

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, SEPTEMBER 26, 2019

7:00 p.m.

In

Senior Center

806 Massachusetts Avenue

First Floor

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Vice Chair

Janet Green

Jim Monteverde

Laura Warnick

Ranjit Singanayagam, Commissioner

Sisia Daglian, Assistant Building Commissioner

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1 P R O C E E D I N G S

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3 (7:01 p.m.)

4 Sitting Members: Constantine Alexander, Brendan Sullivan,
5 Janet Green, Jim Monteverde, and Laura
6 Warnick

7 CONSTANTINE ALEXANDER: The Chair will call this
8 meeting of the Zoning Board of Appeals to order, and as is
9 our custom, we will start with continued cases. These are
10 cases that started at an earlier date, but for one reason or
11 another have been continued until tonight. And then after
12 we finish those, we'll go to our regular segment.

13 Before I start with the first continued case, I
14 would like to read a statement.

15 After notifying the Chair, any person may make a
16 video or audio recording of our open sessions, or may
17 transmit the meeting through any media, subject to
18 reasonable requirements that the Chair may impose as to the
19 number, placement and operation of equipment used, so as not
20 to interfere with the conduct of the meeting.

21 At the beginning of the meeting, the Chair will
22 inform other attendees at that meeting that a recording is

1 being made.

2 And I wish to advise that at least two recordings
3 are being made, our stenographer records to assist her when
4 she prepares the written, transcript of tonight's meeting,
5 and a citizen of the city, who's left a tape recorder here.
6 He is recording as well. Is there anyone else planning to
7 record, or will be recording this meeting? None.

8 Okay, with that we'll turn to the first case,
9 first continued case, Case Number 017018 -- 1500 Cambridge
10 Street. Anyone here wishing to be heard on this matter? No
11 one, I'm not surprised. This case, I'll remind my fellow
12 Board members, started about a year ago. And this
13 petitioner has asked for a number of continuances, often
14 because he failed to post the sign as required by our
15 ordinance.

16 For this hearing, we have not heard from him. And
17 I'd warned the petitioner last time that we're not -- no
18 more continuances, this is it. Anyway, he has not appeared
19 tonight.

20 He did not post a sign again, so I will have to
21 believe he's abandoned the project, but whether he has or
22 not, I'm going to make a motion that we dismiss this

1 petition for a variance, on the grounds that the petitioner
2 has not complied with the advertising requirements as set
3 forth in our ordinance. Discussion, or ready for a vote.

4 BRENDAN SULLIVAN: Sarah is here.

5 CONSTANTINE ALEXANDER: I'm sorry?

6 BRENDAN SULLIVAN: Sarah Rhatigan is here.

7 CONSTANTINE ALEXANDER: She's not representing him
8 any longer.

9 BRENDAN SULLIVAN: Oh, she is not? Okay. Well,
10 my understanding is that they are proceeding with
11 construction anyhow, and that they are doing it as a
12 project.

13 CONSTANTINE ALEXANDER: Correct. Yeah, I can see
14 that, yeah.

15 JIM MONTEVERDE: There's a hole in the ground,
16 right?

17 CONSTANTINE ALEXANDER: I'm sorry?

18 JIM MONTEVERDE: There's a hole in the ground, so
19 it's not --

20 CONSTANTINE ALEXANDER: I've been by and there's a
21 hole in the ground, so I assume that doing it is a matter of
22 right.

1 JIM MONTEVERDE: Right.

2 CONSTANTINE ALEXANDER: But in any event --

3 BRENDAN SULLIVAN: Do they have a building permit?

4 CONSTANTINE ALEXANDER: They have a building
5 permit as well.

6 BOARD MEMBER: As-of-right.

7 CONSTANTINE ALEXANDER: Clearly, they're not
8 interested to do the variance any longer. All right, all
9 those in favor of dismissing the petition on the basis I've
10 decided, please say, "Aye."

11 THE BOARD: Aye.

12 CONSTANTINE ALEXANDER: Five in favor, case
13 dismissed.

14 [All five vote YES]

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(7:04 p.m.)

Sitting Members: Constantine Alexander, Brendan Sullivan,
Janet Green, Jim Monteverde, and Laura
Warnick

CONSTANTINE ALEXANDER: The Chair will now call
Case Number 017150 -- 72 Dana Street. Anyone here wishing
to be heard on this matter?

BRENDAN SULLIVAN: One second. The owner's
actually going to be here soon. Is it possible for us to --

CONSTANTINE ALEXANDER: Sure.

BRENDAN SULLIVAN: -- shuffle the order, and we'll
wait until he gets here?

CONSTANTINE ALEXANDER: Sure.

BRENDAN SULLIVAN: Okay, we'll wait.

CONSTANTINE ALEXANDER: We'll get a recess in this
case, because the owner is not here yet. And there -- the
owner's architect requests that we do that -- we wait until
he arrives.

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(7:05 p.m.)

Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Jim Monteverde, and Laura Warnick.

CONSTANTINE ALEXANDER: So with that, I'll move onto the next case, Case Number 017144 -- 117 Walden Street. And this is the Walden Street case involving the appeal of a decision by the -- Ranjit -- Commissioner. Anyone here wishing to be heard on this matter??

SUSANNE HOWARD: It was withdrawn.

CONSTANTINE ALEXANDER: That's what we tried to do last time; you wouldn't let us do it. Yes. Okay. I think the case -- for the benefit of those in the audience, the case involved an appeal of a building permit that was granted by the petitioner. That appeal was filed. The Commissioner subsequently revoked the building permit, so there's no longer any case to be heard.

So with that, the Chair moves that we accept the request to withdraw this case by the petitioner -- actually the case is moot anyway. All in favor, please say, "Aye."

THE BOARD: Aye.

1 CONSTANTINE ALEXANDER: Five in favor, case with -

2 - over.

3 [All vote YES]

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2 (7:06 p.m.)

3 Sitting Members: Constantine Alexander, Brendan Sullivan,
4 Janet Green, Jim Monteverde, and Laura
5 Warnick

6 CONSTANTINE ALEXANDER: The Chair will now call a
7 different Walden Street case, Case Number 017117. This is a
8 case involving the special permit to permit a relocation and
9 changed window pattern within the setback, with regard to a
10 building that's being renovated. Anyone here wishing to be
11 heard on this matter?

12 SARAH RHATIGAN: Good evening, Sarah Rhatigan,
13 Trilogy Law. I'm here representing the petitioner, who's
14 Matt Hayes.

15 MATT HAYES: Hi, Matt Hayes, owner of 117 Walden
16 Street.

17 SARAH RHATIGAN: In addition, we also had our
18 architect here, Milton Yu.

19 MILTON YU: Milton Yu, hello.

20 SARAH RHATIGAN: Thank you for hearing our case
21 this evening. This is a special permit application, and
22 despite with the filings may suggest, I think it's a

1 relatively simple case. This is a nonconforming, two-family
2 structure, preexisting nonconforming structure built in the
3 1890s, I believe, on a lot in Cambridge on Walden Street,
4 and Matt Hayes has been doing renovation of that structure.

5 The house was in really quite terrible condition,
6 and it's gut renovation, and there are some window changes
7 on the size of the structure that are within allowable
8 setbacks, and there's also I think one new window that's on
9 the rear of the house. And although the rear yard isn't
10 very far from --

11 CONSTANTINE ALEXANDER: It doesn't require any
12 relief from the rear.

13 SARAH RHATIGAN: Well, I would agree with you. I
14 think that Inspectional Services had thought that the
15 picture window, because it was on the right side of the
16 structure that falls within the setback, that it may require
17 relief. So in any event --

18 CONSTANTINE ALEXANDER: What about the left side?

19 SARAH RHATIGAN: -- the plans are there ET plans.

20 CONSTANTINE ALEXANDER: In your petition, you
21 indicated that the left side you don't need relief?

22 SARAH RHATIGAN: So this is where I think that we

1 have a legal difference of opinion with Inspectional
2 Services. Just before the hearing had started, I did ask
3 the Commissioner Mr. Singanayagam what his opinion was, or
4 what he had understood from the Law Department.

5 I believe under 5.21.1, there's language in there
6 that on lots of less than the required width, that the
7 requirement that the lot with requirement is only 30% of the
8 lot's width, so that the sum of both sides could only be
9 required to be 30% of the lot width.

10 And if you'll see my submission to the Board, I
11 did a calculation that -- 45 feet wide, 30% is -- what is
12 it, 13 something, so. 13 -- I think 13? 15?

13 MILTON YU: 15.

14 SARAH RHATIGAN: And so, that the lot width would
15 be a 7.5 side lot requirement. The Commissioner has since
16 told me just before we started that, he thinks that the last
17 week actually disagrees with that. Therefore, we're back to
18 when this was originally filed. There wasn't that
19 alternative interpretation, and so, the lot width
20 requirement was reported in the dimensional table. Milton,
21 can you help me with that?

22 And just so you know, I'm sorry if I'm not tiptop

1 on all the numbers, I wasn't brought into the case until
2 later on.

3 MILTON YU: 12.4.

4 SARAH RHATIGAN: So the lot width requirement
5 would be 12.4. So if you look at the structure, there's more
6 space on the left side than there is on the right side. The
7 right side's quite close to the side lot line.

8 On the left side, most of the structure is
9 conforming in terms of the side lot. It's just there's one
10 extended bay that kind of runs the middle of the structure,
11 and there are two window changes on that left side. There's
12 one that's at the roof.

13 So what we've done is we've tried to highlight
14 these. These are all the same plans that --

15 CONSTANTINE ALEXANDER: Yeah, I hope so --

16 SARAH RHATIGAN: -- you've got in the file.

17 CONSTANTINE ALEXANDER: I just want to make sure -
18 -

19 SARAH RHATIGAN: And the yellow at the top, it's -
20 - there used to be two small windows, and now it's one
21 slightly larger window that's centered on the bay.

22 CONSTANTINE ALEXANDER: At the basement level,

1 you're adding --

2 SARAH RHATIGAN: I'm looking at the top first.

3 CONSTANTINE ALEXANDER: Yeah.

4 SARAH RHATIGAN: So that's new. And then at the
5 basement level, the basement level is new.

6 CONSTANTINE ALEXANDER: Okay.

7 SARAH RHATIGAN: Okay?

8 CONSTANTINE ALEXANDER: What about the right side?

9 SARAH RHATIGAN: And then on the right side -- and
10 just to confirm, we're agreeing, I'm sorry let's just look
11 at the rear for a minute?

12 CONSTANTINE ALEXANDER: Oh, sure.

13 SARAH RHATIGAN: I just want to summarize since we
14 were talking about the rear of the property. So here's the
15 rear, and we've just said that we actually do not need any
16 relief on those rear windows. That's helpful. That's my --
17 that was always my understanding of the rule.

18 So there is one new picture window, but it's -- I
19 mean it's probably 100 feet from the nearest neighbor
20 anyway, so.

21 Okay. So on the right side -- and this is within
22 the setback, the right side of the structure, there are

1 window changes. And I'm going to explain the pen that
2 you're seeing, and I'm going to submit this to you. And
3 obviously, we'll share this with the neighbors, who I
4 understand are here and are concerned.

5 CONSTANTINE ALEXANDER: Well that's all part of
6 your file. You -- not what you're marking.

7 SARAH RHATIGAN: So the markings, there's one
8 correction, which we apologize, we just realized this
9 evening, which I'll explain to you.

10 CONSTANTINE ALEXANDER: Right.

11 SARAH RHATIGAN: And then there are a number of
12 openings that were actually removed. So there were windows
13 that were planned, that are actually not going to be there.
14 So there are -- and again, we'll give everyone the chance to
15 see this, I understand that the folks who are here are
16 interested.

17 So there are one, two, three, four, five window
18 openings that are removed, and they're shown with a red,
19 "X."

20 CONSTANTINE ALEXANDER: Those are all removed?

21 SARAH RHATIGAN: Yep.

22 CONSTANTINE ALEXANDER: You know, it makes more

1 sense if we recess this case, you go in the back room with
2 the neighbors, and they can look at that, and you can
3 discuss it with them. I think it's a little bit unfair to
4 them to have them come up and peer over your shoulder to
5 look at the plans.

6 So let's recess this case.

7 SARAH RHATIGAN: That's fine, sure.

8 CONSTANTINE ALEXANDER: Okay. And we'll take the
9 next case, and we'll renew, finish that, come back.

10 SARAH RHATIGAN: Okay, great. Thank you.

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(7:14 p.m.)

Sitting Members: Constantine Alexander, Brendan Sullivan, Janet Green, Jim Monteverde, and Laura Warnick

CONSTANTINE ALEXANDER: The Chair will now call Case Number -- last of the continued cases -- Case Number 8679 -- 30-50 Churchill Avenue. Anyone here wishing to be heard on this matter?

CARSTEN SNOW-EIKELBERG: Yes.

SUSAN COHEN: Good evening.

CONSTANTINE ALEXANDER: Good evening.

SUSAN COHEN: I'm Susan Cohen, General Counsel of the Cambridge Health Authority, and I'm here with Carsten Snow-Eikelberg, who is the planner who's working on this project. And what we've before you --

THE REPORTER: Can you spell your names, please?

CARSTEN SNOW-EIKELBERG: First name is Carsten, C-a-r-s-t-e-n. Last name is Snow-Eikelberg, and the second part is E-i-k-e-l-b-e-r-g. Did you need Sue's as well? Okay.

SUSAN COHEN: My name is Susan Cohen. So what

1 we've applied for here is for an insubstantial change to a
2 previously granted comprehensive permit. And we have the
3 support of the Department, and we ask of you to permit this
4 very small, de minimis changes.

5 CONSTANTINE ALEXANDER: Why don't you tell us what
6 the changes are, and we'll make the judgment as to how small
7 they are?

8 SUSAN COHEN: Okay. I'm going to let Carsten
9 present you with what the changes are.

10 CARSTEN SNOW-EIKELBERG: So good evening.

11 CONSTANTINE ALEXANDER: Good evening.

12 CARSTEN SNOW-EIKELBERG: These changes are being
13 requested as part of a renovation and upgrade to the
14 building, which is currently in use as a low-income elderly
15 and disabled residential building.

16 The 2003 comprehensive permit, which is what we
17 were requesting the insubstantial change to, granted us the
18 ability to enclose some of the balconies on the building.

19 And so, we are just seeking to extend that and
20 enclose the remainder of the balconies, mainly as an effort
21 to increase the energy efficiency of the building, to update
22 the building cladding and make sure that we can reduce our

1 energy use, and also the comfort and safety of our residents
2 with an improved unit layout.

3 CONSTANTINE ALEXANDER: But what if the reaction
4 of those people who now have balconies and are going to lose
5 them if we grant you the relief you're seeking?

6 CARSTEN SNOW-EIKELBERG: Sure. So the Cambridge
7 Housing Authority and myself in particular, we've had a very
8 extensive process with the residents, beginning about in
9 January of this year, with numerous resident meetings to
10 kind of walk them through design changes and design options.

11 There was, you know, initially some questions and
12 some resistance to the idea of removing the balconies, but
13 ultimately the combination of a more comfortable living
14 environment as well as increased unit space.

15 Because enclosing the remainder of the balconies
16 will add approximately 40 square feet of space to every
17 unit, which in an elderly unit that are not necessarily ADA
18 accessible will still allow for really good universal design
19 elements and a lot of comfort.

20 SUSAN COHEN: If I can just add?

21 CARSTEN SNOW-EIKELBERG: Sure.

22 SUSAN COHEN: This is kind of an ironic point,

1 which is in our original comprehensive permit application in
2 2003, we sought to remove to enclose the balconies. But in
3 reviewing it, we don't actually believe we needed that
4 relief at the time, and we don't believe we need that relief
5 now.

6 But it is a historical fact that we did receive
7 that in the initial comprehensive permit. So if I could
8 just touch base on what the relief is that we're seeking at
9 this point, and then the details can be filled in by
10 Carsten?

11 CARSTEN SNOW-EIKELBERG: Sure.

12 SUSAN COHEN: The original special permit variance
13 when the building was constructed required 50 parking
14 spaces. At the time we submitted the comprehensive permit
15 in 2003, there were 46 parking spaces and that was reflected
16 on the Dimensional form.

17 Since then, and we believe due to restriping for
18 handicapped accessibilities there are 45 spaces -- in fact,
19 only 30 residents have parking permits, so we have much
20 excess parking spaces.

21 But one of the things we're presenting to you is
22 to just confirm the existing parking, no reduction is

1 acceptable.

2 CONSTANTINE ALEXANDER: What about the need of
3 parking for people who visit those who live with the
4 construction?

5 SUSAN COHEN: There's plenty of parking for those
6 people, because there's only the 30 spaces that are --

7 CONSTANTINE ALEXANDER: So the this 16 or whatever
8 --

9 SUSAN COHEN: -- that they're available for the
10 guests and people who work there.

11 CONSTANTINE ALEXANDER: For guests.

12 SUSAN COHEN: Additionally, another item that
13 we're providing because we're enclosing the decks is a new
14 roof deck.

15 And I'm going to let Carsten talk a little bit
16 about the dimensions and the details of the roof deck, to
17 provide a little bit more outdoor space. There is a lovely
18 outdoor landscaped area in the back of the building, so that
19 continues.

20 And that was a condition of the original
21 comprehensive permit, was to have some outdoor space for the
22 residents, and we continue to provide that and increase

1 that, in fact.

2 CONSTANTINE ALEXANDER: And this deck is not on
3 the street level?

4 SUSAN COHEN: No, it's not.

5 CARSTEN SNOW-EIKELBERG: Oh, actually, I just want
6 to make one correction. It is not actually a roof deck. It
7 is on the second story.

8 CONSTANTINE ALEXANDER: Right.

9 CARSTEN SNOW-EIKELBERG: So if the plans that we
10 had submitted --

11 CONSTANTINE ALEXANDER: I've seen plans.

12 CARSTEN SNOW-EIKELBERG: Yeah. So it's not right
13 on the street level, it's actually second story, faces the
14 courtyard. So it's sort of tucked in and meant to be --

15 CONSTANTINE ALEXANDER: So it's not visible to the
16 street?

17 CARSTEN SNOW-EIKELBERG: I mean, it's visible if
18 you are on Clarendon, but it's not right adjacent to the
19 street, it's fully within I would say where the courtyard
20 is.

21 And finally, the last item that we're asking that
22 we're doing substantial installation to the building for

1 energy efficiency purposes, and there's like a very small
2 differential between the existing setback which is at 25
3 feet proposed, which is 24 feet 6 inches. And we're asking
4 for permission to proceed with that installation.

5 CARSTEN SNOW-EIKELBERG: Okay.

6 CONSTANTINE ALEXANDER: And I think you've
7 indicated, that's why I want to get it on the record, you
8 had conversations or meetings with the residents of the
9 building, and gone over or reviewed with them what you're
10 proposing to do?

11 SUSAN COHEN: Yes. We have had several meetings,
12 like I said since January. I would estimate probably at
13 least 10 with the residents as well as shared multiple
14 newsletters, so they are all aware.

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

17 BRENDAN SULLIVAN: Me. The decks that you are
18 closing are off the living room?

19 CARSTEN SNOW-EIKELBERG: Yes, they're --

20 BRENDAN SULLIVAN: So that will the enclosure
21 enclosing the space be an integral part of the living room,
22 or separated by a curtain wall of the door, or how does --

1 it become a three-season room, or?

2 CARSTEN SNOW-EIKELBERG: So the balconies are
3 actually recessed into -- so it will just become part of the
4 living room. So it'll just be making the outside wall
5 flush, rather than the recessed balcony that it is now.

6 CONSTANTINE ALEXANDER: Any other questions? I'll
7 open the matter up to public testimony. Is there anyone
8 here wishing to be heard on this matter? Apparently not.
9 Well, last I looked at it, we have no letters in the file.
10 Do we have any letters? Comments? So I will close public
11 testimony. Ready for a vote?

12 THE BOARD: Yes.

13 CONSTANTINE ALEXANDER: The Chair moves that the
14 changes as proposed by the petitioner in this submission
15 constituent insubstantial changes to the comprehensive
16 permit that was granted for this project in 2003, and
17 therefore may proceed as proposed. All those in favor,
18 please say, "Aye."

19 THE BOARD: Aye.

20 [All five vote YES]

21 CONSTANTINE ALEXANDER: Five in favor, relief
22 granted.

1 CARSTEN SNOW-EIKELBERG: Thank you very much.

2 SUSAN COHEN: Thank you very much.

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1 (7:22 p.m.)

2 Sitting Members: Constantine Alexander, Brendan
3 Sullivan, Janet Green, Jim Monteverde, and Laura
4 Warnick

5 CONSTANTINE ALEXANDER: Okay, the Chair will now
6 return to a case we started and recessed, Case Number 017150
7 -- 72 Dana Street.

8 ADAM GLASSMAN: Adam Glassman, GCD Architects, 2
9 Worthington Street, Cambridge. Okay, so good evening.

10 CONSTANTINE ALEXANDER: Good evening.

11 ADAM GLASSMAN: So what we're dealing with is --
12 all right, so we've got a preexisting nonconforming lot,
13 typical of the neighborhood. It's a long, narrow lot with a
14 large, triple-decker situated in the middle of it.

15 What makes this structure unusual is the rear,
16 somewhat grotesque, partially enclosed stair that somebody
17 tacked on who knows when. The stair is no longer
18 functional, it's no longer needed, and we're seeking --

19 CONSTANTINE ALEXANDER: Why is it no longer
20 needed? Have you put the stairs inside?

21 ADAM GLASSMAN: We have code-complaint single
22 means of egress and sprinklers.

1 CONSTANTINE ALEXANDER: I'm sorry, say that again?

2 ADAM GLASSMAN: A code-compliant single means of
3 egress and sprinklers.

4 CONSTANTINE ALEXANDER: Okay.

5 ADAM GLASSMAN: So we're no longer required to
6 have two means of egress.

7 CONSTANTINE ALEXANDER: Why not just take the
8 staircase structure down and increase the yard space and
9 improve the privacy of your neighbors?

10 ADAM GLASSMAN: We could do that, although it
11 would only benefit the first floor. The first floor would
12 have yard space directly attached to its rear.

13 Anyone who's lived on the second or third floor
14 walkup in a dense city like Cambridge knows that having even
15 a modest amount of open space connected directly to your
16 unit makes a world of difference. It brings a great degree
17 of livability, fresh air, a place to sit.

18 CONSTANTINE ALEXANDER: My concern, though, is --
19 and you know the letters of opposition --

20 ADAM GLASSMAN: I did, I did.

21 CONSTANTINE ALEXANDER: -- from neighbors. And
22 it's a question of privacy.

1 ADAM GLASSMAN: Well, let me address that.

2 CONSTANTINE ALEXANDER: Yeah, please.

3 ADAM GLASSMAN: Our first proposal, which we
4 reviewed with neighbors, was to extend the proposed porches
5 along the entire rear of the building, which architecturally
6 makes sense, but we understood there were concerns about
7 privacy, about noise, about the size.

8 So we revised that proposal, we eliminated
9 completely the first-floor deck. The second and third floor
10 decks we pulled out of the right-side setback completely,
11 and we're proposing 16-foot-3-inch decks for the second and
12 third floor, with 7-foot tall or 6-foot tall privacy
13 screens, solid, tongue and groove, solid wood style on
14 either end. There will be no direct visual connection from
15 either of these decks to either of their side neighbors.

16 And these --

17 CONSTANTINE ALEXANDER: Have you reviewed these
18 plans with the neighbors?

19 ADAM GLASSMAN: We have. And they want no decks,
20 really. This is a case where there's no amount of deck
21 space that they're going to be happy with. And I understand
22 that even small amounts of change could be unsettling, and

1 people often do not like to see anything which could affect
2 them in any way, I'm not sure that the potential of hearing
3 somebody on their deck is a legitimate reason to reject
4 this. I mean, there could be no decks or porches approved
5 in the city. If the idea of potentially hearing somebody on
6 that space.

7 CONSTANTINE ALEXANDER: How big are these decks?

8 ADAM GLASSMAN: 16 three inches x 6 five deep.

9 CONSTANTINE ALEXANDER: They're good size, almost
10 the size of a room?

11 JANET GREEN: How big are they?

12 ADAM GLASSMAN: Well, they're six feet five inches
13 deep.

14 CONSTANTINE ALEXANDER: Oh, okay.

15 ADAM GLASSMAN: And 16 feet three and a half
16 inches long. When you consider this door swing space, you
17 have room for about two chairs.

18 Now, I know -- well, first I want to show -- you
19 know, this is -- what we're proposing is actually the
20 standard in this community. It's very dense, and almost all
21 of the surrounding triple-decker structures all have some
22 kind of outdoor porch. They're actually -- most of them are

1 covered, ours are supposed to be open at the top, so we're
2 not adding FAR there.

3 Our neighbors to the right, they're quite
4 fortunate. They live in a beautiful single-family, very
5 large yard, they have their own large roof deck, which I'm
6 sure they enjoy. I'm sure they're able to enjoy it without
7 creating too much noise for neighbors.

8 Where that house comes closest to our proposed
9 decks, they've got a one and a half story and a one-story
10 bump out from the main house, almost entirely solid walls
11 with transoms on one of them. We're pulled back from the
12 lot line.

13 The new decks that we're proposing are seven feet
14 from the corner of our building, another four feet to the
15 lot line. And the new construction that we're really
16 proposing is completely out of the setback. So we think
17 what we're proposing is reasonable and modest.

18 CONSTANTINE ALEXANDER: Are you an occupant of the
19 structure?

20 THAD SEYMORE: I am not, not currently at least.
21 I am not currently an occupant. It's completely under
22 construction. My wife and I are considering one of the

1 units for ourselves, but that's still kind of up in the air,
2 I can't answer that for sure.

3 I would say just to further what Adam said, there
4 are a number of decks that look down in the same general
5 area as the decks we were proposing. Those decks don't have
6 privacy screening. So I feel that we've gone a little bit
7 further in an attempt to -- you know, keep everybody happy
8 here.

9 I would also say that removing decks and creating
10 a yard space actually invites larger groups. If this is
11 common yard space for three condos, then somebody says to
12 their other condo owners, "Hey, Saturday we're going to have
13 some friends over to barbecue." They do so, it's a lot more
14 people in the yard than you can fit on a deck, so I think
15 this actually mitigates some of that concern.

16 It's also been clear to me through talking to Adam
17 and zoning attorneys and some other people that, you know,
18 the laws of the city are to enforce noise ordinance and
19 those sorts of thing. If there is something going on in
20 these decks that's creating a noise ordinance, then by all
21 means the neighbors should call the police.

22 But these have been designed as family units to

1 accommodate a family, not students, and not large groups of
2 that sort. So --

3 CONSTANTINE ALEXANDER: How big are the units?
4 How many bedrooms?

5 THAD SEYMORE: The second and third floor, which
6 have the decks, are two bedrooms each.

7 THE REPORTER: Sir, could you spell your name for
8 me, please?

9 THAD SEYMORE: Absolutely. Thad, T-h-a-d Seymore,
10 S-e-y-m-o-r-e.

11 CONSTANTINE ALEXANDER: While Brendan's looking at
12 the plans, questions from members of the Board at this
13 point?

14 JIM MONTEVERDE: Do you have some letters in the
15 file?

16 CONSTANTINE ALEXANDER: Yeah, I'm going to get
17 them. I'll open the matter up to public testimony. Anybody
18 here wishing to be heard in this matter? Apparently not.
19 Oh, I'm sorry, I didn't see you, I apologize. Would you
20 like to speak? If so, please come forward and deal with the
21 mic.

