

BOARD OF ZONING APPEAL
FOR THE
CITY OF CAMBRIDGE

GENERAL HEARING

THURSDAY, OCTOBER 13, 2011
7:00 p.m.
in

Senior Center
806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Acting Chair
Timothy Hughes, Member
Tad Heuer, Member
Thomas Scott, Member
Slater Anderson, Member

Sean O'Grady, Zoning Specialist

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PROCEEDINGS

(7:05 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Tad Heuer, Thomas Scott, Slater Anderson.)

CONSTANTINE ALEXANDER: The Acting Chair will call this meeting to order. And as is our custom, we're going to start with the continued cases. The first continued case we have is case No. 10144, 169 Western Avenue.

Is there anyone here wishing to be heard in this case?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that no one wishes to be heard. The Chair is also in receipt of a letter addressed to this Board dated October 11th, referencing this case.

(Reading) Please continue my case until the next convenient hearing. Kathleen Walcott.

So when would be the next convenient

time?

SEAN O'GRADY: I'm thinking January 12th. There is an earlier meeting, but from speaking with her, I'm thinking it might be too early.

CONSTANTINE ALEXANDER: This is a case not heard so there are no issues about who is to sit on the case.

I'm going to make a motion that this case be continued until seven p.m. on January 12, 2012. This being a case not heard, a waiver of notice is already on file. It will be continued on the condition that the Petitioner comply with our sign posting requirements, which would mean that the sign previously issued to the Petitioner should be modified to reflect the new date and time or alternatively a new sign be obtained from the Building Department.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

(7:05 p.m.)

(Sitting Members: Constantine Alexander,

Timothy Hughes, Tad Heuer, Thomas Scott, Slater Anderson.)

CONSTANTINE ALEXANDER: The Acting Chair will now call case No. 10153, 35 Roberts Road. Is there anyone here wishing to be heard on this matter?

And for the record, give your name and address to the stenographer.

CAMPBELL ELSWORTH: Yes, good evening. My name is Campbell Elsworth, 267 Norfolk Street, Cambridge, Mass., and I'm here with my client.

LOU FERRARO: Lou Ferraro, 35 Roberts Road, Cambridge, Mass.

CONSTANTINE ALEXANDER: The last time you were before us, we continued this case because there was an issue -- you had some issues with the Cambridge Historical Commission.

CAMPBELL ELSWORTH: Yes, indeed.

CONSTANTINE ALEXANDER: I've

understood you met with them and all is well?

CAMPBELL ELSWORTH: All is well.

You should have been in receipt as of October 11th of their memo to you, along with some supporting notes.

CONSTANTINE ALEXANDER: Yes. At an appropriate time I will read that into the record. We do have that.

CAMPBELL ELSWORTH: Okay, terrific. Just the -- if I might just elaborate on that meeting. There were -- we had been before the Mid Cambridge --

CONSTANTINE ALEXANDER: Why don't you start with telling us, go back and start with the relief you're seeking and get us there.

CAMPBELL ELSWORTH: Of course, absolutely.

This is an existing two-family house on Roberts Road. It is a non-conforming house in terms of the left side setback as well as

height. And it's also a non-conforming lot just to be clear. It's in a C-1 Zoning. We are seeking to create an addition off the back of that that would just be under the 25 percent which would require a Special Permit by the Zoning Ordinance. The addition that we've created is just under 25 percent. And we are not changing the body of the house. And just to give you this. So this is, this is, so this is the proposed, and you've got, you've got the drawings. So the body of the house is here. We're proposing to add this addition, two-story addition. We're also -- this is a private way, just to be clear. Emmons Place. Meaning there is no curve here at all. We're also proposing to create two off-street parking spots for these two units.

CONSTANTINE ALEXANDER: Those off-street parking spots don't require any Zoning relief, do they?

CAMPBELL ELSWORTH: They do not, no. I don't believe so, no.

CONSTANTINE ALEXANDER: Okay.

