

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING
SEPTEMBER 16, 2010 7:00 P.M.

in

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Timothy 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

(7:00 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Board of Zoning Appeal to order. And the first order of business will be to consider a request for an extension of a Variance granted in case No. 9822, 16 Stearns Street. We granted a Variance on November 9, 2009 to the Petitioner. And so the Board of Appeals it says here, had a September -- oh, no, this is what we're going to do tonight.

The question is whether the Variance would expire on November 10, 2010. And they're seeking a six-month extension which would go to May 9, 2011. We are in receipt of a letter from the Petitioner, Joseph D. Maguire, M-a-g-u-i-r-e addressed to us.

It's received September 13th. "Greetings, I currently hold a Variance granted by the Cambridge Board of Zoning Appeals, case No. 9822 for renovation of 16 Stearns Street which will expire on 9, November 2010. I would like to apply for a six-month extension to the Variance. It took a while to secure financing. So just last week I chose a contractor and signed the project contract and the application for a building permit.

TAD HEUER: Can I ask a question?

SEAN O'GRADY: Sure.

CONSTANTINE ALEXANDER: You can always ask a question.

TAD HEUER: Is this not covered by the administrative extension?

SEAN O'GRADY: We believe that it is. But we haven't got the official yes, it applies in this case, going through legal, so belt and suspenders.

TIMOTHY HUGHES: Which is the belt

and which is the suspenders?

SEAN O'GRADY: That's the belt.
The suspenders are over there.

SLATER ANDERSON: But he's got the application for a building -- he doesn't have a building permit yet?

SEAN O'GRADY: No, he doesn't. And he's unaware of this procedural issue.

SLATER ANDERSON: He's looking at the building permits and that's another process.

SEAN O'GRADY: Right.

SLATER ANDERSON: It's out of our....

SEAN O'GRADY: Right.

CONSTANTINE ALEXANDER: Then he's met the -- if he gets the building permit within the 12 months, then he's okay.

SEAN O'GRADY: You have to get the building permit and start work.

CONSTANTINE ALEXANDER: Are you

sure about that?

SEAN O'GRADY: I don't know, that's what I've always been told.

CONSTANTINE ALEXANDER: There's a recent SJC case which I think says only pulling the building permit.

SEAN O'GRADY: How recent is it, because --

CONSTANTINE ALEXANDER: Like six months.

SEAN O'GRADY: Well, okay.

SLATER ANDERSON: Didn't it have 12 months for the permits?

SEAN O'GRADY: Well, we had a case about that across from Riverside Pizza. They dug a trench and they said well, we started work. And we said, yes, you dug a trench but that trench isn't where the foundation goes. It's a trench to nowhere, so good try. Had you dug the trench over here maybe you'd have an argument.

CONSTANTINE ALEXANDER: Check with legal. I think you don't have to do anything to pull the permit to do anything but to pull the building permit to have met the one year requirement.

TAD HEUER: Also check with legal. It's fairly unambiguous that the permit extension applies.

SEAN O'GRADY: Well, look, Ranjit and I sat down and we said yes, it clearly does, but until the loop comes back through --

TAD HEUER: Well, is that going to be looping back every time this comes up? Because the whole point of a statute is for it to the to come up.

SEAN O'GRADY: No. Hopefully we'll get the answer once and we'll be okay. If there's any confusion -- well, it uses the word Variance so there's no confusion about Variances.

TAD HEUER: Right.

SEAN O'GRADY: It's so broad. It's almost like is it really this broad? And the answer is yes, I'm sure.

TAD HEUER: The answer is yes, indeed, it is that broad.

SEAN O'GRADY: But super.

CONSTANTINE ALEXANDER: I will make a Motion that we grant the extension requested to extend the period for six months to end now on May 9, 2011. All those in favor of granting the extension say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Extension granted.

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

(7:00 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9955, 1663 Mass. Ave. Is there Anyone here wishing to be heard on this matter?

(No response).

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

The Chair also notes that we're in a receipt of a letter. We have a letter from Mr. Rafferty. It's a handwritten letter. It was received on September 16th addressed to Ms. Maria Pacheco. "Please accept this correspondence as a request by the Petitioner in the above-captioned case--" that's this case here -- "to withdraw its application for a Variance from Article 7 of the Zoning Ordinance. Thank you for your attention to

this matter."

The Chair moves that we accept the offer of withdrawal and deem this case to be withdrawn. All those in favor say "Aye."

(Aye).

CONSTANTINE ALEXANDER: Five in favor.

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

(7:00 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will next call case No. 9909, 44 Follen Street. Is there anyone here wishing to be heard on this matter?

(No response).

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

The Chair further notes there's a letter in our files from Vincent J. Panico, Esq. regarding this case. It's addressed to Ms. Maria Pacheco. "Dear Ms. Pacheco, I am the attorney for the owner of 44 Follen Street, Doug Yoffe, which is before the Board in case No. 9909. Please withdraw the case for consideration by the Board. We will not appear at the hearing on this case."

The Chair moves that this Board accept

the offer of withdrawal and to deem this case to be withdrawn.

All those in favor say "Aye."

(Aye).

CONSTANTINE ALEXANDER: Five in favor.

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

(7:10 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9953, Six Berkeley Place. Is there anyone here wishing to be heard on this matter?

ROBERT CALDERARO: Yes.

CONSTANTINE ALEXANDER: Give your name and address. And if you have a business card give it to the stenographer.

ROBERT CALDERARO: Okay. My name is Robert Calderaro C-a-l-d-e-r-a-r-o, with Gregory Lombardi Design, landscape architects.

CONSTANTINE ALEXANDER: Could you share your name with us, too?

ROBERT CALDERARO: My name is Rob Calderaro, Gregory Lombardi Design. We're the landscape architects for Yun Soo Vermeule

and Adrian Vermeule and we're here to request a Variance for a rear yard setback. The property is Zoned A-2. And per the Zoning Ordinance Section 5.31 footnote C we're required to have a setback that is -- well, we have a deeper than 100-foot set rear yard. So we have to add one foot four feet over that. We're 33 feet over. So we ended up with a 34-foot setback which is --

CONSTANTINE ALEXANDER: According to your application, you're now at 34 feet. And the Zoning requirement is 34 feet.

ROBERT CALDERARO: That's correct.

CONSTANTINE ALEXANDER: You're now at 34 feet.

ROBERT CALDERARO: That's correct.

CONSTANTINE ALEXANDER: And with this deck, you're going to be extending it within 29 feet of the rear yard.

ROBERT CALDERARO: That is correct. What we're asking to do is encroach 10 square

feet of freestanding stone wall which is approximately 3.3 feet high, which is three foot, three inches. 97 square feet of deck and stair, the maximum height of one foot, ten inches high. So those areas are indicated in the shaded areas on the plan.

CONSTANTINE ALEXANDER: That's the same as this plan that's in our file?

ROBERT CALDERARO: I believe so.

TAD HEUER: You say you're at 97 square feet?

ROBERT CALDERARO: 97 square feet of deck and stair combined.

TAD HEUER: So the 43.5 square feet in the advertisement is just deck; is that right?

ROBERT CALDERARO: Deck and then there's also in the advertisement it states the stairs as well.

TAD HEUER: Okay.

Is the wall our issue? Do we care about

the wall?

ROBERT CALDERARO: The wall encroaches approximately four foot, eight inches in the setback as well. It's approximately three foot, three inches high.

SLATER ANDERSON: That's the extension of the wall that you see in the sketch there?

ROBERT CALDERARO: Right. What we've done in red here is we've indicated what the extensions into the setback it would be. The construction that you see that's existing is where we brought things prior to coming to the hearing.

CONSTANTINE ALEXANDER: So the red line is where you want to go or you will go if we grant you relief?

ROBERT CALDERARO: That's correct. And we feel that because the minimal amounts of square footage, the height being very low, that's not an unreasonable request.

CONSTANTINE ALEXANDER: Okay.
Have you talked to the neighbors that are directly affected by this?

ROBERT CALDERARO: The neighbors have no problems with and actually think the improvements that the client has done are excellent.

TAD HEUER: So your deck is about 15-by-16 now?

ROBERT CALDERARO: That's correct.

TAD HEUER: That's a pretty big deck. Why do you need more space? Why don't we just give you some stairs? I mean I understand why you need stairs off the deck, but why do you need to make the deck bigger and then add the stairs?

ROBERT CALDERARO: Well, it was the clients request to have the deck that size and really wanted to stick with the original design.

TAD HEUER: What's the hardship of

not being able to adequately use a 15-by-16 deck? It's huge.

ROBERT CALDERARO: Well, based on the grades that we -- obviously do need stairs.

TAD HEUER: Sure. Stairs are fine. Why do you need more deck area?

ROBERT CALDERARO: Well, we feel that based on the paving design and how things lay out, the stairs and the deck all [\[align\]](#) with those paving lines. And actually I have a couple more pictures.

TAD HEUER: Is that a hardship that somebody laid down your paving lines somewhere in the yard at some point? Or maybe you guys laid them down. I don't know if they're new or old. But, you know, I'm looking at -- is this paving that runs along parallel to where you want the deck to go, is that pre-existing? Is that new?

ROBERT CALDERARO: That's new.

TAD HEUER: So you could have put it in if you came to us earlier, you could have put it in two feet this way. You still would have had a line out that way. And you put your deck down to here. The alternative to what you're saying is if you really wanted it to be pertinent, you can put this line all the way out here towards the garage and then come to us and say well, we'd like to line it up to the foot paths, we'd like, you know, another six feet of deck.

ROBERT CALDERARO: We could have done that, but really what we want to do is we want to stick with the design that we have. And we feel that the amount of square footage and the height of the deck, the deck only being 22 inches high, it's not an unreasonable request.

CONSTANTINE ALEXANDER: Well, that's for us to decide.

ROBERT CALDERARO: Right.

CONSTANTINE ALEXANDER: And I sort of support what Mr. Heuer is saying. I mean, you've got an awfully big deck as it is. I mean, I don't understand what your hardship is. You may know to get a Variance, you have to demonstrate a hardship that's owing to the soil conditions, shape or topography of the land.

ROBERT CALDERARO: Right.

CONSTANTINE ALEXANDER: And this especially affects this property and not generally the zoning district.

ROBERT CALDERARO: Right. I understand the size of the deck may seem to you guys as a large deck, but a lot of that deck is actually what we call hallway or space that's actually people moving through. So to locate furniture on this, if you think about how people are moving across the deck and stuff, locate furniture on there, we really do benefit from that extra, I think

it's two and a half feet, 30 inches.

TAD HEUER: How is a hallway if you're only -- all right, so explain your hallway concept to me.

ROBERT CALDERARO: So basically these are the hallways that we can move through. So gaining the space out here really does help as far as chair locations and such.

TAD HEUER: I understand hallway on the boardwalk portion perhaps, but where is it along the seat wall? Like to get to the seat wall maybe the hallway so I can't put a chair there? Is that what you're --

ROBERT CALDERARO: No, I'm saying that that's -- that would be a movement that people would make. They would come up, they come across here. The same would be like that. So the seat wall just basically sits along this back side.

TAD HEUER: So there's a down stair

between the bay window and the --

ROBERT CALDERARO: Down stairway, you're correct.

CONSTANTINE ALEXANDER: Other comments or questions from members of the Board?

TAD HEUER: I have another question just on the dimensional form. So, I'm looking at this case and I'm looking at the next case, and I see total GFA cannot possibly be right in this case because it says 2,098. This looks more right. It says 6,486. Can you explain the 4,000 square foot discrepancy.

ROBERT CALDERARO: I cannot but I can certainly make sure that's correct.

TAD HEUER: 4,000 is about the size of the rest of the houses coming before us combined.

CONSTANTINE ALEXANDER: The dilemma, this gentleman's dilemma is he's

only here for one of the two cases. So you can only compare one of the two dimensional forms.

ROBERT CALDERARO: I apologize if there was a discrepancy. It's something we can certainly clarify for you.

CONSTANTINE ALEXANDER: You're standing behind these numbers, though?

ROBERT CALDERARO: Yes.

CONSTANTINE ALEXANDER: You're saying the correct dimensions are the dimensions on --

TAD HEUER: Given the size of this house I'm going to suggest that it's not possibly right. This is not a 2,000 square foot house.

CONSTANTINE ALEXANDER: 6,000.

SLATER ANDERSON: It's not that big.

CONSTANTINE ALEXANDER: Not that big.

ROBERT CALDERARO: This is an eight

inch plan, so the house is approximately, let's say, it's 40-by-40.

TAD HEUER: Okay.

ROBERT CALDERARO: 32.

TAD HEUER: Yes. And it's how many stories, two and a half?

ROBERT CALDERARO: Two and a half.

SEAN O'GRADY: What's the basement ceiling height?

SLATER ANDERSON: Probably closer to six.

ROBERT CALDERARO: I don't have those -- I don't have those -- I think what mine may stipulate is just the footprint as opposed to the overall square footage is probably what the error is and you're probably correct that --

TAD HEUER: Okay.

ROBERT CALDERARO: -- I think that makes the most sense. But certainly we can clarify that.

SLATER ANDERSON: You know, the 17 over 100 floor ratio is 0.17 when you calculate it.

CONSTANTINE ALEXANDER: I hope so.

TAD HEUER: Yes.

SLATER ANDERSON: It's a big lot.

CONSTANTINE ALEXANDER: It's a big lot.

ROBERT CALDERARO: That also -- there is a fair amount of square footage between, you know, the rear yard property line and where we are.

SLATER ANDERSON: And that's sort of my issues is, you know, it's 12,000 square foot lot yet you want to -- you know, you got all this lot and you want to go into the area where it's a setback. And it is a large deck to begin with. So, I understand the aesthetics and the architectural elements to it.

CONSTANTINE ALEXANDER: The Chair

will note that there's no one in the audience so I assume there's no one else wishing to be heard in this matter, and there are no letters in the file.

You represent that you or your client have spoken to the abutters, and particularly the ones most directly affected and they have expressed no opposition?

ROBERT CALDERARO: That's correct.

CONSTANTINE ALEXANDER: Have they expressed support?

ROBERT CALDERARO: They have not expressed opposition.

CONSTANTINE ALEXANDER: Okay.

ROBERT CALDERARO: My client was supposed to be here but she is not.

CONSTANTINE ALEXANDER: Do you want to wait?

ROBERT CALDERARO: Absolutely, if you want to wait.

CONSTANTINE ALEXANDER: Well, it's

your call.

ROBERT CALDERARO: I have nowhere to go.

CONSTANTINE ALEXANDER: I suggest we recess this case for five minutes to at least let the Petitioner herself attend the meeting before we hear anything further.

BRENDAN SULLIVAN: She may be out there.

CONSTANTINE ALEXANDER: Someone looked in.

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

CONSTANTINE ALEXANDER: For the record, we need to have your name. We have a stenographer taking a transcript.

YUN SOO VERMEULE: Sure. Yun Soo, there's a space. Y-u-n S-o-o. The last name is Vermeule, V-e-r-m-e-u-l-e.

CONSTANTINE ALEXANDER: What's the question you want to address?

TAD HEUER: So, first question is, and we're not looking at the second case yet because that's in five minutes, but the dimensional forms that we have, one dimensional form says the total gross floor area for the house is 6,400 square feet, and the other one for this case says it's 2,048 square feet. Can you --

ROBERT CALDERARO: It's the 6,000, right?

YUN SOO VERMEULE: Yes, it's 6,000.

ROBERT CALDERARO: The 2,000 was just for footprint. So the overall square footage was the 6,000.

TAD HEUER: So we can make that change on this form?

ROBERT CALDERARO: (Nodding head).

CONSTANTINE ALEXANDER: You approve the change that Mr. Heuer is making to this dimensional form?

YUN SOO VERMEULE: Sure. I have a

question about that. You mean it's 6,000 square feet of living space?

TAD HEUER: As defined by the Zoning Ordinance.

YUN SOO VERMEULE: Okay.

CONSTANTINE ALEXANDER: So in other words, it could be your basement if it's seven feet or higher in the basement.

YUN SOO VERMEULE: Yeah. I thought it was smaller, but I think it's including the back yard --

CONSTANTINE ALEXANDER: Who did the dimensional form for the other case? This gentleman here?

YUN SOO VERMEULE: Andy. I think Andy, did you do the dimensions?

ANDY MARVEL: Is this for the carriage house?

CONSTANTINE ALEXANDER: Yes. But one of the problems -- please, for the record give your name and address.

ANDY MARVEL: Andy Marvel. I'm the contractor.

CONSTANTINE ALEXANDER: Spell it, please.

ANDY MARVEL: M-a-r-v-e-l.

CONSTANTINE ALEXANDER: The issue before us is we have two applications here.

ANDY MARVEL: Right.

CONSTANTINE ALEXANDER: You're here for the second one, which we haven't started yet.

ANDY MARVEL: Okay.

CONSTANTINE ALEXANDER: This gentleman is here for the first one which is the deck.

ANDY MARVEL: Got it.

CONSTANTINE ALEXANDER: His application says that the gross floor area of the house is 2,098 feet. The application you prepared has --

TAD HEUER: 6,486.

CONSTANTINE ALEXANDER: They're different. What is the floor area of the house?

ANDY MARVEL: I'm going by what the architect who previously did the project did, and that's what was submitted. You've got it. I know what I presented to you --

YUN SOO VERMEULE: But obviously they changed it to 6,000 so it would be 2,000.