22 MURRAY SMITH: I'm Murray Smith, 70 Dana Street.

1 CONSTANTINE ALEXANDER: So you're an abutter?

2 MURRAY SMITH: I'm an abutter. I'm the abutter on
3 -- with the luxury of --

4 THE REPORTER: Could you spell your name for me
5 please?

6 MURRAY SMITH: M-u-r-r-a-y Smith, 70 Dana Street,
7 the abutter on the right. I'd just like to comment on two
8 things that have been said so far. The first that this is -
9 - this triple-decker building is typical of the
10 neighborhood.

11 You may all be familiar with this block, but there
12 are what I think of as half-width lots from Cambridge Street
13 down to this building, and then what I think of as full-
14 width lots from there on down the block.

15 So this building is on the border of two kinds of
16 buildings in the neighborhood; the same thing is true on
17 Ellsworth Street. Behind this building, there are condos
18 coming down to this point, the building behind, and then
19 single-family homes and two-family homes that are not
20 triple-deckers from there on down.

21 The second thing I'd like to correct is the idea
22 that the other decks in the immediate vicinity don't have

1 privacy screenings.

2 The fact is the other decks, including 74-76 Dana
3 Street, which is also another rehab, and both of the
4 buildings directly behind those two buildings, have decks
5 that are recessed out of a corner of the footprint of the
6 building.

7 So they are trapped in two walls, they don't stick
8 out at the back of the building. So the privacy is provided
9 in that way, they do face straight out into one neighbor and
10 not the other neighbor.

11 Our concern is we have expressed in our letter to
12 the Board is not with privacy, that problem has been solved
13 with the narrowing of the decks, the privacy screens also
14 help with that.

15 As we said in our original filing, when we
16 considered this possibility, that does solve the privacy
17 problem. We're really concerned about noise. That's to the
18 concern we have. Whether that's a legitimate concern --

19 CONSTANTINE ALEXANDER: Oh, it's a very legitimate
20 concern.

21 MURRAY SMITH: -- you can judge that. Thank you
22 very much.

1 CONSTANTINE ALEXANDER: Thank you. The privacy
2 screen doesn't work to muffle the noise?

3 MURRAY SMITH: That would be a matter of judgment
4 and opinion. I would have my opinion, and I'm sure they
5 would have theirs.

6 CONSTANTINE ALEXANDER: Okay.

7 MURRAY SMITH: We wouldn't be likely to agree.

8 CONSTANTINE ALEXANDER: Thank you, again. Sir?

9 MURRAY SMITH: I'm sorry. May I just say one more
10 thing?

11 CONSTANTINE ALEXANDER: Sure.

12 MURRAY SMITH: It was said that we -- that the
13 petitioners thought that there was nothing that would be
14 acceptable to the neighbors. That was a reference to us, I
15 think. Actually, we were never asked what might be
16 acceptable, or if we had any ideas.

17 One idea that I would have suggested if they think
18 the decks are this important, and I had been asked, would be
19 to cut the decks out of the building like the other three
20 buildings in the immediate vicinity are. I don't think that
21 would be economical for them, but that would be a method
22 that would probably not require any variance, I don't know.

1 It would be hard for us to object to. So we've done a good
2 bit of thinking about what would be an acceptable outcome.

3 Another idea is -- that I don't think practical or
4 workable or that I would agree with or they would, but it's
5 not that we're just intransigent.

6 MARK CAREAGA: Good evening, my name is Mark, with
7 a k, Careaga, C-a-r-e-a-g-a. I'm trustee of the 78 Dana
8 Street Condominium Trust.

9 CONSTANTINE ALEXANDER: And you submitted a
10 letter?

11 MARK CAREAGA: I submitted a letter, and really my
12 question is, will that letter be read into the record, or do
13 I send it to our neighbors?

14 CONSTANTINE ALEXANDER: Well, it's up to you. If
15 you want to summarize the letter, I will. If you want me to
16 read the whole letter into the record, I will do that.

17 MARK CAREAGA: I think if you read the full
18 record.

19 CONSTANTINE ALEXANDER: Okay.

20 MARK CAREAGA: The whole letter, that's fine.

21 CONSTANTINE ALEXANDER: Okay.

22 MARK CAREAGA: I do want to -- building on what

1 Murray said, that this idea of carving into the existing
2 building, which, you know, is sort of a quasi-three-decker
3 with a gambrel roof, from our perspective would probably be
4 acceptable.

5 I haven't discussed that with my fellow owner-
6 occupants. But I think our main concern is noise. Privacy
7 is not at all an issue for us. We're leapfrogged over two
8 doors down. It's really just further noise exasperation,
9 and we already deal with noise in the neighborhood. Thank
10 you.

11 CONSTANTINE ALEXANDER: Thank you. Anyone else
12 wishes to be heard on this matter? Apparently not. As
13 indicated, we have a number of letters in our file, and I
14 will start by reading the letter by Mr. Careaga requested.

15 "I am writing on behalf of the 78 Dana Street
16 Condominium Trust to express our concerns about and
17 opposition to the proposed new exterior decks of 72 Dana
18 Street.

19 "My understanding is at the first meeting held on
20 August 15, 2019, the applicants in this case requested a
21 continuance in order to better understand the neighbors'
22 concerns, so that they could address it in their revised

1 submission.

2 "The owner and his architect reached out to me
3 earlier this month to discuss changes to the proposed
4 design. While we were unable to meet in person, we had a
5 discussion via e-mail.

6 "And in the course of that description, I had an
7 opportunity to see revised plans and elevations, that are
8 substantially the same as, if not identical to, the revised
9 submission that is going before you on September 26, as part
10 of the continued agenda.

11 "At the owner and architect's request, I shared
12 the information I received from the architect with the other
13 owner-occupants at 78 Dana. Unfortunately, our collective
14 concerns remain unaddressed.

15 "Summarizing my discussion with the architect,
16 One, Architect: we have added solid wood screen panels at
17 the ends of the deck, which will be an effective sound
18 barrier. Neighbor: Solid wood screens on the ends might
19 help deflect sounds, but if there is a gathering or a party,
20 we are pretty sure we will still hear them, despite the
21 screens.

22

1 "Two, Architect: These are not party decks. The
2 potential noise would not include loud music or shouting.

3 Neighbor: What is the basis for this claim? It will depend
4 on the unknown future occupants.

5 "Architect: The proposed decks are sized for a
6 couple of chairs, not tables, and certainly not crowds.

7 Neighbor: The proposed smaller decks appear to be almost
8 100 square feet.

9 "If an occupant decided not to put any furniture
10 on the deck, we can easily imagine 10 or more people
11 spilling onto the deck during a party.

12 "Architect: These units will be priced as high-
13 end condos for young professionals or empty-nesters, not
14 students.

15 "Neighbor: There is nothing stopping Harvard from
16 purchasing 1 or more of these units and leasing them to
17 graduate students, who will certainly have parties, or a
18 wealthy parent could purchase one as an involvement, and let
19 their children attending university live there.

20 "Architect: Almost all of the nearby structures
21 have similar structure decks.

22

1 "Neighbor: The presence of existing decks on
2 surrounding buildings is beside the point. It is one thing
3 to have a benign, if unsightly, nonconforming condition, but
4 it is another issue altogether to replace that with a new
5 nonconforming condition that we can reasonably expect will
6 have an adverse impact on our quality of life.

7 "In short, we are opposed to the proposal to
8 construct new exterior decks within the rear setback of the
9 subject property, due to concerns about noise and replacing
10 an existing, benign, nonconforming condition with a new,
11 nonconforming condition that will have an adverse impact on
12 the neighbors.

13 "We therefore respectfully request the Board of
14 Zoning Appeal deny the request for a variance to construct
15 these new decks."

16 CONSTANTINE ALEXANDER: We now have a letter from
17 Anise K and R Murray Smith, who reside at 70 Dana Street, so
18 they're abutters. That's not you, sir. I'm not going to
19 read your letter unless you want me to. I assume you --

20 MURRAY SMITH: It doesn't make any difference.

21 CONSTANTINE ALEXANDER: Well, I assume you covered
22 everything in the letter your oral comments. If not --

1 MURRAY SMITH: No, for your deliberations, you
2 know what's in the letter, right?

3 COLLECTIVE: Yeah.

4 CONSTANTINE ALEXANDER: we have a letter from
5 Magali, M-a-g-a-l-i Maiza, M-a-i-z-a, who resides -- and
6 presumably resides, at 82 Dana Street.

7 "I have been recently informed of the hearing held
8 on August 15, regarding the proposed construction of three
9 exterior decks along the rear façade of 72 Dana.

10 "Comparing the planned project with existing decks
11 on buildings of similar size nearby, it appears clearly that
12 these new exterior constructions will add to the density of
13 the neighborhood, causing new privacy issues for abutters,
14 especially those living at 70 Dana.

15 "I live at 82 Dana, and I would like to weigh in
16 regarding the potential noise issue. The yard behind our
17 house is fully visible from all our surrounding neighbors.
18 It was a preexisting condition of our property, and we
19 accepted it as it is -- as is, we accepted it as is.

20 "Fortunately, we and our closest neighbors have
21 managed it with mutual common sense and respect so far. In
22 the case of the new deck construction at 72 Dana, however,

1 the privacy issue has been anticipated, so the Board of
2 Zoning can request an acceptable solution from the
3 developer.

4 "I am confident that the Zoning Board is eager to
5 encourage architectural solutions that avoid creating new
6 privacy noise issues in the neighborhood."

7 CONSTANTINE ALEXANDER: And I will just say in
8 your proposal you're addressing that?

9 ADAM GLASSMAN: I agree to that, yes.

10 CONSTANTINE ALEXANDER: Okay. Can you think of
11 anything else? We have a letter from Belinda Watt, 79 Dana
12 Street #2, and she wrote this letter on August 15, so this
13 is involving the original plan, so I don't think she's seen
14 the plans that you have right now.

15 BOARD MEMBER: Yes, she has.

16 CONSTANTINE ALEXANDER: You have?

17 BOARD MEMBER: She has seen those.

18 CONSTANTINE ALEXANDER: She has? Okay, thank you.

19 BOARD MEMBER: This letter is, as was in the
20 previous case.

21 CONSTANTINE ALEXANDER: Okay. I'll still read the
22 letter.

1 "I just became aware that a house near mine has
2 applied for a variance to build three large porches. I am
3 concerned for several reasons.

4 "First, in reviewing the submitted drawings, these
5 porches appear to be quite wide, running the full width of
6 the building. We are a tight neighborhood with houses very
7 close together. Large porches would take from sunlight and
8 views that the neighbors currently have, and they would
9 impose on the privacy.

10 "Secondly, the two development projects, 72 Dana
11 and 74-76 Dana being run by the applicant, have been
12 worrisome thus far. They began work without permits, and at
13 the beginning we were doing illegal asbestos remediation.
14 Some people are masked, many women doing the work not in
15 masks. They don't use proper -- "

16 CONSTANTINE ALEXANDER: This is not relevant to
17 the zoning. Let's -- next paragraph:

18 "We appreciate that city stopped work while proper
19 permits were applied for and put in place. In light of the
20 above, we request that the developer put together detailed
21 drawings of exactly what the porches will look like, and
22 provide shade and view studies of how the neighbors will be

1 affected.

2 "I hope the city will request a more modestly-size
3 porches are built; something more in keeping with the size
4 of the house and the density of the neighborhood."

5 CONSTANTINE ALEXANDER: We have this letter, it's
6 from Elyse K and R. Murray Smith, and I think that's it.
7 Let me just make sure. It is. So those are all the letters
8 that we have in our files. Are you developing the nearby
9 property as well?

10 THAD SEYMORE: Yes, sir.

11 CONSTANTINE ALEXANDER: Any final comments?

12 ADAM GLASSMAN: Yeah, I want to just clarify that.
13 We're not -- we don't believe we're entitled to porches
14 because everyone else has them and that makes it okay. I
15 think we can all agree that in a dense urban environment,
16 all people benefit some -- even modest connection to the
17 exterior from their homes.

18 Porches like these, like the neighbors have, like
19 we're proposing, they just make sense. They're not
20 extravagant porches that we're proposing, they're not party
21 decks, we've reduced them.

22 I think I can say with some authority that a solid

1 wood fence does muffle airborne noise. I don't think
2 there's any real mystery here to what we're proposing, and
3 how it would have very limited impact on the neighborhood.

4 CONSTANTINE ALEXANDER: Okay, thank you.

5 THAD SEYMORE: If I may?

6 CONSTANTINE ALEXANDER: Sure.

7 THAD SEYMORE: Just a comment on the last letter
8 and the comments to the abutting property that I am
9 developing.

10 There was an issue at the start of that project.
11 The subcontractor that began work without authorization
12 contract from me, I'm currently involved in the legal
13 situation with them. They were not supposed to be inside of
14 that building, I was away. There was never asbestos in that
15 building. The Building Department has record of that, so
16 just to be clear.

17 CONSTANTINE ALEXANDER: I appreciate your comment.

18 THAD SEYMORE: Yeah.

19 CONSTANTINE ALEXANDER: It's not just for your
20 betterment, it's not directly germane to the case we have
21 before us.

22 THAD SEYMORE: I understand, but it matters to me.

1 CONSTANTINE ALEXANDER: I understand that, and
2 you're --

3 THAD SEYMORE: Thank you.

4 CONSTANTINE ALEXANDER: Your explanation is on the
5 record.

6 JIM MONTEVERDE: Can I ask a question? Will these
7 be rental or ownership?

8 THAD SEYMORE: For sale.

9 JIM MONTEVERDE: For sale.

10 THAD SEYMORE: Condos, for sale.

11 JIM MONTEVERDE: Condos. You'll draft the master
12 deed?

13 THAD SEYMORE: Yes, sir.

14 JIM MONTEVERDE: So could you not insert in the
15 master deed some limitation of use for those decks, to say
16 that therefore the personal enjoyment of the owners and not
17 -- something -- I mean, you could have a party at your
18 request house, that's one thing, no one is going to stop
19 that. But if the comment is about the party on the deck,
20 isn't there a way you can manage that in from --

21 THAD SEYMORE: There is, yes.

22 JIM MONTEVERDE: -- through some restriction on

1 how it's used?

2 THAD SEYMORE: Yeah, you can have language to --

3 ADAM GLASSMAN: Absolutely.

4 THAD SEYMORE: -- limit activities, or --

5 JIM MONTEVERDE: So will you do that?

6 THAD SEYMORE: -- limit activities or limit noises
7 past a certain time.

8 ADAM GLASSMAN: Gladly.

9 THAD SEYMORE: Does that satisfy --

10 CONSTANTINE ALEXANDER: If I may, one drawback to
11 that, as a suggestion, is that that's in the master deed.
12 Who can enforce it? You know, the neighbors who feel their
13 privacy is being invaded, they can't take action based upon
14 a violation of a master deed, they're not parties to it.
15 It's only the people who are parties to that deed can
16 complain.

17 So if there's a loud party let's say in the second
18 level, the people in the third level can challenge it, but
19 not anybody else in the neighborhood.

20 ADAM GLASSMAN: That's right.

21 JANET GREEN: I think, though, having something in
22 writing that indicates the intent to somebody who's

1 purchasing the building does have an impact. It may not
2 have enough impact. I mean, people have different ideas
3 about noise and living in an urban environment, and how much
4 noise -- potential noise.

5 I think if you put in an advance call, you know
6 you've got definite noise, you're putting in condos -- high-
7 end condos for people who want to come there and live in a
8 small place. I'm not sure that you're asking for something
9 that you can predict will be noisy.

10 CONSTANTINE ALEXANDER: I'm not -- let me -- I'm
11 not in favor of granting relief. First of all, I think I
12 quarrel with the notion these could be high-end
13 condominiums.

14 You can look at the neighborhood. It's not a
15 neighborhood that is going to have a high-end condominium.
16 This is a -- it's a very good working student/working class
17 neighborhood in which you're going to have that.

18 And I think -- I always am very sensitive to
19 neighbors' issues, particularly when it comes to things in
20 their opinion, and I believe are reasonable, could interfere
21 with the privacy and their use of the property that they
22 have.

1 So I hear you.

2 JANET GREEN: Mm-hm.

3 CONSTANTINE ALEXANDER: I go a different route.

4 JANET GREEN: Mm-hm.

5 LAURA WARNICK: The intent that you're telling us
6 is this is really just for two or three people to sit out,
7 whatever, enjoy their glass of wine, reading --

8 ADAM GLASSMAN: That's how they're sized.

9 LAURA WARNICK: Well 16 feet is not for two or
10 three people. I think it's narrow. I don't think you're
11 going to get a lot of people out there, but how about if you
12 just think about reducing it slightly more, so it really is
13 a place where three people can sit out?

14 ADAM GLASSMAN: We could --

15 LAURA WARNICK: Which assures the neighbors that -
16 -

17 ADAM GLASSMAN: What lengths are you thinking that
18 would be?

19 CONSTANTINE ALEXANDER: I don't think we should --

20 LAURA WARNICK: I can't tell you that.

21 CONSTANTINE ALEXANDER: -- do that for you. If
22 you want to continue the case further, and to reconsider

1 these decks and maybe come up with a -- smaller decks or --

2 ADAM GLASSMAN: Could we propose a size now?

3 CONSTANTINE ALEXANDER: I'm sorry?

4 ADAM GLASSMAN: Could we propose a size now, 12
5 feet?

6 CONSTANTINE ALEXANDER: I want to see -- I mean,
7 we've got to see the drawings. We've got to see -- we've
8 got to approve those with the Building Department, so we
9 can't just do it that way.

10 ADAM GLASSMAN: But I think we're going to
11 continue. But before we do, I just really want to point out
12 that, you know, our friends on the right, this is what
13 they're enjoying, and this is something that has no visual
14 connection to the decks we're proposing.

15 And the other neighbors we heard from are doors
16 down, and the idea that they're going to hear some chatting
17 on a deck at 72 and they're at 78, and they've got multiple
18 buildings between them, I just don't see how this --

19 CONSTANTINE ALEXANDER: The thing you have to
20 worry about -- I worry about, at least, is the cascade
21 effect. We have these decks, and someone in a house one of
22 two doors down and a couple of rooms -- they want them.

1 ADAM GLASSMAN: They've already got them.

2 CONSTANTINE ALEXANDER: Well, maybe other relief.

3 I mean, you've got to -- you start -- we'll continue the
4 case. I'm saying if you come up with another proposal, I
5 wouldn't reject it. But you've got to deal with the fact
6 that this is a tight neighborhood, you have neighbors who
7 have problems --

8 JANET GREEN: Have they had problems?

9 ADAM GLASSMAN: No, I just --

10 CONSTANTINE ALEXANDER: Well, they kind of have
11 problems --

12 ADAM GLASSMAN: -- well, the problem -- and what
13 we haven't talked about is there's a history to this
14 property that precedes us. And what I gather from some of
15 the neighbors, this location has been a big noise problem
16 for a very long time.

17 But it's under new ownership, and it's being
18 renovated. And what we're proposing really is in the
19 architectural style, the character, the tradition of this
20 neighborhood.

21 CONSTANTINE ALEXANDER: I'll go back to do you
22 want to continue the case or not?

1 ADAM GLASSMAN: Do we have a vote?

2 LAURA WARNICK: I'm in favor.

3 CONSTANTINE ALEXANDER: [Laughter] you can roll
4 the dice and see where it goes.

5 LAURA WARNICK: I think that the goal would be to
6 reach an accommodation with your neighbors --

7 CONSTANTINE ALEXANDER: Yes.

8 LAURA WARNICK: -- so that your intent is clear.
9 I've lived in lots of different places in Cambridge.
10 They've always had -- been noisy, regardless of whether
11 there's a deck or not. The windows are open in summertime.

12 So, but I think the point is that you want to be a
13 good neighbor, you want your neighbors to -- you want to
14 start out on good footing with your neighbors, and it's
15 important to reach an accommodation that really you're
16 indicating expect this to be used by a few people now.

17 I think looking at the deck and sizing it so that
18 neighbors are comfortable with that would be a good start.

19 ADAM GLASSMAN: We will reduce it, but I also want
20 to say that when we had these conversations on site, the
21 clear message from the neighbors was that it would be a very
22 tough sell, and they weren't in favor of anything if they

1 could hear somebody chatting on their phone.

2 And I think we've effectively addressed it in
3 pulling it back a few more feet is a gesture. I don't think
4 it'll make -- it'll relieve any concerns in a real way.

5 CONSTANTINE ALEXANDER: Again, do you want to
6 continue the case?

7 ADAM GLASSMAN: We want to continue.

8 CONSTANTINE ALEXANDER: So you had your hand up,
9 but unless you had something relevant to the continuance.

10 ADAM GLASSMAN: No.

11 CONSTANTINE ALEXANDER: Okay.

12 JANET GREEN: I'd be interested in hearing from --

13 CONSTANTINE ALEXANDER: Sure.

14 JANET GREEN: -- other, you know --

15 CONSTANTINE ALEXANDER: If people want to --

16 JANET GREEN: -- I mean, you said what you have,
17 and just the --

18 CONSTANTINE ALEXANDER: I've already indicated I'm
19 going to vote against the proposal, as presented tonight.

20 THAD SEYMORE: You know what, actually we need to
21 take a vote. We're not in the position we can continue,
22 because of timing.

1 CONSTANTINE ALEXANDER: Who says you're --

2 THAD SEYMORE: Well, I'll just say, weather
3 conditions, what's coming up with winter here, it -- I've go
4 to the move to --

5 CONSTANTINE ALEXANDER: It's you're call entirely.

6 THAD SEYMORE: But it benefits the neighborhood
7 for me to be done. But we would like to offer reducing the
8 length from 16 to 12, and that's an easy visual --

9 CONSTANTINE ALEXANDER: Okay, so your proposal
10 before that we're going to vote on is these plans, that the
11 deck size will be reduced from 16 feet to 12 feet?

12 THAD SEYMORE: Yes.

13 LAURA WARNICK: I'm comfortable with that.

14 CONSTANTINE ALEXANDER: Okay.

15 BOARD MEMBER: Ready for a vote now.

16 CONSTANTINE ALEXANDER: The Chair moves that we
17 make the following findings with regard to the variance
18 being --

19 BOARD MEMBER: Variance being sought.

20 CONSTANTINE ALEXANDER: Variance being sought,
21 yes.

22 LAURA WARNICK: Variance and a special permit?

1 CONSTANTINE ALEXANDER: Yeah, special permit too.
2 We'll get to that next. The first finding is that a literal
3 enforcement of the provisions of the ordinance would involve
4 a substantial hardship, such hardship being is that the
5 petitioner believes that appropriate use of the structure
6 requires some outdoor living space on the second and third
7 levels, and that that is the case with abutting properties
8 that have decks that extend like that...

9 That the hardship is owing to the size of the
10 lots, the nonconforming lots, so any modification requires
11 zoning relief, and that relief may be granted without
12 substantial detriment to the public good, or nullifying or
13 substantially derogating the intent and purpose of the
14 ordinance.

15 In this regard, the petitioner is seeking to
16 improve the inhabitability and desirability of the structure
17 that's being rehabilitated.

18 So on the basis of all of these findings, the
19 Chair moves that we grant the variance requested on the
20 condition that the work proceed in accordance with plans
21 prepared by GCD Architects, dated 09/19/2019, initialed by
22 the Chair, with the condition that the decks as shown on

1 these plans are 16 feet long will be reduced to 12 feet in
2 length. Did I get it right?

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

5 THE BOARD: Aye.

6 [Four in favor -- Jim Monteverde, Brendan
7 Sullivan, Laura Warnick, Janet Green; one opposed --
8 Constantine Alexander]

9 CONSTANTINE ALEXANDER: Four in favor, one
10 opposed. The variance is granted. Now let's talk to the
11 special permit, why don't you address us and just briefly
12 talk about --

13 ADAM GLASSMAN: Right. Relocated windows, a new
14 door opening in order to access the porches.

15 CONSTANTINE ALEXANDER: Where -- show me -- show
16 us where the relocated windows are on the plans.

17 ADAM GLASSMAN: Let's see. The Elevation page
18 showing the new decks.

19 CONSTANTINE ALEXANDER: No, no.

20 ADAM GLASSMAN: A 2.1 --

21 CONSTANTINE ALEXANDER: Yeah, here's the existing
22 -- keep going --

1 JIM MONTEVERDE: It's always the last sheet.

2 CONSTANTINE ALEXANDER: [Laughter]

3 ADAM GLASSMAN: So I could see some notes that
4 indicate a new window, new door.

5 JIM MONTEVERDE: New window.

6 CONSTANTINE ALEXANDER: Yeah, yeah.

7 JIM MONTEVERDE: New door.

8 CONSTANTINE ALEXANDER: This is in the back,
9 right?

10 JIM MONTEVERDE: Mm-hm.

11 CONSTANTINE ALEXANDER: Okay.

12 JIM MONTEVERDE: New window.

13 CONSTANTINE ALEXANDER: Yeah.

14 JIM MONTEVERDE: New window.

15 ADAM GLASSMAN: That's it.

16 CONSTANTINE ALEXANDER: That's it.

17 JIM MONTEVERDE: So it's one, two, three, four,
18 five windows two doors? Did I get that right?

19 ADAM GLASSMAN: You did, and we might reduce that
20 number, now that we're modifying the deck side.

21 JIM MONTEVERDE: Well, more than --

22 ADAM GLASSMAN: That's right.

1 JIM MONTEVERDE: -- five windows and two doors?

2 ADAM GLASSMAN: Correct.

3 CONSTANTINE ALEXANDER: Any questions on the --
4 we're talking about the special permit now. No? I'll open
5 the matter up to public testimony. Does anyone here wish to
6 comment on the special permit now? No? I'll open the
7 matter up to public testimony. Does anyone here wish to
8 comment on the requested special permit to the windows?
9 Apparently not. I'll close public testimony. Are we ready
10 for a vote?

11 The Chair moves that we make the following
12 findings with regard to the relief being sought: Special
13 permit being sought: That the requirements of the ordinance
14 cannot be satisfied without the special permit.

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

19 As indicated, these windows will be in the rear,
20 so they don't have congestion issues or hazard issues, at
21 least in my opinion, and will not constitute a substantial
22 change in established neighborhood character.

1 That the continued operation or development of
2 adjacent uses, as permitted in the ordinance, will not be
3 adversely affected by the nature of the proposed use, and
4 with regard to this, I would note that although the
5 neighbors have objected to the variance issue, the decks,
6 they have not objected to the window issue, and that I draw
7 the conclusion that they don't believe they would be
8 adversely affected, by what is proposed.

9 No nuisance or hazard will be created to the
10 detriment of the health, safety and/or welfare of the
11 occupant of the proposed use, or the citizens in the city,
12 and for other reasons that the proposed use will not impair
13 the integrity of the district or adjoining district, or
14 otherwise derogate the intent and purpose of this ordinance.

15 On the basis of all of these findings, the Chair
16 moves that we grant the special permit requested, again, on
17 the condition that the work proceed in accordance with plans
18 identified in connection with the variance, and subject to
19 the change that was required on the plans, with regard to
20 the variance -- namely, the reduction of the size of the
21 decks from 16 feet to 12 feet.

22 All those in favor of granting the special permit,

1 please say, "Aye."

2 THE BOARD: Aye.

3 [All five vote YES]

4 CONSTANTINE ALEXANDER: Five in favor, special
5 permit granted.

6 ADAM GLASSMAN: Thank you all.

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1 (7:59 p.m.)

