, the first page of which has been initialed by the Chair.

All those in favor, please say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. The Variance has been granted. And I'm sorry we had to keep you here to this late hour. Good luck.

(Alexander, Hughes, Sullivan, Heuer, Anderson)

(11:20 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9983, 22-24 Myrtle Avenue. Is there anyone here wishing to be heard on this matter?

For the record, could you give your name and address? And if you've got a business card, you can give that to the stenographer, we'd appreciate that.

ORI PORAT: Ori Porat, P-o-r-a-t. 24-22 Myrtle Avenue, Cambridge.

ARNE GRONNINGSATER: And my name is Arne Gronningsater, 32 Powderhouse Boulevard, Somerville.

CONSTANTINE ALEXANDER: Okay.  
You're here seeking five skylights in a setback, right?

ORI PORAT: Right.

CONSTANTINE ALEXANDER: And these skylights are in place and it was an innocent mistake for our Zoning requirements that were build.

ARNE GRONNINGSATER: Right.  
During the rough inspection the inspector pointed out that they were in violation.

CONSTANTINE ALEXANDER: Right.  
Unlike other cases that we had this evening, there's no suggestion that this was done with knowledge that you were not complying with our Zoning By-Laws.

ARNE GRONNINGSATER: Right.

CONSTANTINE ALEXANDER: To allow you to have a Special Permit of skylights in this setback you have to get a Special Permit.

Any members of the Board have any questions you want to ask regarding this? No questions.

Is there anyone here wishing to be heard?

(No response.)

CONSTANTINE ALEXANDER: No one here wishes to be heard.

I think we're ready for a motion. I would just read into the record, too, that we have a memo from the Cambridge Historical Commission saying that the Cambridge Historical Commission staff approved the five skylights with a certificate of non-applicability. No further review is required.

Okay. The Chair moves that we grant a Special Permit on the basis of the following findings:

That no impact will be on -- the skylights do not impact traffic generated

on the property or patterns of access or egress that would cause congestion, hazard or substantial change in established neighborhood character.

That the ability of continued operation of adjacent uses will not be adversely affected by your skylights.

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

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

In fact, the skylights are -- have virtually no impact, privacy impact on the neighboring properties.

That they make the structure more functional in terms of increased light for the top floor.

So on the basis of all the foregoing, the Chair moves that a Special Permit be granted the Petitioner to legitimize the five skylights that have already been built in the structure.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Sorry to keep you here so long.

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

(Whereupon, at 11:25 p.m., the meeting adjourned.)

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

**COMMONWEALTH OF MASSACHUSETTS  
BRISTOL, SS.**

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

I am not related to any of the  
parties in this matter by blood or  
marriage and that I am in no way  
interested in the outcome of this matter.

I further certify that the testimony  
hereinbefore set forth is a true and  
accurate transcription of my stenographic  
notes to the best of my knowledge, skill  
and ability.

**IN WITNESS WHEREOF**, I have hereunto  
set my hand this 10th day of September  
2010.

---

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

My Commission Expires:  
April 23, 2015

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