ANDY MARVEL: Yeah -- no. So, it's 6486. And the requirement right now with FAR would be 6240 which is what it comes out to.

TAD HEUER: Right. Okay. So, if we correct the form that says 2,098 to read 6486, so the two forms are the same, that's correct?

YUN SOO VERMEULE: Yes.

TAD HEUER: Okay. Now that we have that out of the way, the question that several of us have is in looking at the deck that you already have on the house, it's a fairly large

deck. It's 15-by-16. And certainly I think, I do and I think some of the rest of the board members understand the need for stairs off the deck, that makes sense. What we'd like your explanation of is why you need more deck space that invades into the setback?

YUN SOO VERMEULE: Actually --

CONSTANTINE ALEXANDER: And before you answer that question, let me explain to you why the question has been asked of you. If we grant you the relief that you're asking, the Variance, you have to demonstrate to us a hardship, this is required by statute. A substantial hardship that is caused by the soil conditions, shape or topography of the land.

So what is your hardship that requires you or leads you to ask of us to grant you this deck that extends into the rear yard setback?

YUN SOO VERMEULE: Okay. I'm not

sure if you --

ROBERT CALDERARO: I've already spoken on it.

YUN SOO VERMEULE: Well, did you explain what happened? Like, initially we had a plan and --

ROBERT CALDERARO: No, I didn't go through the whole history about it.

YUN SOO VERMEULE: Okay.

So, you know, we had a plan of what the deck was going to be. And the reading of the Zoning Laws, it was misread to be the 25 feet setback. The 35 feet was in like the small quotes. So we had started the project, and it was told to us that, you know, you can't do it. However, we didn't get guidance from the people in the -- is it -- I mean, what department would that be?

ROBERT CALDERARO: Zoning.

YUN SOO VERMEULE: The Zoning Department. They were sort of hostile and

they wouldn't help us as to how we can resolve this issue. Okay?

Gregory Landscape sent them several different options as to how we could proceed, and they would not give us an answer as to yes or no. So, right now, the way it is, we're not extending any more of the deck. Where we've stopped is where the deck will be. We're gonna just make the stairs.

TAD HEUER: But that's not what's shown on your plan.

ROBERT CALDERARO: The Variance is going for --

YUN SOO VERMEULE: But that's the stairs, because they --

TAD HEUER: Look at the plan.

ROBERT CALDERARO: It's two feet more of that.

YUN SOO VERMEULE: Okay. But does that include the stairs that's the wider stairs?

ROBERT CALDERARO: Yes. So we have the wider stairs.

YUN SOO VERMEULE: Okay. I mean --

ROBERT CALDERARO: I think what they're saying is they would be okay with just the stairs.

YUN SOO VERMEULE: Yeah.

ROBERT CALDERARO: So, if that --

TAD HEUER: If you're okay with the deck going to where it is right now if that's legal, and you just want stairs off of it, I think you'd get better reception than if you're asking for the deck where it is right now plus more deck plus stairs. But it sounds like that's what you thought you were asking for anyway. You might want to confer.

YUN SOO VERMEULE: Okay. I'm sort of confused. Because we went back and in order to do -- right, Andy? Because Andy's going to do -- finish the deck. To do the stairs --

ANDY MARVEL: Just so I'm clear, the shaded part, is that --

ROBERT CALDERARO: That's the Variance.

ANDY MARVEL: And the deck, and this point right now does not come any further than the red now then?

ROBERT CALDERARO: That's correct. That line right there is basically that line right there.

ANDY MARVEL: So we're only actually asking for the steps which I think is okay.

CONSTANTINE ALEXANDER: Well, it's not okay. I mean, you still need relief, but as Tad pointed out, the nature of the relief is quite different.

YUN SOO VERMEULE: Andy, right? We went through this. We figured that if we were going to do the wide steps, the deck would come out to where it is now.

ANDY MARVEL: Yeah, and in reality

we're actually going to pull the deck back slightly because we want to get full boards. So we're actually going to pull it back about four inches I think before we start the steps.

CONSTANTINE ALEXANDER: If we grant relief, we always tie it to some plans that are in the file. What I'm hearing now is the plans that we have are not the plans that you're planning to build. Because these plans show you -- somebody's got to take responsibility.

ANDY MARVEL: I understand. I mean, I'm happy to take responsibility. I didn't build it originally and --

YUN SOO VERMEULE: Was it you or Liz that sent in the modified plans?

ROBERT CALDERARO: This is the plan that was sent in. So this was the modified plan.

YUN SOO VERMEULE: Yeah, but I think we -- I don't know.

SLATER ANDERSON: What's the date on that plan?

ROBERT CALDERARO: On this plan?

SLATER ANDERSON: May 21st?

ROBERT CALDERARO: That's correct.

YUN SOO VERMEULE: Yeah, subsequent to that there was another plan.

SLATER ANDERSON: Well, what I'm seeing here, though -- a question I have is looking at the photograph --

TIMOTHY HUGHES: I think it's the same as that one, but it says it's revised on the 26th of July.

ROBERT CALDERARO: It's the same plan.

CONSTANTINE ALEXANDER: So these are the same? It's a different date.

SLATER ANDERSON: It says revised 26th July.

TAD HEUER: That says May 21st.

ROBERT CALDERARO: Revised 26th

July. You have the same plans.

CONSTANTINE ALEXANDER: Same plans.
Same plans.

Slater had a question.

SLATER ANDERSON: The deck that's
existing right now in the photograph --

ROBERT CALDERARO: Yes.

SLATER ANDERSON: -- that is an
extension of what was there originally?

YUN SOO VERMEULE: No, there was no
deck.

SLATER ANDERSON: There was no deck.
Okay. Because I'm looking at this plan here,
and obviously the deck that's been built is
already a portion of the deck that you're
asking for. So the deck you're asking for
exists in part?

YUN SOO VERMEULE: No.

ROBERT CALDERARO: No.

SLATER ANDERSON: No? Well, that
little -- maybe my eyes are deceptive. I

mean, look at that little bit which is about a foot maybe right there that's not grey.

ROBERT CALDERARO: Oh.

SLATER ANDERSON: That extends more than a foot from the wall. What I see in the picture, in that location.

ROBERT CALDERARO: Can you point out where you're talking about?

SLATER ANDERSON: Right there. That width right there is more than what is shown as in red -- not in red. So it looks like the deck you're asking for in grey is already in that photograph.

ROBERT CALDERARO: Well, if you look at -- if you look at the paving line right here, which is this line right here.

SLATER ANDERSON: Right.

ROBERT CALDERARO: That [align]s with that edge right there. So this photo's a little deceiving because its perspective, it looks larger. But that stone is that

stone.

SLATER ANDERSON: Well, this plan, I can tell you that's about a foot.

TIMOTHY HUGHES: It's a little over a foot. Maybe 15 inches. There's five boards there that are one-by-six boards so it's twice as big as that. So that's already been built to the grey area. It has to have been. I mean, just checking with the dimensions, right.

SLATER ANDERSON: Extending the grey area.

TIMOTHY HUGHES: So you are asking for extra deck because you already built it.

CONSTANTINE ALEXANDER: Sure they are.

TIMOTHY HUGHES: Three and a half feet.

ROBERT CALDERARO: It looks like it's built a little further, that's for sure, but certainly not built all the way not out

to here.

SLATER ANDERSON: I'm just trying to understand the facts.

TIMOTHY HUGHES: What's the size of the boards on that deck? The one by sixes?

ANDY MARVEL: It's really tight. I mean, think you're right, this point might be slightly further than where the setback is.

CONSTANTINE ALEXANDER: More than slightly.

ANDY MARVEL: Slightly. I don't think so.

TIMOTHY HUGHES: Just tell me -- I mean, you're going to finish this deck. Do you know what size the dimensional lumber -- I mean, the planking is on that deck?

ANDY MARVEL: Yeah, I'm sure it's one-by-five.

TIMOTHY HUGHES: Four and a quarter, four and a half inches. 1, 2, 3, 4, 5.

ROBERT CALDERARO: Well, if you look

at this angle, you can really see --

YUN SOO VERMEULE: It might be three.

TIMOTHY HUGHES: 1, 2, 3, 4, 5 boards and one's missing. Six boards.

ROBERT CALDERARO: 1, 2, 3, 4. Five total.

TIMOTHY HUGHES: This is the corner here. It's 1, 2, 3, 4, plus.

ROBERT CALDERARO: Oh, you're right. I'm sorry.

ANDY MARVEL: And are those one by fours?

TIMOTHY HUGHES: They're not one by four.

ANDY MARVEL: Are they one by six.

TIMOTHY HUGHES: I don't know if they're five or six, but from the photograph I can't tell. But they're bigger than --

ANDY MARVEL: They must be six then. So that's five and a half.

TIMOTHY HUGHES: Yes. So we're already around 30.

SLATER ANDERSON: Literally and figuratively we're in the grey area.

ANDY MARVEL: We're in the grey area.

TIMOTHY HUGHES: Yes, we're in the grey area.

ROBERT CALDERARO: Can I see your scale again for a second?

TIMOTHY HUGHES: Yes, you can in a second. Yes, I'm looking at this and calling it just under three and a half feet from the grey area to that raised plant box.

ROBERT CALDERARO: Yeah. I'd say it's three and a half feet from that edge.

TIMOTHY HUGHES: And that would make sense in terms of like five plus.

ROBERT CALDERARO: From the setback, though, from the edge to the setback?

TIMOTHY HUGHES: It's a one by six.

ROBERT CALDERARO: From the edge of the wall to the setback line is approximately two feet. Is that what you're reading?

TIMOTHY HUGHES: That's --

ROBERT CALDERARO: That's what it scales to.

TIMOTHY HUGHES: From the edge of the raised plant box to the setback to this point? Yes, it's approximately two feet. But the setback line is at an angle so it's obviously -- you're encroaching on the setback at the seat wall more than you are --

ROBERT CALDERARO: Agreed. I think as Andy has said, they certainly intend on moving those four inches to get the full board as opposed to bringing it out to where it is right now.

CONSTANTINE ALEXANDER: So the relief you're asking from us is to extend the deck plus the stairs, not just the stairs as

was said earlier.

ANDY MARVEL: Well, it sounds like it's about a foot. A foot to 15 inches of deck plus the stairs.

ROBERT CALDERARO: Plus the stairs.

TIMOTHY HUGHES: Plus the stairs, correct.

CONSTANTINE ALEXANDER: And if we just said no to the foot to foot and a half of deck and just stairs, will the world come to an end?

ANDY MARVEL: I'm the wrong one to ask.

TIMOTHY HUGHES: Well, it's a rhetorical question because we know the world is not coming to an end. It's not even coming to an end in 2012 when the Mayan calendar says it's going to come to an end. It's not going to come to an end if these steps don't go to the sidewalk.

CONSTANTINE ALEXANDER: I think you

get the drift of what we're wrestling with here. We have a legal standard. We just don't sit here and do whatever we feel like doing. We have to meet a legal standard. We don't see the hardship for the extra deck space. There is a hardship in a sense with regard to the need to stairs given the height of the deck, but to add more deck to what is now a large deck, I don't see how you meet the legal standard.

YUN SOO VERMEULE: Yeah, I would say the hardship is we started this project in April. We've been incumbered because the Zoning Commission refused to guide us as to what we should do. We've already started the project. We've already laid down the boards. I paid so much more than I originally planned because people have -- I mean, I don't know why the original date for this issue was in June. I called the office multiple times asking them if there were

dates from June until now. They said no. Andy, for this issue called and he got a date earlier than tonight and they said well, there's nothing we can do. And it's not arbitrary. But I'm sorry, everything from April -- like, everything that we've come across has been arbitrary. And you're telling me that there's a legal standard for a hardship?

CONSTANTINE ALEXANDER: Ma'am.

YUN SOO VERMEULE: I'm telling you that I've lived with this, you know, open construction. And my children haven't been able to play in the backyard since April because of this issue.

CONSTANTINE ALEXANDER: One of the reasons why it's taken several months longer is because you didn't post the sign.

YUN SOO VERMEULE: No. I was out of the country.

CONSTANTINE ALEXANDER: That's not

our -- you were --

YUN SOO VERMEULE: Yeah, I know, of course, yeah. You know what?

CONSTANTINE ALEXANDER: Don't blame the Zoning Office or blame this Board for the length of time it's taken. If you had posted the sign, we would have heard this case months ago but we didn't. I just want to put on the record that it is just not a matter of arbitrariness on the part of this Board or the Zoning Office.

YUN SOO VERMEULE: The Zoning Office sent me a letter for the June date. Why is it for this date they sent it to our contractor? And he was fully aware of the date. I mean, it seems like how you go about doing it seems to be how you want to go about doing it. And you're asking me for a hardship. You're asking me, you know, sarcastically will the world end? You're right, the world will not end. But I've

lived with this, you know, for an entire season. And I have two young children. I haven't had, you know -- my neighbors couldn't -- I didn't want them to play in the backyard because, you know, we have lumber sticking out and it's been a hazard. It's been a safety hazard. And now you're telling me that, oh, you know, you don't have a hardship so we're not going to let you finish the deck.

CONSTANTINE ALEXANDER: That's not what we're saying. We're saying that the deck that we may require you to finish is not a deck as large as the one you're seeking tonight. That's what we're trying to say to you. Because we can't find a way legally to justify a deck of this size that you're seeking. That is the issue before us. It's not a personal issue on our part.

YUN SOO VERMEULE: No, but I -- okay. I understood you file for -- you ask for a

Variance and I mean, I was under the understanding that if my neighbors were okay with it -- you can't see this deck from the public, you know, streets. I don't see why -- I mean -- I'm asking you as a Board, like, why wouldn't you allow this? People ask for Variances and it may not cause a hardship, but....

CONSTANTINE ALEXANDER: I can only try to explain one more time. To grant Variances we have to meet a legal standard that's set by the Commonwealth of Massachusetts and also by the City of Cambridge. That standard is a standard that you have to meet a three part test. And you have to demonstrate a substantial hardship that's owing to the soil conditions, shape or topography of the lot of the structure. That's the legal standard. Yes, we take into account what neighbors' views, pro or con. We take into account things like whether it's

visible from the public way. Because the third part of the test is whether what you want to do to derogate from the intent or purpose of our Zoning By-Law. That's only one of the three parts of this test. We take all of that into consideration. We elicit information on all that. But at the end of the day we can't just say we ignore the hardship because we have no right to do that. We have to reach a conclusion. We may be right, we may be wrong, but we have to deal with the issue of hardship. And we expect Petitioners to come before us to help us. It's your burden to demonstrate to us, to convince us that you have that hardship. That's why we're trying to draw out this information. And if I was being sarcastic earlier about the world coming to an end, I apologize. I didn't mean that to be. I was just trying to get to the point that this case might be much easier for you, that relief

might be granted, if you were to consider reducing the size of the deck and only seeking relief for the stairs in terms of the setback.

YUN SOO VERMEULE: Okay. I mean, I said this earlier, one of the hardships is we've already laid down the bluestone. And like I said before we've spent, you know, more money because it's -- this project has been extended. And if we do not make the deck the way we intended, then we're going to have to remove all the bluestone again and move it to a closer spot. I mean, you can see that the bluestones, the path goes all the way back in our yard. So what you're asking me -- I mean, asking me to do is to lift all the bluestones --

CONSTANTINE ALEXANDER: Your point is you started this project in good faith. You paid an expenditure of money. And now you discover that you do have a Zoning problem and if we don't grant you the relief, you're

going to have an additional expense of removing the work that you've previously done. I think that's your point.

YUN SOO VERMEULE: That's right.

CONSTANTINE ALEXANDER: Okay.

TAD HEUER: You've also built a deck, if I'm looking at this correctly, you've built the dark grey part already?

ROBERT CALDERARO: No.

TAD HEUER: Part of it.

ROBERT CALDERARO: Part of it, yeah.

TIMOTHY HUGHES: Part of it.

TAD HEUER: I mean, knowing that you need to come for a Variance and you've known that you needed to come for a Variance, Variance means vary. Not as of right. You can do whatever -- you can do the deck you've already built as of right --

YUN SOO VERMEULE: But that's -- we were under the impression that -- I mean, that's why they stopped in the middle like

this. I mean, you have boards sticking out because they were under the impression you could build as far as that board. I mean, I don't know what happened.

TAD HEUER: Well, and I mean that's more the point. That everyone, at least your contractors knew you can build as far as the board and not any further without coming to us. And to the extent that you're expecting that we are going to grant you the ability to go further, I'm not sure that's a reasonable expectation to have.

YUN SOO VERMEULE: Okay. I mean, I mean, I don't know what Brian was thinking.

ROBERT CALDERARO: I don't know if we were saying that that was our expectation wasn't that -- we weren't coming here expecting that just to fly through.

TAD HEUER: Well, it must have been because you laid down your exterior bluestone path that you want that deck to extend to.

BRENDAN SULLIVAN: Who determined where the stop point was?

ROBERT CALDERARO: I'm not sure. Was that Brian?

YUN SOO VERMEULE: I mean, I guess it was Brian.

ROBERT CALDERARO: It was the deck contractor who determined where that stop point was.

BRENDAN SULLIVAN: And you're not sure why he determined that was the stop point?

ROBERT CALDERARO: Well, basically he came to get a permit for this and was told that it was in violation of the setback before we even started building this.