2 Sitting Members: Constantine Alexander, Brendan
3 Sullivan, Janet Green, Jim Monteverde, and Laura
4 Warnick

5 CONSTANTINE ALEXANDER: The Chair will call Case
6 Number 017165 -- 35 Cambridge Park Drive. Anyone here
7 wishing to be heard on this matter?

8 KEVIN O'FLAHERTY: Good evening Mr. Chairman and
9 members of the Board. My name is Kevin O'Flaherty. I
10 represent the owner of 35 Cambridge Park Drive, which has a
11 lot of letters in it, so I'm just going to call them the
12 owner, so we don't have to --

13 CONSTANTINE ALEXANDER: [Laughter] That's fine.

14 KEVIN O'FLAHERTY -- spend another 15 minutes going
15 through that.

16 CONSTANTINE ALEXANDER: That's fine.

17 KEVIN O'FLAHERTY: Tonight, I'm joined by my
18 colleague, Joel Antwi and Mr. Dante Angelucci, who --

19 THE REPORTER: Spellings, some spellings.

20 KEVIN O'FLAHERTY: Sorry. What do you need
21 spelling on? My name?

22 THE REPORTER: Spell all your last names, please.

1 KEVIN O'FLAHERTY: Okay. My last name is O
2 apostrophe capital F as in Frank -l-a-h-e-r-t-y. Mr.
3 Antwi's last name is A-n-t-w-i. And now you're going to
4 really test me, because the other gentleman I was going to
5 introduce is a representative of the owner, and his name is
6 Dante Angelucci, A-n-g-e-l-u-c-c-i. Did I get it right
7 Dante?

8 DANTE ANGELUCCI: Yes.

9 KEVIN O'FLAHERTY: That's not bad for an
10 O'Flaherty to get that right.

11 COLLECTIVE: [Laughter]

12 CONSTANTINE ALEXANDER: Mr. Rafferty could have
13 helped you with that.

14 KEVIN O'FLAHERTY: So we're here tonight, as the
15 Board understands on an appeal, if you will, of a Building
16 Inspector's determination with respect to our property.

17 As you know, the property recently underwent a
18 major construction project. There were two parts of that
19 project.

20 Part 1 was a 47,000 square feet addition to the
21 existing office building that has been there since the early
22 '80s. It was an addition to the top of the building, and

1 the second part of the work on the construction project was
2 a 137,000 square feet rehabilitation/renovation, I don't
3 know what the right word is, of the existing/preexisting
4 office building.

5 CONSTANTINE ALEXANDER: And the tower addition,
6 did the building appear -- other than going higher
7 vertically -- did it change?

8 KEVIN O'FLAHERTY: No.

9 CONSTANTINE ALEXANDER: On the base of it?

10 KEVIN O'FLAHERTY: No, the -- it's within the
11 footprint of --

12 CONSTANTINE ALEXANDER: It's just straight up.

13 DANTE ANGELUCCI: Actually -- for further
14 clarification, we actually --

15 CONSTANTINE ALEXANDER: I'm sorry, sir, you've got
16 to come forward.

17 DANTE ANGELUCCI: Sorry. We actually --

18 THE REPORTER: Give your name and address, please.

19 DANTE ANGELUCCI: Dante Angelucci, Davis
20 Companies, 125 High Street, Boston, Massachusetts. We
21 actually did remove a 6000 square feet footprint from the
22 far east side of the building. It was a two-story structure

1 that contained some lab space. Both spaces were demolished,
2 and that square footage was then added in conjunction with
3 the 47,000 square feet vertically.

4 CONSTANTINE ALEXANDER: Okay. Thank you, so --

5 KEVIN O'FLAHERTY: I stand corrected. So the
6 footprint didn't increase, it actually reduced.

7 CONSTANTINE ALEXANDER: What puzzles me, frankly,
8 in this case is we've got no information about the structure
9 itself. We were told it was a warehouse in 1970, you're
10 building a 47,000 square foot tower, or you have built, or
11 higher, but we don't see any drawings about the building,
12 any elevations.

13 We don't have any information about what has
14 happened to the buildings since it was started and -- I
15 thought it was built on 1970, and that's all very relevant
16 to the determination.

17 KEVIN O'FLAHERTY: Well, I actually think -- well,
18 I don't think it's relevant to Mr. -- to the Building
19 Inspector's determination, it was a building permit was
20 issued for this project in connection with that. All that
21 sort of information was dealt with. There wasn't any zoning
22 relief, as I understand it.

1 CONSTANTINE ALEXANDER: Yeah, but the issue here
2 is a taxation issue.

3 KEVIN O'FLAHERTY: That's right, that's right.

4 CONSTANTINE ALEXANDER: Well yeah, but one of the
5 reasons -- the standards, if they're going to impose the tax
6 is substantial rehabilitation of buildings to accommodate
7 uses in the above list, for which the buildings were not
8 originally used.

9 KEVIN O'FLAHERTY: Right.

10 CONSTANTINE ALEXANDER: So I would like to have
11 seen what the building was originally used for, and what
12 you've done to the buildings you acquired since then --

13 KEVIN O'FLAHERTY: Sure, sure.

14 CONSTANTINE ALEXANDER: -- to see whether there
15 has been a substantial rehabilitation.

16 KEVIN O'FLAHERTY: Well, so let's -- we're not
17 going to dispute that there was a substantial
18 rehabilitation. There has been a substantial
19 rehabilitation, even in that current project, right?

20 CONSTANTINE ALEXANDER: Right.

21 KEVIN O'FLAHERTY: The issue is going to be how do
22 you interpret the incentive project provision. So let me --

1 just bear with me for a while, and if I can't answer your
2 questions, we'll try to do our best, and you will be able to
3 put me to the test.

4 KEVIN O'FLAHERTY: So the history here, the
5 relevant facts really aren't in dispute. I read Mr. -- I
6 read the Building Inspector's letter of September 23, in
7 which basically we agree on 90% of the -- what I would call
8 the relevant facts.

9 CONSTANTINE ALEXANDER: Right.

10 KEVIN O'FLAHERTY: The building was constructed in
11 1947. It was a steel fabrication plans back then by
12 Bethlehem Steel. In 1981, there was a special permit issued
13 and I think variances as well by this Board that allowed
14 that building to be converted, adapted, accommodate for
15 office use.

16 And from 1981 until the present day, 38 years,
17 that's what it was. It was an office building, three
18 stories. We've increased the height with the new project.

19 But those relevant facts really are the only thing
20 that the Board has to concern itself with, because there is
21 no dispute between us that there was a substantial
22 rehabilitation and a conversion. And we gave the Board the

1 zoning permit that was issued back in 1981 where the
2 conversion took place.

3 CONSTANTINE ALEXANDER: But I'm reading from our
4 ordinance. It's defines --

5 KEVIN O'FLAHERTY: Yeah. We'll get to that.

6 CONSTANTINE ALEXANDER: -- I guess it's a new
7 project -- it says, and this results in the taxation, "A
8 substantial rehabilitation of buildings, for which the -- to
9 accommodate uses for which the buildings were not originally
10 --

11 KEVIN O'FLAHERTY: Correct.

12 CONSTANTINE ALEXANDER: -- issued.

13 KEVIN O'FLAHERTY: Correct.

14 CONSTANTINE ALEXANDER: For use, I'm sorry.

15 KEVIN O'FLAHERTY: Correct.

16 CONSTANTINE ALEXANDER: I misread that.

17 KEVIN O'FLAHERTY: And this rehabilitation was not
18 to accommodate -- was not to accommodate the --

19 CONSTANTINE ALEXANDER: The building was in use --

20 KEVIN O'FLAHERTY: -- an obvious use.

21 CONSTANTINE ALEXANDER: But the building was not
22 originally used for office buildings -- office.

1 KEVIN O'FLAHERTY: It was not, it was not, you're
2 right about that. And the accommodation -- so when a court
3 looks at this, what a court is going to do is it's going to
4 apply principles of statutory interpretation. Just like the
5 Board has --

6 CONSTANTINE ALEXANDER: Right.

7 KEVIN O'FLAHERTY: -- honestly.

8 CONSTANTINE ALEXANDER: Right, right.

9 CONSTANTINE ALEXANDER: You sit in a quasi-
10 judicial capacity while you're here, as you know.

11 CONSTANTINE ALEXANDER: Right.

12 KEVIN O'FLAHERTY: And the primary principle of
13 statutory interpretation is, what's the plain language mean?
14 And in this case, we're pretty much agreed on everything
15 except, what does "accommodate" mean, to accommodate?

16 Well, if you look, "accommodate" up and that's
17 right in the statute -- you just read it, Mr. Chairman, to
18 accommodate a use, for what use is being accommodated? It -
19 - well, an office use. But that office use has already been
20 accommodated in that building.

21 CONSTANTINE ALEXANDER: But you keep ignoring the
22 word, "originally."

1 KEVIN O'FLAHERTY: I understand.

2 CONSTANTINE ALEXANDER: And originally it was not
3 office.

4 KEVIN O'FLAHERTY: So the -- no doubt about it.
5 And then it was not. In 1947, the original use was and
6 ultimately.

7 CONSTANTINE ALEXANDER: Right.

8 KEVIN O'FLAHERTY: Then in 1981, there was an
9 annotation, there was a conversion to office. And that is
10 when the accommodation took place. This current project is
11 not to create that accommodation. That has happened
12 historically 38 years ago.

13 And here's why I think this principle statutory
14 interpretation has to hold here. First of all, that's what
15 the word means, number one.

16 Number two, the other principles that we've
17 recited in our letter, which is part of the record here, is
18 that things have to be interpreted to make sense, to make
19 sure that there's not an illogical result, to make sure that
20 interpretations don't lead to a harsh or unfair result.

21 And I would say that the Building Inspector's
22 interpretation here would lead to all of those. And here's

1 why. Think about it for a second. If there are two
2 builders, right? Two developers, right? They're thinking
3 about a 50,000 square feet office building, and they have a
4 choice.

5 Do I take an old building in Cambridge -- and
6 Cambridge is full of them, and try to do something to adapt
7 this building -- not tear it down, to make it useable in
8 modern times? Do I do that, or do I tear it down and build
9 something new?

10 And this interpretation, what the Building
11 Inspector says here is, if you adapt it and bring it forward
12 to modern times, and then in 10 more years you renovate it
13 again, you do a substantial renovation, we get to hit you
14 twice for the incentive payment. We get to double book you.
15 And --

16 CONSTANTINE ALEXANDER: That's not before us
17 tonight, that's another --

18 KEVIN O'FLAHERTY: No, but --

19 CONSTANTINE ALEXANDER: That's a hypothetical I'm
20 not --

21 KEVIN O'FLAHERTY: -- that's how important. Mr.
22 Chairman, I will tell you that's how court's going to look

1 at this. Because you have to interpret statutes so they
2 make a rational result.

3 CONSTANTINE ALEXANDER: Sir, I understand. You
4 can take that argument to the courts should you get an
5 adverse --

6 KEVIN O'FLAHERTY: Of course, of course we could.
7 I'm just telling you, though, that you sit -- this Board
8 sits like a court here tonight, in a quasi-judicial
9 capacity.

10 CONSTANTINE ALEXANDER: Absolutely.

11 KEVIN O'FLAHERTY: And I know you're not sitting
12 as lawyers or judges, I understand that. And what I'm
13 trying to do is say, "Here are the principles that even this
14 Board should think about and apply in determining this
15 issue." And one of them is, where does it lead? And what
16 would that incentivize? Well, it would incentivize people
17 tearing buildings down.

18 CONSTANTINE ALEXANDER: Right.

19 KEVIN O'FLAHERTY: Which is really, as I
20 understand it, against a lot of the policies of Cambridge to
21 try to reuse buildings, create -- you know, adaptive reuses
22 that are economically viable in modern times. What I just

1 proposed to you -- which you said is a hypothetical, I
2 agree, it is a hypothetical -- I said, "You know, this is a
3 hypothetical." But the interpretation that the Building
4 Inspector has put before us on this very issue would lead to
5 that result.

6 And it would incentivize developers not to create
7 adaptive reuses that they could get taxed successively on,
8 every time they renovated the building, because every
9 renovation would be a change to a building that was not
10 originally used, as you said, for that particular use.

11 CONSTANTINE ALEXANDER: Why do you believe there
12 would be these successive taxes?

13 KEVIN O'FLAHERTY: Because they can do it.

14 CONSTANTINE ALEXANDER: I don't know if that's the
15 case.

16 KEVIN O'FLAHERTY: Well, that's what's happening
17 here.

18 CONSTANTINE ALEXANDER: That -- I mean, because
19 now we have --

20 KEVIN O'FLAHERTY: The statue -- the

21 CONSTANTINE ALEXANDER: -- the last, this 30,000
22 square feet home.

1 KEVIN O'FLAHERTY: I understand.

2 CONSTANTINE ALEXANDER: We now have -- and all
3 that's gone before, we have a substantial rehabilitation.

4 KEVIN O'FLAHERTY: Well --

5 CONSTANTINE ALEXANDER: If there's another 40,000
6 square foot tower is added to the top of it, I don't want
7 cases before us, I don't see a basis for the city.

8 KEVIN O'FLAHERTY: Well, the basis would be what
9 you just articulated five minutes ago. Look, was this
10 originally an office use?

11 CONSTANTINE ALEXANDER: Right.

12 KEVIN O'FLAHERTY: No. It was an industrial use.
13 Now you're adding more office. Therefore, you get to -- you
14 have to pay an extra incentive payment.

15 It -- the other thing it would do, besides
16 incentivizing people not to try to do adaptive reuses, it
17 would discourage people -- well, it would treat similarly
18 situated people differently, which is another issue legally,
19 you know, as you sit here and try to interpret a statute in
20 a fair and reasonable way.

21 So the individual who tears that building down and
22 builds a new building, he gets hit with one incentive

1 payment. The individual who adaptively reuses that building
2 and builds out 50,000 square feet of office, if in 10 years
3 or 20 years he needs to upgrade that, and he has to do a
4 substantial rehab of that building, he gets hit with another
5 incentive payment, under this theory.

6 You're saying that the city wouldn't do it --

7 BRENDAN SULLIVAN: Well, only to the original
8 building.

9 CONSTANTINE ALEXANDER: Yeah.

10 BRENDAN SULLIVAN: Only to the original building?

11 CONSTANTINE ALEXANDER: Yep.

12 BRENDAN SULLIVAN: You're saying sublingual he can
13 sign in to renovate 10,15 years down the road? It's only to
14 the original building that --

15 KEVIN O'FLAHERTY: The argument would be the
16 original building was a warehouse, let's say. And he turned
17 it into an office.

18 BRENDAN SULLIVAN: Right.

19 KEVIN O'FLAHERTY: And 50,000 square feet --

20 BRENDAN SULLIVAN: But if you get an addition to
21 it.

22 KEVIN O'FLAHERTY: The addition would count.

1 BRENDAN SULLIVAN: That's right.

2 KEVIN O'FLAHERTY: And we're not arguing that, Mr.
3 Sullivan. We are conceding the 47,000 of new structure.
4 That's definitely --

5 BRENDAN SULLIVAN: Right. Beyond that.

6 KEVIN O'FLAHERTY: -- in the -- that's in the bank
7 for the City of Cambridge, okay? But the difference, as you
8 know, in dollars, is --

9 CONSTANTINE ALEXANDER: Well, that's \$1.8 million.

10 KEVIN O'FLAHERTY: Of course it is, of course it
11 is, like any taxation.

12 CONSTANTINE ALEXANDER: Right. Of course.

13 KEVIN O'FLAHERTY: So the point is, as a straight
14 statutory interpretation case, which is what this is, the
15 principles of statutory interpretation come our way on this,
16 the plain language. "To accommodate" means to adapt. That
17 adaptation -- and I realize you don't buy it --

18 JIM MONTEVERDE: I don't buy it.

19 KEVIN O'FLAHERTY: But that's what the court's
20 going to say. They're going to look at the plain language,
21 and they're going to look at the word, "accommodate" in this
22 context, and they're going to say, "That needs to adapt."

1 When did the adaptation occur? It occurred in
2 1981. That's our point. So while the incentive payment is
3 due on the \$47,000, no dispute, it's not due on the \$137,000
4 that has been office since 1981. Because our project did
5 not create a new office building from something that used to
6 be a warehouse, it didn't. That's what happened back in
7 1981.

8 And I would say it's not consistent with the plain
9 language of the statute or with considerations of, you know,
10 fairness, equity, logic, honestly, to interpret it in the
11 way that the Building Inspector has. There's a lot of
12 respect for the Building Inspector here. He's a very nice
13 man, he knows what he's -- he knows his stuff and --

14 CONSTANTINE ALEXANDER: I agree with that.

15 KEVIN O'FLAHERTY: -- a lot of respect. But in
16 this particular case, we're -- I think we're right, he's
17 wrong. Now, one of the things that I will just point out,
18 in his letter, in our submissions, we talk about principles
19 of statutory interpretation. Look at his letter of
20 September 23 -- not a word about that. Not a word.

21 CONSTANTINE ALEXANDER: Only because --

22 KEVIN O'FLAHERTY: And that's what matters.

1 CONSTANTINE ALEXANDER: Only because his
2 interpretation, or his decision, is -- didn't need
3 interpretation. It's on the straight words of the Ordinance
4 Committee.

5 KEVIN O'FLAHERTY: Okay.

6 CONSTANTINE ALEXANDER: And it -- I just read
7 those for us. You fit one in those words. You've made
8 substantial -- your plan -- substantial rehabilitation to a
9 building, to accommodate a use for which the building was
10 not originally used. That's those words are --

11 KEVIN O'FLAHERTY: And I know those are the words
12 --

13 CONSTANTINE ALEXANDER: -- they're still clear.

14 KEVIN O'FLAHERTY: I know those are the words,
15 and the word, to "accommodate" is the critical one. And the
16 rehabilitation did not accommodate the office use. That's
17 my point.

18 CONSTANTINE ALEXANDER: It didn't.

19 KEVIN O'FLAHERTY: I realized you and I are
20 talking --

21 CONSTANTINE ALEXANDER: It didn't?

22 KEVIN O'FLAHERTY: We did not do the

1 rehabilitation to convert this building from a warehouse to
2 an office to accommodate to adapt the building -- that's
3 what the word, "accommodating" in this context means. You
4 and I are going to go around on this --

5 JIM MONTEVERDE: Okay.

6 KEVIN O'FLAHERTY: Sir --

7 JIM MONTEVERDE: You and I are going to go around
8 on this.

9 KEVIN O'FLAHERTY: We're not going to agree, we're
10 not going to agree.

11 JIM MONTEVERDE: -- until the cows come home, so
12 you've heard our position.

13 BRENDAN SULLIVAN: This is like déjà vu this is
14 like back to the future. The '81 variance -- a copy of
15 that.

16 CONSTANTINE ALEXANDER: I don't have it.

17 KEVIN O'FLAHERTY: I have it.

18 CONSTANTINE ALEXANDER: You have it? I don't
19 think it's in the filing.

20 BRENDAN SULLIVAN: I printed it.

21 KEVIN O'FLAHERTY: I might have marked it out, but
22 I do have it. Sisia has a clean copy.

1 SISIA DAGLIAN: Here it is.

2 BRENDAN SULLIVAN: Because I think my name is on
3 it.

4 KEVIN O'FLAHERTY: It is.

5 BRENDAN SULLIVAN: So what -- is he still alive?

6 KEVIN O'FLAHERTY: No, I didn't, no I didn't. I
7 would say, you know, where I sort of focus is on the second
8 paragraph. "Petitioner seeks to convert the warehouse
9 building to office use, to convert, to accommodate, to
10 adapt, to change." That's what that is, and that's when
11 that happened. That would be the point, with respect to the
12 kind of plain language, the interpretation in our view.

13 CONSTANTINE ALEXANDER: Okay. Anything further?

14 KEVIN O'FLAHERTY: I wanted to see if Mr. Sullivan
15 had questions.

16 CONSTANTINE ALEXANDER: That's fine. That's fine.

17 KEVIN O'FLAHERTY: I think I probably --

18 CONSTANTINE ALEXANDER: That's fine.

19 BRENDAN SULLIVAN: The petition in 1981, the
20 applicant is in the process of renovating the premises
21 formerly occupied by Bethlehem Steel as a warehouse with
22 office into a three-story office building containing

1 approximately 134,000 square feet. Existing buildings -- so
2 on and so forth. Requests are made for a special permit and
3 variance as noted, and so on and so forth.

4 I sort of -- what I find troubling is the city's
5 attempt to claw back.

6 JANET GREEN: I'm sorry, Brendan.

7 CONSTANTINE ALEXANDER: Claw back.

8 BRENDAN SULLIVAN: I think that the wording of the
9 inclusionary ordinance is unfortunate. And again, not to
10 rewrite history, but I think that a building in existence as
11 of the date of the adaption of the ordinance, whatever the
12 status of that building was, should prevail, in my
13 estimation, as opposed to going back to 1947. Okay? The
14 statute was adopted in 1987.

15 CONSTANTINE ALEXANDER: But Brendan, you're
16 bringing into play a nonconforming structure, nonconforming
17 use. This is not a zoning issue as to whether you can use
18 the building or not, it's a question about what tax --

19 BRENDAN SULLIVAN: Well, to me it's a question of
20 what was the use of that building --

21 CONSTANTINE ALEXANDER: Yeah.

22 BRENDAN SULLIVAN: In 19 -- when the ordinance was

1 adopted.

2 KEVIN O'FLAHERTY: It's a question about how do
3 you interpret and apply the bylaw, and the ordinance, excuse
4 me. And the Building Inspector in the first instance makes
5 a call, and then you guys in the second instance --

6 CONSTANTINE ALEXANDER: Right.

7 KEVIN O'FLAHERTY: -- review that call.

8 CONSTANTINE ALEXANDER: And the third instance is
9 the court can review our decision.

10 KEVIN O'FLAHERTY: Correct. And then the Appeals
11 Court. And then the SJC. And sooner or later somebody's
12 done.

13 CONSTANTINE ALEXANDER: Right.

14 KEVIN O'FLAHERTY: But I understand what Mr.
15 Sullivan's saying, that makes sense to me, and it -- the
16 point is under the Building Inspector's interpretation here,
17 we do this renovation, okay, and we get whacked for the
18 whole 187,000 square feet on the incentive project. And
19 then we -- in 20 years we want to do another one. Do we go
20 back to --

21 CONSTANTINE ALEXANDER: I don't buy that, no. You
22 take --

1 KEVIN O'FLAHERTY: But that's what's happening in
2 this case, sir.

3 CONSTANTINE ALEXANDER: No, no, it's only one time
4 that you get the tax.

5 KEVIN O'FLAHERTY: Where does it say that in the
6 statute, that there can only be one time? It doesn't say
7 that. It doesn't say that.

8 And I hear what Mr. Sullivan's saying, which is a
9 way of saying, "Look, we've got -- you have to apply this
10 thing in a way that makes rational sense, and protects the
11 integrity of the ordinance from challenges, but also that
12 makes it a logical ordinance that affects the purpose.

13 And clearly, what was the purpose of this
14 ordinance? It was to -- when people took an adaptive reuse
15 of a building, they had to pay an incentive payment. But
16 that's only, as Mr. Sullivan says, after 2015 when the
17 ordinance came into play, that adapted free use of this
18 building happened way before the ordinance.

19 CONSTANTINE ALEXANDER: Correct.

20 KEVIN O'FLAHERTY: And in a way it's kind of a
21 retroactive application of this statute against reality that
22 happened much earlier.

1 CONSTANTINE ALEXANDER: Anything else?

2 KEVIN O'FLAHERTY: So I'm complete, unless anybody
3 has any questions for me, and then -- you guys can talk.

4 CONSTANTINE ALEXANDER: Anybody have any questions
5 or comments at this stage, for our medical public testimony?

6 BRENDAN SULLIVAN: Well, no. I mean, I agree with
7 your position. And I think you're right, it's bad billing
8 that's in there somehow, and so on and so forth. And I am
9 troubled by it.

10 That being said, I also go by what the planning,
11 the wording, the language is. And I think it's unfortunate
12 wording and language in there, that the city has allowed to
13 go all the way back to 1947, and that 1981 has had office
14 use there.

15 And again, I think that the framers of this, the
16 drafters really should have said, "As per" -- whatever the
17 status is -- "as per the adoption of the ordinance." But
18 they didn't.

19 CONSTANTINE ALEXANDER: They didn't?

20 BRENDAN SULLIVAN: They didn't. And so, possibly
21 the intent, we do not know it's bad intent, is to go all the
22 way back, which I think is not the right thing to do.

1 KEVIN O'FLAHERTY: But I would say it's --

2 CONSTANTINE ALEXANDER: But again, we --

3 BRENDAN SULLIVAN: And I think again --

4 CONSTANTINE ALEXANDER: -- it's a legal question.

5 BRENDAN SULLIVAN: -- and again, if 15 years from
6 now, whomever comes in and wants to redo it again or
7 whatever it may be, then again it doesn't stop the city from
8 coming back in and saying, you know, we need --

9 CONSTANTINE ALEXANDER: I think we should -- that
10 case can be dealt with, should it arise. I mean, I don't
11 think we should deny or we should overturn the commission's
12 decision on the basis of a hypothetical.

13 And maybe in the future another 1000-foot tower
14 would be added, and the city might impose another tax. Who
15 knows what's going to happen at that time? Who knows what
16 the ordinance will provide at that time?

17 BRENDAN SULLIVAN: Well, I'm editorializing when I
18 say that. You know, but I mean -- but that's my view of it.

19 CONSTANTINE ALEXANDER: I understand.

20 BRENDAN SULLIVAN: However, I think the rule today
21 is the wording, as unfortunate as it is, the plain language
22 of the ordinance.

1 CONSTANTINE ALEXANDER: Any other comments from
2 members of the Board at this point?

3 JANET GREEN: So Brendan, what you're saying is
4 that you understand the -- or you had feelings about how it
5 should be, but that's not the same as how it is?

6 BRENDAN SULLIVAN: Yes, correct.

7 LAURA WARNICK: I'm still uncertain, because if
8 they still -- we're going to give you another hypothetical.
9 If the factory had been in operation for six months, and
10 then had gone under and the office was -- that it was
11 replaced with office use, are we now -- the office use had
12 been in place for whatever it is, 80 years, do we still go
13 back to the original construction? Why would we do that?
14 What's the --

15 CONSTANTINE ALEXANDER: That's what the statute
16 says.

17 LAURA WARNICK: Well, but original -- I guess I'm
18 concerned with the word, "original."

19 CONSTANTINE ALEXANDER: Jim, you want to --
20 whether we were getting to the -- we can wait and discuss it
21 again, after we hear it from the public, if they have any
22 comments. Probably should do that. Does anyone here wish

1 to be heard on this matter??

2 JAMES RAFFERTY: I do. Good evening Mr. Chairman
3 and members of the Board. For the record, my name is James
4 Rafferty. I'm an attorney with offices at 907 Massachusetts
5 Avenue. I was involved with Mr. Angelucci in the permitting
6 of this structure. Two quick points.

7 First, I think with all due respect, I think Mr.
8 O'Flaherty's example is very relevant. First, the Board
9 should know that this is a case of first impression. I've
10 spent many months discussing this with the Building
11 Commissioner. This came as a complete surprise to us.

12 At no point during the permitting process, usually
13 there's language in the special permit from the Planning
14 Board that identifies the project as subject to the
15 incentive zoning.

16 We always knew, of course, and by the way the
17 payment has been made to the city on the new construction.
18 What I pointed out unsuccessfully to the commissioner is you
19 don't have to be too creative. It's not really a
20 hypothetical.

21 My point is when this statute was expanded, and it
22 was in a very limited area before, but in 2015 it was

1 extended citywide, I said, "You don't have to go any further
2 than down the street to the Novartis facility on Mass
3 Avenue." I was involved in the permitting of that.

4 The candy factory was converted to a lab across
5 the street a new building was created. If 30 years from now
6 Novartis wants to renovate either one of those buildings, if
7 we take this narrow view of, "original" then they're going
8 to have to make a payment to renovate the candy factory
9 building, but they wouldn't require such a payment.

10 That was never the intent of the ordinance, and it
11 is contrary to our land use and preservation bills in the
12 city.

13 The conversion of the Novartis, the conversion of
14 that candy factory to a life-science thing is a marvel. But
15 the consequence of their doing that, as opposed to tearing
16 it down is -- it's not that far away if you think about it,
17 it's been there now for almost 20 years -- that in 20 more
18 years, the department would have to be consistent and say,
19 "original candy factory."

20 So forever in the life of that building, we're
21 going to go back. In the case of the candy factory, you
22 know, it was there for such a long time. That's what's

1 unfair in the application.

2 So if the city's going to be literal in the use
3 of the word, "original" they also need to be literal I would
4 suggest -- in the word, "accommodate."

5 When we applied for the special permit for this
6 case, we were not required to get an Article 19 Project
7 Review special permit, because we were adding less than
8 50,000 square feet. And the existing office GFA was not
9 considered a conversion.

10 Under the Article 19 special permit, if we were
11 converting, we would have been subject to a much longer
12 special permit process involving Article 19. So it's an
13 inconsistent treatment from a zoning perspective of this
14 building. The Article 19 zoning provision says you don't
15 have a change of use, so you don't need to include the
16 existing GFA in your special permit.

17 So if you look at the special permit for the
18 building, the 35 Cambridge Park special permit, you don't
19 have it, that authorized the rehabilitation of an existing
20 office and the addition of another 47,000 square feet. It
21 just so happened that that maxed us out on the FAR and the
22 GFA. So it wasn't a case where it was inadvertent.

1 But the point being, like I said, I was so taken
2 aback by this conclusion, and one doesn't appeal the
3 Commissioner lightly, because we understand the burden, and
4 I always advise clients, "You've got to get four members of
5 the Board to tell the person they rely on for
6 interpretations of the ordinance, that he got this one
7 wrong."

8 And in this case, I honestly believe, because
9 there's no precedent for it, that this is a wrong
10 interpretation. And the consequence is highly relevant.

11 So the notion that that's speculative, what we
12 will worry about 20 years later, these are very real example
13 down the street here where you've got two buildings, and it
14 cannot be said that it was the intent of this ordinance to
15 create two classes of buildings -- one that gets
16 rehabilitated, is going to pay an incentive zoning fee, and
17 one that was built brand-new will never have to pay that
18 fee. But yet that's the result.

19 One can't -- the Board can't ignore the result of
20 an interpretation that leads to an unfair conclusion, and I
21 think that's been Mr. O'Flaherty's problem.

22 CONSTANTINE ALEXANDER: Thank you.

1 JIM MONTEVERDE: Very well said, Mr. Rafferty.

2 CONSTANTINE ALEXANDER: Anyone else wishes to be
3 heard on this matter? Ranjit, are you going to stand by the
4 letter you submitted?

5 RANJIT SINGANAYAGAM: Yes.

6 CONSTANTINE ALEXANDER: I'll close public
7 testimony. Any -- you had any final comments on the
8 discussion? We've had a lot of discussion already, but we
9 can discuss this some more.

10 JANET GREEN: Yeah, but I wonder if you might read
11 his letter into the file.

12 CONSTANTINE ALEXANDER: Whose letter?

13 JANET GREEN: Ranjit's.

14 CONSTANTINE ALEXANDER: Sure.

15 JANET GREEN: You know, just so that we have it as
16 part of --

17 CONSTANTINE ALEXANDER: Sure. I'll read it.

18 JANET GREEN: What everybody's heard in the
19 deliberations. And maybe we --

20 CONSTANTINE ALEXANDER: This is his letter, and
21 after in response to your application.

22 JANET GREEN: Mm-hm.

1 CONSTANTINE ALEXANDER: I want to try to go to the
2 letters, DIB blah, blah, blah.

3 "Owner of the property located in 35 Cambridge
4 Park Drive, the property, has appealed my July 10, 2019
5 determination that it's addition of 47,179 square feet to
6 the building that the property -- property being 35
7 Cambridge Park Drive -- the building, and a substantial
8 rehabilitation of the existing building at the property --
9 is subject to the housing contribution pursuant to
10 incentives on the provisions of the zoning ordinance set
11 forth in Second 11.202 of the ordinance.

12 "My determination is based on the following: The
13 building on the property was originally constructed in
14 approximately 1947. The original use of the building was
15 for steel fabrication, which is an industrial use by the
16 Bethlehem Steel Company.

17 "In the 1980s, the then owners of the building
18 conducted a renovation of the building, but they did not
19 demolish the building. At that time, the use of the
20 building was changed to an office for research and
21 development.

22 "In 2017, DIB, that's your client, applied the

1 building permits to -- applied for building permits to
2 construct a 47,179 square foot addition to the building at
3 the property.

4 "The owner also applied for building permits to
5 substantially rehabilitate the existing building at the
6 property, specifically the rehabilitation of the existing
7 building proposed by the building permits that were sought
8 constituent substantial rehabilitation of the building, due
9 to the cost of construction, the amount of area
10 rehabilitated and because the construction is to, "bid out"
11 the building, meaning making the office, making the
12 space suitable for occupation. The owner intends to use the
13 building at the property for an office use.

14 "The definition of an incentive project in the
15 ordinance was amended as of September 28, 2015. And zoning
16 ordinance Section 2.000 of the ordinance defines an
17 incentive project as --

18 CONSTANTINE ALEXANDER: And then there's a long --
19 it repeats what's in the ordinance. But the relevant
20 language, as you've all heard tonight, is it's a section or
21 a sentence or a part of a sentence that says:

22 "For purposes of definition, of this definition --

1 we're talking about of a new building -- new development
2 shall mean substantial rehabilitation of buildings to
3 accommodate uses in the above list -- above list was the
4 thing in -- it's earlier in the section -- for which the
5 building was not -- the buildings were not originally used."

6 And then the rest doesn't -- is not relevant.

7 "The owner's project, which consists of an
8 addition to, and the substantial rehabilitation of the
9 existing building at the property constitutes a new
10 development, as set forth above. Construction of an
11 addition to an existing building to accommodate an office
12 use is new development, pursuant to the definition of an
13 incentive project in Section 2.000 of the ordinance.

14 "Also, substantial rehabilitation of a building to
15 accommodate an office use if that is not the use for what
16 the building was originally used -- and that was emphasized
17 in this letter -- is a new development pursuant to the
18 definition of an incentive project in Section 2.000 of the
19 ordinance.

20 "Here, the building at the property was -- again
21 emphasized -- originally used for an industrial use, and the
22 owner's substantial rehabilitation of the building is for an

1 office use.

2 "Therefore, the owner's application relates to the
3 entire project, and the entire building located at the
4 property is an incentive project pursuant to the definition
5 of "incentive project" in Section 2.000 of the ordinance.

6 "Although the owner argues in its appeal to the
7 Board that the incentive provisions of the ordinance should
8 not apply, because the use existing in the building at the
9 time of its current application would not change, that is
10 not relevant to the question of whether the application
11 relates to proposed, "new development" for any portion of
12 the property proposed to be used for uses different from the
13 emphasized original uses of the property, when it first
14 commenced in 1947.

15 "Because the application is for, "new development"
16 for the entire building at the property, the attempted
17 zoning provisions of the ordinance require that a housing
18 contribution be made for all of the gross floor area of the
19 property.

20 CONSTANTINE ALEXANDER: And I think the rest is
21 null. So it just goes to the calculation of the tax or the
22 like, not to Americans, in my opinion. So does that --

1 JANET GREEN: Yeah.

2 CONSTANTINE ALEXANDER: Back to the discussion, or
3 any discussion. We're ready for a vote.

4 BOARD MEMBER: We're ready.

5 CONSTANTINE ALEXANDER: Ready? Ready? Everybody
6 ready? Okay, well I think it's a simple motion.

7 [Brendan Sullivan and Constantine Alexander vote
8 NO, Jim Monteverde, Laura Warnick, Janet Green vote YES]

9 CONSTANTINE ALEXANDER: The Chair moves that we
10 grant the appeal of the petitioner, which would reverse the
11 determination of the Building Inspector. All those in favor
12 of reversing the decision of the Building Inspector and
13 granting the appeal of the petitioner, please say, "Aye."

14 THE BOARD: Aye.

15 CONSTANTINE ALEXANDER: One, two, three in favor.
16 Opposed? Two opposed, you need four for a favorable option.
17 The motion has been defeated.

18 PETITIONER: Thank you.

19 CONSTANTINE ALEXANDER: We have to --

20 BRENDAN SULLIVAN: We'd better rewrite that --

21 CONSTANTINE ALEXANDER: Oh, I think the message
22 should be clear, but sure. I don't want to -- I don't think

1 we should have the Board make that kind of recommendation.

2 I think we can -- I'll make the comment that it's clear.

3 You can sit down sir, if you want.

4 BRENDAN SULLIVAN: No, I --

5 CONSTANTINE ALEXANDER: Or you can sleep, I don't
6 care. It's clear that the language of the section that's
7 involved is less than perfect. And I think it would behoove
8 the city officials to revisit that, and maybe it -- not
9 maybe -- and to consider whether to improve upon the
10 definition, so we don't have issues like we have tonight.

11 Now, going back we have to also put in the record
12 why is this Brendan and I voting on this, why the motion --
13 the appeal was denied. I've written something out, and I'll
14 read it and give you the comments.

15 "The appellant has not demonstrated that its
16 addition to the building at 35 Cambridge Park Drive and its
17 earlier work to this structure do not constitute a
18 substantial rehabilitation of the structure to accommodate a
19 use, for which the structure was not originally -- repeat
20 originally used.

21 "It is incontroverted (sic) that the structure in
22 question was built for steel fabrication, or as a warehouse

1 for steel, all of which are industrial uses. Over the years
2 and to this day, the building's use has evolved to an office
3 use.

4 "But over the years, with the recent addition the
5 building's size has been increased by about a third, the
6 building's exterior appearance has been changed, the
7 building's internal systems and workings have been -- I
8 presume this to mean completely -- changed, and the
9 building's internal layout have been completely changed, all
10 to accommodate a use, office, for which the building was not
11 originally used, steel fabrication and warehouse.

12 "In short, quite clearly, the addition and the
13 prior modifications have resulted in a substantial
14 rehabilitation, for a use of which the building was not
15 originally used.

16 "By the express definition of incentive project
17 contained in Section 2 of the ordinance, this makes the
18 office building at 35 Cambridge Park Drive an incentive
19 project of more than 30,000 square feet subject to a housing
20 contribution, as required by Section 11.202 of our
21 ordinance. The Commissioner's decision is correct, and the
22 appeal is denied."

1 CONSTANTINE ALEXANDER: Any changes? Comments?

2 I know.

3 BRENDAN SULLIVAN: I know I'd like to
4 editorialize on it, but it's a motion.

5 CONSTANTINE ALEXANDER: Oh, we can edit.

6 BRENDAN SULLIVAN: So I can't. No, it's just that
7 I -- it's one of these that I agree with both. I mean, I
8 totally agree with your decision. And I think your position
9 makes total sense. The plain language of the ordinance is
10 very clear to him that he -- it's a bad ordinance, it's bad
11 language.

12 And, you know, but I can't put my own personal
13 views into a vote, I have to vote by what he did and what
14 he's reading in for the plan. I agree with both of you.

15 CONSTANTINE ALEXANDER: I think our record is
16 clear, and you've made that point several times on this as
17 well. It is what it is, and maybe it means our decision is
18 wrong.

19 BRENDAN SULLIVAN: It's bad, but it is what it is.

20 CONSTANTINE ALEXANDER: Anyway, the case is over.
21 Thank you very much.

22 KEVIN O'FLAHERTY: Thanks very much for your

1 attention.

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21 (8:38 p.m.)

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Sitting Members: Constantine Alexander, Brendan

1 Sullivan, Janet Green, Jim Monteverde

2 CONSTANTINE ALEXANDER: Well, on the assumption
3 that the folks of 117 Walden Street are still vigorously
4 debating the plans, I'm going to call the next case on our
5 agenda, if I can find my agenda. I'm going to call Case
6 Number -- thank you -- 017161 -- 38 Sacramento Street.
7 Anyone here wishing to be heard on this matter.

8 Good evening.

9 LAURA WARNICK: Good evening.

10 CONSTANTINE ALEXANDER: You heard a very learned
11 discussion.

12 LAURA WARNICK: So my neighbor --

13 CONSTANTINE ALEXANDER: Did you get notice of this
14 case? I always believe that if you're someone who got
15 notice, you're an abutter, or an abutter or an abutter --

16 LAURA WARNICK: Yeah.

17 CONSTANTINE ALEXANDER: You should recuse
18 yourself. Otherwise, unless you know the people personally
19 or the like --

20 LAURA WARNICK: Yeah.

21 CONSTANTINE ALEXANDER: -- I don't do it. It's up
22 to you, though.

1 LAURA WARNICK: Yeah, I think I better --

2 CONSTANTINE ALEXANDER: Want to recuse? Okay,
3 that leads to something else. We're having our discussion.
4 One of our Board members has recused herself, because she
5 lives on the street. There's consequence to that. I'm
6 going to explain it to you.

7 If you received from the prior case to get the
8 relief you're seeking, you need four votes. So it's not
9 just a majority, it's a super majority, four out of five.

10 Now, with the recusal you only have four. So you
11 only need a unanimous vote. You won't have the benefit of
12 maybe getting one percent.

13 So under those circumstances, we offer to the
14 petitioner a right to continue the case, until we get a
15 fifth member, and that's another date. And you'll have
16 better odds is a better way of saying it, of getting the
17 relief you want. I think it's your call.

18 LAURA WARNICK: I think I'm going to go.

19 CONSTANTINE ALEXANDER: Then say --

20 LAURA WARNICK: I think I'm going to go forward.

21 CONSTANTINE ALEXANDER: Take it off the --

22 THE REPORTER: Kindly state your name and address

1 for the record.

2 CONSTANTINE ALEXANDER: Just take it off the
3 stand, it's easier.

4 LINDA BRION-MEISELS: Hi. My name is Linda,
5 hyphenated last name, Brion B-r-i-o-n Meisels, M-e-i-s-e-l-
6 s. Okay?

7 CONSTANTINE ALEXANDER: What's the monumental
8 relief you're seeking?

9 LINDA BRION-MEISELS: I'm seeking to change a
10 window that's on my deck to a door, and change the door to a
11 window. And I'm wondering if it would be helpful if I just
12 read my supporting statement.

13 CONSTANTINE ALEXANDER: Sure.

14 LINDA BRION-MEISELS: Initially.

15 CONSTANTINE ALEXANDER: Well, this is the same
16 thing that's in our files now?

17 LINDA BRION-MEISELS: Yes, it is.

18 CONSTANTINE ALEXANDER: I know I've read it, and
19 presume the others have --

20 AUDIENCE: I read it.

21 LINDA BRION-MEISELS: You read it?

22 CONSTANTINE ALEXANDER: -- presume the others have

1 -- but you would like to hear it or not?

2 AUDIENCE: Read it.

3 CONSTANTINE ALEXANDER: We're all set.

4 LINDA BRION-MEISELS: Okay. Then I'll just read
5 the last two sentences. "We are not altering the footprint
6 of the house. The reason for this application is that the
7 reconfiguration of rooms on the first floor requires a
8 relocation of an existing door triggering this special
9 permit application."

10 So this you also have. And the door that is in
11 this picture is the one that's being changed to a window
12 because I have -- I'm having an accessible bathroom for
13 myself made on the first floor, and the window that's in
14 this photo is being changed to a door, so that I can get
15 onto the deck.

16 I've spoken to my abutters. I have two abutters
17 on either side, and Lesley University from which we bought
18 the house in '79 --

19 CONSTANTINE ALEXANDER: They have a letter of
20 support, which I'll read in a second.

21 LINDA BRION-MEISELS: -- okay, great -- in the
22 back. The change doesn't affect my neighbors at all, and

1 I'm happy to answer any other questions that you have. Joe
2 Bard is with me and is a friend and a neighbor.

3 AUDIENCE: Yeah, you need to tell her --

4 LINDA BRION-MEISELS: I'm sorry, I should --

5 AUDIENCE: That's alright.

6 CONSTANTINE ALEXANDER: You're good.

7 AUDIENCE: You're fine.

8 JOEL BARD: Mr. Chair, Members, I'm Joel Bard, J-
9 o-e-l B-a-r-d. I occasionally appear here. I'm a
10 registered attorney, but I'm just here to support my friend
11 and hoping to help her in the process.

12 CONSTANTINE ALEXANDER: Good. That's very kind of
13 you, actually, to come down.

14 LINDA BRION-MEISELS: I think so too.

15 CONSTANTINE ALEXANDER: We do -- well, before I
16 get there, questions from members of the Board? I'll open
17 the matter up to public testimony. Is there anyone here
18 wishing to be heard on this matter? Apparently not. We are
19 in receipt of a letter, one letter. It's from Lesley
20 University, which I'll read into the record? In regard to
21 this case, 30 Sacramento Street.

22 "Lesley University would like to express our

1 support of Linda Brion-Meisels' -- "

2 CONSTANTINE ALEXANDER: Did I get it right?

3 LINDA BRION-MEISELS: Yes, thank you.

4 CONSTANTINE ALEXANDER: " -- petition for a
5 special permit to relocate a door in the setback. Linda was
6 a faculty member at Lesley for 40 plus years. She and her
7 late husband Stephen purchased 38 Sacramento Street from
8 Lesley in December 1979.

9 Most of the homes in the neighborhood were built
10 long before we had zoning guidelines, and consequently many
11 do not conform to existing setback requirements. In this
12 instance, the rear of 38 Sacramento is approximately three
13 feet from the shared property line with 80 Oxford, a Lesley-
14 owned building. Linda and her family have been supervising
15 neighbors for going on 40 years, and Lesley encourages the
16 board to grant the requested special permit."

17 Very nice letter.

18 LINDA BRION-MEISELS: I moved. I didn't know that
19 they'd done that. So.

20 CONSTANTINE ALEXANDER: Oh, really?

21 LINDA BRION-MEISELS: Yeah.

22 CONSTANTINE ALEXANDER: Anyway.

1 LINDA BRION-MEISELS: Wonderful.

2 CONSTANTINE ALEXANDER: Do you want a copy for
3 your scrapbook?

4 LINDA BRION-MEISELS: Of course I would, yes.

5 CONSTANTINE ALEXANDER: Ready for a vote?

6 LINDA BRION-MEISELS: Ready.

7 CONSTANTINE ALEXANDER: Okay. The Chair moves
8 that we make the following findings with regard to the
9 special permit that's being sought: That the requirements
10 of the ordinance cannot be met unless we grant you the
11 special permit.

12 That traffic generated or patterns in access or
13 egress resulting from what you're proposing to do will not
14 cause congestion, hazard, or substantial change in
15 established neighborhood character. I think the nature of
16 the product speaks for itself with regard to that.

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

20 And as proof of that, we have the letter from
21 Lesley, which indicates that it's the case. It's in its
22 opinion that no nuisance or hazard will be created to the

1 detriment of the health, safety and/or welfare of the
2 occupant of the proposed use, or the citizens of the city.

3 And that generally, what is being proposed will
4 not impair the integrity of the district or adjoining
5 district, or otherwise derogate the intent and purpose of
6 this ordinance.

7 So on the basis of all of these findings, the
8 Chair moves that we grant the special permit requested on
9 the condition that the work proceed in accordance with plans
10 that you've submitted, and which I've initialed. So both
11 can change, which I do not think will be the case, you would
12 have to come back before us. Understand that?

13 LINDA BRION-MEISELS: Yes.

14 CONSTANTINE ALEXANDER: All those in favor, please
15 say, "Aye."

16 THE BOARD: Aye.

17 [Four vote YES - Laura Warnick was recused;
18 Brendan Sullivan, Jim Monteverde, Constantine Alexander,
19 Janet Green]

20 LINDA BRION-MEISELS: Thank you very much, thank
21 you.

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21 (8:45 p.m.)

22 Sitting Members: Constantine Alexander, Brendan

1 Sullivan, Janet Green, Jim Monteverde, and Laura
2 Warnick

3 CONSTANTINE ALEXANDER: The Chair will now call
4 Case Number -- if I can find it -- 017163 -- 283 Upland Road
5 Number 2. Anyone here wishing to be heard on this matter?
6 Good evening. As you know now, name and address for the
7 purpose of the stenographer.

8 JUDY BRIGHT: Yes. Judy Bright, 283 Upland Road,
9 Unit 2.

10 JOHN BRIGHT: John Bright, 203 Upland Road, Unit
11 2.

12 ROBERT LINN: Robert Linn, 161 Grove Street.

13 CONSTANTINE ALEXANDER: I'm sorry, I didn't catch
14 the name.

15 ROBERT LINN: Robert Linn.

16 THE REPORTER: Could you spell it?

17 ROBERT LINN: L-i-n-n.

18 CONSTANTINE ALEXANDER: The floor is yours. We
19 are here to ask the Board to grant us permission, a variance
20 to extend the house approximately gross square footage
21 approximately 48 square foot on the house.

22 It's already nonconforming, it's over the gross

1 square footage, and the reason for the extension is we were
2 asking to have a covered front porch that runs along the
3 entire front of the house, and squaring off, they love that
4 porch.

5 There's currently a faceted bay, two stories,
6 which we're removing the first story of that bay, extending
7 the porch over, and then pulling out a square bay, instead
8 of the faceted -- above the porch.

9 In addition, the new porch, as it reaches the
10 corner of the corner lot will now be 10 feet from the line,
11 as opposed to the 15 feet, as the ordinance requires.

12 Although in zoning Area B, 10 feet is allowed if
13 it's the average of neighbors, which is very close to being
14 the average of the neighbors, because the houses on Huron,
15 the corner lot on this side and on this side of Huron are
16 both less than 10 feet, or 10 feet or less, but the house
17 that's along Upland to the right is 15 feet.

18 So it doesn't exactly meet the criteria for 10. So
19 we're asking the Board to rerun that as well.

20 CONSTANTINE ALEXANDER: That was succinct.
21 Questions for the members of the Board? No questions, I'll
22 open the matter up to public testimony. Linda, do you want

1 time to --

2 LINDA BRION-MEISELS: No.

3 CONSTANTINE ALEXANDER: I'll open the matter up to
4 public testimony. Is there anyone here wishing to be heard
5 on this matter? Apparently not. We are in receipt of a
6 number of letters, e-mails and what have you, all of which
7 are very laudatory of you, and support of the relief you're
8 seeking. Most of the members of the Board want me to read
9 them into the record. I think I can summarize that they are
10 all in support. I saw no negative letters.

11 So close public testimony. Ready for a vote?

12 LINDA BRION-MEISELS: Yes.

13 CONSTANTINE ALEXANDER: The Chair moves that we
14 make the following findings with regard to the variance
15 being sought: That a literal enforcement of the provisions
16 of the ordinance would involve a substantial hardship, such
17 hardship being is that the structure is in need of, and is
18 being renovated is too strong, but revision to its
19 appearance and livability and that is what this would apply,
20 not only to you, but anybody else who subsequently bought
21 the property, so it runs with the land, if you will.

22 That the hardship is owing to the fact this is

1 already a nonconforming structure, so that any modification
2 requires zoning relief.

3 And that relief may be granted without substantial
4 detriment to the public good, or nullifying or substantially
5 derogating the intent or purpose of the ordinance.

6 So on the basis of all of these findings, the
7 Chair moves that we grant the variance being sought on the
8 condition that the work proceed in accordance with plans
9 prepared by Moskow Linn Architects, M-o-s-k-o-w Linn, L-i-n-
10 n dated August 7, 2019, the first page of which has been
11 initialed by the Chair.

12 This means that if she had some change of heart,
13 and you want to modify what we've seen, you're going to have
14 to come back before us.

15 JUDY BRIGHT: Gotcha.

16 CONSTANTINE ALEXANDER: All those in favor, please
17 say, "Aye."

18 THE BOARD: Aye.

19 [All five vote YES]

20 CONSTANTINE ALEXANDER: Five in favor, variance
21 granted. Good luck.

22 ROBERT LINN: Okay, thank you, sir.

1 JUDY BRIGHT: Thank you.

2 CONSTANTINE ALEXANDER: We're taking a brief
3 recess, and then we'll return to our case in recess, 117
4 Walden Street.

5 [RECESS]

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21 (8:51 p.m.)

22 Sitting Members: Constantine Alexander, Brendan

1 Sullivan, Janet Green, Jim Monteverde, and Laura
2 Warnick

3 CONSTANTINE ALEXANDER: Okay, the Chair will now
4 call the case that we have recessed earlier, Case Number
5 017117 -- 117 Walden Street. This is a special permit case,
6 not the Appeals case, which is long gone.

7 SARAH RHATIGAN: Thank you. Sarah Rhatigan again,
8 and here with the same folks as before. So Milton Yu and
9 Matt Hayes.

10 CONSTANTINE ALEXANDER: We want to know what
11 happened in your long meeting outside --

12 SARAH RHATIGAN: We had a long meeting, and it was
13 helpful in some ways, and not helpful in others. So I think
14 that you will probably hear a number of objections from the
15 neighbors.

16 CONSTANTINE ALEXANDER: But you're still standing
17 by the plans that you've submitted?

18 SARAH RHATIGAN: We are. What I did want to do is
19 let me just -- I don't want to belabor a lot of issues in
20 our first run here, because I expect that there's going to
21 be testimony that we'd like to respond to.

22 So what I was going to do is just clarify for the

1 Board what relief is needed, so that everybody's clear about
2 what we're asking for, and then also just tell you about
3 essentially sort of, you know, sort of a proffering or an
4 offering that we made that was rejected.

5 So first -- again, so the sides of the house are
6 the ones that have windows that require relief. And so, if
7 you are facing the house from the street, from Walden
8 Street, this is the left side of the house. And again, at
9 the top this is removing two windows and creating one
10 centered window on the dormer.

11 CONSTANTINE ALEXANDER: That is the left side of
12 the structure?

13 SARAH RHATIGAN: This is the left side of the
14 structure.

15 CONSTANTINE ALEXANDER: You're facing the street?

16 SARAH RHATIGAN: Exactly. And then the new
17 basement opening. Okay. So that's the left side. The
18 right side is the one that -- that's where we left off,
19 because we were describing window changes.

20 So now the neighbors have all seen this plan,
21 which I'm going to submit to you after we're done talking,
22 because it does have just one change to a requested relief

1 window, which is the one that's marked here. That's just
2 the changed location. This was -- we apologize, it was just
3 a drafting error.