BRENDAN SULLIVAN: Okay.

ROBERT CALDERARO: So he had an understanding of where that line was and that's where he stopped. That was, I guess in his mind he thought he was stopping in the

right spot.

SLATER ANDERSON: So he probably measured from the back fence 34 feet and felt that that was where that is.

ROBERT CALDERARO: That's correct.

SLATER ANDERSON: Okay.

ROBERT CALDERARO: In good faith he stopped it.

SLATER ANDERSON: That's fine.

TAD HEUER: Yes.

ROBERT CALDERARO: I'm sure there was no intent to, to go passed the setback line.

CONSTANTINE ALEXANDER: Further questions at this point? I should ask since we now have people joining the meeting. Is there anyone wishing to be heard on this matter?

(No response).

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

people before us.

Questions, any further additional comments you'd like to make?

ROBERT CALDERARO: And the other comment I had made in regards to the fact that a lot of this deck is indeed hallway, and the additional space does give us the ability to put chairs where it may be difficult where people are passing through was.

YUN SOO VERMEULE: Can I just make one more further comment?

CONSTANTINE ALEXANDER: Sure.

YUN SOO VERMEULE: When we bought this house it was a two-family house and they were renting out the third floor. And there was a stairway. I mean, I don't know if you have plans which stuck out further than this because it was a -- it was a structure where they could go straight to the third floor. We removed that structure because it's now a single-family home. So, in terms of space

and what you can see from the public area, I mean, it comes out much further than the deck.

ROBERT CALDERARO: Right.

And the fact that the deck is only 18 to 20 inches tall, with a seat wall three feet three inches high. And we do have both neighbors thinking that it's a fantastic project.

TIMOTHY HUGHES: I'd like to --

CONSTANTINE ALEXANDER: Go ahead.

TIMOTHY HUGHES: On the application under the B part of the hardship it says that, you know, for the following reasons, it says the structure that was installed according to the setback regulations was constructed without steps. And that seems to me to suggest that there's a hardship for steps.

CONSTANTINE ALEXANDER: Yes.

TIMOTHY HUGHES: There is no hardship for an extended deck.

CONSTANTINE ALEXANDER: I think

that's what I was trying to suggest earlier.

TIMOTHY HUGHES: And they're not even addressing the hardship for extended deck here, just for the steps.

CONSTANTINE ALEXANDER: The relief they're seeking, the plans they submitted show an extended deck.

TIMOTHY HUGHES: Yes. And I think that's true. And I think the photographs show it, too.

SLATER ANDERSON: Well, I'm fine with -- to expedite things -- with the deck as framed with steps off of the deck as framed. Is that what we're talking about?

CONSTANTINE ALEXANDER: No extension of the deck?

SLATER ANDERSON: No extension of the deck. Frame the deck. Whether it's in or out of that 34 foot at this point, you know, it's built. I don't want you to have to rip it out or move it one way or another. You're

going to have to tear it apart if you want to extend it. I'd rather just sort of say it is what it is. There was a mistake made. It needs steps for safety reasons and move the thing forward. Now, we don't have a plan that necessarily represents that. That's the problem. But I'll leave that to the Chair to resolve. That's my position.

TAD HEUER: I also point out that I find it somewhat odd that the deck would be constructed without steps and there would be a realization that steps were needed. That strikes me as somewhat odd. If you know how far you need to go, you build up to that edge and say oh, we wish we had steps. Most people consider steps an integral part of their decks if their decks are raised. So, can you explain what happened there?

TIMOTHY HUGHES: There are other ways on and off the deck. There are two other sets of steps. They're just not, you know,

the full length of the deck.

YUN SOO VERMEULE: Okay. Brian, who was --

TIMOTHY HUGHES: I understand your point though.

YUN SOO VERMEULE: -- he was making the deck, he's no longer on the project because -- I mean, the way he left the deck as well as other quality issues, he's no longer making the deck. I mean, I don't know why he left it there that way. I think it would have been more usable if he had just cut the boards even. But the way he left it, and I have, you know, I was unable to get in touch with him subsequent to that because, you know, kids obviously can't play back there with the boards as is.

TAD HEUER: Oh, sure. I understand that. But my question is only if you know where your setback is, your deck should accommodate stairs that get you off that

setback without intruding into it. Rather than building your deck all the way up to your setback line and then saying how do we get off, now we're two feet off the ground? It seems a bit odd. I think I would agree with Slater as well, that I think stairs are certainly warranted. I would be in favor of doing stairs into the setback and granting a Variance for that purpose with the deck as framed, not extending any further the decking, and calling it even essentially because this lot line is slightly jagged. It's not perfectly parallel to the deck itself. I think some allowance can be made there to have it squared off. But beyond that I would only support a Variance for stairs.

BRENDAN SULLIVAN: I would not concur. And that's the practical solution.

CONSTANTINE ALEXANDER: It is.
Could I have the file back, but particularly

the plans?

TIMOTHY HUGHES: Everything is in there.

CONSTANTINE ALEXANDER: Ready for a Motion?

TIMOTHY HUGHES: Indeed.

SLATER ANDERSON: Do you want us to vote on this?

ROBERT CALDERARO: Do you want to continue or do you want them to vote on it?

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

SLATER ANDERSON: Are you satisfied with this?

ROBERT CALDERARO: Yes.

YUN SOO VERMEULE: Yes.

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

That a literal enforcement of the provisions of this Ordinance would involve

the substantial hardship to the Petitioner. Such hardship being is that it would have a -- she would have a deck several feet or so off the ground without any stairs unless we allow the stairs to be in the setback themselves.

That the hardship is owing to circumstances relating to the shape of the lot, and the fact that the lot has got rear yard setbacks, and there is a deck already framed that extends as far back into the setback as permissible leaving no room for steps.

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

In this regard the Chair would note it has been represented to us that there is no neighborhood opposition to the proposal. And that the deck and certainly the stairs are

not visible from the public way.

On the basis of these findings the Chair would move that a Variance be granted the Petitioner on the condition that the work that is shown on the plan submitted by the Petitioner dated as revised July 26, 2010, work must proceed in accordance with the plans in regard to the stairs only. That the deck itself can go no farther than where it is currently framed and is shown on these plans.

SLATER ANDERSON: May I suggest that we take that photograph, you initial that and put it in the file as representing the footprint of the deck?

CONSTANTINE ALEXANDER: That's a good suggestion, sure.

SLATER ANDERSON: May we have that photograph?

CONSTANTINE ALEXANDER: This shows the footprint of the deck anyway.

SLATER ANDERSON: Well, we're sort of agreeing it's going to look like that.

CONSTANTINE ALEXANDER: Okay.
Thank you.

And on the condition that as I've already said about the deck can extend no farther than where it is currently framed as shown on the plan that I've identified, and is also shown on a photograph submitted by the Petitioner which I have initialed.

BRENDAN SULLIVAN: Can I see that?

CONSTANTINE ALEXANDER: Sure.

Before we vote, is everybody satisfied with that Motion? Members of the Board. I'm not asking the Petitioner.

BRENDAN SULLIVAN: Yes.

TAD HEUER: When we are speaking of frame, are we speaking for the underlying frame or the --

SLATER ANDERSON: The frame. I mean, there's going to be one more plank here

or some finishing, but structurally it's --

TAD HEUER: Right. But not to the extent --

SLATER ANDERSON: No. Those are supposed to be trimmed.

ANDY MARVEL: There will be one more board, that's it, before the stairs.

CONSTANTINE ALEXANDER: Are you satisfied?

SEAN O'GRADY: Let me take a look at the photograph.

SLATER ANDERSON: It's the extent of the structural framing.

SEAN O'GRADY: Oh, yes.

BRENDAN SULLIVAN: The inspectors were over in that area?

SEAN O'GRADY: Is he? He can count on that being correct.

TIMOTHY HUGHES: Who?

SEAN O'GRADY: Mr. Grover.

CONSTANTINE ALEXANDER: All those

in favor of granting the Variance subject to the conditions I've identified, please say "Aye."

(Aye).

CONSTANTINE ALEXANDER: Five in favor.

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

CONSTANTINE ALEXANDER: So the Variance has been granted. I think you understand what we've said, that the deck cannot be bigger than what it is.

YUN SOO VERMEULE: Yes.

(7:55 p.m.)

(Sitting Members: Constantine Alexander,

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9984, Six Berkeley Place. Is there anyone here wishing to be heard on this matter?

ANDY MARVEL: Yes.

CONSTANTINE ALEXANDER: This is a new case. You have to give your name for the record.

ANDY MARVEL: Yes. Andrew Marvel, M-a-r-v-e-l.

CONSTANTINE ALEXANDER: This time you're seeking a Variance again, a completely different kind of Variance. If you can just elaborate for us.

ANDY MARVEL: Sure. Let's see, when the Vermeules purchased the house -- how many years ago?

YUN SOO VERMEULE: January 2007.

ANDY MARVEL: In 2007, there's an

existing carriage house at the back of the property which it is -- basically has a series of French doors. I think it's six French doors across the front, two windows on the left side, a window and a door on the right and it's basically a plaster finished space inside. There's no plumbing to it, but it does have heat in there. It has a gas heater.

CONSTANTINE ALEXANDER: What was the structure, in your judgment, originally built for?

ANDY MARVEL: I'm sure it was a little carriage house is my guess.

CONSTANTINE ALEXANDER: To live in? Because there are no curb cuts on the street so it couldn't have been used for a garage.

ANDY MARVEL: No. I mean, it's offset enough that it's logical that you could have passed by the house and gotten back to it with a carriage or something like that. I don't know the vintage of the house, but I

think it might be in that vintage. But it's not wide enough for two cars really. It's not that -- you would be hard pressed to squeeze two cars in it. But it's all plastered inside. It has a tile floor, bookcases and so forth. And you have the plan I believe.

CONSTANTINE ALEXANDER: Yes, right.

ANDY MARVEL: I have it. So what the Vermeules are looking for is basically to just turn it into a home office. And it does not have a bathroom in it. And so the hardship here is basically that they'd like to turn it into a home office. It has no bathroom. They'd like to put a bathroom. No kitchen facilities, none of that.

In terms of the impact externally, we're really doing nothing. We're going to replace the shingles on the roof because the roof's shot. We're going to replace the French doors in kind so they'll be exactly

what's there because what's there is rotted and is not working.

CONSTANTINE ALEXANDER: What I don't understand, though, is why you need a Variance. A Variance from what? Your dimensional form is not complete by the way. It's left blank.

ANDY MARVEL: FAR -- for which?

CONSTANTINE ALEXANDER: The dimensional form which we work from.

SLATER ANDERSON: The middle column.

CONSTANTINE ALEXANDER: The middle column has not been filled in. That's what it's all about, the request of conditions.

ANDY MARVEL: Okay. Well, everything on the left here is basically what -- then maybe I put it in the wrong column.

CONSTANTINE ALEXANDER: Left is existing conditions. And then the middle is

supposed to be requested conditions. And then you can compare the middle against the Ordinance requirements and you see what you need a Variance for.

ANDY MARVEL: Well, actually, see we're not changing anything.

CONSTANTINE ALEXANDER: Well, then why do you need a Variance?

ANDY MARVEL: Because it is habitable space. Which the problem is there is no permit pulled for whatever work was done there. It was -- we went back and looked through the -- and, Sean, maybe you can help me on the -- but --

SEAN O'GRADY: Yes.

ANDY MARVEL: -- the issue was putting the bathroom in.

CONSTANTINE ALEXANDER: I understand what you want to do. That's quite clear.

ANDY MARVEL: No, no. I think the

fact is that there's nothing showing -- it's all figured into the FAR, but it's not -- there was no record of it actually being a habitable space.

CONSTANTINE ALEXANDER: The question is then you have certain FAR now.

ANDY MARVEL: Yep.

CONSTANTINE ALEXANDER: And then if we allow this bathroom in the home office, your FAR is going to increase?

ANDY MARVEL: No, it's actually, that's all figured in here. Because when they got it, when they got the property, the garage was part of that.

YUN SOO VERMEULE: Because the previous owners --

SEAN O'GRADY: If I can interject for a moment.

CONSTANTINE ALEXANDER: Say again, please?

SEAN O'GRADY: If I can interject

for a moment.

CONSTANTINE ALEXANDER: Please.

SEAN O'GRADY: The technical reason why they're here is that if it were a garage, and I no longer believe that it is because you today told me there's no curb cut there. Were it a garage, it would benefit from exclusions from FAR.

CONSTANTINE ALEXANDER: Right.

SEAN O'GRADY: As soon as the cars are taken out of it and it's used for any other use, the FAR goes up. So, when it came to me, it came to me as a garage that was finished. And so I saw an FAR bump, and I saw an FAR bump that crossed the line. So in order for them to rehab it, I routed them here. But I'll tell you the truth, my thinking now is that if that was a carriage house, then it would have been abandoned before the Ordinance came into effect. I can't say that for sure. But I certainly would accept that as a fact. And

it then -- and because there's no curb cut, it never was a garage, it never would have had the benefit of that exclusion and so that FAR always would have existed.

CONSTANTINE ALEXANDER: All that goes to say there's no need for a Variance. I mean the FAR is not changing by virtue of the home office.

SEAN O'GRADY: Yes. I'm of that opinion now. Now, I can't say that that's going to be the Department's opinion and I'd like for them to have the opportunity to proceed to a vote to cover all bases because this is just my personal opinion at this point in time.

CONSTANTINE ALEXANDER: I understand. My only dilemma is I don't like voting to grant a Variance if I don't know what the Variance I'm granting. It may not be a Variance at all.

SEAN O'GRADY: The Variance would

be -- yes, the worst case scenario the Variance would be that swing in FAR from the loss of it being a garage.

CONSTANTINE ALEXANDER: We don't know what the swing is. We have no numbers.

SEAN O'GRADY: We do. You know what the number of the garage is, right?

TAD HEUER: It's 400 square feet, right?

ANDY MARVEL: Right.

CONSTANTINE ALEXANDER: What's the FAR now and what's the FAR going to be with 400 square feet? And what is the requirement of the district?

TAD HEUER: Well, they're already over.

ANDY MARVEL: We're already over.

TIMOTHY HUGHES: Deduct the 400 feet and that's what it is.

CONSTANTINE ALEXANDER: I guess you're right. They're already over.

TAD HEUER: They're already over by 44 square feet, and they would be asking for an additional 400 which bumps them from 0.50 something in a 0.5 district to a 0.52.

ANDY MARVEL: 0.52.

CONSTANTINE ALEXANDER: Okay. So now we have it framed.

So, you're looking for a Variance in the FAR requirements, I'm going to characterize it, as a slight increase over what is permissible. You want to go to roughly 5.2. And in the district has a cap or a max of 0.5. Okay. And the hardship is you have a carriage house. It should be usable as habitable space but it needs a bathroom.

ANDY MARVEL: Right.

CONSTANTINE ALEXANDER: And that's why you're here before us.

ANDY MARVEL: Exactly. Yeah. And externally there would be no changes.

TAD HEUER: You don't happen to know

at what point it was finished inside, do you?

ANDY MARVEL: No. I went down to the Building Department and I went back as far as I think 19 -- I think it was 1950 or something like that, and I didn't -- there were no records showing this ever having been worked on. So I don't know.

YUN SOO VERMEULE: The previous owners had changed it. She used it as an art studio.

TAD HEUER: Right. I guess my question is if they were over ten years, they've done an illegal conversion even if it were not appropriate, if it had not been FAR and they illegally convert it, would they be out of it anyway?

SEAN O'GRADY: That's for construction. It's not for use. Gosh, that's an interesting one. I wouldn't hazard a guess on that. I'd be more comfortable resting on the grandfathering.

But yes, there's another way to scan it I suppose.

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

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

(No response).

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. And there's nothing in the file one way or another.

Do your neighbors know about the fact that you're proposing to put a bathroom in here and use it more frequently than you have?

YUN SOO VERMEULE: Yes.

CONSTANTINE ALEXANDER: And no one has expressed any opposition?

YUN SOO VERMEULE: No.

ANDY MARVEL: And we have the signs posted as well.

CONSTANTINE ALEXANDER: Right.

SLATER ANDERSON: Can you tell me is the basement included in your FAR calculation?

ANDY MARVEL: Yes.

CONSTANTINE ALEXANDER: The Chair will close public testimony.

Further comments or comments from members of the Board or are you ready for a vote?

TIMOTHY HUGHES: I'm ready for a vote. Are we comfortable that we have a Variance to hang this on?

CONSTANTINE ALEXANDER: A Variance what?

TIMOTHY HUGHES: Are you comfortable we are we have something to hang a Variance on and the Motion --

CONSTANTINE ALEXANDER: I'm going to frame the Motion. You can disagree with it when I do.

TIMOTHY HUGHES: I don't disagree.

CONSTANTINE ALEXANDER: I think I have enough. 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 there is an inhabitable carriage house on the property which it's inhabitability is severely compromised by the fact that there is no bathroom facilities in the structure.

That the hardship is owing to circumstances relating to the shape of the lot where the structure is located near the rear of the lot, and a distance from the main house in terms of bathroom facilities.

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

The Chair would note in this regard that

there is no neighborhood opposition. That there are no proposed -- as I'll get to, a modification of the structure itself on the externals.

And that as a result, the city will gain another structure that could be put to gainful use as opposed to literally very limited use.