4 This is a kitchen window, and it was when the
5 kitchen design -- the countertops were being figured out and
6 so --

7 CONSTANTINE ALEXANDER: Now, the right side --

8 SARAH RHATIGAN: -- this is --

9 CONSTANTINE ALEXANDER: -- is the one that's --

10 SARAH RHATIGAN: -- this is the right side, it's
11 close --

12 CONSTANTINE ALEXANDER: -- very close to the --

13 SARAH RHATIGAN: -- it's about a five-foot
14 distance.

15 CONSTANTINE ALEXANDER: Right, okay.

16 SARAH RHATIGAN: Now, of interest, just this
17 doesn't require your approval, but just so that you know,
18 the Xs are window openings that are -- have since been
19 closed over that are --

20 CONSTANTINE ALEXANDER: Right.

21 SARAH RHATIGAN: -- no longer going to be windows.
22 So there was a lot of discussion among the neighbors about

1 the -- kind of the design aesthetics of this that they
2 didn't all love the way the dimensions or the -- you know,
3 how the windows lined up how it looked, just in terms of --
4 you know --

5 CONSTANTINE ALEXANDER: Are those four skylights
6 in the top? There are four --

7 SARAH RHATIGAN: And then the skylights are in the
8 top. Some of those skylights --

9 CONSTANTINE ALEXANDER: Are those --

10 SARAH RHATIGAN: Yes. Some of those skylights are
11 not in the setback. They are shown here. I think that the
12 neighbor disagrees about whether or not they're in the
13 setback or not. So we will request relief for those. We
14 believe that actually just this one requires relief, the one
15 that's in pink. Right, then? Or is it both.

16 MATT HAYES: Both of these, this one and this one.

17 SARAH RHATIGAN: Oh, right.

18 MATT HAYES: These too are --

19 SARAH RHATIGAN: So I'm sorry the one that's on
20 top of the bay --

21 CONSTANTINE ALEXANDER: Right.

22 SARAH RHATIGAN: -- needs relief, and this one

1 needs relief.

2 CONSTANTINE ALEXANDER: And the other two don't?

3 MATT HAYES: No, I actually put a tape measure on
4 it the other day. I put a tape measure on them the other
5 day. They're actually with the five feet, the 5.15, within
6 the setback. They are an additional seven feet interior
7 change from the interior wall. So there's still six inches
8 of wall, and thus it puts us past the 12.45 setback.

9 SARAH RHATIGAN: So --

10 CONSTANTINE ALEXANDER: Maybe someone -- skylights
11 to my mind anyway, you look up at the sky. So is that the
12 case of these? Look --

13 SARAH RHATIGAN: Yes.

14 CONSTANTINE ALEXANDER: -- if you were at the
15 skylight, would you be able to look at the neighboring
16 property?

17 SARAH RHATIGAN: No.

18 MATT HAYES: No.

19 SARAH RHATIGAN: And I have some photographs. I
20 didn't print them; I have some photographs on my phone if
21 you want. You can just see the -- you know, you see the rim
22 edge from the street.

1 MATT HAYES: Even more so, the shed dormer. I
2 mean, the shed dormer has --

3 SARAH RHATIGAN: Has a very flat pitch, right.
4 And so, again, the Xs are no longer openings. Okay?

5 CONSTANTINE ALEXANDER: Okay.

6 SARAH RHATIGAN: The upshot I would say of the
7 window changes on this are that Mr. Hayes is doing the
8 minimal required to brighten up some dark spots within this
9 house. It's a major overhaul to take a building that's
10 really crumbling to the ground and put a lot of time and
11 effort into it to create livable units.

12 And, you know, frankly if there were not a project
13 in the back that was in dispute, I suspect that there would
14 be less opposition.

15 That being said, one of the concerns -- I mean, I
16 really don't want to -- I don't want to -- you know, cast
17 aspersions or anything, but I just want to sort of put out
18 there that if this were any other project, I would be
19 surprised if there would be a two-hour meeting about the
20 window changes that we're requesting.

21 CONSTANTINE ALEXANDER: I'm going to make an
22 observation though, and you don't come -- you and your

1 client, not you -- don't come here necessarily with clean
2 hands? You know, you've got a building permit to put a
3 second house in the back yard, and your normal procedure is
4 you wait until the appeal period runs out before you do it.

5 MATT HAYES: Can I answer that? In every instance
6 that I chose to do work, I called the Commissioner --

7 CONSTANTINE ALEXANDER: That doesn't work, sir,
8 I'm sorry. Calling the Commissioner doesn't do it. There's
9 an appeal period, because you don't know, he can't speak to
10 the neighbors. You don't know.

11 MATT HAYES: Right.

12 CONSTANTINE ALEXANDER: Because I see what's going
13 on here, and I do not like it. Is they tried basically a
14 fait accompli to the neighborhood, I mean, we -- you got a
15 big hole here, now what do you want me to do? And he'll
16 work that out with the neighbors and with Ms. Singanayagam.
17 But that was not a good process. And so I --

18 MATT HAYES: With that said, I was asked, like,
19 there was never a stop work order that got put into place.
20 I was asked to voluntarily stop, when this became -- when
21 this became a real legal issue, and it started getting
22 scrutinized by the Legal Department, the Commissioner and

1 his colleagues asked me to voluntarily stop work until there
2 was resolution, to which I said yes.

3 CONSTANTINE ALEXANDER: Again, you shouldn't have
4 started the work. Let's not belabor, and I'm doing the --

5 BRENDAN SULLIVAN: I would just assume that we
6 discuss this particular -- yeah --

7 MATT HAYES: Right.

8 BRENDAN SULLIVAN: -- as if it was a stand-alone.

9 CONSTANTINE ALEXANDER: That's how we should have
10 treated it.

11 SARAH RHATIGAN: Thank you, yeah. So one of the
12 questions I did come up, one of the concerns from neighbors
13 that was brought up was there were sort of two sets of
14 concerns that we wanted to be able to speak to.

15 And so, what I'm showing you now, this is
16 essentially kind of a landscaping plan, if you will,
17 proposal. I know it's in pink and it's sort of a little
18 informal here, but this was -- one of the concerns that the
19 neighbors had was, "Well, what about open space on this --
20 you know, are you meeting the open space requirements?"
21 which we are, and we wanted to show that to them.

22 And, you know, can you do anything to help with

1 the fact that now that, you know, now that there are some
2 additional windows on the left side of the building that are
3 as of right, but they are additional or larger windows that
4 the neighbors who are -- have a view from -- okay, so this
5 is our lot.

6 Right here.

7 CONSTANTINE ALEXANDER: Right.

8 SARAH RHATIGAN: The neighbors who are on Walden
9 Mews, which is a townhouse development that is not the
10 neighboring lot, but it's one lot over, but it's very deep,
11 and those -- that structure is quite close to this property
12 line, and it looks out over this back area.

13 So the folks who live there who are here, will
14 look at the house with more windows. So this was proposed
15 by Mr. Hayes, which is a 15-foot tree -- remind me of what
16 it's called, a Kentucky coffee --

17 MATT HAYES: Kentucky coffee tree, yeah.

18 SARAH RHATIGAN: A mature planting, which he's
19 proposed to put here. This is showing the -- essentially
20 the landscape plan for the project, which is not different
21 than what's been filed, but it's just described a little
22 bit.

1 This is the open space in the back that is
2 dimensionally required, dimensionally compliant. That's 23%
3 of the square footage on the lot. And then the cross-
4 hatched is green space, open space, but it's not
5 dimensionally compliant, and that's 14% of the lot coverage.

6 When we -- and then these two were additional two
7 15-foot mature trees that were proposed to be planted on
8 this boundary. It's not really possible to plant trees in
9 this very small space, because they probably won't do well
10 and they may have issues with the foundation.

11 But this siting was considered a good spot, both
12 because it provided a little coverage for the neighbors, and
13 also, because it, you know, kind of fit in nicely.

14 The discussion with the neighbors about the
15 windows, when we got through presenting this proposal, the
16 neighbors wanted to know what's going to happen with this
17 foundation? To which --

18 CONSTANTINE ALEXANDER: That's not --

19 SARAH RHATIGAN: -- I agree is not. And when we
20 could not answer this question, the negotiations ended.

21 CONSTANTINE ALEXANDER: I'm a little confused,
22 which is not unusual. Are you proposing these -- as part of

1 your relief you're being sought if you grant the special
2 permit, you will comply with the landscaping suggestions?

3 SARAH RHATIGAN: So if this Board would want that
4 as a condition of the special permit, yes, absolutely.

5 CONSTANTINE ALEXANDER: Certainly, it can't hurt.
6 I mean --

7 SARAH RHATIGAN: Frankly, I think that he would
8 like to do that as well. I mean, he's got the specimen
9 trees, he's prepared to plan them.

10 CONSTANTINE ALEXANDER: There's no reason
11 therefore not to -- if -- should we grant relief --

12 SARAH RHATIGAN: Exactly.

13 CONSTANTINE ALEXANDER: -- to make that
14 requirement --

15 SARAH RHATIGAN: Yes.

16 CONSTANTINE ALEXANDER: -- part of the relief.

17 SARAH RHATIGAN: Yep.

18 BRENDAN SULLIVAN: And this ties into the windows
19 addition, relocation. I'm reading this that it would screen
20 the windows --

21 CONSTANTINE ALEXANDER: Yep. --

22 BRENDAN SULLIVAN: From the neighbors?

1 SARAH RHATIGAN: Yes.

2 BRENDAN SULLIVAN: Emitting of light of those
3 persons and so on and so forth less visible. So it will
4 help mask any view to the house and from the house.

5 SARAH RHATIGAN: I think that's correct.

6 BRENDAN SULLIVAN: That's the purpose of the
7 trees?

8 SARAH RHATIGAN: Mm-hm.

9 BRENDAN SULLIVAN: So it's directly related to --

10 SARAH RHATIGAN: It is directly related to the
11 windows, yes.

12 CONSTANTINE ALEXANDER: I think the requirement
13 for setbacks generally fulfill two policies. One, safety.
14 Buildings shouldn't be too close together. Fire can spread
15 from one building to the other, and two, privacy.

16 You don't want people to peer into your window,
17 and that's the issue before us tonight. It's privacy. And
18 the landscaping does -- as maintained, does help with
19 privacy. And this is my opinion.

20 LAURA WARNICK: But these are not evergreen trees.
21 They are specimen trees. No, they're not. So it's good --
22 provides privacy during the summer -- spring, summer or

1 fall.

2 CONSTANTINE ALEXANDER: Not all the time.

3 LAURA WARNICK: Not all the time.

4 MATT HAYES: Yeah, sure.

5 CONSTANTINE ALEXANDER: It's better than nothing,
6 I guess is the point.

7 SARAH RHATIGAN: Evergreen trees would be, I
8 suppose, another option, right?

9 MATT HAYES: Yeah, I mean open to that, but I just
10 thought that these would kind of have a larger -- I mean I'm
11 open to evergreen trees, I just thought that these trees
12 have a larger and wider canopy during the summer months, and
13 I mean just like any other property in Cambridge, when trees
14 defoliate, we all lose a sense -- a certain amount of
15 privacy.

16 But again, I'm totally open to evergreens. Yeah.

17 CONSTANTINE ALEXANDER: I for one wouldn't want
18 this Board to get involved in choosing what kind of trees.
19 But I think the idea of plant scaping, and landscaping and
20 we'll rely on your good faith to put the right kind of tree
21 in. I think if you don't, the neighbors will let you know.

22 MATT HAYES: I know.

1 CONSTANTINE ALEXANDER: That's my judgment, based
2 on the progress of this case. But anyway, are you through?
3 I want to hear from the neighbors. I don't mean to rush
4 you.

5 SARAH RHATIGAN: Yeah, no, we're through, but we
6 would like a chance to respond.

7 CONSTANTINE ALEXANDER: Of course, of course. And
8 again, let's make clear the plans, should we grant relief,
9 will be those two pages -- those two right there, plus the
10 landscaping. Just leave them right there for now. Okay.

11 Well, any questions from members of the Board.
12 I'll open the matter up to public testimony. Is there
13 anyone here wishing to be heard on this matter? At least
14 one person does.

15 MARCELO MARCHETTI: Take the mic?

16 CONSTANTINE ALEXANDER: Yeah. Take the mic and
17 name and address, please

18 MARCELO MARCHETTI: Yeah, I'm one of the neighbors
19 that lives --

20 CONSTANTINE ALEXANDER: And name and address too,
21 starting with.

22 MARCELO MARCHETTI: Okay. My name is Marcelo

1 Marchetti. I live in 7 Walden Mews.

2 THE REPORTER: Could you spell your name, please?

3 MARCELO MARCHETTI: M-a-r-c-e-l-o M -- as in Mary
4 -- a-r-c-e-l-o.

5 CONSTANTINE ALEXANDER: Now, you're not --

6 MARCELO MARCHETTI: Marchetti is M-a-r-c-h-e-t-t-
7 i.

8 CONSTANTINE ALEXANDER: -- you're not a direct
9 abutter?

10 MARCELO MARCHETTI: No.

11 CONSTANTINE ALEXANDER: Okay.

12 MARCELO MARCHETTI: There is one property in
13 between 117 and the Mews.

14 CONSTANTINE ALEXANDER: Okay.

15 MARCELO MARCHETTI: And one of the houses that is
16 affected, because going from two windows on this left side
17 of the property facing us now have four windows, facing.
18 Looking into my property and because of height, I'm right
19 across those windows.

20 So we were discussing about trees, right? The
21 possibility of blocking that, and I'm fine with that. Okay?
22 Part of the issues that we have a concern is because this --

1 I know that you're trying to separate the situations, but
2 the whole property to look at as a whole --

3 CONSTANTINE ALEXANDER: Sir --

4 MARCELO MARCHETTI: I understand, but I would
5 rather be heard, because I have not been heard by anybody
6 since I started sending e-mails. I received no attention
7 from anybody.

8 I sent pictures from before on the property in its
9 original form, the current form, and then all of a sudden,
10 there are foundations being placed. I sent an e-mail when
11 the hole was being -- when the ground was being opened; no
12 reception, no answer.

13 Okay, so to me I understand that it's upsetting to
14 him, because he believed to have done everything that he
15 needed to do. But somewhere, things were lost in this whole
16 process. And separating the issues, in my opinion it's a
17 convenience, maybe for somebody that was not addressing the
18 whole concern of the neighbor. The neighborhood doesn't
19 look at just windows or just this -- we're looking at the
20 whole --

21 CONSTANTINE ALEXANDER: Thank you.

22 MARCELO MARCHETTI: Okay.

1 CONSTANTINE ALEXANDER: Why don't you just set her
2 up? Thank you. Anyone wishes to be heard?

3 SUSANNE HOWARD: Hi. My name is Sue Howard, and I
4 am at 111 Walden Street. I am an abutter to an abutter, but
5 I back yard looks right into the space. I have prepared a
6 copy of what it is I'm about to say. I've prepared five
7 copies so you can look at them if I miss something.

8 Thank you for -- some time ago on September -- for
9 September -- for the September 12 meeting, I did ask that a
10 lot of information be provided, and there was a submission.

11 But I didn't find it to be either different at all
12 or recertified by the architect to address the open space
13 issues, which are now compounded by the fact that there's
14 this thing in the back yard, which is a violation.

15 And so, the question I raise for the Board is
16 that under Section 10.43, it appears that until that
17 requirement that the zoning ordinance be met and all
18 circumstances are met, that there is an issue as to whether
19 or not the permit can go forward.

20 Before I'm interrupted, can I just finish here?
21 Because we did have a discussion with the developer, with
22 Matt and his lawyer about the possibility of coming to some

1 kind of comprehensive solution, so that the developer could
2 move forward with his two units, and so that the neighbors
3 would feel that they were both heard, and that a principal
4 concern was addressed.

5 The process for the windows is probably best
6 addressed by some other folks who do have windows. I would
7 just note that the windows were installed, knowing that
8 there was a special permit issued that needed to be attended
9 to, and in that initial building permit, part of that was
10 crossed out, so that they could go forward.

11 CONSTANTINE ALEXANDER: Can I just interrupt you
12 right there, is that true? Did you start to build or work
13 on the windows, before you --

14 MATT HAYES: On the right side, I did not start
15 them until I had gotten approved -- until I had a letter
16 from -- which has apparently now been withdrawn, which I
17 didn't know. I did not start windows on that side until I
18 had gotten written consent from the most impacted neighbor,
19 and most impacted neighbor to my right.

20 And one other thing that I -- respectfully
21 understand what Mr. Chairman is saying in terms of his
22 concerns -- so the window openings, he had contractors

1 there, they were -- he understood that he was working at
2 risk.

3 And -- but also from experience of doing other
4 construction work on similar projects, when he's gone to the
5 neighbors, you know, most impacted and said, "Are you okay
6 with this?" And they say, "Sure." And he's gotten e-mail to
7 prove that, he understands he's going at risk, but it's also
8 small, you know, movements of windows that he frankly didn't
9 anticipate this was going to be what it was.

10 He understands that it was at risk and, you know,
11 the one window that is the new window that is subject to the
12 special permit, that is boarded up, so that there's no --
13 you, any actual negative impacts to the neighbors. The ones
14 that were moved slightly, those windows are not installed
15 yet, but the openings were changed; shifted by inches.
16 Apologize for interrupting you.

17 SUSANNE HOWARD: Yeah. So what was -- what's also
18 submitted here was that somehow the open space that was
19 listed was listed as nonconforming -- the open space that's
20 listed on the application which was unchanged in what I had
21 hoped would be a correction and a plan for the open space --
22 was listed as nonconforming, and a picture was submitted.

1 On the picture, what you see is a car and some
2 broken up concrete on half of the lot. It's not a complete
3 picture of the lot, and it definitely shows trees that were
4 taken down before the picture was taken.

5 So it was not just a vacant lot. It had trees on
6 it, and I think some of the other members of the
7 neighborhood have some pictures on the extent of tree
8 removal that has exacerbated the situation for the
9 neighbors.

10 And why we would like to see this project
11 completed as soon as possible, and to have a good, open
12 space plan that accommodates the new units that are going to
13 but there, that's real.

14 One of the issues here is not only -- I mean, it's
15 the foundation and getting that to a place where, you know,
16 somebody can use the yard, but what's been proposed, it's
17 not usable by the two-unit owners.

18 CONSTANTINE ALEXANDER: Well, getting into the
19 yard discussion again -- let me finish please. We have
20 before us plans for new windows on each side, and we have
21 before us proposed landscaping if you will; tree addition.
22 That's what's before us. I don't want to get into the open

1 space and the rear yard. That's not relevant to this case.

2 SUSANNE HOWARD: So the fact that the application
3 isn't correct doesn't concern me.

4 CONSTANTINE ALEXANDER: In what respect is it
5 incorrect?

6 SUSANNE HOWARD: It's incorrect in that it shows
7 zero open space.

8 CONSTANTINE ALEXANDER: Open space is not
9 relevant. How many times do I got to say it? It's not
10 relevant to a determination for relocation of windows by a
11 special permit in the setback.

12 SUSANNE HOWARD: So what you're saying is that it
13 -- you can -- anything else you fill in on the application
14 doesn't matter? That all you're going to look at is the
15 windows?

16 CONSTANTINE ALEXANDER: That's -- it's a narrow
17 relief they're seeking.

18 SUSANNE HOWARD: So you can have an architect come
19 in and stamp and say that it's this, that and the other
20 thing and you don't care, is that right?

21 JANET GREEN: Can I just try to say something,
22 maybe?

1 CONSTANTINE ALEXANDER: Sure, try.

2 JANET GREEN: You see, if you look on the
3 schedule, you'll see that there are two places that we're
4 looking at, two cases, right? There are two cases.

5 SUSANNE HOWARD: One was with --

6 JANET GREEN: One is for the appeal and one is for
7 a special permit. We take each case individually. They
8 don't bleed over into each other. So what we're asking for
9 is for you to address the special permit, which is to
10 relocate and change window patterns within the setback.
11 That's the --

12 SUSANNE HOWARD: Okay.

13 JANET GREEN: That's what's under discussion now.
14 Other things may come up and you'll want to say something
15 else. But right now, it's about the windows.

16 SUSANNE HOWARD: Okay. Well, perhaps I should go
17 then to the requested conditions for the windows, which is
18 in the last page of the text here. And there's a series of
19 things that you should choose to go with, what is a plan
20 that the neighbors have not agreed to, with respect to the
21 trees.

22 CONSTANTINE ALEXANDER: You've heard the very

1 first condition it says, "To address and increase light
2 emitted from 35 new windows and skylights."

3 SUSANNE HOWARD: Well, some of them are at --

4 CONSTANTINE ALEXANDER: What?

5 SUSANNE HOWARD: According to the developer, some
6 of them are allowed without going before the special permit.

7 CONSTANTINE ALEXANDER: So therefore --

8 SUSANNE HOWARD: I would take a different
9 position, which is that any time you have a nonconforming
10 structure and you alter it in this manner, that you would
11 need to get a special permit for all the windows --

12 CONSTANTINE ALEXANDER: No.

13 SUSANNE HOWARD: Not just those in the side yard.
14 The side yard restriction seems to me it's in the section of
15 Section 8. But I understand that, and I medication saying
16 that there is -- the window sizes have been changed, maybe
17 by inches, but it makes a big difference when you do that
18 with all the number of new windows.

19 So you can choose to not address this condition,
20 but I will just say that that's the -- when you put in that
21 many more windows, especially for some of the neighbors who
22 are now -- they have six, because they were on a corner that

1 didn't have any windows at all. The amount of light at
2 night is going to be significant for them.

3 So this was a proposal to try to minimize the
4 light pollution at night, and also, to have some block put
5 in that they might have to have some covering on, because
6 it's just a lot of glass in the back yard, where previously
7 it was a green space for us with lots of trees and coverage
8 in a lot of different areas. And now we have more windows.

9 So I don't know, I put a blank here for the other
10 folks who made changes the windows, just to be sensitive to
11 the neighborhood. This is a neighborhood finding that
12 you're going to need to make about how it does affect the
13 neighborhood.

14 Foliage and fencing we've talked about a little
15 bit. But there is also parking, which I know isn't from the
16 windows, but it does have to do with additional light. The
17 trees -- many of them have already been removed. If there
18 is a way to replace them, we've sort of talked about that.

19 And also, to remove -- I would ask as a condition
20 that they remove zoning violations on the --

21 CONSTANTINE ALEXANDER: No.

22 SUSANNE HOWARD: On the property.

1 CONSTANTINE ALEXANDER: No, I'm going to say it a
2 third time, no. That's not the case before us tonight, and
3 we're not going to get into that. We're dealing with the
4 special permit for the windows.

5 And if there were violations before, that will be
6 dealt with in a separate proceeding, should it come before
7 the Board. We're not going to get into that.

8 SUSANNE HOWARD: So if, just so I understand for
9 future reference --

10 CONSTANTINE ALEXANDER: Yeah.

11 SUSANNE HOWARD: If there is a permit before you
12 and there's a fair number of building violations there, you
13 ignore them and just go for what has been applied for??

14 CONSTANTINE ALEXANDER: Yeah. You should take an
15 appeal for those building violations and challenge those,
16 and we'll have a separate case on those.

17 SUSANNE HOWARD: Okay.

18 CONSTANTINE ALEXANDER: That's how it works.

19 SUSANNE HOWARD: All right, well, I think that's
20 what I have. And we do have somebody who wants to talk just
21 about the general area, and I hope you will listen, because
22 we've been to four hearings, and this is our fourth, and

1 this particular person is affected by the windows, but also
2 by the defoliation of the entire site, which affects what we
3 look at.

4 NANCY BRICKHOUSE: So my name is Nancy Brickhouse.
5 I live at 113 Walden Street. I'm the abutter next to the
6 house in question. Our house is --

7 THE REPORTER: Could you spell your last name,
8 please?

9 CONSTANTINE ALEXANDER: On the right side or left
10 side? I'm sorry.

11 NANCY BRICKHOUSE: Right side.

12 CONSTANTINE ALEXANDER: Right side.

13 NANCY BRICKHOUSE: Brickhouse, B-r-i-c-k-h-o-u-s-
14 e. The first thing I want to say is that although my
15 husband did approve the window plan, he then later sent a
16 letter to you and cc'd to Matt Hayes, withdrawing his
17 approval on it in case you don't remember that.

18 And you can see why, because although we're not
19 allowed to talk about the elephant in the room, I'm still in
20 the room where we live.

21 So I'm not sure what else I can say without
22 talking about the foundation, but I will talk about the

1 defoliation, because it does affect a lot of what the
2 neighbors are hoping will be part of the refoliation (sic)
3 of the lot.

4 So this is -- this is from an aerial photo, you
5 can actually Google and find the original photo. My husband
6 did some drawings on it to show the tree area that was
7 defoliated -- sorry, and you can see this is my house here.

8 So this whole area was green with mostly trees.
9 My back yard is the one that doesn't have trees, because it
10 has a foundation under it -- from about 1992, the year
11 before we bought it from a person who tried to put a
12 building right behind it. Like I said, our houses are
13 twins. They were built in the 1890s, around 1892, '93.

14 So it's quite -- there were quite a lot of trees.
15 If you -- my husband colored this darker, but if you go to
16 the original photo, you can see it looks like all the other
17 trees that go all the way back through here.

18 And this is what I think some of the neighbors
19 would like to see replace, but they can't until we
20 understand what the elephant in the room is going to do.
21 Thank you.

22 HURST HANNUM: Good evening. My name is Hurst

1 Hannum, H-u-r-s-t H-a-n-n-u-m and I live at 9 Walden Mews,
2 next to Marcelo. We're on the left-hand side, more towards
3 the back. The first thing I wanted to say is I just learned
4 tonight that you're all volunteers of this.

5 CONSTANTINE ALEXANDER: Right.

6 HURST HANNUM: And I have to say that I'm very
7 appreciative of the fact that you take your time to listen
8 to people argue two or three hours once a week or however
9 often it is that you meet.

10 CONSTANTINE ALEXANDER: Twice a month.

11 HURST HANNUM: We --

12 CONSTANTINE ALEXANDER: Twice a month.

13 HURST HANNUM: We have a back view and a corner
14 view. We frankly never noticed the windows on the original
15 house, because the tree growth was so dense that we never
16 saw the windows. We can see them now, and I can't describe
17 the view, or the issue that we have.

18 I won't mention the elephant in the room, but
19 counsel for the owner spoke to you at length about open
20 space, and what they plan to do to help mitigate the new
21 windows by blocking some of the view by planting trees. The
22 open space that were going to hold those excluded where the

1 foundation now is.

2 And I simply don't know whether -- because this is
3 the first time we've ever heard of trees -- whether the
4 single tree that she proposes to block the views both from
5 Number 7 and Number 9, I just don't know where it is. It's
6 on a map. I don't know if it will mitigate the fact that
7 there are many more windows than there used to be.

8 And so, it's very difficult to separate these
9 things, but I appreciate your attempts to do it.

10 I can't help to say -- make one other comment.
11 And that reflects one that you made earlier. The owner of
12 the property is someone they actually know, because he did a
13 -- not well, but casually, because he did a -- tore down the
14 house and made another house, and 137-139 Walden Street, I'd
15 have to say it was a definite improvement over what was
16 there before.

17 He's also doing another major project, as you
18 probably know, on Vincent Street another block away.

19 Given the fact that he obviously knows Cambridge,
20 and Cambridge zoning laws and Cambridge permit laws better
21 than anyone at least on this side of the river, I find it
22 astonishing that so much of the Board's time seems to have

1 been taken up with in an ex post facto way approving things
2 that he already started to do.

3 And I hope that the Board takes this into account.
4 Because it simply isn't the way that I expect an entity of
5 the city government of Cambridge to work. I know there is
6 nothing you can do about it, but when someone does something
7 at risk, I hope that you take them at your word.

8 The reason that we couldn't agree to the plan of
9 mitigation with the new trees is because we have no idea
10 where the trees are going to go. I've thought about having
11 a tree before, and so, I think it -- I hate to do this to
12 you, but I think the only thing to do is to continue this if
13 you wish to take well-founded objections by neighbors into
14 account.

15 CONSTANTINE ALEXANDER: Do you see where they're
16 proposing to put the trees?

17 HURST HANNUM: Yes, but I don't know what that
18 looks like from my deck or my first floor or my second-floor
19 window.

20 SARAH RHATIGAN: Could you remind me where you
21 live?

22 HURST HANNUM: Number 9. It's the first --

1 SARAH RHATIGAN: I mean, where is it? On the --
2 from --

3 HURST HANNUM: Right here.

4 SARAH RHATIGAN: You're over here?

5 MATT HAYES: This property, there's another
6 property, and then a property that's

7 HURST HANNUM: Yeah, we're right next to Numbers
8 --

9 SARAH RHATIGAN: You're in this building, okay.

10 HURST HANNUM: Number 7, yeah.

11 SARAH RHATIGAN: Okay, thank you, thanks.

12 HURST HANNUM: That's okay. So that's -- and I
13 simply can't give an informed opinion about whether this is
14 going to help or not, since the Board seems to think that
15 this was something important, and it should be made a
16 condition to the permit, all I can say is that I can't agree
17 to that because I don't know what that condition means.
18 Thank you.

19 CONSTANTINE ALEXANDER: Thank you. And thank you
20 for taking the time to come down. We really do appreciate
21 it. Brendan?

22 BRENDAN SULLIVAN: Sarah, can I see the latest

1 plan that's -- it's showing the trees.

2 CONSTANTINE ALEXANDER: I want to see those trees
3 too, after you're done Brian, Brendan. Let me see --

4 LUISA SAN JUAN: Yeah, I don't think I need a
5 microphone, because my voice runs very well.

6 THE REPORTER: You need it.

7 LUISA SAN JUAN: Okay. My name is Luisa, L-u-i-s-
8 a and my last name is San Juan, S-a-n J-u-a-n. I came here

9 THE REPORTER: Your home address?

10 LUISA SAN JUAN: Excuse me?

11 THE REPORTER: Your address, please?

12 LUISA SAN JUAN: 7 Walden Mews. Yes. I came here
13 in the first hearing. I don't know if you remember, because
14 I was appalled how much privacy I was losing. And the
15 hearing was not even that. I don't understand how things
16 are done in Cambridge. I have to say that. I don't
17 understand the law.

18 But what I can understand very clearly is that now
19 from my bedroom, all the windows on the left side are
20 bigger. The builder was telling -- Matt was saying that --
21 the whole inside was bigger. I don't know. But the outside
22 was smaller -- every single window, and there are many

1 windows there.

2 And in the back, while there are four windows and
3 there are two before, from my bedroom at the same time, and
4 you can say maybe we have a lot, but you see where the flag
5 is? Right there, without anything in front? Now I can --
6 they can see my bedroom, which all these windows, all these
7 lights.

8 I understand, I don't understand the law. But the
9 privacy I have lost considerably. So it's true that even if
10 they put one tree, part of the privacy is lost. Because
11 there is a driveway, and in that part cannot be put the
12 tree. The windows are larger. And we have some neat
13 pictures of before and after. And they are on the record,
14 my husband said.

15 So I don't know how the law works, but I want to
16 put the point that I have lost considerably privacy. And
17 there will be more invasion of light, and everything that
18 goes with it. That's just -- I want to say that.

19 CONSTANTINE ALEXANDER: Okay. Thank you for
20 coming down.

21 LUIA SAN JUAN: Thank you.

22 CONSTANTINE ALEXANDER: Anyone wishes to be heard?

1 Ms. Howard, I think you wanted to --

2 SUSANNE HOWARD: I would just like to say that we
3 also made an offer. I made an offer to Matt to work with
4 him on a plan that would be acceptable to everyone, and but
5 I needed some time, I mean, we were just here, this is the
6 first hearing on this that's been substantive. This is the
7 first time that many of the neighbors have even seen Matt.

8 So my offer to him was to work on a plan. And I'm
9 aware that this is going to be recorded on the property, and
10 that any condition will go run with the land. And so I'm
11 concerned that if there is a plan that is a condition, that
12 it be suitable for what he has and is proposing.

13 Because what we don't know -- and I think, you
14 know, in fairness to Matt it's a shock to, you know, think
15 you're building a building and to do it and not to have, you
16 know, have it kind of pulled out from under you. I
17 appreciate that, and sort of what's next is something that
18 requires some time and some consulting with the landscape
19 people and your lawyer and everything to figure out how to
20 work this into the two units that he has there, and allow
21 whatever proposal they have for trees and open space to be
22 there -- consistent with what they're going to do with those

1 two units when they divide them up.

2 Because I'm sure he's going to sell them, it'll be
3 a condo. So -- and each one is going to have to have
4 private space. And I just think it would be helpful to all
5 concerned if we could allow us a little more time to work
6 out something that really works. Because Matt is going to
7 move on to the next project.

8 And we're going to live there, as was have some of
9 us for the last 30 years with the next neighbors. And it
10 would be great not to kind of muck up the title and muck up
11 all this sort of stuff with a plan that shows a foundation
12 in the back, when maybe they'd prefer, they didn't know.

13 CONSTANTINE ALEXANDER: Please.

14 SUSANNE HOWARD: But it's on the plan that's
15 submitted. So I didn't know they were going to submit the
16 plan. This was the first thing. We -- I wanted to come
17 back with something else, and I'm hoping that you would
18 allow us the time to do that. And also allow Matt to note
19 what else he's going to do back there. Because if he is
20 agreeing to put those trees there, he may not -- he may want
21 to move them a little bit and not have it be --

22 CONSTANTINE ALEXANDER: Are you amenable to

1 continue this case and having further discussions to come up
2 with a landscaping plan?

3 SARAH RHATIGAN: I need to respond to that.

4 CONSTANTINE ALEXANDER: That would maximize to the
5 extent possible the privacy of the abutters?

6 SARAH RHATIGAN: The request is to go forward
7 today, if at all possible.

8 CONSTANTINE ALEXANDER: Why?

9 SARAH RHATIGAN: There is not -- there has not
10 been cooperative or sort of open negotiating opportunities
11 here --

12 CONSTANTINE ALEXANDER: That's a very strong
13 comment to come from someone whose client has also acted
14 somewhat improperly throughout the process.

15 SARAH RHATIGAN: Well, I, let me try to rephrase
16 that better. I apologize. It's been a long night.

17 CONSTANTINE ALEXANDER: Yes, it has.

18 SARAH RHATIGAN: I haven't probably eaten enough
19 snacks to get me through. So the -- it has been a very
20 long, sort of process of continuing this matter for a period
21 of time.

22 CONSTANTINE ALEXANDER: The first time it was

1 continued was because your client didn't do the advertising
2 that's required by our statute.

3 SARAH RHATIGAN: There's -- I'm not suggesting
4 that -- one, I wasn't here at that point and, you know, I
5 apologize for that, but the continuance -- I'm not saying
6 that the continuances are anyone's fault, I mean this has
7 just been a series of --

8 CONSTANTINE ALEXANDER: I'm listening.

9 SARAH RHATIGAN: -- there's been a lot going on.
10 Let me put it that way. I don't have a strong sense of a
11 continuance being that helpful. And --

12 CONSTANTINE ALEXANDER: Understood.

13 SARAH RHATIGAN: -- there's not -- I mean, just,
14 you know, to be very honest, there's not a lot of, you know,
15 of wiggle room of where to put these trees.

16 CONSTANTINE ALEXANDER: Can you -- I'm sorry to
17 interrupt you. Can you just show me on that Planning Board
18 the trees you're proposing to add, where?

19 SARAH RHATIGAN: So --

20 CONSTANTINE ALEXANDER: One.

21 SARAH RHATIGAN: -- this is a tree, this is a
22 tree, and this is a tree.

1 JANET GREEN: Can you pull it up just a little bit
2 so that we all can see?

3 CONSTANTINE ALEXANDER: We all can see.

4 SARAH RHATIGAN: Oh, yeah, I apologize.

5 LAURA WARNICK: This is a current concern, like,
6 for me, I think. You've heard that the neighbors are very
7 concerned about privacy. They've got all other issues that
8 are not under our jurisdiction, under our purview this
9 evening, but I think at very least, to be able to show the
10 size and exact location and the species and agree, have a
11 communication with neighbors only on those issues that would
12 indicate to them the privacy allowed by their suggestions of
13 trees.

14 So that making that offer to them in a clear way,
15 this is using a magic marker, talking about this tree or
16 that tree, I think it's of serious enough concern that it's
17 worth going to the neighbors and giving them a precise
18 description of what you're proposing.

19 SARAH RHATIGAN: So I would ordinarily agree with
20 you. But I just want to, you know, not to be getting too
21 thick into the weeds, but with our discussions in the other
22 room, we were presenting the proposal of the trees and

1 describing the open space.

2 And when we circled around the room and discussed
3 this for quite a bit of time, the consensus in the room was,
4 unless you can tell us you're getting rid of that
5 foundation, we don't have anything to discuss.

6 So that's where we're coming from. We really
7 would like to have this resolved. If this Board tells us
8 we're refusing to -- we're going to vote against you, we
9 will listen to you, but I just want you to understand where
10 we're coming from. It's not --

11 LAURA WARNICK: Yeah.

12 SARAH RHATIGAN: We're --

13 CONSTANTINE ALEXANDER: Understood.

14 SARAH RHATIGAN: We're really not trying to be
15 unreasonable. It's just we're not feeling like there's
16 really --

17 CONSTANTINE ALEXANDER: The foundation is not an
18 issue for this case.

19 JANET GREEN: But I would like to ask the
20 neighbors, and I think I'm asking you, not the people
21 sitting in front of us, if you can have a discussion about
22 the trees and about the windows and the landscaping and not

1 bring up the other issue? Because it seems like when you
2 went to have that discussion tonight, everything got stopped
3 because of that.

4 If we're going to continue this case, it has to be
5 with the agreement of the neighbors that you're not going to
6 bring up that other issue. You'll have plenty of time to
7 bring that up in another forum, but this is a special permit
8 case. It is about the windows.

9 If you want to have a discussion about the
10 windows, as I think you've reasonably suggested, but you
11 have a responsibility in that regard, that when these people
12 come back before us that they'll say, "We had a discussion
13 with the neighbors, and it really went somewhere." I mean
14 you may or may not agree with that, but I think now is the
15 time to either agree with it or don't agree with it.

16 SARAH RHATIGAN: Could I just make one other --

17 BRENDAN SULLIVAN: Janet, thank you.

18 CONSTANTINE ALEXANDER: Yes.

19 BRENDAN SULLIVAN: Thank you.

20 CONSTANTINE ALEXANDER: Right. Well said.

21 SARAH RHATIGAN: The only other thing --

22 SUSANNE HOWARD: Are we -- then I promise I'll

1 stop talking here.

2 BRENDAN SULLIVAN: I think Ms. Howard's request is
3 reasonable.

4 CONSTANTINE ALEXANDER: Yes.

5 BRENDAN SULLIVAN: I think it's reasonable. So if
6 you want to take --

7 CONSTANTINE ALEXANDER: One at a time, one at a
8 time.

9 AUDIENCE: Brendan, they're having trouble hearing
10 you.

11 CONSTANTINE ALEXANDER: Yeah, and we've got to
12 keep a record. So --

13 BRENDAN SULLIVAN: The bottom line for me is I
14 think Ms. Howard's request is reasonable.

15 CONSTANTINE ALEXANDER: Yes.

16 SUSANNE HOWARD: Thank you.

17 CONSTANTINE ALEXANDER: And I second that.

18 MATT HAYES: May I say something?

19 CONSTANTINE ALEXANDER: Yes, you may. You need to
20 use the microphone though. No, no, you need the mic. Are
21 you going to speak, address us? You've got to enter it into
22 the record.

1 MATT HAYES: Every time I have stepped into
2 conversation with Ms. Howard it has been combative, it has
3 been like threatening, it has been just like -- it has just
4 disintegrated into this no civility.

5 And I totally get your point, and I totally
6 respect what you're saying, I just don't think I'm going to
7 get into a forum with these neighbors and Sue leading the
8 charge, where I'm going to have a real, rational
9 conversation and come up with a real --.

10 Like, all of the properties I develop, I, like,
11 spend a lot of money on the landscaping -- on big, mature
12 trees, 15 to 20-foot tall trees. I go out of my -- like, I
13 don't like building crap. And, like, I like putting nice
14 landscaping, I will address privacy in any way possible.

15 CONSTANTINE ALEXANDER: Why don't you have the
16 meeting, present your landscaping plans and if you hear
17 words about the foundation --

18 JANET GREEN: We're going to ask you about that,
19 and we're going to ask them about that --

20 MATT HAYES: That will be fine.

21 JANET GREEN: -- when you come back.

22 CONSTANTINE ALEXANDER: We're not going to talk

1 about the foundation in this case. Period, end of story.

2 How many times have I got to say it?

3 BRENDAN SULLIVAN: Matt, you've got two choices.

4 JANET GREEN: Brendan?

5 BRENDAN SULLIVAN: We can either take a tour boat

6 now --

7 MATT HAYES: Yeah.

8 BRENDAN SULLIVAN: -- or you can continue it, and
9 have the discussion and come back to us, and then you can
10 briefly characterize how that meeting went. All right? And
11 then we can make the value judgment as to whether or not you
12 acted in good faith, and whether or not they acted in good
13 faith. So there's two choices.

14 MATT HAYES: So you're basically saying you'll
15 vote against this, if I don't --

16 BRENDAN SULLIVAN: And I understand that neither
17 one -- neither one is probably distasteful to you.

18 MATT HAYES: No, but I mean I --

19 JANET GREEN: Just go. Just let's move forward.
20 Move it forward.

21 SARAH RHATIGAN: Do we need to have a
22 conversation?

1 CONSTANTINE ALEXANDER: No.

2 SARAH RHATIGAN: So what we're hearing -- I just
3 want to clarify -- I'm hearing that there's at least three
4 to four to maybe five unanimous voting or feeling on the
5 part of this Board that you want us to continue this to --

6 CONSTANTINE ALEXANDER: I want you to continue it.
7 I want have one more attempt, and a good discussion about
8 the landscaping that will minimize the impact on the
9 privacy.

10 SARAH RHATIGAN: Okay.

11 CONSTANTINE ALEXANDER: Period, end of story. I
12 don't want to hear any more about foundations, not in this
13 case. Maybe we'll here another case, unfortunately.

14 SARAH RHATIGAN: Yeah.

15 CONSTANTINE ALEXANDER: But not now.

16 SARAH RHATIGAN: And could we also just for the
17 record have this Board -- I think you've said this, but I
18 just want to sort of reiterate, I mean the folks in Walden
19 Mews have been really concerned about these windows openings
20 here, which are as of right, and the openings -- the rough
21 openings from the inside are really the same size. They
22 appear larger.

1 I'm not sure exactly what the story is, but these
2 are not special permit windows. We understand that their
3 concerns I think are probably largely windows that are not a
4 matter of this Board's jurisdiction.

5 CONSTANTINE ALEXANDER: If you have rights -- if
6 you have windows, you're changing that are as a matter of
7 right, we have no jurisdiction to pass on that. It's a
8 matter of right. Do it.

9 SARAH RHATIGAN: Thank you. I just want that --
10 that's just helpful I think for our conversation.

11 CONSTANTINE ALEXANDER: Yeah.

12 SARAH RHATIGAN: Thank you.

13 CONSTANTINE ALEXANDER: If you've got to identify
14 the windows that you don't have a matter of right, you're
15 seeking the relief from this Board.

16 SARAH RHATIGAN: Yes.

17 CONSTANTINE ALEXANDER: And you have to present --
18 you've got to hopefully reach agreement with them as to
19 trees or other landscaping that will minimize the adverse
20 impact on their privacy.

21 SARAH RHATIGAN: Right, and --

22 CONSTANTINE ALEXANDER: And that's what this is

1 about. And nothing more.

2 SARAH RHATIGAN: Yeah.

3 JANET GREEN: So can I just speak up to make sure
4 that the neighbors who are here understand what as-of-right
5 means?

6 CONSTANTINE ALEXANDER: Please explain.

7 LUISA SAN JUAN: Yes, because in fact there are
8 two more windows, and each window is larger.

9 CONSTANTINE ALEXANDER: The as-of-right means that
10 they don't need zoning relief. If that's all they were
11 doing is changing those windows, we wouldn't have a hearing
12 tonight. And they can do whatever they want with regard to
13 those windows, because they have a right to do it, like
14 building a new building.

15 You can put your windows, respect setback
16 requirements where you want, how you want, bigger, smaller,
17 that's your right as an owner of a piece of property.

18 We're only talking about the windows that are too
19 close, that are not as a matter of right, that they are too
20 close to the lot line. They violate the setbacks. And
21 those windows need our approval. And as you've heard, the
22 concern that we have when we have these kinds of case is

1 privacy. We understand -- that's why you have setbacks.

2 And so, you have problems with the privacy impact
3 of what they want to do with the windows that they need
4 relief for, and that's why we're going to continue the case,
5 I think, so you have discussions they can present to you,
6 and you can talk to them about the kinds of landscaping
7 they're going to do to minimize the impact of those windows
8 that are in the setback, not the other windows. That's it.

9 MATT HAYES: Okay. These trees that I'm proposing
10 to --

11 CONSTANTINE ALEXANDER: Right.

12 MATT HAYES: -- to plant block my right windows.
13 I'm, like, literally doing this because I think it may look
14 good. And I mean, it helps replenish trees in Cambridge,
15 yes, I know that whole conversation is old, but again, like
16 --

17 LAURA WARNICK: I believe you.

18 MATT HAYES: Yeah.

19 LAURA WARNICK: But I think this Board and your
20 neighbors deserve proper documentation.

21 MATT HAYES: Right.

22 LAURA WARNICK: So that we can see and the

1 Building Inspectors can hold you too, and that it's totally
2 transparent and aboveboard.

3 SARAH RHATIGAN: Mm-hm.

4 LAURA WARNICK: I don't think an 8.5 x 11 with
5 magic marker is the appropriate meeting for this level of
6 decision.

7 SARAH RHATIGAN: Yep. Understood.

8 MATT HAYES: So if I prepare a site plan showing
9 where trees will be planted --

10 CONSTANTINE ALEXANDER: And describing what the
11 trees will be --

12 SARAH RHATIGAN: Yep, diameter.

13 MATT HAYES: So as long as I show --

14 SARAH RHATIGAN: Diameter --

15 MATT HAYES: -- where the trees will be, the diam
16 -- the caliper of the trees, the overall size of the trees,
17 and that's all we're talking about, even though, again,
18 these trees will be blocking my right windows, which I'm
19 happy to do, I was always going to do.

20 LAURA WARNICK: Yeah, yeah. Species.

21 MATT HAYES: That's -- species?

22 CONSTANTINE ALEXANDER: Yes.

1 MATT HAYES: Kentucky, puffy or whatever it is,
2 yeah. Yes, yeah.

3 LAURA WARNICK: Okay.

4 MATT HAYES: And I'm happy --

5 LAURA WARNICK: Right.

6 MATT HAYES: But it is going to undoubtedly
7 gravitate towards the foundation.

8 JANET GREEN: We are going to ask, when you come
9 back, we are going to ask the question of whether you were
10 able to have the conversation about the windows and what the
11 special permit is about. If that hasn't happened, it
12 discredits attempting to have that conversation, and then we
13 just make a decision based on how we make the decision.

14 CONSTANTINE ALEXANDER: Anyway, we're going to
15 continue the case. And I think you --

16 MATT HAYES: Great.

17 CONSTANTINE ALEXANDER: You're amenable to that?

18 MATT HAYES: Yes.

19 CONSTANTINE ALEXANDER: When -- to go to the --

20 MATT HAYES: Can we do it in two weeks?

21 SISIA DAGLIAN: We already have three cases on
22 October 10.

1 CONSTANTINE ALEXANDER: Will three weeks be
2 enough? I'm sorry two weeks.

3 MATT HAYES: Two weeks, absolutely. I mean, my
4 landscaper --

5 CONSTANTINE ALEXANDER: Well, I don't know, I mean
6 not just you. You've got to have to talk to these neighbors
7 and they got to have time to look at what you're proposing.
8 You continue to disregard the neighborhood, and that's part
9 of the problem I have.

10 MATT HAYES: I can put together, I can have my
11 landscape architect, because I actually already have these
12 trees ordered. And for -- that I can use here, that I can
13 use elsewhere, but -- I lost my train of thought. Yeah.

14 CONSTANTINE ALEXANDER: Well, can everybody meet
15 in two weeks? I'm sorry?

16 MATT HAYES: So I'm sorry, yeah. I can have my
17 landscape architect call these out in the next literally,
18 like two or three days, I can circulate them, I can offer to
19 have a meeting in the next 10 days.

20 SISIA DAGLIAN: You're talking about the tenth?

21 CONSTANTINE ALEXANDER: Is it -- what's the
22 reaction of the neighbors in terms of is two weeks enough

1 time? Assuming he gives you the plans?

2 HURST HANNUM: That would be fine, I just wanted
3 to clarify two things. First, Sue is not our lawyer.

4 CONSTANTINE ALEXANDER: Sue's what?

5 HURST HANNUM: Sue is not our lawyer.

6 CONSTANTINE ALEXANDER: I understand that.

7 HURST HANNUM: She lives on the other side of the
8 house. We are Number 9. We're never spoken to about either
9 windows or anything else. First thing we heard about trees
10 was tonight.

11 So what I would suggest, with all respect, is that
12 at least two conversations take place about the windows and
13 the trees, one with the people in Number 7, Number 9 Walden
14 Mews are on the left side of the house, and the other are
15 the people on the right side of the house.

16 Because we have no idea what they're going to say
17 about windows in this building, none of our business. That
18 would make everything easier. I hope it would make it
19 easier for Matt as well. Then it wouldn't take a lot more
20 time. A simple suggestion.

21 CONSTANTINE ALEXANDER: All right. That takes two
22 meetings. I think you need one meeting, it'll cover both

1 sides, and everybody who's affected on both sides can come
2 to that meeting. I don't think we need to have two
3 meetings. I don't want to get into -- if you want to do
4 that and the petitioner wants to do that, fine.

5 SARAH RHATIGAN: Than I would just submit to the
6 Board that we'll communicate and make sure that we have the
7 e-mail addresses so that I'm not assuming that Sue is
8 representing other folks --

9 CONSTANTINE ALEXANDER: Right.

10 SARAH RHATIGAN: -- in this neighborhood. We'll
11 make sure that we convene in however we see, you know,
12 cooperative, you know, meeting with the neighbors.

13 BRENDAN SULLIVAN: So the tenth or the twenty-
14 fourth?

15 SISIA DAGLIAN: Correct. The tenth we already
16 have three cases.

17 BRENDAN SULLIVAN: All right. So pick a date.

18 CONSTANTINE ALEXANDER: I'm willing to go to the
19 next one, the tenth.

20 BRENDAN SULLIVAN: That's fine.

21 CONSTANTINE ALEXANDER: Everybody can make the
22 tenth?

1 BRENDAN SULLIVAN: Can I make a motion?

2 JANET GREEN: I can make the tenth, yeah.

3 CONSTANTINE ALEXANDER: Well, there's got to be
4 understanding that you're going to put plans in the
5 neighbors' hands at least a week -- within -- at least seven
6 days before.

7 BRENDAN SULLIVAN: I will meet with him on
8 Wednesday, okay?

9 CONSTANTINE ALEXANDER: I'm sorry?

10 BRENDAN SULLIVAN: I will meet with them next
11 Wednesday.

12 CONSTANTINE ALEXANDER: Fine.

13 BRENDAN SULLIVAN: I'll offer to meet with them
14 next Wednesday, yeah.

15 JIM MONTEVERDE: Can I add one point?

16 CONSTANTINE ALEXANDER: Go ahead.

17 JIM MONTEVERDE: Then we'll wrap it up. So we
18 talked about the site plan with the illustration of the
19 trees, and some description of the trees so the neighbors
20 can understand just what effect they have on the elevation.

21 I would suggest you put the trees on the elevation
22 in their either current state and, you know, don't overstate

1 it that they're mature state, just make a representation of
2 them so the neighbors can understand what they will look
3 like.

4 I'd also suggest -- I mean, I know looking at the
5 plans, I found it difficult flipping between your existing
6 elevations and your proposed if you would please very
7 clearly indicate, color or graphically, which windows you
8 are part of this Board's review.

9 And in both the existing and the proposed
10 elevation, please just note those so that it's clear, it's a
11 clear roadmap for your neighbors, which ones you're actually
12 talking about, so that it just helps to focus the discussion
13 and not let it wander elsewhere?

14 MATT HAYES: Uh-huh.

15 JIM MONTEVERDE: Thank you.

16 CONSTANTINE ALEXANDER: Okay, ready for a motion?

17 JIM MONTEVERDE: Yep.

18 CONSTANTINE ALEXANDER: The Chair moves that we
19 continue this case once again as a case not heard. What?

20 AUDIENCE: That's it, go.

21 AUDIENCE: Go.

22 CONSTANTINE ALEXANDER: Continue this case as a

1 case heard until 7:00 p.m. on -- is it October tenth, is it

2 SISIA DAGLIAN: Yes.

3 JIM MONTEVERDE: Yeah.

4 CONSTANTINE ALEXANDER: -- on Tuesday, September
5 10.

6 AUDIENCE: October.

7 CONSTANTINE ALEXANDER: October 10, I'm sorry,
8 it's been a long night.

9 SISIA DAGLIAN: Thursday.

10 CONSTANTINE ALEXANDER: October 10.

11 BRENDAN SULLIVAN: Thursday.

12 CONSTANTINE ALEXANDER: Subject to the following
13 conditions.

14 JIM MONTEVERDE: Thursday, October 10.

15 CONSTANTINE ALEXANDER: That the petitioner -- you
16 satisfied the first one -- signed a waiver of time for
17 decision. The second that the posting sign has to be
18 modified to reflect the new date and the new time and
19 maintained for the 14 days.

20 So if you're going to have it on October 10,
21 tomorrow morning you better be up there. And make sure it
22 stays up there, because I've had problems with signage, as

1 I've mentioned to Sarah before.

2 And lastly, the new -- we're continuing this case
3 for this landscaping plan. You've heard Mr. Monteverde's
4 description of what should be in it. Those plans must be
5 distributed to the neighborhood, any relevant neighbor, at
6 least seven days before October 10, and there has to be in
7 our files no later than 5:00 p.m. on the Monday before
8 October 10, give us time to look at it.

9 Do you neighbors feel that will be enough time if
10 you get a week before the hearing on October 10?

11 AUDIENCE: Seven days before?

12 AUDIENCE: Seven days before October 10.

13 CONSTANTINE ALEXANDER: All those in favor of
14 continuing the case, please say, "Aye."

15 THE BOARD: Aye.

16 [All vote YES]

17 CONSTANTINE ALEXANDER: Five in favor, case
18 continued. Unfortunately, we'll see you on October 10.

19 COLLECTIVE: Thank you.

20 JANET GREEN: That's it, go.

21 CONSTANTINE ALEXANDER: These should be
22 resubmitted.

1 AUDIENCE: Okay. So you don't need them?

2 CONSTANTINE ALEXANDER: No, not now.

3 AUDIENCE: Okay.

4 [BREAK]

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20 (9:55 p.m.)