On the basis of these findings, I move that a Variance be granted on the condition that the Petitioner in doing the work proposed, namely, adding a bathroom, make no changes to the exterior of the structure. Not extend the size of the structure. And I think it's been represented to us that no other external modifications, that all of the modifications are going to be internal.

ANDY MARVEL: That's right.

CONSTANTINE ALEXANDER: Does that satisfy members of the Board in terms of the Motion?

On the basis of the foregoing, I move that a Variance be granted on the condition that I have just suggested. All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

ANDY MARVEL: Thank you very much.

YUN SOO VERMEULE: Thank you.

(8:05 p.m.)

(Sitting Members: Constantine Alexander,

Timothy Hughes, Brendan Sullivan, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair calls No. 9985, 18-20 Cameron Avenue. Anyone here wishing to be heard on this matter? For the record, Mr. Rafferty, tell us who you are.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman. James Rafferty on behalf of the Applicant. Seated to my right Shane Marrison.

CONSTANTINE ALEXANDER: Mr. Rafferty, before we proceed, I have to advise you that one of the members of our Board has to recuse himself from this case. As a result, we only have four sitting members. And as you know, but I want to make sure your client knows and the public record is clear, to get the relief you're seeking, you need a vote of four persons. So, if there were five of us sitting here, it would be four out of

five. There could be one decenter and relief, if that were the case, could be granted. With Mr. Anderson not being able to sit, you'll need a unanimous vote of this committee. As a result, you have the option of continuing the case until another night when we can get a fifth member and you'll have the benefit statistically you'll have a greater chance of success from four to five or four to four. But it's your call, you can proceed tonight with just four or you can continue the case.

ATTORNEY JAMES RAFFERTY: Thank you for that very thoughtful explanation. And without getting into the merits of the case, there's another procedural twist to this that may inform Mr. Marrion's decision making that I'd like to raise with the Board.

CONSTANTINE ALEXANDER: Sure.

ATTORNEY JAMES RAFFERTY: We're here under a section of the Ordinance 6.43.6

and that section speaks to Special Permits for abutting -- Special Permits for mutual easements by abutting property owners to create a common driveway. And this scenario doesn't really fit that exactly. And there was some suggestion earlier today by Mr. O'Grady that perhaps the abutting property owner need be an applicant as well. And today I had them sign an ownership certificate. And it's not clear to me that they would need to be an applicant because their driveway is their driveway. And this property owner is looking to use their driveway, an easement, there's no mutual easement here. The key interest here in the driveway is in the abutter.

This follows a Section under 6.43 in the Ordinance that lays out all the dimensional requirements necessary to construct a driveway. And as I've always viewed it, it's this section that says well, if you can't meet

that, if you don't have that 10-foot minimum width, you don't have the setbacks, property owners can work together through easement and petition to have a common driveway. And that would be the case when you were attempting to construct a driveway. In this case we have an existing driveway. And like the prior case, I'm not exactly certain that the relief is needed. Or more to the issue about the continuance, is it a case where, because I have great respect for Mr. O'Grady's analysis, is it a case where I do need to, regardless of Mr. Anderson's position, do I need to file a companion case by the abutting property owner and have them seek a Special Permit? And I think it's an interesting issue, and I don't know if it's been raised prior to tonight or if the Board has a view as to whether, regardless of Mr. Anderson's position, whether we're -- the case is ripe enough to go forward.

CONSTANTINE ALEXANDER: Speaking only for myself, I have no view. I never thought about it. I didn't even think we would have this case tonight so I can't answer your question. Just out the good faith, I'm not trying to dodge it. I haven't thought about it. But maybe other members of the Board have. Even if they haven't thought about it, they may want to express an opinion.

TIMOTHY HUGHES: I haven't thought about it, but it seems like continuing the case would give you an opportunity to explore it more fully and come to us with an answer rather than worrying about whether we should proceed tonight with only four people. I mean, there's a couple of reasons to continue this case. There's more than one. And just the fact that there's only four members, there is only one of them. There is some more investigation you could do to sort this out.

ATTORNEY JAMES RAFFERTY: True,

true, true. But there's a timing impact here. And Mr. Marrion has bought the property. He's refurbished it, in the backyard. And I'm not going into the merits, I appreciate that. But the bottom line on the timing decision as well, if he could go forward, because that issue wouldn't hinder him, I think he might consider going forward only because he has buyers lined up for both of these units. He's completed his renovation. And as you can imagine his purchase contract has to accommodate for whether or not the buyer gets a parking space or not. So, if there's not likely -- in many ways I have felt the case that I had anticipated, that the greater focus of the Board's emphasis might be on the issue around the open space and how the tradeoff here between the parking for the open space. But the driveway itself is a pre-existing driveway and the neighbor's granting an

easement through a, you know, a bilateral agreement for consideration and that's not really necessary. But, if we were to go down this road and then were to discover that gee, we don't have enough relief because we needed to get the other neighbor, so....

CONSTANTINE ALEXANDER: Well, let me ask another question: Has there been a formal determination by the Inspectional Services Department as to whether you need to have your neighbor be a party of the case or bring its own case?

ATTORNEY JAMES RAFFERTY: Well, I don't want to speak for them. But they kindly called me up and said what do you think of this? And I certainly see that. And like I said, at the end of the day, I think that they make a call --

CONSTANTINE ALEXANDER: My question is if they made a call that you do need it, then this case, we couldn't hear the case

tonight anyway.

ATTORNEY JAMES RAFFERTY: That was my point. But had I not known of Mr. Anderson's position, I would have come here tonight, and I shared this with Mr. O'Grady, trying to convince the Board that I can proceed and that I don't need a co-applicant, that it would be elevating form over substance, that I have a signed agreement and that why would --

CONSTANTINE ALEXANDER: My question would still be the same, my comment would still be the same for all you said came, before us and tried to convince us that you don't have to go bring the neighbor, it's the position of the Inspectional Services Department that you do, then you're taking an appeal from that decision and we can't decide that because it's not properly advertised.

ATTORNEY JAMES RAFFERTY: Right. And I don't think, and again it's not

appropriate for me. I spoke with both Mr. O'Grady and Mr. Singanayagam today and kind of laid out what I thought. And I think the consensus was that I would go to the Board. And I think they were content to let the Board judge that. But I shouldn't speak for them. So, I know Mr. O'Grady is very good at not speaking when he can wink and not nodding when he can smile. So, I should stop talking, but my sense was well -- and I explained all this to Mr. Marrion. I said, this is a very interesting situation. I believe --

TAD HEUER: Well, since I --

SEAN O'GRADY: I would just -- yes, we --

CONSTANTINE ALEXANDER: Yes, what?

SEAN O'GRADY: We took a rather cowardly position and let Mr. Rafferty come to see you without making the decision.

ATTORNEY JAMES RAFFERTY: My only

criticism is that it's not cowardly at all. I think it's a very wise decision.

CONSTANTINE ALEXANDER: Very political decision.

ATTORNEY JAMES RAFFERTY: There's no pejorative of that word in my view. The matter was before the Board and we thought that. So, on the one hand I think Mr. Marrion is saying well -- and I said, you know, at the end of the day we're going to have to talk about permeable surfaces and a whole bunch of other things. And I don't know that the driveway is going to be it. But if greater minds that interpret the Ordinance say, you know, from my read of this I do think there's a deficiency in not having the other applicant here.

TAD HEUER: Well, I guess my question is on recordation. So a Variance has to be recorded against the property, correct?

ATTORNEY JAMES RAFFERTY: That's correct.

TAD HEUER: If the Variance is granting an easement over an owner's property who is not here, wouldn't a Variance need to be recorded against both properties?

ATTORNEY JAMES RAFFERTY: Yes, it would.

TAD HEUER: And if their property is not before us, how do we record this Variance?

ATTORNEY JAMES RAFFERTY: Oh, easily. Easily. I have an ownership certificate from them and I can put any Variance on it. It's not registered land.

CONSTANTINE ALEXANDER: By contract. You've got a contractual agreement.

ATTORNEY JAMES RAFFERTY: Right. And if this were approved, I would record an easement agreement, an easement deed, an easement plan, and the Variance decision and

I would record it both ways. I would put it on the title of the burden property and the title of the benefitting property.

TAD HEUER: But it's not registered?

ATTORNEY JAMES RAFFERTY: It is not registered.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: We've all been dancing now for a while. Let's try to bring it to a conclusion. I think I'd want to hear from you why, and I don't want to hear it -- I want to hear it in advance of the hearing so I can think about it, why you don't think you need to have the companion case brought as well as you represented your case on the merits on the issue before you right now. I'm very reluctant to hear -- to decide a case not on, a novel issue, to me it's novel, but without having any benefit of advance knowledge of it.

BRENDAN SULLIVAN: I think going

back to Mr. Rafferty's initial opening paragraph, if you were creating a new driveway, you are affecting two owners because it's assuming that the property line is down the middle of this proposed driveway.

CONSTANTINE ALEXANDER: It's not though by the way.

BRENDAN SULLIVAN: Right. But in this case you have an existing driveway, and the only way that it affects the neighbor to the left is that he had to agree to an easement. We could hear -- it's a little -- I think the Ordinance doesn't necessarily address the existing.

ATTORNEY JAMES RAFFERTY:
Contemplated this scenario.

BRENDAN SULLIVAN: And so we could grant the parking scheme in the back. That does not become effective until the easement has been recorded, agreed to by both parties. So, I'm not sure if you really need a

co-applicant because it really -- we're not creating something new which is affecting the neighbor to the left.

CONSTANTINE ALEXANDER: I think you've indicated a fair point, Mr. Sullivan. Do you have ownership?

ATTORNEY JAMES RAFFERTY: Yes, it's been filed in the file. If it was merely a co-applicant, that was it. When I started going through the mechanics with Mr. O'Grady, and I scratched my head. I said, well, would I have a separate BZA case number? Would these be two separate BZA cases?

BRENDAN SULLIVAN: Because we're not granting a Variance or any relief to the neighbor of the left.

ATTORNEY JAMES RAFFERTY: Exactly the point. The Variance relief is related solely to the Applicant's property then the Special Permit relief. And I think it's not

all that clear that the people who already own a driveway need a Special Permit to grant an easement to their neighbors to use the driveway.

BRENDAN SULLIVAN: Right. And that would be my opinion.

ATTORNEY JAMES RAFFERTY: I think the owner of the other property needs a Special Permit to use that driveway and that's the way we filed it.

BRENDAN SULLIVAN: To use the property and it's contingent upon our granting it and also granting the easement.

CONSTANTINE ALEXANDER: I don't -- that's why I asked my question, Brendan. I don't think we should grant relief subject to getting an easement. If you have the easement already, it's in the file, but we don't have to get to that --

ATTORNEY JAMES RAFFERTY: Oh, sure, the easement is a necessity and it's well

papered. I mean there's a letter from the abutter.

BRENDAN SULLIVAN: The easement is a requirement.

CONSTANTINE ALEXANDER: Say it again, please.

BRENDAN SULLIVAN: The easement is a requirement before the Special Permit becomes effective.

CONSTANTINE ALEXANDER: Yes, but the easement is in effect. It's in the file.

ATTORNEY JAMES RAFFERTY: No, no, it hasn't been recorded.

CONSTANTINE ALEXANDER: It hasn't been recorded.

ATTORNEY JAMES RAFFERTY: But there's an easement plan that depicts this. And there's an easement agreement.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: If we were to grant relief and the easement was not

executed, the Special Permit becomes null and void.

ATTORNEY JAMES RAFFERTY: Well, true.

CONSTANTINE ALEXANDER: It has been executed and you said --

ATTORNEY JAMES RAFFERTY: Well, no, it hasn't been exe -- I mean, it's in draft form. You wouldn't execute a Deed prior to this.

CONSTANTINE ALEXANDER: Right. You could grant -- there could have been an easement subject to getting Zoning relief.

ATTORNEY JAMES RAFFERTY: Well, there's an easement agreement that allows for that.

TAD HEUER: But you would never consummate that agreement until you knew what the --

ATTORNEY JAMES RAFFERTY: Right. It's a purchase and sale. So, there's a

contract to grant an easement. The easement document is an exhibit to that contract. It's been provided. Included in the exhibits is an easement plan which depicts the abutting driveway. And obviously if he doesn't come up at the end of the day with the consideration, which is a key element of most real estate conveyances, then even if he got the relief here, he doesn't have the right to drive on the neighbor's driveway absent the easement. So it's pretty academic at that point. I mean, he does need to --

CONSTANTINE ALEXANDER: All I'm trying to get at is you don't need to make a subject to grant an easement. It's a practical matter.

ATTORNEY JAMES RAFFERTY: Oh, I agree, it's a practical matter absent an easement this Board couldn't give relief to go over someone's property. I know you can do a lot, but I don't think you can do that.

CONSTANTINE ALEXANDER: That's my point. That's my point.

ATTORNEY JAMES RAFFERTY: So, we're back to if that's the case and people were comfortable with that, then maybe we would proceed. Or if it's a case of, you know, I'm not completely comfortable, I would respect that and say well, we don't have Mr. Anderson. I mean, my view is that I'm generally convinced of the merits of my cases that four or five really doesn't make much difference to me.

CONSTANTINE ALEXANDER: That's your call.

ATTORNEY JAMES RAFFERTY: But in this case if we have the added issue of well, you know, and I respect the notion that this is a little unusual, and if there was any uncertainty, then I advise -- I advised Mr. Marrion before I even was aware of Mr. Anderson that we could face a scenario

tonight where we've got to do something additional but would cause this to be delayed.

CONSTANTINE ALEXANDER: I'm willing to proceed with the case if you're willing to proceed with the case. I think now that I've heard and seen there's an easement agreement. It wasn't in the file of course when I looked at it. And if you have an agreement, and the fact of the matter is, as you point out, if we grant relief and you don't consummate your easement arrangements with relief tonight, even if you could, I'm prepared to go forward. I don't know what the other members of the Board feel.

BRENDAN SULLIVAN: I have no problem moving forward.

TIMOTHY HUGHES: I'm cool.

TAD HEUER: Sure.

CONSTANTINE ALEXANDER: Now --

ATTORNEY JAMES RAFFERTY: Now one

last question. Remember that other issue I was talking about?

CONSTANTINE ALEXANDER: Would you like a brief recess?

ATTORNEY JAMES RAFFERTY: Sure.

(Whereupon, a short recess was taken.)

(8:20 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Tad Heuer,

Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair is going to call once again case No. 9930, 678 Massachusetts Avenue. Is there anyone here wishing to be heard in this matter?

(No response).

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

The Chair would further note that the Board has been advised that the Petitioner in this case has not complied with our sign posting requirements, and therefore we cannot consider the case tonight until and unless the Petitioner does so. So I move that we continue the case until -- I think we should pick a date far in the future.

SEAN O'GRADY: Okay. We can go out as far as December 16th.

CONSTANTINE ALEXANDER: To December 16th. And we have a waiver of time for

decision in the file? This case has been continued already.

SEAN O'GRADY: There should be a letter of waiver. Yes, we have it.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until seven p.m. on December 16th. The Chair having noted that a waiver of time for a decision already is on file. But on the condition that a sign finally be posted on these premises. And the sign indicate the fact that the hearing will be held on December 16th at seven p.m. Failure to comply with this condition would mean we won't hear the case on December 16th as well.

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

(Aye).

CONSTANTINE ALEXANDER: I would note this is a case not heard. Therefore, we don't have to have the same five members here

on December 16th.

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

(8:25 p.m.)

(Sitting Members: Constantine Alexander,
Timothy Hughes, Brendan Sullivan, Tad Heuer,

Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will now call case No. 9932, 10 Canal Park. Is there anyone here wishing to be heard on this matter?

(No response).

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

The Chair would also note for the record that this Board has been advised that the Petitioner in this case has not complied with our sign posting requirements, and therefore this Board cannot consider the case tonight. This case will be continued until and unless the Petitioner does comply with the posting requirements.

So on this basis the Chair moves that this case be continued until seven p.m. on December 16th. The Chair noting that this is a case not heard and that a waiver of time for a decision is already in the file. The

continuance will be on the condition that the Petitioner timely post a notice required by our Zoning By-Law indicating that the hearing date and time is seven p.m. on December 16th.

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

(Aye).

CONSTANTINE ALEXANDER: Five in favor case continued.

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

(8:25 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Tad Heuer,

Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9986, 12 Crescent Street. Is there anyone here wishing to be heard on this matter?

SUZANNE KRIEGSMAN: Hi.

CONSTANTINE ALEXANDER: For the record, name and address. If you have a business card, give it to the stenographer. Tell us what your name is.

KEVIN CARMICHEAL: My name is Kevin Carmicheal. Owner of Summit Contracting.

SUZANNE KREIGSMAN: Susan Kreigsman, 12 Crescent Street.

HITESH TRIVEDI: Hitesh Trivedi, 12 Crescent Street.

CONSTANTINE ALEXANDER: Thank you. You're here before us, you want a Variance to build a dormer basically?

SUZANNE KREIGSMAN: We're asking for one percent increase in the FAR. We want

to -- we have a steep and narrow staircase from the second to the third floor of our house, and we'd like to change the pitch of that staircase so it's a little safer. And in order to do that we need additional headroom at the top of the stairs. So we want to put a dormer at the top of the stairs.

CONSTANTINE ALEXANDER: Just for the record, the issue here before us, why you're here, is you need a Variance because of FAR. As you point out, I want to be very specific for the record, that right now you have a FAR of 0.78 and the district has a maximum of 0.75. So you have a non-conforming structure.