21 Sitting Members: Constantine Alexander, Brendan Sullivan,

22 Janet Green, Jim Monteverde, and Laura

1 Warnick

2 CONSTANTINE ALEXANDER: The Chair will now call
3 Case Number 017166 -- no, I'm mistaken. Take that back --
4 017164 -- 141 Prospect Street. Anyone here wishing to be
5 heard on this matter?

6 GEORGE SALLUM: I am George Sallum, of 127 Larch
7 Road.

8 THE REPORTER: Could you repeat your name please?

9 CONSTANTINE ALEXANDER: Closer to your mouth.

10 THE REPORTER: Spell your name?

11 GEORGE SALLUM: 127 Larch Road. I own 141
12 Prospect Street.

13 CONSTANTINE ALEXANDER: Right.

14 GEORGE SALLUM: All I'm asking is to legalize a
15 use that has been going on for 25 years after the rent
16 control was over. There will be no impact on the utilities,
17 on the parking, on the traffic or anything because we're not
18 changing anything.

19 CONSTANTINE ALEXANDER: Sir, you have to
20 understand how our ordinance works. You're not -- three-
21 family use is not permitted in the district. If you want to
22 do it, you'll have to satisfy four conditions in our

1 ordinance, Section 5.26.

2 GEORGE SALLUM: Yes sir.

3 CONSTANTINE ALEXANDER: You only satisfy one of
4 the four requirements. And for us to give a variance for
5 not complying with the other three, you've got to meet some
6 very stringent conditions.

7 GEORGE SALLUM: Okay.

8 CONSTANTINE ALEXANDER: About substantial
9 hardship, and that's how it is. The city has restrictions
10 on three-family structures in your district. And maybe
11 you've been running this as a three-family house for many
12 years, but it wasn't done legally.

13 GEORGE SALLUM: Although I have been paying taxes
14 as --

15 CONSTANTINE ALEXANDER: Sir --

16 GEORGE SALLUM: -- I have got permits from the
17 department, but no, let me speak about the hardship.

18 CONSTANTINE ALEXANDER: About the what? I'm sorry

19 --

20 GEORGE SALLUM: About my hardship.

21 CONSTANTINE ALEXANDER: Yes.

22 GEORGE SALLUM: I am 42 years -- 8 --

1 CONSTANTINE ALEXANDER: [Laughter] 82.

2 GEORGE SALLUM: I am 82 years old. I'll be 83 in
3 January. And I am really tired. I cannot go up with the
4 work. As a matter of fact, in March of this year, I was
5 working the -- I had a fall on the stairs inside the
6 building. I broke six cervical vertebrae and crushed one
7 lumbar, and spent three months between Beth Israel, the
8 rehab and at home, and I consider myself lucky, because I
9 can still walk.

10 The reason -- that's the reason with the blessing
11 of the city inspectional services, the assistance of my wife
12 and my two children, I decided to retire, or as they say, to
13 break the cymbals and start dancing. Over here is to hang
14 the shingle, go fishing. And that's the reason I am still
15 in the place.

16 The reason for they said one of the things about
17 that all they say -- is this conversion, and that's why I
18 applied after all these years. The building was 20 -- was
19 five units when I bought it, under rent control. It was
20 five units.

21 This is that -- it was five units during rent
22 control. And I applied in '92. So removal of two rooms on

1 the second floor, and they gave me, they approved the
2 removal provided that I have to wait until one of the
3 tenants, who is in Unit 2B, leaves. Rent control was over.
4 Oh, this is first, if you --

5 BRENDAN SULLIVAN: No, I have them.

6 GEORGE SALLUM: Rent control was over. I applied
7 again in '93. I wanted my -- the reason I bought my house
8 is for either of my sons go to MIT, go to Harvard. My first
9 son went to Bentley. The second one went to MIT, just as a
10 mechanical engineer. And the rent control refused to have
11 him to convert this to have him live there because -- sorry
12 if I am talking too much.

13 CONSTANTINE ALEXANDER: Well, you're not talking
14 too much, but you're not talking to the relevant issues
15 before us tonight.

16 GEORGE SALLUM: All right.

17 CONSTANTINE ALEXANDER: And I'm sorry about your
18 physical problems you described before, but you'll have to
19 understand -- you were denied a variance for three units
20 back in 1988. You --

21 GEORGE SALLUM: So what do I need now? For your
22 approval?

1 CONSTANTINE ALEXANDER: You need to demonstrate --
2 try again -- you need -- to get a variance, you have to
3 satisfy three conditions.

4 GEORGE SALLUM: Okay.

5 CONSTANTINE ALEXANDER: Okay. Unfortunately, I
6 don't think you're going to satisfy them, but I'll tell you
7 what they are.

8 GEORGE SALLUM: Okay.

9 CONSTANTINE ALEXANDER: The first condition is
10 that unless we allow you to have three dwelling units in the
11 building, it would involve substantial hardship to you.
12 Now, it's a hardship not peculiar to you, it's a hardship to
13 whoever owns that building.

14 And 50 years from now, and this is a two-family
15 structure -- that was two-family, and the hardship is that
16 you -- for more income presumably, you converted this to
17 three units. That's not a hardship that entitles you to the
18 variance you're seeking. That's requirement number 1.

19 Two, you have to satisfy the requirement that this
20 hardship, which was identified, is owing to circumstances
21 relating to the soil conditions, shape or topography of such
22 structure.

1 And especially affecting such structure, but not
2 affecting generally the zoning district in which it is
3 located. Got to be special circumstances. There's no
4 special -- not peculiar to you personally, but peculiar to
5 the structure in the neighborhood. You don't satisfy them.

6 And the last is that relief may be granted without
7 substantial detriment to the public good, or nullifying or
8 substantially derogating the intent and purpose of the
9 ordinance. The ordinance is intended to have in this
10 district no more than two--family structure.

11 And, but unless you get entitled to a variance,
12 and you can satisfy four conditions, three of which you
13 don't satisfy. You're not even close to meeting the
14 requirements to get a variance. We have no choice. We may
15 be very sympathetic to you personally, but we have to apply
16 the ordinance that the City Council adopted, and the law of
17 Massachusetts. And that's a problem. You don't get close
18 to satisfy those legal requirements. I'm sorry, you know, I
19 -- that's just the way it is.

20 GEORGE SALLUM: Would you be kind enough to
21 provide me with a copy of these notions? I will be
22 appreciative.

1 CONSTANTINE ALEXANDER: Just the Building
2 Department will do that. Contact the Building Department
3 tomorrow morning, and they will give you these sections,
4 section 5.26.

5 GEORGE SALLUM: May I take a picture of it?

6 CONSTANTINE ALEXANDER: Sure. I'm not sure I gave
7 you the right section. I'll set you up with --

8 AUDIENCE: You get the right one? I'll take that.
9 No, we'll take that back.

10 CONSTANTINE ALEXANDER: No, no, no.

11 AUDIENCE: You don't want that. That's the wrong
12 one. We'll get you the correct one. One more.

13 CONSTANTINE ALEXANDER: Thank you.

14 GEORGE SALLUM: So when I get the approval from
15 the Building Department, I --

16 CONSTANTINE ALEXANDER: You don't get any approval
17 from the background.

18 GEORGE SALLUM: No, *when* I do.

19 CONSTANTINE ALEXANDER: You have to -- you need to
20 educate yourself as to the legal requirements, and then
21 you've got to come down before us and present a case why you
22 satisfy those legal requirements.

1 GEORGE SALLUM: I know it, sir. All I am asking
2 is to satisfy these four. When I get the Building
3 Department satisfied, then I come back?

4 CONSTANTINE ALEXANDER: No.

5 GEORGE SALLUM: Okay.

6 CONSTANTINE ALEXANDER: Even if -- these are
7 dimensional requirements. Either they'll satisfy them --
8 you do -- and the building Department agrees, in which case
9 you don't need any zoning relief, you're done, you're
10 entitled.

11 But if the Building Department says, "No, you
12 don't meet these requirements," your only alternative is to
13 come back before us and seek a variance.

14 GEORGE SALLUM: Okay.

15 CONSTANTINE ALEXANDER: Okay? And what I've tried
16 to explain to you, your ability to get that variance is
17 very, very small. The statute is clear, our precedent is
18 clear. You just can't have a two-family -- a three-family
19 house in this district if you don't satisfy the four
20 conditions that are in Section 5.26.

21 You have to get the statute, sir. I'm not -- you
22 can take a picture, but you need to see the section, you

1 need to understand the requirements for a variance.

2 GEORGE SALLUM: Very good. Give me the section,
3 please.

4 CONSTANTINE ALEXANDER: It is -- you want to look
5 at Section 5.26.

6 GEORGE SALLUM: 5.26.

7 CONSTANTINE ALEXANDER: And that's the
8 requirements for up -- we call up conversion, going to two-
9 family and three-family.

10 GEORGE SALLUM: 5.26.

11 CONSTANTINE ALEXANDER: And then you need to
12 satisfy the requirements for a variance that are set forth
13 in Section 10.30.

14 GEORGE SALLUM: 10.30?

15 CONSTANTINE ALEXANDER: Yeah. And it has several
16 subsections. Those --

17 GEORGE SALLUM: Mm-hm.

18 CONSTANTINE ALEXANDER: -- the first is the
19 requirements that you don't satisfy, the second, the
20 variance is what we can do to excuse the fact that you don't
21 comply.

22 GEORGE SALLUM: So it's -- 5.26?

1 CONSTANTINE ALEXANDER: Yes.

2 GEORGE SALLUM: And 10.30.

3 CONSTANTINE ALEXANDER: That's right. And there's
4 several subsections undertaken.

5 GEORGE SALLUM: This is the headings?

6 CONSTANTINE ALEXANDER: Yes.

7 GEORGE SALLUM: These are --

8 CONSTANTINE ALEXANDER: Yes.

9 GEORGE SALLUM: Any other headings?

10 CONSTANTINE ALEXANDER: Those are the two you have
11 to understand and satisfy.

12 GEORGE SALLUM: Thank you.

13 CONSTANTINE ALEXANDER: Thank you. Are we going
14 to continue this case?

15 GEORGE SALLUM: Yes.

16 CONSTANTINE ALEXANDER: How much time do you think
17 you need to -- let's continue this case for --

18 GEORGE SALLUM: I want to introduce someone here.

19 CONSTANTINE ALEXANDER: Say it again?

20 GEORGE SALLUM: Mehrdad. Just I want to introduce
21 you. This is Mehrdad Roustay. This is Mr. Mehrdad Roustay,
22 the perspective buyer of the building. So in the future, he

1 will be the one who might be coming.

2 CONSTANTINE ALEXANDER: We've heard -- you sat
3 here; we've heard the testimony.

4 MEHRDAD ROUSTAY: Thank you, sir.

5 THE REPORTER: Could you spell your name for me
6 please?

7 MEHRDAD ROUSTAY: It's Mehrdad, M-e-h-r-d-a-d R-o-
8 u-s-t-a-y.

9 CONSTANTINE ALEXANDER: If I may suggest, sir, if
10 you want to pursue this case, you should get an attorney.

11 MEHRDAD ROUSTAY: Okay, I will.

12 CONSTANTINE ALEXANDER: Who understands zoning
13 laws and what's required and what's not. So --

14 MEHRDAD ROUSTAY: Thanks.

15 CONSTANTINE ALEXANDER: It will be a lot more
16 informed decision.

17 MEHRDAD ROUSTAY: Thank you.

18 CONSTANTINE ALEXANDER: Thank you.

19 GEORGE SALLUM: Thank you.

20 BOARD MEMBER: Are we going to continue?

21 SISIA DAGLIAN: Do we have a date?

22 CONSTANTINE ALEXANDER: Oh yeah, we've got to

1 continue. So thank you.

2 SISIA DAGLIAN: We need to know what date?

3 CONSTANTINE ALEXANDER: What -- how much time do
4 you think you need? Two months? A month?

5 GEORGE SALLUM: Probably about a month.

6 CONSTANTINE ALEXANDER: About a month?

7 GEORGE SALLUM: A month, yeah.

8 SISIA DAGLIAN: October 24?

9 CONSTANTINE ALEXANDER: October 24?

10 GEORGE SALLUM: Yes, please.

11 CONSTANTINE ALEXANDER: Okay --

12 SISIA DAGLIAN: It's a case heard?

13 CONSTANTINE ALEXANDER: -- we're going to -- well,
14 first of all, it's a case heard. Can everybody make the
15 twenty-fourth? Can't. What's the next date?

16 SISIA DAGLIAN: November 7.

17 BOARD MEMBER: I am not here.

18 CONSTANTINE ALEXANDER: You're not here. So we
19 can't make November 7.

20 SISIA DAGLIAN: November 21?

21 CONSTANTINE ALEXANDER: Going once. Sir, do you
22 understand what I'm talking about? When the case comes back

1 before us, they need the same five persons that are sitting
2 here tonight. And if you do not, your chances of getting
3 relief are minimized.

4 And so we have to make sure the five of us can be
5 here when we continue the case. And when you've heard a
6 couple of dates we've suggested, at least one person can't
7 make it.

8 So we're going to do November 21. I think it's
9 okay, right?

10 BOARD MEMBER: Yep.

11 CONSTANTINE ALEXANDER: Going once?

12 SISIA DAGLIAN: Yes.

13 CONSTANTINE ALEXANDER: 7:00 p.m. on November 21.

14 BOARD MEMBER: Okay.

15 CONSTANTINE ALEXANDER: And you can present your
16 case then. Now, there are certain conditions before we do
17 that. Well, I'll make the motion.

18 CONSTANTINE ALEXANDER: The Chair moves that we
19 continue this case as a case heard until 7:00 p.m. on
20 November 21, subject to the following conditions:

21 One, you'll have to sign a waiver of time for
22 decision. If you don't do that, the case is going to be

1 thrown out right now. We'll have a waiver, a piece of paper
2 that says -- by law we have to decide cases by a certain
3 date. And we're giving you the, being nice to you, if you
4 will, giving you a second opportunity to convince us that
5 you could be entitled to relief.

6 But I have to get a -- I'm -- if you do not get a
7 waiver, we can't do that. So I need a -- I mean it's you,
8 not you. You have to sign a waiver, and she'll have it for
9 you to sign right here.

10 GEORGE SALLUM: Oh.

11 CONSTANTINE ALEXANDER: Sign right now.

12 GEORGE SALLUM: A waiver? Okay.

13 CONSTANTINE ALEXANDER: Okay, that's the first
14 condition.

15 GEORGE SALLUM: And that's to waive what?

16 CONSTANTINE ALEXANDER: By law, if we don't make a
17 decision on the case by a certain date, that's 65 days to
18 hear it, then the relief is granted -- automatically you get
19 relief. Obviously, we don't want that to happen. So you
20 need a waiver of time for a decision.

21 GEORGE SALLUM: I believe you, sir. I'll sign it.

22 CONSTANTINE ALEXANDER: Okay.

1 GEORGE SALLUM: Excuse me -- you know --

2 CONSTANTINE ALEXANDER: The second condition, you
3 know, the sign you posted up on there, which shows
4 announcing this? You've got to take that sign, or get a new
5 one, take the old date, today's date, cross it out, take the
6 time, cross it out, and put the new date, November 21, the
7 time 7:00 p.m., and that new sign or that modified sign,
8 must be maintained for the 14 days before November 21, just
9 as you did for tonight's hearing.

10 GEORGE SALLUM: So I get a new sign or modify this
11 one?

12 CONSTANTINE ALEXANDER: I would suggest get a new
13 sign into the Building Department.

14 GEORGE SALLUM: Okay.

15 CONSTANTINE ALEXANDER: It's probably the easiest
16 way to do it. And the last, which probably is not relevant,
17 but if you're going to submit plans, specifications,
18 drawings in connection with the relief you're seeking, they
19 must be filed with the Building Department no later than
20 5:00 p.m. on the Monday before November 21. That's to allow
21 us and other citizens in the city to go to the Building
22 Department, read up on the case and be prepared for the case

1 to be heard. Those are the three conditions.

2 JANET GREEN: So for example, we wouldn't tell if
3 it says three-family? We don't have any plans that say what
4 would that two-family be.

5 CONSTANTINE ALEXANDER: Yeah.

6 JANET GREEN: So we would need to have some plans
7 about that, before we could say whether that might be --

8 GEORGE SALLUM: You want plans of the units,
9 right?

10 JANET GREEN: Yes.

11 CONSTANTINE ALEXANDER: Yes, but --

12 GEORGE SALLUM: Okay.

13 CONSTANTINE ALEXANDER: -- remember the 5 --
14 you've got to go back to Section 5.26. You've got to look
15 at the requirements there, and tell us whether you satisfy
16 our conditions -- do you satisfy them or not? Based upon
17 the case -- let me finish. Based upon the case tonight, I
18 can tell you, you only satisfy one. You got part, open
19 space. The other three requirements you don't satisfy
20 unless you reconfigure the entire inside of the building or
21 add to it or whatever. Maybe you can satisfy.

22 But right now, you don't, and the only way you get

1 relief is through the variance, as I've described before.

2 GEORGE SALLUM: I understand.

3 CONSTANTINE ALEXANDER: Okay.

4 GEORGE SALLUM: So I will provide you -- or I will
5 provide whoever -- with plans -- the original plans when I -

6 -

7 CONSTANTINE ALEXANDER: Give it to the Building
8 Department --

9 GEORGE SALLUM: No, no, I will provide the
10 original plans and the new, existing plans and I'll even
11 provide copies of the building permit and when it was;
12 whatever.

13 CONSTANTINE ALEXANDER: You can do this; I'm just
14 telling you it may not be relevant.

15 GEORGE SALLUM: Not for you, for the Building
16 Department.

17 CONSTANTINE ALEXANDER: Yeah.

18 GEORGE SALLUM: But I'm telling you what I am
19 going to do sir.

20 CONSTANTINE ALEXANDER: I know. Okay, tell us.
21 Go ahead.

22 GEORGE SALLUM: You might not -- I don't know.

1 But that's what -- that's my understanding, and that's it.

2 CONSTANTINE ALEXANDER: The you.

3 GEORGE SALLUM: You're welcome, sir. Go ahead and
4 take a vote. All those in favor of continuing the case on
5 this basis, please say, "Aye."

6 THE BOARD: Aye.

7 [All vote YES]

8 CONSTANTINE ALEXANDER: Five in favor, we'll see
9 you in November, November 21. Thank you, sir.

10 GEORGE SALLUM: Thank you.

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19 (10:15 p.m.)

20 Sitting Members: Constantine Alexander, Brendan

21 Sullivan, Janet Green, Jim Monteverde, and Laura

22 Warnick

1 CONSTANTINE ALEXANDER: The Chair will now call
2 Case Number 017166 -- 67 Dudley Street. Hopefully all good
3 things will come to those who wait, we'll find out.

4 THE REPORTER: Name and address.

5 CONSTANTINE ALEXANDER: Name and address for the
6 stenographer, please.

7 JESSICA CASHDAN: Jessica Cashdan, 67 Dudley
8 Street.

9 THE REPORTER: Could you spell your name, please?

10 JESSICA CASHDAN: The last name is Cashdan, C-a-s-
11 h-d-a-n.

12 CONSTANTINE ALEXANDER: Are you going to speak
13 sir? If so, you've just got to give your name and address.

14 FRANCOIS BERELOWITCH: So Francois F-r-a-n-c-o-i-s
15 Berelowitch, B-e-r-e-l-o-w-i-t-c-h, 67 Dudley Street.

16 JESSICA CASHDAN: So we're just -- we are putting
17 in application for a special permit so that we can enlarge
18 to basement windows and a variance so that we could change
19 what is the existing bulkhead stairs out the basement into
20 the back yard, to change it to just a regular door with
21 exterior stairs, so that we have a more, useable way to exit
22 the basement.

1 CONSTANTINE ALEXANDER: Okay.

2 JESSICA CASHDAN: And more light and fresh air
3 through the larger windows.

4 CONSTANTINE ALEXANDER: That's pretty concise.
5 Questions from members of the Board?

6 JESSICA CASHDAN: And then we've spoken with our
7 neighbors, and everybody's fine.

8 CONSTANTINE ALEXANDER: I don't think we have a
9 letter in our file.

10 JESSICA CASHDAN: We didn't send letters, but I
11 just texted my neighbors earlier, and they said it's fine.

12 CONSTANTINE ALEXANDER: You can represent it to
13 us.

14 JESSICA CASHDAN: I can represent that the
15 neighbor's friend in a friendly fashion asked what we were
16 doing and had no concerns. It doesn't affect them in any
17 meaningful way.

18 CONSTANTINE ALEXANDER: I'll open the matter up to
19 public testimony. Any questions from members of the Board?
20 The public testimony, anybody here wishing to be heard on
21 this matter? Apparently not. I'll close public testimony
22 as indicated.

1 We have only verbal letters of -- verbal
2 expressions of support, no letters in our file. I will
3 close public testimony. Ready for a vote?

4 Okay, we have I guess two votes to take. Yeah,
5 two votes. I'll take the first vote with regard to the
6 variance. The Chair moves that we make the following
7 findings with regard to the variances that we're seeking:

8 That a literal enforcement of the provisions of
9 the ordinance would involve a substantial hardship, such
10 hardship being is that the safety of the occupants of the
11 structure, whoever they may be, and their ability to enjoy
12 the structure require the kind of relief that's being sought
13 tonight.

14 That the hardship is owing to the fact this is
15 already a nonconforming structure, and therefore any
16 modification required zoning relief.

17 And that relief may be granted without substantial
18 detriment to the public good, or nullifying, or
19 substantially derogating the intent or purpose of the
20 ordinance.

21 So on the basis of these findings, the Chair moves
22 to grant the special permit requested on the condition that

1 the work proceeds in accordance to these two pages of plans
2 that I've initialed. All those in favor, please say, "Aye."

3 THE BOARD: Aye.

4 [All five vote YES]

5 CONSTANTINE ALEXANDER: Variance granted.

6 Special permit. The Chair moves that we make the
7 following findings with regard to the special permit you're
8 seeking. This is in regard to relocating windows. That the
9 requirements of the -- are you going to plant any trees to
10 block?

11 JESSICA CASHDAN: There's no space for trees.

12 CONSTANTINE ALEXANDER: I'm kidding. That's
13 already gone through. The requirements of the ordinance
14 cannot be met with the special permit you're seeking.

15 That traffic generated or patterns in access or
16 egress resulting from what is being proposed will not cause
17 congestion, hazard, or substantial change in established
18 neighborhood character, the impact of the what is proposed
19 with regard to the -- what is proposed is minimal if any on
20 the neighborhood.

21 That the continued operation or development of
22 adjacent uses, as permitted by the ordinance, will not be

1 adversely affected by what you're proposing.

2 And that no nuisance or hazard will be created to
3 the detriment of the health, safety and/or welfare of the
4 occupant of the proposed structure, or the citizens of the
5 city, and then generally what is proposed will not impair
6 the integrity of the district, or other derogate the intent
7 and purpose of this ordinance.

8 So on the basis of all these findings, the Chair
9 moves that we grant the special permit you're seeking, again
10 on the condition that the work proceed in accordance with
11 the plans referred to with the variance. All those in
12 favor, please say, "Aye."

13 THE BOARD: Aye.

14 [All five vote YES]

15 CONSTANTINE ALEXANDER: Five in favor, relief
16 granted. Good luck.

17 JESSICA CASHDAN: Thank you.

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19 (10:20 p.m.)

20 Sitting Members: Constantine Alexander, Brendan
21 Sullivan, Janet Green, Jim Monteverde, and Laura
22 Warnick

1 CONSTANTINE ALEXANDER: The Chair will now call
2 Case Number 017167 -- 23-25 Line Street. Anyone here
3 wishing to be heard on this matter? You know the drill.

4 EDRICK VANBEUZEKOM: Yep. Good evening. My name
5 is Edrick vanBeuzekom. Would you like me to spell that?
6 The first name is E-d-r-i-c-k. The last name is V as in
7 Victor -a-n B as in boy -e-u-z-e-k-o-m. I'm the architect
8 for the project. I live at 427 Putnam Ave in Cambridge.

9 JOHN CUNHA: Okay. So my name's shorter, but
10 maybe a little bit as difficult as well. My name is John,
11 initial H., my last name is Cunha, that's C-u-n-h-a.

12 CONSTANTINE ALEXANDER: Are you the owner of this?

13 JOHN CUNHA: I am, and live there. I live at 23.

14 CONSTANTINE ALEXANDER: Edrick?

15 EDRICK VANBEUZEKOM: So the subject property is a
16 two-family house. John lives on the second and third
17 floors. The third floor is basically -- it's finished
18 space, but it's not really useable, doesn't have adequate
19 headroom. It's only got one bedroom on the second floor,
20 and so, we're proposing a couple dormers on the third floor,
21 as could make that usable space to get another bathroom out
22 there. This way, he can have family stay with him and other

1 --

2 CONSTANTINE ALEXANDER: And these two are going to
3 substantially conform to the dormer guidelines.

4 EDRICK VANBEUZEKOM: Yes. And dormers are 15 feet
5 long. They're less than 50% of the length of the house. I
6 will show you the drawings here.

7 CONSTANTINE ALEXANDER: Do we have the plans right
8 here?

9 JOHN CUNHA: Here.

10 EDRICK VANBEUZEKOM: Yeah. Okay. Let me see. We
11 have dropped the beginning of the dormers starts just
12 slightly below the ridge, the ridgeline. So we are bringing
13 the dormers out to the exterior wall, just because
14 structurally it's much easier to do that, and we would
15 continue the roof line across there, as you see in this view
16 here.

17 Jack has spoken to the neighbors --

18 CONSTANTINE ALEXANDER: That was one of my
19 questions. There are no letters in our file.

20 JOHN CUNHA: No, I mean, my apologies. I actually
21 should have thought of it, but I didn't. I have spoken to
22 the neighbors. The neighbor who is actually somewhat

1 affected by this is the neighbor to the west, if you will,
2 to the -- if you're looking at the house, it's to the right,
3 and there's some shadows that, depending upon the time of
4 year, would have some impact.

5 And so, I brought them -- you know, they came in,
6 I gave them the set of plans, and they gave me my blessing -
7 - they gave me --

8 CONSTANTINE ALEXANDER: Their blessing.

9 EDRICK VANBEUZEKOM: Their blessing.

10 JOHN CUNHA: Their blessing, thank you. I knew
11 that was getting --

12 JESSICA CASHDAN: I thought I was blessed.

13 CONSTANTINE ALEXANDER: It's been a long night.

14 JESSICA CASHDAN: It's late.

15 JOHN CUNHA: It's been a very long night. We did
16 do shadow studies, which we showed them -- okay, so.

17 CONSTANTINE ALEXANDER: Questions from members of
18 the Board? I'll open the matter up to public testimony.
19 Anybody here wishing to be heard? No one wishing to be
20 heard. As indicated, there are no letters in our file. But
21 we're going to advise a verbal assurance -- verbal support
22 for what is proposed. I'll close public testimony. Time

1 for a vote.

2 The Chair moves that we make the following
3 findings with regard to the variance being sought: That a
4 literal enforcement of the provisions of the ordinance would
5 involve a substantial hardship, such hardship being that
6 this is a very small, residential structure that makes its
7 inhabitability difficult, and therefore the need for
8 additional space, living space.