SUZANNE KRIEGSMAN: Right.

CONSTANTINE ALEXANDER: And you want to go from 0.78 to 0.79.

SUZANNE KRIEGSMAN: Yes.

CONSTANTINE ALEXANDER: You will further increase the non-conformance albeit

modestly. As I quickly look at this, are you familiar with the dormer guidelines in the city?

KEVIN CARMICHEAL: Yes.

CONSTANTINE ALEXANDER: You essentially complied with the dormer guidelines?

KEVIN CARMICHEAL: Yes, sir.

TAD HEUER: Is that right? I was looking at A-8.

CONSTANTINE ALEXANDER: There was one slight problem.

SUZANNE KRIEGSMAN: Oh, really.

TAD HEUER: It appears that the dormer isn't setback, it goes right into the wall, which is not something we usually favor. And it also appears to go into the ridge line, which is another thing we don't normally favor. So the only thing that it appears to comply with --

CONSTANTINE ALEXANDER: The size.

TAD HEUER: -- is that it's less than 15 feet. And I still have a question about why you need a 14-foot dormer to provide code compliant stairs.

SUZANNE KRIEGSMAN: Right. So, here's what we've done. So, I understand that those aren't the most favorable, but my understanding when we were planning this, that it still does conform to sort of what's allowed per se. So we are trying to get a clean look on the exterior of the house. The house has had -- before we purchased it had a lot of construction done to it. It doesn't have many clean lines to it. So we were trying to make as many clean lines as possible. So we weren't changing the exterior of the house to be even more stringed than it is in some ways.

The other thing is we were looking for a 14-foot dormer. We did want to center the dormer on the house so it looked nice from the

outside, and in order to have headroom at the top of the stairs and then be able to make that corner to do things like bring furniture up to that floor, we felt we were going to need a little extra space in order to do that because it is a steep roof up there.

TAD HEUER: So, that brings me to one of the other questions. You mentioned that you wanted it to be aesthetically pleasing on the outside. All we have are pictures of the inside.

SUZANNE KRIEGSMAN: Right. Because what I came asking for -- and I didn't realize that we might want pictures of the outside, because we're asking for increase in FAR. I didn't realize that that exterior look was something that we were going to be discussing this evening.

TAD HEUER: Exterior is pretty much all we end up discussing. Interior you can do whatever you want with your house, you

know, as long as you're staying within the floor to area ratios. If you want to put your kitchen in your basement, you want to put your bedrooms in the attic, you know, more power to you. But most of what we're charged with is looking at the exterior impact of what you put on. And given that you're proposing something that goes into the ridge line and something that goes into the wall, two of the three, you've got one that comes very close to the foot, the exterior visual impact is what concerns us the most. And it's difficult to tell from the schematic as well just the interior photographs what this is actually going to look like in terms of impact of the neighborhood.

CONSTANTINE ALEXANDER: I'm going to just say I had that same exact reaction. The plans are rather sketchy in particularly in terms of elevation and exterior, external appearances. We would also like to see a lot

more information so we can judge the impact particularly when it's not 100 percent complying with the dormer guidelines. They are what they are.

SUZANNE KRIEGSMAN: Right. I think -- I mean, I think my understanding was that also if we didn't go right to the -- not the ridge line. What's the other?

CONSTANTINE ALEXANDER: The ridge.

SUZANNE KRIEGSMAN: Not the ridge line, the other part.

KEVIN CARMICHEAL: Face the wall.

SUZANNE KRIEGSMAN: That we wouldn't have room at the top of the stairs. We wouldn't get the headroom that we need. We need to go all the way out to that wall in order to do that.

CONSTANTINE ALEXANDER: Excuse me. You're saying complying with the dormer guidelines in their entirety would reduce the benefits of the project that you're doing?

SUZANNE KRIEGSMAN: Right.

CONSTANTINE ALEXANDER: It would minimize it. So to get what you want to get in terms of necessary headroom and living space, you can't be compliant with the dormer guidelines. It's one or the other. And the one you want obviously is what works for you inside the house.

SUZANNE KRIEGSMAN: Right.

TIMOTHY HUGHES: I'd like to go on record as saying that I don't agree totally with the dormer guidelines, and this won't be the first time I've said this.

CONSTANTINE ALEXANDER: That's right.

TIMOTHY HUGHES: And I think that building over top of the wall makes more sense structurally. It's been certainly easier to build, and it doesn't require a lot of reinforcing if you set the thing back 18 inches into the house. And if you need to go

to the ridge line to get the headroom, I don't have a problem with that either.

CONSTANTINE ALEXANDER: Well, as I would point out --

TIMOTHY HUGHES: And I think at least ten feet of that dormer is necessary for the operation of coming up the stairs and turning the corner and having a landing that's workable.

TAD HEUER: At least ten feet it is, right.

TIMOTHY HUGHES: At least ten feet. And I think the other four feet is what she explained was for a symmetrical look from the exterior.

CONSTANTINE ALEXANDER: And in fact the dormer guidelines are guidelines and they're not part of our Zoning Ordinance. It's something we look to. You don't have to comply literally with the dormer guidelines.

TAD HEUER: I also have a letter from

the Walkers. Miss Walker and Mr. Berman; is that right?

SUZANNE KRIEGSMAN: Yes.

TAD HEUER: They say that they support the plan to add a 14-foot dormer and increase the FAR by approximately 35 square feet. Are they mistaken as to how much --

SUZANNE KRIEGSMAN: No. I mean, we've showed them. I mean, we were sort of going back and forth -- these are our next-door neighbors. They understand what we're doing. They've seen copies of the plans. We talked to them. They do know what we're doing. If the numbers in there are wrong, it's because I probably miscommunicated. I mean, I wasn't trying to deceive anybody. It was a miscommunication.

TAD HEUER: Right. I'm just asking the difference between 35 square feet and what I see from your form is 130 square feet is less than minor.

SUZANNE KRIEGSMAN: Right, I mean....

CONSTANTINE ALEXANDER: 43.

SUZANNE KRIEGSMAN: No, I think it's -- yeah, I think it's 43.

TIMOTHY HUGHES: Four feet by 14 is the dormer.

CONSTANTINE ALEXANDER: My notes were wrong.

TIMOTHY HUGHES: It can't be more than 50 square feet.

CONSTANTINE ALEXANDER: It's 43.

SUZANNE KRIEGSMAN: 43.

CONSTANTINE ALEXANDER: I noticed the discrepancy as well.

SUZANNE KRIEGSMAN: Yeah, sorry about that.

TAD HEUER: Does your floor area, and this is just a general question. Floor area ratio doesn't count when it is bringing a stair into compliance, correct?

CONSTANTINE ALEXANDER: I don't know the answer, but I don't think that's correct. But I'm not positive.

TAD HEUER: I don't think it counts though.

CONSTANTINE ALEXANDER: Maybe you're right. You have to ask Sean who stepped out.

TIMOTHY HUGHES: 0.1 is not small enough for you?

TAD HEUER: I just want it to be accurate.

SLATER ANDERSON: (Inaudible.)

SUZANNE KRIEGSMAN: Oh, thank you.

CONSTANTINE ALEXANDER: Well, Tad is looking at the picture of the house, does anyone here wishing to be heard on this matter?

(No response).

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

As Mr. Heuer indicated, there is a letter in the file from the most direct affected abutter. I'll just formally read it into the record.

There is a letter in the file addressed to us from Jan Walker and Jeff Berman saying "We live at 100 Oxford Street next-door to Sue Kreigsmann and Hitesh Trivedi at 12 Crescent Street. We support their plan to add a 14-foot dormer and increase the FAR by approximately 35 square feet on the side of the house and it's closest to our property."

I take it no other neighbors expressed any opposition?

SUZANNE KRIEGSMAN: No, and we talked to most of them.

CONSTANTINE ALEXANDER: Further questions or comments from members of the Board?

(No response).

CONSTANTINE ALEXANDER: Going once,

going twice. Tad, are you set for a vote?

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: Yes?

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: 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 there is insufficient room in the third floor to use the stairs to the third floor which I guess is a finished attic currently?

SUZANNE KRIEGSMAN: Yes.

CONSTANTINE ALEXANDER: That the hardship is owing to the fact that this is a non-conforming structure. So that any additions to the structure requires Zoning relief.

And that relief may be granted without

substantial detriment to the public good or nullifying or substantially derogating to the intent or purposes of this Ordinance.

The Chair notes in this regard that the neighbor most directly affected by the relief being sought is in favor of the project.

That the project will allow a better utilization of the structure overall by increasing the headroom on the third floor, and that the structure for the proposed work is in substantial compliance with the dormer guidelines but not entirely.

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 submitted by the Petitioner. They're numbered A-1, A-2, A-7 and A-8 and initialed by the Chair. Before I take a vote I want to make it very clear, these are the final plans?

SUZANNE KRIEGSMAN: Yes.

CONSTANTINE ALEXANDER: Because if you amend them you need to come back before us. I want to make sure you understand that.

KEVIN CARMICHEAL: Yes.

CONSTANTINE ALEXANDER: The Chair moves that a Variance be granted subject to the conditions I've already mentioned. All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Anderson.)

CONSTANTINE ALEXANDER: All opposed?

TAD HEUER: Opposed.

CONSTANTINE ALEXANDER: Relief is nevertheless granted. Good luck.

(8:35 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Tad Heuer,

Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9987, Five Chalk Street No. 2. Is there anyone here wishing to be heard on this matter? Please come forward. For the record give your name and address, please.

TIMOTHY FISHER-JEFFES: Mr. and Mrs. Tim and Yvonne Fisher-Jeffes, Five Chalk Street, Cambridge.

CONSTANTINE ALEXANDER: The purpose of this, by the way, is we keep a transcript. She's a stenographer and we're keeping a transcript. Okay. You also wish to seek a Variance.

TIMOTHY FISHER-JEFFES: We do. For pretty much everyone.

CONSTANTINE ALEXANDER: And you're taller. The Chair will note that for the record. Okay. The problem is again is an FAR issue.

TIMOTHY FISHER-JEFFES: Correct.

CONSTANTINE ALEXANDER: And you have a non-conforming structure.

TIMOTHY FISHER-JEFFES: Built in 1867.

CONSTANTINE ALEXANDER: 1867? And the FAR now is 0.96. You want to go to 1.0. And the district is supposed to have a maximum of 0.6.

TIMOTHY FISHER-JEFFES: Correct.

CONSTANTINE ALEXANDER: And the issue is to be better utilize the third floor and that's why you want a dormer?

TIMOTHY FISHER-JEFFES: Yes. We have a growing family as you may have noticed. And we need a new bedroom and a use for the bathroom.

CONSTANTINE ALEXANDER: I don't quite, and maybe because it's me, and I don't understand to what extent, how do you deal with the dormer guidelines? Are you

complying?

TIMOTHY FISHER-JEFFES: I believe we are complying except for the setbacks, same argument as the previous case.

CONSTANTINE ALEXANDER: In other words, the size is 15 foot or less?

TIMOTHY FISHER-JEFFES: Yes, it is. There's two. It's two of seven and a half each. And they run down the gable side of the third floor.

CONSTANTINE ALEXANDER: You don't go to the ridge line though? Oh, yes, you do.

TIMOTHY FISHER-JEFFES: We do go to the ridge line but that's not necessarily essential because we do have a lot of height. We go to the outside wall, it's probably going to be in addition to the dormer guidelines.

TAD HEUER: (Inaudible.)

TIMOTHY FISHER-JEFFES: And for us it's by structural to maximize the area of use analogy.

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

TIMOTHY FISHER-JEFFES: Yes, as much as we can locate.

CONSTANTINE ALEXANDER: Has anyone expressed any opposition?

TIMOTHY FISHER-JEFFES: No.

CONSTANTINE ALEXANDER: Sure?

TIMOTHY FISHER-JEFFES: Yes.

CONSTANTINE ALEXANDER: The last I looked we don't have any letters in the file one way or another.

TAD HEUER: And you're removing the gable dormer; is that right?

YVONNE FISHER-JEFFES: The little one, yeah.

TIMOTHY FISHER-JEFFES: That horrible little thing yes. To be replaced by a nicer looking dormer. We actually have a color picture here. It's just bigger.

That is one of the projects. The other

two are to match up. If you look at the front of the house, at the moment there is a bay window on our side which only is on the first floor. Whereas, the neighbor's side it's on both floors. We want to even it up to make it more symmetrical from the outside.

CONSTANTINE ALEXANDER: So the additional space granted by the bay window is part of the FAR?

TIMOTHY FISHER-JEFFES: Correct, it's 75 square feet.

CONSTANTINE ALEXANDER: And there's also in spiral staircase. Are you going to remove that as well?

TIMOTHY FISHER-JEFFES: Yes. We have an interesting second egress coming off the kitchen down into some common space. Because this is a condo, so we have a downstairs neighbor. So it arrives in some the common space and then exits either through her deck or through the basement to

the outside. We would like easy access to the garden and also safer access.

CONSTANTINE ALEXANDER: Safety.

TIMOTHY FISHER-JEFFES: At the moment, actually we took the measurements now. We have stairs going down from the kitchen which have a pitch of 41 degrees. So it's a 9.5 inch step with an eight inch rise.

YVONNE FISHER-JEFFES: It's also vary.

TIMOTHY FISHER-JEFFES: They vary a little bit because they were clearly built a long time ago. The width of the passageway is only 28 inches. So it's really very difficult to carry a laundry basket down there and see your feet. Or actually to see anything. And lastly, the door at the bottom of the stairs, it's actually at the bottom, it's still on the stairs, is only five feet high and it's a door to the common area. So it has to be opened and closed and locked.

Basically it's a hazard. I've actually fallen down there twice. So, I would very much like to have another exit to get out of the house.

CONSTANTINE ALEXANDER: We'll address the safety aspects in terms of the second egress. We're very conscious of safety.

TIMOTHY FISHER-JEFFES: The only down side of having the other egress outside is the external rather than internal. It would obviously be preferential to have it as an internal egress rather than an external in the winter. But we can't reconfigure the internal one because we can't touch the lady downstairs. She owns the space downstairs.

TAD HEUER: That was actually my question. Is there anything on file from your other condo owner?

TIMOTHY FISHER-JEFFES: No.

CONSTANTINE ALEXANDER: Probably

under your condo documents you have to get approval from the condo association. Do you have that?

TIMOTHY FISHER-JEFFES: Yes. I mean, I don't have it in writing. It's just the two of us and we have discussed it at length.

CONSTANTINE ALEXANDER: That doesn't necessarily involve a zoning point of view. Just to be careful from a title point of view you want to make sure you get something on record for yourselves, if we grant relief, to indicate that you didn't violate the condominium association. You had an oral agreement that somehow gets reneged.

TAD HEUER: And someone else sells and asks for a Variance that's against your property.

CONSTANTINE ALEXANDER: You should get something in writing for the record.

Yes.

Further questions from members of the Board at this point?

Anyone here wishing to be heard on this matter?

(No response).

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

I don't believe there's any letters in the file. There wasn't a day or so ago.

Any further -- I'll give the Board members one last chance to ask questions or any comments. No? Ready for a Motion?

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. The hardship being that given this is a non-conforming structure, that the Petitioner is not able to have sufficient

headroom and ability to utilize the third floor without a dormer. And further that there are safety issues with regard to a second means of egress.

What is being proposed will improve the safety of the occupants of the structure by having this external staircase.

That the hardship is owing to circumstances relating simply to the fact that this is a non-conforming structure, and that any relief requires Zoning -- any modification requires Zoning relief.

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.

On the basis of these findings, the Chair moves that a Variance be granted on the condition that the work proceed in accordance with plans submitted by the Petitioner, plans and photographs. They are numbered A-A,

A-1, A-2, A-3, S-1, S-2. The first page of which has been initialed by the Chair.

TIMOTHY FISHER-JEFFES: I have -- obviously have people around to tell me how much it's going to cost. One of the issues that they raised was the positioning with the architect with the windows for the dormers. Apparently he put them right on the corner, which may or may not be an issue in terms of building. So, we might want to move them slightly in either direction. But the size will remain the same.

CONSTANTINE ALEXANDER: Just the location not the size? The location of the windows in the dormers?

TIMOTHY FISHER-JEFFES: And obviously size uniform to code.

CONSTANTINE ALEXANDER: Well --

TIMOTHY FISHER-JEFFES: I don't know the code personally myself.

CONSTANTINE ALEXANDER: I'm not

adverse to allowing building to the motion which, I'll make in a second, some allowance to what you're seeking. Any members of the Board have a problem with that?

(No).

CONSTANTINE ALEXANDER: Then going back to my motion:

The work proceed in accordance with the plans, etcetera, etcetera. Except that the windows on the dormer may be located differently than as shown on the plan provided that the size of the windows do not increase. Okay?

TIMOTHY FISHER-JEFFES: Or conform to code.

CONSTANTINE ALEXANDER: That's without saying.

TIMOTHY FISHER-JEFFES: I was told that some size --

CONSTANTINE ALEXANDER: Except to the extent the need necessary to comply with

code.

TIMOTHY FISHER-JEFFES: Right.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted. Good luck. Thank you very much.

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

(8:45 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Tad Heuer,

Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9988, 49A Dana Street. Is there anyone here wishing to be heard on this matter?

CHUN YUAN HUANG: My name is Chun Yuan Huang. This is my wife Yihua Wang. And because we are lacking at communication ability, I ask my friend to help us.

PAUL SAVAGE: My name is Paul Savage. I'm a friend of theirs. I live in Everett.

CONSTANTINE ALEXANDER: All right, Mr. Savage, so I've got a question for you: How did this address get to be 49A Dana Street when it's located on what's this, Cambridge Street?

PAUL SAVAGE: It's actually located on Broadway.

CONSTANTINE ALEXANDER: Broadway. Broadway. Yes, down the street on Broadway.

PAUL SAVAGE: Yeah, I guess it's because it's attached to the main structure that is on Dana Street. You're right, it's quite a ways away from --

CONSTANTINE ALEXANDER: I almost didn't find the sign because I looked around on 49A Dana Street I didn't see any sign. And I just happened to walk around the corner and there --

PAUL SAVAGE: Saw it on the tree.

CONSTANTINE ALEXANDER: On the tree. I saw the number there, too.

CHUN YUAN HUANG: That's why on mailing address, I always had parentheses, off Broadway.

CONSTANTINE ALEXANDER: Okay. You've heard the drill so far in terms of how we go about this.

PAUL SAVAGE: Right.

CONSTANTINE ALEXANDER: You're seeking a Variance this time to basically

build a vestibule. Enclose a front door of the property with a new porch.

PAUL SAVAGE: Right.

CONSTANTINE ALEXANDER: Anything more than that?

PAUL SAVAGE: No, that's basically it. And the total square area that's increased I think it's 24 square feet. It says 29, but it's actually reduced to 24.

CONSTANTINE ALEXANDER: These are the plans so to speak. I guess they've gone by the Historical in Mid-Cambridge?

PAUL SAVAGE: Yes.

CONSTANTINE ALEXANDER: There's no problem?

PAUL SAVAGE: No problem.

CONSTANTINE ALEXANDER: And technically for the record, the FAR right now is 1.4089. By adding an extra 19 feet, you're going to go to 1.4216 in a 0.75 district. So you have substantially

non-conforming in terms of FAR, and you're going to increase that non-conformance.

PAUL SAVAGE: Correct.

CONSTANTINE ALEXANDER: But the purpose is demonstrable. You want to improve the ability to keep the elements outside the house when you go inside.

PAUL SAVAGE: Correct. And it's set back quite a bit.

CONSTANTINE ALEXANDER: It's not pleasant to open the door and walk right into the living room. Once upon a time someone built this house thinking that was not a problem.

PAUL SAVAGE: Apparently.

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

TAD HEUER: Is there a reason that your elevation A and B windows are different rather than the same?

PAUL SAVAGE: A and B elevation

windows are different?

TAD HEUER: Yes. One of them is at least -- I'm looking at the --

PAUL SAVAGE: It shouldn't be.

YIHUA WANG: Yes, I take out the A. A is inside here. So it's inside.

PAUL SAVAGE: She's the architect.

YIHUA WANG: This is on here.

CONSTANTINE ALEXANDER: And the plans you have -- I'm sorry, go ahead.

TAD HEUER: So this plan is the old one and it should be this one?

YIHUA WANG: Correct.

TAD HEUER: Where the windows are the same on both sides as opposed to here where they're two in one?

YIHUA WANG: Yes.

CONSTANTINE ALEXANDER: And you appreciate it because you have a certificate from the Historical Commission, these are the plans, you can't modify them.

CHUN YUAN HUANG: Yes.

CONSTANTINE ALEXANDER: And if we grant relief, it will be the same with conditions, you have to comply with these plans.

PAUL SAVAGE: Right.

CONSTANTINE ALEXANDER: At least without coming back before us.

PAUL SAVAGE: Okay.

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

(No response).

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

I don't believe there's any letters in the file. So, further questions or comments from members of the Board? Tad.

TAD HEUER: Is the FAR added by having a small deck on top of the porch as well as the area?

CONSTANTINE ALEXANDER: I don't

believe so. I think that that second floor doesn't count. Jog my memory about this. The gap and the railing on the top, and I notice you can sort of walk out, it's not a window but it's almost like a full door size window.

CHUN YUAN HUANG: This we want to have because the second floor window is really small. But however the window --

PAUL SAVAGE: Height, the sill is very low.

CHUN YUAN HUANG: From the floor is really low. So if our friends' children come to our house, if they open the window, they go out, we are scared.

PAUL SAVAGE: It's a safety feature.

CONSTANTINE ALEXANDER:

Understood. You're not otherwise planning to use that as a living area?

CHUN YUAN HUANG: No. We want to close the window. But just for safety

reasons we don't want our friends' children to fall down just for that reason.

CONSTANTINE ALEXANDER: Further comments or questions?

TAD HEUER: This isn't in a setback?

PAUL SAVAGE: Setback's no problem. It starts at 15 and will be 13.

CHUN YUAN HUANG: 30.

PAUL SAVAGE: It's 15.7 now. It will be 13.

CONSTANTINE ALEXANDER: Ready for a vote?

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: Okay. 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 as presently configured, there is no, if you will, buffer

between the external elements and the living space inside, making the ability to use the structure not as desirable as might otherwise be desired, otherwise be a good idea to have.

The hardship is owing to circumstances relating to the soil conditions, shape or topography of the structure. Mainly that this is an older building, it's non-conforming and therefore any modification would require Zoning relief.

And that relief may be granted without substantial detriment to the public good or without nullifying or substantially derogating from the intent or purpose of this Ordinance. In fact, the relief being sought is modest in nature. It's a slight increase in FAR. It is one that has no neighborhood opposition. The goal of this is to create a vestibule which is more consistent with current building standards, to have a way of basically buffering the outside from the

inside.

And on the basis of these findings the Chair moves that a Variance be granted to the Petitioner to proceed with the project in accordance with plans submitted by the Petitioner. There are three pages entitled, "Floor Plan, Elevation B and Elevation C," all of which have been initialed by the Chair.

The Chair would further note by the way, with regard to no derogation or intent or purpose of the Zoning By-Law, that this project has received a certificate of appropriateness from the Mid-Cambridge Historical. All those in favor of granting the Variance on the basis so moved, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

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

(8:55 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case 9989, 139 Pearl Street. Is there anyone here wishing to be heard on this matter?

STEVE SUMMIT: Good evening. I'm Steve Summit. I'm the Petitioner. This is my address, 139 Pearl Street. This is my architect Chris Klein.

CONSTANTINE ALEXANDER: Can I ask you a question at the outset? I know from our research there was a Petition before us in 2006.

STEVE SUMMIT: Substantially identical.

CONSTANTINE ALEXANDER: And my question is is this the same relief that's being sought?

STEVE SUMMIT: Precisely.

CONSTANTINE ALEXANDER: And what did you do, did you just let the Variance lapse?

STEVE SUMMIT: I had a change in my job situation and I was unable to complete the work as planned. And I almost got the building permit under the previous Variance. It would be easier to extend a building permit than Variance. And I miscalculated and did not. So we are begging your time to consider substantially the same matter.

CONSTANTINE ALEXANDER: Well, we've already made the findings the last time. We can change our minds I suppose.

STEVE SUMMIT: It was a different Board.

CONSTANTINE ALEXANDER: Well, I was on that case.

STEVE SUMMIT: I thought I remembered you. Jennifer was the Chair, and I remembered her clearly.

CONSTANTINE ALEXANDER: Anyway, okay. It is the same matter, same project that you came before us before?

CHRISTIAN KLEIN: Exactly.

CONSTANTINE ALEXANDER: But for the members of the Board who were not here before and for me with a bad memory, tell us what you want to do.

CHRISTIAN KLEIN: Okay. The building in question is a 14-by-40 footprint house. It's on the back of a lot. It's not on the street. And essentially it's a one and a half story house. And the way the house is constructed currently, the roof, the height of the walls at the start of the roof on the second floor is four foot six and my client is six foot ten.

CONSTANTINE ALEXANDER: We'll concur with that.

CHRISTIAN KLEIN: And so what we had sought to do and what we're seeking to do again is to create more liveable space on the second floor of this house. Currently it's divided. There are three rooms on the second

floor. The middle room does not have a legal fire egress so it can't be used as a bedroom. We're looking to try to increase the volume, but because we're in the back side of this lot, we are only two feet off the rear lot line where this house is. And then on the lot behind us there's also a back of lot house, so there's -- we're trying to keep the profile of the house as low as possible rather than try to raise the roof up substantially. We're trying to keep it as tight as we can. So for that reason we're looking to put a shed dormer on the back side for -- to put a bathroom on the second floor. And on the front side there's a combination of shed and gable dormers to create enough volume to also allow us some height so we can get an egress window in on the second floor in that center space. So we're looking to raise the roof less than a foot in order to accomplish all this.

CONSTANTINE ALEXANDER: Am I correct in this case are you also looking for access to a deck, a roof deck?

TAD HEUER: No.

CHRISTIAN KLEIN: No, we're not.

CONSTANTINE ALEXANDER: I'm sorry. Dormer guidelines, want to speak to those?

CHRISTIAN KLEIN: Sure. We don't comply substantially with the dormer guidelines. We had -- basically the reason behind that is that in order to keep the roof height down, we need to have the windows interrupting where the roof line would be if it continued across and the dormers sat inside. Also the building is only 14 feet across. So if we pulled in two feet on each side to give ourselves a substantial area of route traveling in front of the dormers, then unfortunately there's not much left on the interior of the building. And so for those reasons the facade of the house continues

from the ground up to and including the dormers rather than being broken by the roof lines as I know the dormer guidelines prefer.

CONSTANTINE ALEXANDER: Do you think basically these gable dormers, these three dormers?

CHRISTIAN KLEIN: Right.

CONSTANTINE ALEXANDER: There's no dormers now at all?

CHRISTIAN KLEIN: There's no dormers now at all, no.

TAD HEUER: Gable dormers within a shed, right?

CHRISTIAN KLEIN: Right.

STEVE SUMMIT: Or a gable joined by a shed is the way we described it.

TAD HEUER: So you're looking for a --

CHRISTIAN KLEIN: Basically if we were to shed the whole thing, we would have to push the shed so high in order to get the

windows in.

TAD HEUER: Right.

CHRISTIAN KLEIN: We felt that the gables, I mean there's no question that they don't comply, but we feel, I feel, and my neighbors agree that it's more visually interesting now although it does not comply with the dormer guidelines than it did before. The existing silhouette is really kind of dumpy.

TAD HEUER: How long is that from stem to stern?

CHRISTIAN KLEIN: Along the --

TAD HEUER: Along the front elevation.

CHRISTIAN KLEIN: Front elevation of the house is 40 feet in total.

CONSTANTINE ALEXANDER: It's the length of the house?

TAD HEUER: Just asking.

CHRISTIAN KLEIN: So, it's 31 feet.

STEVE SUMMIT: It is substantially in excess of your 15 or 20 --

CONSTANTINE ALEXANDER: 31 feet. And how big --

CHRISTIAN KLEIN: The house itself is 40 and one half foot.

CONSTANTINE ALEXANDER: So all but nine feet of the length of the house?

CHRISTIAN KLEIN: Correct.

TAD HEUER: And your rear dormer is how long?

CHRISTIAN KLEIN: It should be -- it's 15 on the back side, too. In order to have a light at the top of the -- the landing at the top of the stairs and to have the bathroom have windows.

TAD HEUER: Right.

CHRISTIAN KLEIN: This is a house that substantially cannot be seen from the street.

CONSTANTINE ALEXANDER: Questions

from members of the Board at this point?

Does anyone here wishing to be heard on this matter?

(No response).

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

You've indicated that you have neighborhood support or neighbor support.

CHRISTIAN KLEIN: Yes. There were -- I doubt you have the letters that were in the file when we filed three years ago.

STEVE SUMMIT: From 2006.

CHRISTIAN KLEIN: There were some letters of support during that filing in that one.

CONSTANTINE ALEXANDER: In that one but not this one.

STEVE SUMMIT: As far as I know.

CONSTANTINE ALEXANDER: You have spoken to all of your neighbors?

STEVE SUMMIT: I have.

CONSTANTINE ALEXANDER: And they have expressed no opposition?

STEVE SUMMIT: Correct.

CONSTANTINE ALEXANDER: Comments from members of the Board at this point, or do you want a little more time to study the plans?

TAD HEUER: I'll make one technical note that probably is apropos of nothing, but the notarized certificate of ownership legally can't be valid because it's a photocopy.

CHRISTIAN KLEIN: Do you want to sign over it now?

STEVE SUMMIT: Now, one of them was -- there was an original which was notarized.

TAD HEUER: Right.

STEVE SUMMIT: I'm not sure that's not the one that's in the file.

TAD HEUER: Right. That's what we would expect because a notarized document can't be a photocopy because then it's a copy of something that was notarized. It's not something that I don't think that if we were to grant relief, we couldn't cure by having a requirement to have a notarized copy. I think the original --

CONSTANTINE ALEXANDER: I would not propose to add that to the motion itself when we get to the vote if you don't mind.

TAD HEUER: It's important.

CONSTANTINE ALEXANDER: It is important, but it's more important for them more than it is for us.

TAD HEUER: True.

CONSTANTINE ALEXANDER: Does anybody on the Board want to express some views?

BRENDAN SULLIVAN: It's a narrow house, it made sense to us, it made sense to

me four years ago and it makes sense to me tonight.

CONSTANTINE ALEXANDER: All I would say is same here. Obviously I voted for it four years ago. I do think although I'm distressed by the size of the dormers, I understand the reason why. And I think visually I do think it's better than what you have now. I like the gabled effect with the shed dormer given the situation.

STEVE SUMMIT: I can recommend an architect who is talented in coming up with -- he did not pay me to say that.

TIMOTHY HUGHES: You're paying him enough anyway.

BRENDAN SULLIVAN: The only solution to make this worthwhile and to make it work.

CONSTANTINE ALEXANDER: That's right.

TAD HEUER: I mean, I understand

that I think at one point in the application supporting statement the comment to the extent of that's not looking to increase building density. I think it's undeniable that it's increasing building density. It's whether someone wants to or not.

STEVE SUMMIT: Our meaning there if I can interrupt, is that although -- I mean, the property is already completely beyond the FAR and we are making it even worse in terms of FAR. We are not adding the number of people. We're not adding foot traffic or parking. We're not going outside the existing, current footprint. The FAR increased. We're not even increasing floor area. It's just because the ceiling heights go up, it now counts where it did not before.

SLATER ANDERSON: So you're not increasing population density?

STEVE SUMMIT: Right.

TAD HEUER: Building density.

BRENDAN SULLIVAN: The alternative would be more roof which is not aesthetically pleasing. So that would be the massing.

CONSTANTINE ALEXANDER: That would be the massing, right.

TAD HEUER: Yes. I think I would almost prefer to see more roof than this frontage of house. Understanding that it's not on the street, it's set back. I mean, I think the general thing that I'm also wrestling with is this house is in place where there should be more house. We're extending back lot houses in areas where houses are not supposed to be, were never meant to be, and then we're increasing their density where we already wish they weren't structure, according to the Ordinance. I understand that people have purchased these houses and wish to live in them. But this is running up the edge to me where there's a condo lot situation where there's a second house. It

is what it is. And I'm not sure how much we should be encouraging expanding those types of houses.

CONSTANTINE ALEXANDER: But I think if I may respond.

TAD HEUER: Sure.

CONSTANTINE ALEXANDER: Yes, we're expanding, but the way to look at it is you've got a house and maybe in an area that's not too dense. We don't want it to fall into disrepair. People want to make modifications that are consistent with living in the house. I think that to me swings the decision. Otherwise you're going to be stuck with a house that you're never going to be able to do anything to externally. And house doesn't have a great future in my mind if that happens. That's how I come out.

But anyway, further comments or we read I for a vote?

Hearing no comments, I think we're

ready for a vote. Let's see how the vote goes.

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 given its current configuration, location is somewhat challenged in terms of the ability to be effectively used for habitation purposes.

That the hardship is owing to the circumstances relating to the fact that we talked about a non-conforming structure in a tight lot.

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

The Chair would note that this project

will, as I said before, improve the habitability of the structure. It appears to be the only design feature that would allow better use of the structure that this Board in fact already in 2006 made findings that relief should be granted. And that there is nothing that has been demonstrated to us, no neighborhood comments or the like that would suggest that the decision we reached in 2006 was incorrect.

So on the basis of all 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 that are in a bound set of plans prepared by Approach Architects, the first page has been initialed by the Chair.

And again before I take the vote, you understand that no more modifications at least without coming back before us.

CHRISTIAN KLEIN: Yes.

CONSTANTINE ALEXANDER: On the basis of the foregoing, the Chair moves that a Variance be granted. All those in favor of granting the Variance, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Anderson.)

CONSTANTINE ALEXANDER: Opposed?

TAD HEUER: Opposed.

CONSTANTINE ALEXANDER: One opposed. Variance granted.

(9:10 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Brendan Sullivan, Tad Heuer.)

CONSTANTINE ALEXANDER: The Chair will call a case we just recessed, 18-20 Cameron Avenue.

I think when we last left you you were deciding whether you wanted to proceed tonight having been advised of the consequences of the fact there's only four members of the Board sitting on this case. What is your pleasure?

ATTORNEY JAMES RAFFERTY: The Applicant having been fully briefed of the burden of receiving a unanimous decision in order to have this relief granted, does wish to proceed.