9 That the hardship is owing to the fact that this
10 is a nonconforming model already, and any relief requires
11 zoning, any modification requires zoning relief.

12 And that relief may be granted without substantial
13 detriment to the public good, or nullifying or substantially
14 derogating the intent or purpose of the ordinance.

15 So on the basis of all of these findings, the
16 Chair moves that we grant the variance requested on the
17 condition that the work proceed in accordance with plans
18 prepared by EDB Design, dated July 24, 2019, the first page
19 of which has been initialed by the Chair. All those in
20 favor, please say, "Aye."

21 THE BOARD: Aye.

22 [All five vote YES]

1 CONSTANTINE ALEXANDER: Five in favor, variance
2 granted.

3 JOHN CUNHA: Thank you very much.

4 EDRICK VANBEUZEKOM: Thank you.

5 AUDIENCE: Let me say what somebody else said
6 earlier. Thank you for your public service. It's
7 impressive.

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19 (10:25 p.m.)

20 Sitting Members: Constantine Alexander, Brendan
21 Sullivan, Janet Green, Jim Monteverde, and Laura
22 Warnick

1 CONSTANTINE ALEXANDER: The Chair will now call
2 Case Number 017168 -- 146-148 Pearl Street.

3 CAMPBELL ELLSWORTH: Good evening, my name is
4 Campbell Ellsworth. I'm joined by my wife, Natalia Bard.
5 We are the owners of that building that's going up right now
6 on Pearl Street, and it --

7 CONSTANTINE ALEXANDER: Didn't you come before us
8 before with instructions?

9 CAMPBELL ELLSWORTH: I did, for tandem parking in
10 the driveway.

11 CONSTANTINE ALEXANDER: Was that an issue?

12 CAMPBELL ELLSWORTH: Yeah.

13 CONSTANTINE ALEXANDER: Okay.

14 CAMPBELL ELLSWORTH: It's been a long history, and
15 that was in 2016, I believe.

16 CONSTANTINE ALEXANDER: Okay.

17 CAMPBELL ELLSWORTH: And that was after we went to
18 the Historic Commission to be allowed to take the original
19 building down.

20 CONSTANTINE ALEXANDER: Okay.

21 CAMPBELL ELLSWORTH: So we are here before you for
22 several modifications to window wells and the request to

1 take a -- what is currently -- let me back up -- it's a two-
2 family structure, and if I might, I think it would helpful
3 if I just stood up and --

4 CONSTANTINE ALEXANDER: Sure, sure.

5 CAMPBELL ELLSWORTH: -- described. So we have --
6 the building in that was permitted, and this all has to do
7 with the apartment is a smaller subset of the whole thing.
8 The building is not equally divided.

9 We decided after many iterations to sort of take
10 more square footage and make a smaller apartment in the
11 front. That at some point actually became too small. So we
12 decided to drop a habitable bedroom for a two-family into
13 the lower level.

14 So initially we had the apartment -- the front
15 door of the apartment was here, and the, "back door of the
16 apartment" was here. It was --

17 NATALIA BARD: The egress.

18 CAMPBELL ELLSWORTH: The egress, you know, back
19 egress, second means of egress. And actually, the access to
20 our unit is actually down the driveway and in on the side.
21 When we decided to drop a bedroom down here, what made more
22 sense was for us to be able to egress out of that bedroom

1 area and then come straight up through there.

2 So I am effectively, I'm not building any further
3 into the setback than I had been, but I'm actually doing it
4 with, which I think is sort of a more -- sort of a less
5 massive way of going down.

6 There are some other very small modifications.
7 There are -- you know, there's a window well on the front
8 that got a little bit bigger, those are all sort of
9 articulate on your -- on the plans that I had submitted.

10 I do want to say that we -- as before, as always,
11 with these various boards that we've gone before, including
12 yours, we've reached out to the abutters. I used the same
13 list that Maria generates the abutters to abutters. We have
14 been in touch -- I believe you got several letters of
15 recommendation; I think there's one more.

16 CONSTANTINE ALEXANDER: We've only got one, I
17 think.

18 CAMPBELL ELLSWORTH: Well, okay, well --

19 CONSTANTINE ALEXANDER: Maybe I'm wrong. No, more
20 than one.

21 CAMPBELL ELLSWORTH: I've got --

22 CONSTANTINE ALEXANDER: Yeah, it came after I read

1 the file.

2 NATALIA BARD: I did I check my mail. This was
3 from several days ago.

4 CAMPBELL ELLSWORTH: There was one, two three.

5 CONSTANTINE ALEXANDER: All the letters that are
6 in support? No letters were opposition?

7 CAMPBELL ELLSWORTH: That is correct. That is
8 correct. And, most importantly, the folks that about this
9 side of the building, I met with them. They had their
10 yearly condo meeting last night, and I actually was present
11 and I presented this.

12 And the -- everyone was in support. I think I've
13 got one or two letters from them. And the one guy who is
14 closest to this sort of modification, he was in full
15 support, and actually I have his letter.

16 CONSTANTINE ALEXANDER: Okay.

17 CAMPBELL ELLSWORTH: In support in the file.

18 NATALIA BARD: Mentioning and this would be more
19 favorable to him for privacy reasons than a staircase at
20 grade level --

21 CONSTANTINE ALEXANDER: Yeah.

22 NATALIA BARD: -- facing his windows right across.

1 CONSTANTINE ALEXANDER: Do you want to give us
2 that letter?

3 CAMPBELL ELLSWORTH: Yes, certainly. This is the
4 letter that I wrote to them, and I will give you I think
5 it's this guy, right. That's the abutter most --

6 CONSTANTINE ALEXANDER: Okay, thank you.

7 CAMPBELL ELLSWORTH: Most effective.

8 NATALIA BARD: But that Patty O'Neal's in the
9 building?

10 CAMPBELL ELLSWORTH: Yeah. They were -- right.
11 They were -- I mean, we can give you the whole packet. Not
12 that --

13 CONSTANTINE ALEXANDER: Thank you.

14 CAMPBELL ELLSWORTH: So that's the outline of it.

15 CONSTANTINE ALEXANDER: Okay.

16 NATALIA BARD: Just these three.

17 CAMPBELL ELLSWORTH: Right, and just also to point
18 out this is a narrow lot, nonconforming in that sense. I've
19 got an existing driveway on the right side, you know. So
20 this was a snug fit anyway. And now I find that I want to
21 do something in that 7.5-foot setback, and so we are --

22 CONSTANTINE ALEXANDER: For more, okay. Thank

1 you. And questions from members of the Board? None? No
2 public testimony, there's just nobody here. I will look
3 close at public testimony and subsequently admit it. Ready
4 for a vote?

5 The Chair moves that we make the following
6 findings with regard to the variance being sought: That a
7 literal enforcement of the provisions of the ordinance would
8 involve a substantial hardship, such hardship being as given
9 the nature of the lot, which I'll get to in a second, and
10 the new structure that there is a need to modify the
11 proposed structure as presented by the petitioner.

12 And that would -- not true just to the petitioner,
13 but whoever would own the property in the future.

14 That the hardship was owing to the shape of the
15 lot. It's a very narrow lot, and that creates some setback
16 issues that lead to this case, and that relief may be
17 granted without substantial detriment to the public good, or
18 nullifying or substantially derogating from the intent or
19 purpose of the ordinance. The matter speaks for itself.
20 The relief sought is rather modest. It has unanimous
21 neighborhood support, and it -- bottom line it will improve
22 the housing stock of the city.

1 So on the basis of all of these findings, the
2 Chair moves that we grant the variance requested on the
3 condition that the work proceed in accordance with plans
4 prepared by Ellsworth Associates, Inc., the first page of
5 which has been initialed by the Chair and it's dated May 22,
6 2019.

7 All those in favor, please say, "Aye."

8 THE BOARD: Aye.

9 [All five vote YES]

10 CONSTANTINE ALEXANDER: Five in favor.

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17 (10:30 p.m.)

18 Sitting Members: Constantine Alexander, Brendan
19 Sullivan, Janet Green, Jim Monteverde, and Laura
20 Warnick

21 THE REPORTER: Can I just get the spellings of
22 your names, please?

1 CAMPBELL ELLSWORTH: Oh sure. First name
2 Campbell, C-a-m-p-b-e-l-l, last name Ellsworth, E-l-l-s-w-o-
3 r-t-h and Natalia N-a-t-a-l-i-a, last name Bard B-a-r-d.

4 AUDIENCE: We're ready for you. Are you ready?

5 CONSTANTINE ALEXANDER: We're ready. Okay. Do
6 you have your Tootsie Rolls with you?

7 AUDIENCE: Yes, we do.

8 AUDIENCE: The bags are there.

9 AUDIENCE: Are we allowed to get them out before??

10 AUDIENCE: Do you need a little bit of a sugar
11 pickup, or do you want to --

12 BOARD MEMBER: No.

13 CONSTANTINE ALEXANDER: We can't take bribes.

14 AUDIENCE: So after.

15 BOARD MEMBER: But you can leave them on your way
16 out.

17 CONSTANTINE ALEXANDER: That's right.

18 AUDIENCE: We will absolutely do that.

19 CONSTANTINE ALEXANDER: If you forget them. Thank
20 you. Should I quote?

21 BOARD MEMBER: I will.

22 CONSTANTINE ALEXANDER: All right. At long last,

1 the Chair will call Case Number 017171 -- 810 Main Street.

2 The floor is yours.

3 JOHANNA SCHNEIDER: Good evening, Mr. Chair,
4 members of the Board. My name is Johanna Schneider. I'm at
5 attorney at Hemenway & Barnes in Boston, and I am here on
6 behalf of Cambridge Brands, Inc. A subsidiary.

7 CONSTANTINE ALEXANDER: You've been before us
8 before?

9 JOHANNA SCHNEIDER: I have.

10 BOARD MEMBER: Yeah.

11 JOHANNA SCHNEIDER: Hopefully you'll like me
12 better.

13 CONSTANTINE ALEXANDER: You got relief the last
14 time, as I recall.

15 JOHANNA SCHNEIDER: I did, I did.

16 CONSTANTINE ALEXANDER: It was the Telecom, the
17 place over on Harvard in Harvard Square.

18 JOHANNA SCHNEIDER: That's right, you have an
19 excellent memory.

20 AUDIENCE: He does.

21 JOHANNA SCHNEIDER: He does. Do the rest of you
22 remember me as fondly?

1 AUDIENCE: No.

2 CONSTANTINE ALEXANDER: No.

3 JOHANNA SCHNEIDER: [Laughter] We're here tonight
4 regarding an expansion of the existing Cambridge Brands
5 facility of 810 Main Street. Candy has been manufactured at
6 this facility since 1908, and this is the last remaining
7 candy manufacturing plant in all of Cambridge.

8 We're here before you tonight seeking zoning
9 relief associated with some modest changes to the existing
10 facility, that are necessary to allow these operations to
11 remain in Cambridge for many years to come.

12 I'm joined by Jamie Cairns from Cambridge Brands,
13 and he's going to walk through the proposal in a moment.

14 And we do have PowerPoint, which we have in paper
15 form. And I realize it has late, and it has been a long
16 night for you also.

17 CONSTANTINE ALEXANDER: Yes, it is.

18 JOHANNA SCHNEIDER: I will defer to the Board as
19 to how much you want to hear from us about the specifics and
20 good partial resection.

21 As far as the zoning matters go, I'll just sort of
22 overview that and maybe we can just take it from there. The

1 facility is located within the Business B Zoning District
2 and from Central Square Overlay District.

3 The project proposes roughly 9900 square feet of a
4 new addition, and also, the relocation and reconfiguration
5 of site loading and parking, so that all critical plant
6 functions as are taking place on CDI-owned property, rather
7 than on adjacent property, which CDI has historically
8 released for these functions.

9 From a zoning perspective, we require variances
10 for first an extension of the preexisting nonconforming
11 candy manufacturing use until the addition.

12 They require an increase in the FAR. It's a
13 relatively modest increase. We are going from 4.21, which
14 is the existing, nonconforming, and we're going to see that
15 by just about a 0.3, and we require a variance for a loading
16 bay length.

17 We have one loading bay that does not comply, it
18 is 42 feet, rather than the required 50 feet, and we also
19 require a variance with respect to curb cut length. I'm
20 sure it's in the file that you all have a chance to deliver
21 this. We did go before the Planning Board on September 10,
22 and we received from the Planning Board --

1 CONSTANTINE ALEXANDER: I will reread it.

2 JOHANNA SCHNEIDER: -- a special permit with
3 respect --

4 CONSTANTINE ALEXANDER: We have a letter, and I'll
5 read that into the file.

6 JOHANNA SCHNEIDER: Wonderful. So at this point I
7 can turn it over to Jamie Cairns to kind of walk through
8 some of the elements of the proposal if the Board is
9 interested. Otherwise, we can discuss --

10 CONSTANTINE ALEXANDER: Briefly, but I also -- one
11 point you didn't mention, that you also got approval from
12 the Cambridge -- the Central Square Advisory?

13 JOHANNA SCHNEIDER: Yes, yes.

14 CONSTANTINE ALEXANDER: Okay.

15 JOHANNA SCHNEIDER: And we also -- and I hope that
16 it's in the file, we also have a letter of support from the
17 Central Square Business Association.

18 CONSTANTINE ALEXANDER: Okay. No surprise there.

19 JOHANNA SCHNEIDER: So we have done a lot of
20 community process, and a lot of outreach, and the reaction
21 has been overwhelmingly positive.

22 CONSTANTINE ALEXANDER: Okay. Just briefly, you

1 don't have to do a PowerPoint.

2 JAMIE CAIRNS: Good evening. So, like John has
3 said, my name is Jamie Cairns. I'm the Engineering Manager
4 at Cambridge.

5 THE REPORTER: Could you spell your name for me
6 please?

7 JAMIE CAIRNS: Yep. Last name is C-a-i-r-n-s.
8 And I do want to mention really the reason for having to do
9 this project is really two-fold. One, our electrical system
10 in our plant is over 60 years old, and is in dire need of an
11 upgrade.

12 The challenge is with new electric codes for
13 height requirements. There's no place in our existing
14 building that we can actually put a new primary switch gear.
15 So that's really one point that's driving the addition.

16 The second point is our current loading bays for
17 our warehouse and logistics function actually are on leased
18 property. So in the essence of trying to becoming more
19 self-sufficient, we seek to put loading docks on our
20 property, so we don't have to rely on that lease property in
21 the future.

22 So that's really what's driving this addition. It

1 is a modest addition. When you look at it and look at the
2 variance requirements, we do require one shorter loading bay
3 off of the back of the addition, because we're going from
4 currently we have three loading bays that can handle 53-foot
5 trailers.

6 We're actually going to two loading bays off of
7 the front of the building that can handle 53-foot length.
8 However, we do need one more loading dock based on our
9 needs, and that would be more for shorter bulk truck
10 deliveries, which is what requires the shorter loading dock
11 configuration.

12 The other one is curb cut on Main Street.
13 When you look at the width of the loading bays, as required
14 for how the switch gear has to sit in the basement of the
15 new addition, that's what's driving the width, due to the
16 turning radius for 53-foot trailers to be able to make the
17 turns in both the west and eastward direction on Main
18 Street.

19 And then obviously we are currently nonconforming
20 height. So we're looking to match that same height on the
21 modest addition.

22 CONSTANTINE ALEXANDER: And is this the only

1 factory that the company manufactures Tootsie Rolls?

2 JAMES CAIRNS: So we are Cambridge Brands, which
3 is a subsidiary of Tootsie Roll, industry. So Tootsie
4 Roll's headquarters is in Chicago. Tootsie Roll acquired
5 Cambridge Brands back in 1993, but obviously we've been
6 making candy in this facility since 1908.

7 So when you look at the products that we make
8 there, we are the sole producer worldwide of Junior Mints,
9 Charleston Chew, Sugar Babies and three main products that
10 get made in our facility. We also have some newer products;
11 Tootsie Roll Mini Bites and Fruit Chew Mini Bites as well.

12 But for the products made in our facility, we are
13 the only location in the world that produces those products.

14 CONSTANTINE ALEXANDER: How many employees do you
15 have?

16 JAMIE CAIRNS: About 194 full-time employees.

17 CONSTANTINE ALEXANDER: Okay.

18 JAMIE CAIRNS: What other question does the Board
19 have?

20 JANET GREEN: I have one question. I was curious
21 you're going for a month; I'm giving 25 parking spaces to
22 100 spaces.

1 JAMIE CAIRNS: Yep.

2 JANET GREEN: And I wondered, how can you do that?
3 What's happened, what's changed that --

4 JAMIE CAIRNS: So today we have a parking lot that
5 gets used on a sporadic basis. We, when looking at our peak
6 parking needs, we actually our peak is at 98 parking spots
7 required.

8 We do have some employees -- we actually have a
9 large percentage, almost 30% of our employees that use
10 public transportation or parking it. So our peak demand is
11 for our first-shift employees, which is 98 parking spots,
12 and that's really the transition from first shift to second
13 shift.

14 So we're looking to maintain that number, because
15 the change in our loading area does reduce the parking --
16 car parking spots that we currently have available to us.

17 JANET GREEN: So it's mostly because people are
18 using more public transportation?

19 JAMIE CAIRNS: Yep.

20 JANET GREEN: And bicycles or whatever they do?

21 JAMIE CAIRNS: Yep.

22 JANET GREEN: However they're doing it.

1 JOHANNA SCHNEIDER: However they're doing it, it's
2 working. And we're fortunate that there are enough parking
3 spaces in the two off-site lots, which are very proximate to
4 the facility that can handle the overflow, that, you know,
5 is needed from the relocation. The parking space is off of
6 the main site.

7 LAURA WARNICK: So you're no longer leasing the
8 property?

9 JAMIE CAIRNS: We currently are leasing. Our plan
10 is to become self-sufficient so in the future we won't need
11 to lease the property. So we do actually have two locations
12 that we lease. One we used for about 7 car parking spots.
13 The other location has about 15 car parking spots as well as
14 our three loading bays.

15 LAURA WARNICK: So where are your 22 parking
16 spaces.

17 JAMIE CAIRNS: We have a parking lot across the
18 street that has 62 parking spaces.

19 LAURA WARNICK: Across Main Street.

20 JAMIE CAIRNS: Across Main Street we call our
21 Cherry Street lot, and then the other spot is what we refer
22 to as Columbia Street, which is at the corner of Columbia

1 and Bishop Allen, which right now is -- has 40 parking
2 spaces available.

3 CONSTANTINE ALEXANDER: Even if he -- I'm sorry,
4 go ahead.

5 LAURA WARNICK: So when you have your new
6 shortening truck, loading dock, would that be extending over
7 the sidewalk?

8 CONSTANTINE ALEXANDER: It is not.

9 LAURA WARNICK: It's totally different?

10 JAMIE CAIRNS: It's totally off of the street in
11 both loading docks, configurations and State Street site.

12 CONSTANTINE ALEXANDER: And you're committed to
13 remain in this site, even though there's a substantial
14 residential development going on across the street and the
15 like.

16 JAMIE CAIRNS: Yeah, I will tell you Tootsie Roll
17 in general I was very committed to Cambridge. I think
18 they're very proud of the fact that being the last can you
19 manufacture in Cambridge and want to stay. Here obviously
20 you can look at the project that we're undertaking.

21 And some people may question, "Does it make sense
22 to do that sort of investment here, versus moving outside of

1 the city?" But they are permitted, and they want to make
2 sure that we can be successful here for a long time.

3 CONSTANTINE ALEXANDER: This is a special-use
4 building. Should we approve this, and you decide and the
5 corporate honchos decide in a couple years they want to sell
6 the property. Is someone else going to buy it and make some
7 transistors or whatever; something other than Tootsie Rolls
8 and other candies?

9 JOHANNA SCHNEIDER: Well, the use that we're
10 looking for permission to continue is a candy manufacturing
11 use.

12 CONSTANTINE ALEXANDER: Okay.

13 JOHANNA SCHNEIDER: So I suppose another candy
14 manufacturing could come in. But if someone wanted to do
15 some other light manufacturing use. They'd have to come
16 back before this Board.

17 JIM MONTEVERDE: Could I ask a question?

18 CONSTANTINE ALEXANDER: Yes.

19 JIM MONTEVERDE: So I understand the need for the
20 loading docks, and how that works with your plan, and I
21 mentioned at my understanding you need to upgrade the
22 electrical equipment?

1 JAMIE CAIRNS: Mm-hm.

2 JIM MONTEVERDE: You said that's a switch,
3 correct?

4 JAMIE CAIRNS: It's our primary switch gear and
5 our secondary switch gears.

6 JIM MONTEVERDE: And the basement okay?

7 JAMIE CAIRNS: It's going to be located, yeo.

8 JIM MONTEVERDE: In terms of resiliency or any
9 other climate concern is that --

10 JAMIE CAIRNS: Yep. So the whole system is
11 designed based on 100-year flood risk. So there is water
12 mitigation, sort of all being designed into the concrete
13 foundation for that basement structure.

14 JIM MONTEVERDE: Okay.

15 JAMIE CAIRNS: And we have partnered with
16 Eversource --

17 JIM MONTEVERDE: Yep.

18 JAMIE CAIRNS: -- to be able to design it to their
19 satisfaction.

20 JIM MONTEVERDE: And then there's space above the
21 loading dock,

22 JAMIE CAIRNS: There is space above the --

1 JIM MONTEVERDE: What function is that?

2 JAMIE CAIRNS: Yeah, so when you look at the
3 design, currently we're a five-story building. It's going
4 to be the same height, but it's actually going to be three
5 floors.

6 So you're going to have -- the first floor is
7 going to be warehouse operations with our new loading dock;
8 that's actually going to be a double high floor so we can
9 handle stacking pallets and racking.

10 The floor above that is a single high floor.
11 That's going to be used for whip or process storage of work
12 in process or candy before it can be packaged. And then
13 above that is another double high floor that's going to be
14 used for packaging material, storage based on some of the
15 new products that we've been developing.

16 JIM MONTEVERDE: And the Planning Board, any other
17 agency, someone reviewed your plans and proposals?

18 JOHANNA SCHNEIDER: Well in connection with our
19 Planning Board application, we've worked very, very closely
20 with TPAT, particularly on the traffic and parking and
21 transportation --

22 JIM MONTEVERDE: Right. Okay.

1 JOHANNA SCHNEIDER: -- and the routing of the
2 trucks and before DPW as well.

3 JIM MONTEVERDE: The Planning Board itself? Is
4 there a local neighborhood or conservation currently?

5 JOHANNA SCHNEIDER: We've been to the Central
6 Square Advisory Committee and have a letter of support from
7 them. And we've also been to the Central Square Business
8 Association and have a letter of support from them.

9 CONSTANTINE ALEXANDER: Yeah, the -- we have a
10 memo from the Planning Board, which I'll read into the
11 record:

12 "The Planning Board has reviewed the proposal to
13 construct, in addition to the existing candy manufacturing
14 facility, for upgraded electrical switching equipment, the
15 Planning Board granted a special permit for additional
16 height in the Central Square Overlay District.

17 "The Planning Board supports the proposal, which
18 is a good plan that enables them an existing manufacturing
19 use, to remain in Cambridge, keeping good, long-term
20 employment opportunities.

21 "The applicant has addressed many of the concerns
22 of residents and city staff about the operations and the

1 future.

2 CONSTANTINE ALEXANDER: And there's also a
3 letter as indicated, or a memo, which I will not read, from
4 the Central Square Advisory Committee, and they also are in
5 support of the project.

6 JIM MONTEVERDE: Can I add one parting comment --

7 CONSTANTINE ALEXANDER: Go right ahead, keep
8 going.

9 JIM MONTEVERDE: -- which has nothing to do with
10 Board. But on the -- on our purview, the elevations I
11 noticed the word, "EFIS" jumped out at me. I haven't seen
12 that word for 30 years.

13 CONSTANTINE ALEXANDER: Tootsie Roll's been around
14 for a long time, I don't understand.

15 JIM MONTEVERDE: As a building material? Again,
16 not the purview here, but that would be a disappointment,
17 extremely. They paid at EFIS, you've got to pay it, right?
18 And me making Pat -- that's why I asked about the Planning
19 Board or any other group.

20 If anyone else had any comment about the EFIS, but
21 then also the reveals and textures to create a similar
22 rhythm. I mean it's not how you treat -- you may not

1 technical, but you're certainly old enough and significant
2 enough in the existing structure to have that category, and
3 how you add addition of this bulk to that. I mean there are
4 certainly ways to handle it.

5 JAMIE CAIRNS: Mm-hm.

6 JIM MONTEVERDE: With simple materials --
7 industrial quality materials. I just -- this one I object
8 to.

9 JOHANNA SCHNEIDER: We did work with and have been
10 continuing consultation with Cambridge Historic regarding
11 the materials. We did present a Materials Board at the
12 Planning Board hearing, and they did not have any objection
13 to the materials that are suggested for this building.

14 JIM MONTEVERDE: I do.

15 JOHANNA SCHNEIDER: We hear you.

16 COLLECTIVE: [Laughter]

17 JIM MONTEVERDE: And that's fine. I'm glad you're
18 here, love what you do, thank you.

19 CONSTANTINE ALEXANDER: Great. Any other comments
20 from members of the Board? Since there's no one here, I'm
21 not going to ask for public testimony, and the
22 communications we received indicated are from the Planning

1 Board and the Central Square Advisory Committee. I don't
2 think there's anything else in our files.

3 So ready for a vote? The Chair moves that we make
4 the following findings with the variance being requested:

5 That a literal enforcement of the provisions of
6 the ordinance would involve a substantial hardship, such
7 hardship being is that this is an older structure. The
8 electrical part, or the electrical requirements for the
9 operation of the structure are outdated, and need revision.
10 And that in turn requires a modification of the structure,
11 as proposed by the Plaintiff -- by the applicant, wrong
12 thing.

13 That the hardship is owing to the fact that this
14 is the shape of the lot and its location in the -- on Main
15 Street, and that relief may be granted without substantial
16 detriment to the public good, or nullifying or substantially
17 derogating the intent or purpose of the ordinance.

18 What's happening here is with our approval, this
19 will allow a very long-standing citizen of the city, who
20 brings actually a lot of good publicity to the city in terms
21 of the manufacture of Tootsie Rolls and other candies it
22 will allow them to stay and grow and thrive in the city of

1 Cambridge.

2 And I think, to me, anyway, I welcome alternatives
3 to all the high tech that we see in the city. I think we
4 can have all different kinds of manufacturing that goes on
5 here.

6 So on the basis of all of these findings, the
7 Chair moves that we grant the relief, the variance
8 requested, on the condition that the work proceeds in
9 accordance with this book that you put together, and the
10 first page of which has been initialed by the Chair. All
11 those in favor, please say, "Aye."

12 THE BOARD: Aye.

13 [All vote YES]

14 CONSTANTINE ALEXANDER: Five in favor, thank you.

15 [COLLECTIVE]: Thank you very much.

16 [10:51 p.m. End of Proceedings]

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CERTIFICATE

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Commonwealth of Massachusetts

Middlesex, ss.

I, Catherine Burns, Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the above transcript is a true record, to the best of my ability, of the proceedings.

I further certify that I am neither related to nor employed by any of the parties in or counsel to this action, nor am I financially interested in the outcome of this action.

In witness whereof, I have hereunto set my hand this _____ day of _____, 2019.

Notary Public

My commission expires:

August 6, 2021

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