CONSTANTINE ALEXANDER: You've noted the number of descent tonight already.

I mean, we've had a number of cases with descent. I just want to one more time -- you can see we're not necessarily a unanimous Board. You need a unanimous vote.

SHANE MARRION: I'm okay with it. Let's go.

CONSTANTINE ALEXANDER: Okay. Go ahead.

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chair. The case has a number of unique aspects associated with it. This is a two-family house on Cameron Ave. that the Applicant purchased last year and has been restoring and refinishing. His renovation work has not involved an expansion in any way of the structure itself. He's stayed within the existing footprint of the building. But there are a couple of unique conditions on the site that led him to some conversations with his abutter.

The photographs that are in the file

really, I think, address the issue that I want to bring to the Board's attention. And that is that it appears that there may have been in the past a less formal agreement about the use of the rear of the property with the abutter.

CONSTANTINE ALEXANDER: What was there before by the way, before you did the renovation? Was it a two-family?

ATTORNEY JAMES RAFFERTY: Oh, no. It was a two-family.

CONSTANTINE ALEXANDER: And now it's going to be a three-family?

ATTORNEY JAMES RAFFERTY: No, no. Still a two-family. The proposal however is that the -- if you look at the photographs, the back out of the property is dominated. The abutter on the left has an entirely asphalt yard. This yard is -- the yard, proposed locus is nearly all asphalt.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: The other dominant feature is there is a cinderblock commercial building on the zero lot line that abuts this property.

CONSTANTINE ALEXANDER: What is that building there? I know it's cinderblock. I couldn't figure out what the building was.

SHANE MARRION: It's an auto body.

ATTORNEY JAMES RAFFERTY: It's the back of an auto body shop on the street -- what's the name of the street?

SHANE MARRION: I think it's....

CONSTANTINE ALEXANDER: Whatever.

ATTORNEY JAMES RAFFERTY: So, and then we have the backyard of this abutter as well. This abutter has sent a letter of support.

CONSTANTINE ALEXANDER: Who is that abutter? Is that Jan?

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: I think we have that.

ATTORNEY JAMES RAFFERTY: She has a new letter, too. But essentially the same. Same approach.

The abutting property -- so faced with this condition, and as Mr. Marrion looked at his options, the property does not have any parking. It's obviously grandfathered from that requirement. But the issue really then comes to down to the two-fold issue: One is this section under Article 6 that says owners of properties can establish common driveways by easement pursuant to Special Permit. As I noted and I don't -- and in that section of the Ordinance talks about mutual easement. And this technically isn't a mutual easement, and the fee interest is owned entirely. But after reviewing the matter with the Department, their conclusion was that the Special Permit relief would be required. So

that's the first portion of it. So the Special Permit relief deals with the section of Article 6 that says that common driveways by mutual easement are permitted by Special Permit, and that's the first piece of relief.

The second part of the relief deals with the parking spaces themselves. The parking spaces are conforming dimensionally, but there is an impact on the open space. The asphalt that's there now is calculated as open space. In fact, I was surprised, but rereading it I understood that consideration. So, when you look at the dimensional form and the numbers here, you think that there's a reduction in open space, but the quality of that open space is really quite unusual. It's mostly asphalt.

CONSTANTINE ALEXANDER: What was there before?

ATTORNEY JAMES RAFFERTY: Well, that's our point.

SHANE MARRION: This was existing that way.

CONSTANTINE ALEXANDER: Do you understand why? Was it a basketball court?

ATTORNEY JAMES RAFFERTY: Well, the speculation from talking to some of the neighbors, they may have used the driveway by agreement to park and repair cars back there because it's all asphalt. And there's no real distinction between the property lines here. If you don't have the benefit of the plot plan, you wouldn't know where one property begins and the other one ends. Just A Start was involved in the conversion of this condo. These are owned by the -- these are affordable housing condos. So Mr. Marrion had some conversation with the owners. Was it three unit condos?

SHANE MARRION: Yes.

ATTORNEY JAMES RAFFERTY: And discussed well, how would you feel about if

an easement, and my use of sharing the driveway. They have three cars that use it, and they were receptive to it. I think frankly they saw some value in doing so. And the approach here is can the case be made that the site will be better off when Mr. Marrion is done with the Zoning relief than without the zoning relief. And clearly in one aspect there will be, and that's permeability. There's little or any permeability on the site now. And as you know, open space -- we divided into three categories. We have the general definition of open space. Then we have green open space. And then we have permeable open space.

To qualify for the green open space, the open space needs to have a 15 foot in any direction measurement. Clearly this doesn't have that. But, again, if you look at the photographs, what it has is nearly an entire asphalt backyard which does meet the

15 feet, but there is, as I said, no permeability. So combined with the fact that the property is located on the street where there's very limited on street parking, Cameron Avenue is a busy thoroughfare which only extends for a few houses into Cambridge and then it becomes the City of Somerville. Somerville has resident parking as Cambridge does. So if you were to live here, we really have a limited ability to park because once you get up further Cameron Avenue, you can't park on Cameron Avenue. There's apparently a project pending at the Planning Board which I think it's completed it's approvals at the corner of what's called Rounder Records which is diagonally across from here. That's proposed to be a 30, 40 unit residential project. So the parking here likelihood is the parking demand in this stretch of Cameron Avenue is only going to increase.

CONSTANTINE ALEXANDER: Isn't there

also a fire hydrant right near the corner of that driveway?

SHANE MARRION: Right, right in front of the house.

CONSTANTINE ALEXANDER: Which also restricts the amount of parking.

SHANE MARRION: Right in front of the house.

ATTORNEY JAMES RAFFERTY: So, Mr. Marrion looked at a parking layout that would actually, by most estimations, allow not even for the cars to back out all the time. This configuration, with some generosity of accommodation by neighbors, that probably both neighbors could take advantage of this if you grade it off. While it doesn't appear to be in the easement area, it does seem to be a practical understanding between people. So, it will also provide opportunities for at least one if not both of these cars to drive out completely. But the dimensional issue

presented here is the open space issue. And the hardship really has to do with, I think, it's directly related to the caliber and quality of the existing open space. And while it meets the definition of the Zoning Ordinance, I think it doesn't meet what might be considered a natural expectation of what open space -- of what characteristics it should have.

If you had an opportunity to look at the photos, Mr. Marrion has done an impressive job remodeling the house. It's not high, high end housing. The units themselves are probably going to sell in what would be considered the moderate range for housing in Cambridge. It's a project that he's proud of. He's been straight forward in doing his work here and thinks that having an opportunity to provide for a unit of this size with the parking space, will make it attractive housing, and essentially will

allow for one non-conforming aspect of the property to be cured. The counterbalancing non-conformity created here, we hope the Board would conclude is given the characteristic of the existing open space is a worthy tradeoff, coupled with the overwhelming hard scape characteristics that surround the property. And that essentially is the basis of the hardship and the relief that's being sought from the open space requirements to allow for those two parking spaces.

They have been set off in ways to meet the dimensions, the requirements. And they have as dimensioned on the plan, meet the dimensional requirements of the parking spaces under Article 6. So it's a Special Permit presuming if needed for the use of the easement and a Variance to allow for the exchange of a -- to allow for the change in non-conformity to make conforming parking

but create non-conforming open space.

TAD HEUER: Is there access from that parking area to the house in the rear or do you go around the front?

ATTORNEY JAMES RAFFERTY: Oh, no, there's an entrance right here.

TAD HEUER: Okay. And then is there a fence right now on this, on I guess the --

ATTORNEY JAMES RAFFERTY: This side? Yes. Isn't there?

SHANE MARRION: No.

ATTORNEY JAMES RAFFERTY: Do we have a photo?

SHANE MARRION: There was a fence. The fence is now down. I took the fence down.

TAD HEUER: Okay. So what is on the abutter's property in the rear on this side?

SHANE MARRION: Do you mean when you're facing the house to the right, or to the --

TAD HEUER: Yes.

SHANE MARRION: Okay. I mean, there's just a little walkway.

TAD HEUER: Okay. And so in your, you know, greenish landscaping here, is that going to be visually, is that going to continue out here? Do they have parking in the rear here?

SHANE MARRION: No, they don't have parking and it's just a yard.

TAD HEUER: It's a yard. This will like look the extension of the yard that will go a bit further?

SHANE MARRION: Yes.

TAD HEUER: Are you planning to put a fence up?

SHANE MARRION: I mean, well no -- yeah, there's a fence here now, yeah. Okay, yep.

TAD HEUER: Oh.

SHANE MARRION: I'm open to doing whatever satisfies the Board.

ATTORNEY JAMES RAFFERTY: I think the abutter is appreciative of the effort. That abutter, she's in support. But to your point, you're correct, her yard is not the yard that I was describing with the asphalt. That's this yard.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: But the picture does show, you can see the house, where the work has been done. You can see the back side of the commercial building that we referred to. And as you see here on the site plan, it's on a zero property line. It really looms over the backyard in a way that would suggest that it's not the most pastoral setting even if one were to --

CONSTANTINE ALEXANDER: I want to -- and Tad raised a good point. I want to understand more and I didn't think about it before. This situation. I know that there's a backyard here and how all this

works. Is it a multi-family dwelling over here, two-family house?

ATTORNEY JAMES RAFFERTY: That's interesting because the letter from the woman there --

CONSTANTINE ALEXANDER: Did she write a letter?

ATTORNEY JAMES RAFFERTY: Yes, she's the woman who I just handed you her letter.

CONSTANTINE ALEXANDER: Oh, I thought that's the person that's over here.

ATTORNEY JAMES RAFFERTY: Oh, no, that's the co-applicant. We have an ownership certificate from them and a letter of support from them. But no, that's the woman who lives there. She's fully in support. She appears to be running a -- there's a sign out that calls it an inn or a B&B, I'm not quite sure.

CONSTANTINE ALEXANDER: Really?

ATTORNEY JAMES RAFFERTY: When I put up the sign, I was like what is that? So to answer the question --

CONSTANTINE ALEXANDER: Let's not go any further.

ATTORNEY JAMES RAFFERTY: So, it's not what I would call a conventional residence. It's right out on the street. And there's a phone number to call if you want a room.

BRENDAN SULLIVAN: Don't ask, don't tell.

ATTORNEY JAMES RAFFERTY: Personally I never stayed there, but I imagine it's lovely accommodations.

CONSTANTINE ALEXANDER: But the backyard of that, without getting into the nature of the use of the structure, this is backyard of their property right there?

ATTORNEY JAMES RAFFERTY: Yes. You can see it's depicted here in this. Yes, I

think you can see it here. There's that chain link fence, it's over on that side.

CONSTANTINE ALEXANDER: Okay.

There's no parking in the backyard?

ATTORNEY JAMES RAFFERTY: No, she doesn't have a driveway. I don't believe, does she?

SHANE MARRION: No, she doesn't.

BRENDAN SULLIVAN: Is any of the open space going to be deeded to unit 1? Obviously unit 2 has a little bit of a porch or a deck.

SHANE MARRION: Yeah. They're going to have exclusive use of space. It will have like a patio area.

BRENDAN SULLIVAN: Unit 1?

SHANE MARRION: Yes, for unit 1.

BRENDAN SULLIVAN: All ground level that comes out the back.

SHANE MARRION: Well, here is going to be all grass and shrubs and greenery and

things like that.

BRENDAN SULLIVAN: Which is common.

SHANE MARRION: Yes.

BRENDAN SULLIVAN: Okay. And each unit will have a deeded space?

SHANE MARRION: Yes.

BRENDAN SULLIVAN: And the area underneath the deck for the second floor is unit 1's domain?

SHANE MARRION: Yes. But here will be common and there will be some grass and there will be an area of where unit 2 will be able to walk through. And there probably will be like a little patio area right here, right in between.

BRENDAN SULLIVAN: Okay. So unit one does capture some open space?

SHANE MARRION: Yeah.

BRENDAN SULLIVAN: And unit 2 has the deck?

SHANE MARRION: And I can tell you

from a practicality standpoint, I live on Harvey Street which is the same street as Cameron, two blocks down across Mass. Ave. and the parking's getting worse. And I don't have parking. I park on the street. And I can tell you that it's getting worse and worse every year because of all the -- you know, the construction that's going on. Like the 30 units across the street. And I have more and more evenings where I get done work and I have to drive like two blocks down to find a parking space. So it's definitely getting worse.

BRENDAN SULLIVAN: Anybody coming to buy a condo, I mean, criteria other than space is parking.

CONSTANTINE ALEXANDER: And again because of the fact that you're only feet away, not several feet but very close to the city lot line, and Somerville's off limits. They will ticket you if you park there. So

you really don't have as much on street parking --

SHANE MARRION: You're limited.

CONSTANTINE ALEXANDER: -- as you might have on another street in Cambridge that's fully within Cambridge.

SHANE MARRION: Right.

TAD HEUER: You said you want to put a patio. So would that be here?

SHANE MARRION: Underneath the deck.

TAD HEUER: Under here?

SHANE MARRION: Right. Underneath the deck.

TAD HEUER: And then is the easement limited to two cars? Is there a burdening or over burdening? There are only two parking spaces. If you want it limited to the use of that driveway for access to two spaces.

ATTORNEY JAMES RAFFERTY: I can only say we drafted the easement, we sent it over,

and the attorney for Just A Start Lauren Curry, she changed it all.

CONSTANTINE ALEXANDER: Oh, really?

ATTORNEY JAMES RAFFERTY: So, I from years gone by have been intimidated for years, so by certain people. So I just said okay. So I don't know that that is in here.

BRENDAN SULLIVAN: It's only a week's worth of work, too.

ATTORNEY JAMES RAFFERTY: Who was I to question it? But it came back in a different form and I was told that this was better than what was sent over. And I have no pride of authorship. And I said okay, that looks fine.

But to your point, Mr. Heuer, it doesn't say that. It does, it has the kind of generic language for vehicles to cross over and makes it clear that they can't park here and they can't --

BRENDAN SULLIVAN: So she's happy,

you're happy?

ATTORNEY JAMES RAFFERTY: That would be coincidence if that ever occurred.

TAD HEUER: I mean, I guess my preference when we get to the Special Permit is to allow the Special Permit for -- to limit it to the two cars here so we don't end up with a situation years later with people getting two and then packing in two more and. Then the easement, while this would be an issue is the number of parking, too. That they couldn't say oh, well we're accessing it to add a third car somewhere. The easement we burdened, overburdened if it was more than --

BRENDAN SULLIVAN: Special Permit is for two cars.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: Right. And I think there's also the reality that in approving a plan for two spaces --

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: -- which are dimensionally conforming, you couldn't put two other spaces. You'd be creating tandem and all that.

CONSTANTINE ALEXANDER: I think you're absolutely right, but I'll make it clear.

TIMOTHY HUGHES: I'm not sure the language is going to have any effect on the parking anyway and I don't see how it's enforceable.

ATTORNEY JAMES RAFFERTY: Well, it would be enforceable I suspect if either of these abutters --

TIMOTHY HUGHES: (Inaudible.)

ATTORNEY JAMES RAFFERTY: It's a complaint driven process, yes.

TIMOTHY HUGHES: Exactly.

TAD HEUER: I think Mr. O'Grady will point out that there are numerous complaints

before that he never thought would be enforced.

CONSTANTINE ALEXANDER: Let me go to public comments before we finish up on the questions and further comments from the Petitioner.

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

(No response).

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

The Chair notes that this Board is in receipt of several pieces of correspondence. One is a letter from -- we've got two letters. Jaenia, J-a-e-n-i-a Mikulka, M-i-k-u-l-k-a who resides at 16 Cameron Avenue. I'm going to read what I believe is the second of the two letters. It's addressed to the City of Cambridge. "Shane Marrion has done an excellent job on the house next to mine at 1820 Cameron Avenue. I am happy with the

work he has done. It is visually pleasing and very high quality work. I am in favor of this proposal to add off street parking, and he has some very good ideas for landscaping around the house and the pavement."

We also have a letter from Semita, S-e-m-i-t-a Condominium Trust at 24 Cameron Avenue. The letter is from the trustees of this trust. Nicholas Holahan, H-o-l-a-h-a-n and Lauren Curry, C-u-r-r-y. The letter states, "On behalf of the owners of the three condominium units at 24 Cameron Avenue, we are writing to express our support for the parking area requested by the owner of 18 Cameron Avenue, and our support for the shared driveway to those spaces. As trustees of the Semita Condominium Trust, we plan to enter into an agreement with the owner of 18 Cameron Avenue to deed him an access easement over the common driveway area shown on his plans. We would appreciate your

favorable decision on the plan's common driveway and thank you for your consideration."

There's no attachment. And that seems to be the sum and substance of the public commentary.

Further comments?

ATTORNEY JAMES RAFFERTY: Nothing.

CONSTANTINE ALEXANDER: Public testimony will be closed.

Further questions or comments from members of the Board?

TIMOTHY HUGHES: No. I'm good.

CONSTANTINE ALEXANDER: There is none. Let's proceed to a vote or votes. First, we'll take up the Variance.

The Chair moves that this Board make the following findings:

That a literal enforcement to the provisions of this Ordinance would involve -- we're talking about the Variance

now by the way, which is with regard to the -- not the easement, but the compliant parking.

A literal enforcement of the provisions the of the Ordinance would involve a substantial hardship to the Petitioner. The hardship being that off street parking would be denied because of open space requirements that are not meaningful in terms of improving the character of the City of Cambridge.

The hardship is owing to circumstances relating to basically the topography of the land and the structures, and the parking that is already paved over.

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 Chair would note that this finding can be made because of the fact that relief, if granted, will promote off street parking

in an area that has need for more off street parking.

And that further that in fact what is being proposed is to really formalize what has effectively been an occurring de facto for a period of time, it would appear since the backyard has been paved over.

And so, that on the basis of these findings, a Variance would be granted on the condition that the work proceed -- and we're talking about only two parking spaces, and that these parking spaces be imposed on the property, consistent with the plans submitted by the Petitioner, dated July 16, 2010 and which has been initialed by the Chair.

All those in favor of granting relief, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan,
Heuer.)

CONSTANTINE ALEXANDER: Let's go to
the Special Permit.

The Chair moves that a Special Permit
be granted to the Petitioner with respect to
establish a common driveway through an
easement with an abutting property owner.

In connection with that Special Permit,
the Chair moves that we make the following
findings:

That traffic generated or patterns of
access will not cause congestion, hazard or
substantial change in established
neighborhood character. In fact, the
traffic patterns and the patterns of the
access and egress would be improved and it
would not be changed from past practice.

That the continued operation of
development of adjacent units will not be
adversely affected by the nature of the

proposed use. In fact, the person most potentially adversely affected was in support of the Petition and will have to sign an easement granting the rights the Petitioner is seeking.

That no nuisance or hazard will be created to the detriment of the health, safety or welfare of the occupants or the citizens of the city.

And the proposed use will not impair the integrity of the district or adjoining districts or otherwise derogate from the intent or purpose of this Ordinance.

In fact, what is being proposed here again is to effectively deal with an existing curb cut and make the property, the benefit of that curb cut to benefit the Petitioner's property.

And to the extent that this easement would affect the neighboring property that is the matter for the neighboring property owner

to be concerned about. He, she or it will have to grant an easement to allow. In fact, the Petitioner to use the easement we're going to allow from a zoning point of view to access the parking in the rear of the structure.

So on the basis of the foregoing, the Chair moves that a Special Permit be granted on the condition I guess, that the easement in terms of its dimensions, they will be consistent with the easement that's identified on the plan previously referred to by the Chair and initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor. Unanimous again. Relief granted.

(Alexander, Hughes, Sullivan, Heuer.)

(9:35 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9990, 32 Bellis Circle. Is there anyone here wishing to be heard on this matter?

MARIBETH LADD: Maribeth Ladd, 32 Bellis Circle.

BARRY MURPHY: And Barry Murphy, 32 Bellis Circle.

CONSTANTINE ALEXANDER: You're looking for a Special Permit?

MARIBETH LADD: Yes, we have a house -- the basement of 1886 with a

non-conforming side porch. It has an existing roof so it's included in the FAR. But the setback is less than seven and a half feet. So we'd like to enclose it and add two windows and two skylights. My understanding it's the windows and skylights that require the Special Permit. Because the wall can be enclosed but we could not do it. Our neighbors have no objections. We've discussed it with them.

CONSTANTINE ALEXANDER: You don't have any letters. I don't think I saw a letter in the file.

TAD HEUER: Walking enclosure of a porch?

CONSTANTINE ALEXANDER: Yes. The enclosure because they're in a setback you have to get a Special Permit.

TAD HEUER: Right.

CONSTANTINE ALEXANDER: Right.

TAD HEUER: But it's also because of

the wall not just because of the windows.
The enclosure.

CONSTANTINE ALEXANDER: You're right, sorry. You're correct. The enclosure itself, more than the window that requires Zoning relief Special Permit. Questions?

Anyone here wishing to be heard on this matter?

(No response).

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

The Chair notes there are no letters in the file in regard to this Petition. I'll close public testimony.

Anyone wishing to make comments, suggestions, questions?

TAD HEUER: My only concern about enclosing a building by enclosing its side porch is largely for this building a front porch, especially because we're in a 0.5 and

it's already 1.08 doubling the FAR.

MARIBETH LADD: Can I point out that includes the basement which has a low ceiling. It's not habitable.

TAD HEUER: If it includes a low -- how high is the ceiling?

MARIBETH LADD: In the basement? I hit my head on it if I don't bend.

TAD HEUER: Then it shouldn't be included if your FAR.

MARIBETH LADD: It should not. But it is on the city records.

CONSTANTINE ALEXANDER: Say that again? You have a basement that's less than seven feet high and you're saying on the city records it's treated as habitable space?

MARIBETH LADD: It's included in the FAR.

CONSTANTINE ALEXANDER: I would suggest you might want to go to --

BRENDAN SULLIVAN: They're

including it under square footage, but under the Zoning.

CONSTANTINE ALEXANDER: If they did, you better --

BRENDAN SULLIVAN: And for the Zoning, it's not habitable space. There's a little bit of a conflict there. On your database it will have square footage. That doesn't necessarily translate into Zoning habitable FAR.

TAD HEUER: So when you completed the dimensional form, did you draw the number directly off of the city records?

MARIBETH LADD: From the city records.

TAD HEUER: What's the floor plan?

TIMOTHY HUGHES: Hand me the plan.

CONSTANTINE ALEXANDER: They're not seeking a Variance for FAR.

TAD HEUER: I know. But my concern is in terms of bulking, it's less than 108.

BRENDAN SULLIVAN: How many square feet?

MARIBETH LADD: I think it's one third of the total, because it's the same basement, first floor, second floor.

BRENDAN SULLIVAN: What are the numbers, do you know?

MARIBETH LADD: 2178 divided by three.

BRENDAN SULLIVAN: 700 plus.

MARIBETH LADD: Actually, less. The porch that we're proposing.

TAD HEUER: So it's really essentially 1400?

MARIBETH LADD: Yeah.

(Making calculations.)

SLATER ANDERSON: What's the number on the dimensional form? 2117.

TAD HEUER: 2117.

SLATER ANDERSON: Gross area that the city has the open porch, the deck, the

basement, the living area is only 1292 according to the city. So 646. And 646 as best as I can see.

TAD HEUER: Right. And then....

BRENDAN SULLIVAN: Plus the porch.

TAD HEUER: So you're around 1400.

TIMOTHY HUGHES: It's more like 0.71 not 1.08.

TAD HEUER: You're on a lot of around 1950.

TIMOTHY HUGHES: Yes.

TAD HEUER: All right. I'm less concerned. I'm still marginally concerned, but less marginally concerned.

CONSTANTINE ALEXANDER: Further questions or comments from members of the Board? Ready for a vote?

The Chair moves that this Board grant the Special Permit to the Petitioner on the basis of the following findings:

That what is proposed will not

adversely impact traffic or patterns of access or egress that would cause congestion, hazard or substantial change in established neighborhood character. In fact, traffic patterns and patterns of access and egress would be improved upon, at least for purposes of the occupant of the structure.

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

In this regard the Chair would note that the neighbors most affected by the enclosure of the porch and the location of the windows have not expressed any opposition to the project.

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

And that the proposed use would not impair the integrity of the district or

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

In fact, the architecture, aesthetically this will improve the appearance and usability of the structure.

On the basis of this, as I said before, the Chair moves that a Special Permit be granted to the Petitioner on the condition that the work proceed in accordance with a plan submitted by the Petitioner dated July 28, 2010 and initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Anderson.)

CONSTANTINE ALEXANDER: All those opposed?

TAD HEUER: No.

CONSTANTINE ALEXANDER: One
opposed. Four is all you need so you have
your Special Permit.

(9:40 p.m.)

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

CONSTANTINE ALEXANDER: The Chair
will call case No. 9991, 165-167 Putnam
Avenue, unit 165 B. Is there anyone here
wishing to be heard on this matter?

MARY ZENDRAN: Good evening. I'm
Mary Zendran, Z-e-n-d-r-a-n for the
Petitioner Peter Wierzbinski. The spelling
should be on the application. And that is
Milton Yu Y-u from Peter Quinn Architect.

CONSTANTINE ALEXANDER: You two are

seeking a dormer?

MARY ZENDRAN: Yes.

The Petitioner proposes to put in a dormer. And to do that he wants to increase the head space. He is converting the third floor into a bedroom area, and also the dormer would allow access to a roof deck. Now, he needs a Variance for the FAR and also for increase of square footage. Currently it is non-conforming. It's currently at 0.760. And the district allows 0.75 so it is currently non-conforming. And the request for condition is 0.765. So it's very modest. It's an increase of 59 square feet. So when the plans were drawn, it was drawn to be, you know, as modest as possible to still allow the dormer to be put into place.

Now, the dormer we put in the back, there should be pictures included. The dormer will be in the back of the building. So it's not visible from the street.

CONSTANTINE ALEXANDER: But unlike the other ones where we heard needed additional head space, a finished attic or the like, this is more of a situation where you're looking to get access to your deck, right?

PETER WIERZBINSKI: No, the main purpose is to get more head space. As you reach the top of the stairs, I'm almost hitting my head. My roommate is six foot two and he does hit his head as he does come up the steps. And so the deck, the purpose of the dormer to get access to the deck is more to kill two birds with one stone or to allow access to get out there, but it's mostly for the head clearance.

TAD HEUER: That may be true. When I read your paper for the Variance, you state that Petitioner is converting the attic space into a master bedroom suite to maximize the financial value of his condo.

MARY ZENDRAN: Yes.

TAD HEUER: That doesn't necessarily seem to be a substantial hardship, is it?

MARY ZENDRAN: No, but he is trying to put the -- to increase the financial -- what the value of the condo will be, and to convert that into that space he does need the headroom to increase. Because right now it's about five feet. When you walk up there, it's very easy to hit one's head and then --

CONSTANTINE ALEXANDER: The point that Mr. Heuer is getting at, or he can state it himself, but the fact of the matter is that there is a difference between -- you don't help your case by saying that you'll increase the value of the property. That's why everybody comes before us and that's why we on the Zoning Board don't always say yes.

TAD HEUER: You may be honest. Many

people come in and don't tell us.

CONSTANTINE ALEXANDER: For the reason you want to hear, but that's not a helpful statement. I'm more moved, and I think it's more important to talk about the headroom. The access to the deck still troubles me. But I think that goes to the increasing the value of the property. That's clearly the purpose of that.

How large is the deck?

BRENDAN SULLIVAN: The deck is eight foot nine by 17 feet.

CONSTANTINE ALEXANDER: Is that used at all for living purposes? How do you get out of the deck now?

PETER WIERZBINSKI: Oh, there is no deck. I would like to build one.

CONSTANTINE ALEXANDER: Oh.

MARY ZENDRAN: You know, he does have the by-right to build the deck.

CONSTANTINE ALEXANDER: He does. I

understand. He doesn't have the by-right to get a dormer to get access.

MARY ZENDRAN: Exactly. But the dormer, he's had some issues with leaking on the roof area so the dormer -- it would actually allow better access for not just to enjoy the deck, but to get out there and to do some maintenance in the wintertime and when the ice builds up --

PETER WIERZBINSKI: When I purchased the place there was actually an old -- it looks like some old owner decided to just cut out the roof and put a satellite in there and didn't even header off the rafters, and it's just sort of sitting in there so we'd like to fix it and make it look nicer.

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

ANN LONDON: Sure. I just want to

speak in favor of it.

CONSTANTINE ALEXANDER: Come forward. I'm sorry, we have to have the stenographer take your name and address down.

ANN LONDON: Ann London at 172 Putnam, apartment 2. So, I'm a neighbor of Pete's and he's worked really hard on this project and put a lot of time and effort into it. And, you know, I've seen the work he's doing. And I know he's done everything he can to really, you know, go the right route and with architects and the whole bit. And I just want to support it, because I think that he's really worked hard in planning this, and to make the best out of his living situation and increase the value on the street. That's all.

CONSTANTINE ALEXANDER: Thank you.

MARY ZENDRAN: He has spoken to all the neighbors in the condos. There are two buildings and the condominium. He's spoken

to all the neighbors. You should have letters in there. And also he's spoken to the abutter who is not part of the condominium, who has also given his consent to the project.

BRENDAN SULLIVAN: Is there an alternate third floor unit?

PETER WIERZBINSKI: Yes.
Basically the mirror image of mine.

BRENDAN SULLIVAN: Okay. And would they be possible coming down for the same type of relief?

PETER WIERZBINSKI: It's possible. They already finished off their upstairs, and I don't think they've noticed the problem quite honestly, because they use it for their children's rooms. So, I don't know how often they go up there. But they've already finished it off. And I don't think they have any other plans to improve it.

TAD HEUER: Does the dormer comply

with our dormer guidelines?

MILTON YU: As far as I know, yes.

TAD HEUER: Does it go to the ridge?

MILTON YU: To the existing ridge,
yes.

CONSTANTINE ALEXANDER: That's it.

TAD HEUER: It doesn't comply to the
dormer guidelines.

CONSTANTINE ALEXANDER: You can't
go to the ridge.

TIMOTHY HUGHES: You can't go to the
ridge it just doesn't comply with the dormer
guidelines.

CONSTANTINE ALEXANDER: What's the
size of the dormer? The length of it.

MILTON YU: The width.

BRENDAN SULLIVAN: Six-foot-six.

MILTON YU: Right, six-foot-six
wide.

BRENDAN SULLIVAN: You're supposed
to come down from the ridge. As far as coming

in from the -- everything else complies.

TIMOTHY HUGHES: What do you get for interior head height if it goes to the ridge? And what do you get if you come down to the ridge?

MILTON YU: You still have at the low point, seven -- around seven six. If you lower it from the ridge, you still have the lower point at seven six.

TIMOTHY HUGHES: What if you came down from the ridge?

MILTON YU: Right, because it's right now sloped at the ridge is the high point. And we maintain the height, I think lower this angle.

CONSTANTINE ALEXANDER: Why don't I read into the record the letters that we have.

We are in receipt of a letter of Americo Angrade, A-n-g-r-a-d-e addressed to the Cambridge Board of Zoning Appeals. "Dear Gentle People, I am writing in support of the

Variance request by Peter Wierzbinski to build a dormer at the above-referenced property."

There is also a letter or letters from Peter S. Quinn addressed to this Board, dated June 14th. "Please see enclosed drawings and Zoning compliance --" oh, this is just basically --

MARY ZENDRAN: That's from Milton's office.

CONSTANTINE ALEXANDER: Yes, right.

But there are letters from Rubin Dottin, D-o-t-t-i-n who resides at 161 Putnam Avenue which is located in the adjacent building. There's also a letter from -- an identical letter from Angus Beasley, B-e-a-s-l-e-y who resides at Nine Hingham.

PETER WIERZBINSKI: It's the building on the same lot.

CONSTANTINE ALEXANDER: And a letter from Rebecca Loh, L-o-h who resides at

167-B Putnam Avenue.

A letter from Sedric Hubean,
H-u-b-e-a-n who resides at 7-13 Hingham
Street, A No. A.

And a letter from Peter Coley,
C-o-l-e-y, Seven Hingham. And all the
letters -- and there's more.

MARY ZENDRAN: Everyone in the
condominium association.

CONSTANTINE ALEXANDER: Everyone in
the condominium association. Okay. Thank
you.

And the letters all say that you have
discussed your Variance application for a
dormer to be added with us. We support his
application for a Variance. The Variance
will allow Pete to make improvements to the
property that will raise the value of our
property and won't interfere with the use and
enjoyment of our property.

Further comments or questions from

members of the Board? Want more time to look through the files?

TIMOTHY HUGHES: No, I'm good with it. I just want to check something.

CONSTANTINE ALEXANDER: Tad, you all set?

SLATER ANDERSON: I personally am not a big fan of the sheds. I can deal with the dormers that go to the ridge. The sheds that go to the ridge I have trouble. It looks like they flipped the roof. I prefer to see them come down. That's my only comment. And I think you can practically do that in this case because you're cutting the rafters anyway.

CONSTANTINE ALEXANDER: However, and I have some problems with the design of the dormers myself. But to do that you have to go back and revise the plans.

TAD HEUER: Do you have photographs of the --

MARY ZENDRAN: Yes. It should be included in the file. This is the front of the building, right here. The dormer will be in the back of the building. It's covering where the tree is right now, but it would be right here. And it just overlooks the common area right here. There should be color photographs in the application.

TAD HEUER: I didn't see any photographs.

CONSTANTINE ALEXANDER: I don't remember seeing any photographs in the file.

TAD HEUER: Here they are.

MARY ZENDRAN: And here's the better view.

PETER WIERZBINSKI: That was the skyline I was referring to earlier.

MARY ZENDRAN: So it will be where the tree is covering where, in the back.

CONSTANTINE ALEXANDER: Ready for a vote?

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 ability to the issues regarding head space with regard to the second floor and the ability to access a deck to be built as a matter of right would not be available without the dormer.

The hardship is owing to circumstances relating to the shape of the structure.

The structure in fact as designed does create headroom problems and that's the reason for the dormer.

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

The Chair would note that however that -- well, I won't go further than that.

On the basis of these findings, the Chair moves that a Variance be granted the Petitioner on the grounds that the work proceed in accordance with the plans numbered five pages submitted by the Petitioner, the first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: One, two, three, Aye. All those opposed?

TAD HEUER: No.

CONSTANTINE ALEXANDER: One opposed. Motion granted.

(Alexander, Hughes, Sullivan, Anderson, in Favor.)

(Whereupon, at 9:55 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 27th 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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