CAMPBELL ELSWORTH: So, the existing house was non-conforming relative to this left side setback. Just also to point out it's being considered a corner lot. So it has a front/front, side/side, no rear setback. It's non-conforming here. We have created a conforming addition here. And we might or you might want to discuss that because there are -- I think it's 5.21, there are some allowances for setbacks on non-conforming lots.

So, as this is in the Mid Cambridge District, we went before that Board two months ago or so, presented this, they had some concerns about the materials that we were using. They felt that, as well as some of the architectural choices of modifying windows. They articulated those very

clearly to us, albeit all of us got, this Board included, all of us got that notice. I think this Board got it as well as we did the day of the hearing, this BZA hearing. We were recommended by your Board to go back and discuss it with them, which we did, I believe, on the 27th, and we addressed all of those. There were five issues just so summarize:

The first one had to do with clapboards on the main body of the house. We had initially wanted to redo those clapboards in a hardy plank. We have since, after discussion with them, decided to leave the existing clapboard, to patch it in where we need to. Where we are adding the addition we'll be able to remove clapboards off the back. We'll be able to carefully remove those and use those also to patch in. So they were, they were fine with that. They also were fine with the fact that we could, if we so chose, to use the hardy plank on the

addition itself. That was point No. 1.

Point No. 2 was windows. They had recommended that we look at the rehabilitation of the existing windows. We felt after a long discussion and pricing out the options of the rehabilitation of the windows, looking at energy efficiency, looking at the need to have additional storms on top of that, we looked at that and we've decided to replace them with a high quality wood window with an aluminum sash, just for ease of maintenance. And also on the recommendation perhaps to leave the frames and to do just the replacement sashes. But they were fine with us, you know, they were basically fine with that.

Third point was configuration of the front porch. We felt that -- right now if you look at the existing, there's just sort of a very small single porch and a single entry. We wanted to make that two entries to

represent two forms of entry for each unit and have that expressed on the outside. We have had actually a larger front porch here, and upon basically Sarah's recommendation at Historical in that meeting, we've reduced the size of that from twelve feet wide to ten feet wide, which is just about as narrow as we can get that front piece and still have access to those front doors.

The front set of stairs actually remains the same in terms of dimension, in terms of what's there now. So that was the third point.

The fourth point was that there was a skylight up on the roof that was off-centered above the entry. They objected to the off-centeredness and we have removed that completely. And perhaps the strongest was that the north elevation, which is this one, because we are creating in the two units a kitchen and a kitchen above, we had

originally had proposed to modify these windows, but they felt that the unbalancing of the symmetry of this, of this facade was not in keeping with what they would have preferred, and so we've looked at that, and let me just open up to that page which is A3.2 in your packet. I'll hold it up here. Is that so what we've decided to do, obviously, is keep them exactly the same. Actually, keep the original frames and window sizes even though there are kitchens behind them, meaning that the countertops will go up above the glass, but, you know, according to them -- and I've seen it as well, this detail is done all the time, you just have to sort of black it out behind there. So that's a, that seemed like a reasonable compromise and, they were quite happy with the fact that we were maintaining -- yeah, and I have extra copies.

CONSTANTINE ALEXANDER: The current

plans are the ones that were in the file were dated 9/23?

SLATER ANDERSON: Yes, that is correct.

CAMPBELL ELSWORTH: No. They were originally dated August --

SLATER ANDERSON: The cover is 9/23 but the plan you're referring to is October 7th.

CAMPBELL ELSWORTH: Oh, I see. Yes, that is correct. Yes, that's correct.

SLATER ANDERSON: Okay.

CAMPBELL ELSWORTH: Right, that looks correct. Right.

SLATER ANDERSON: Is the cover sheet on yours dated the 23rd of September?

CAMPBELL ELSWORTH: Yes, it is. Yes, that was done by the surveyor who did that work, yes. My drawing is underneath --

SLATER ANDERSON: Are all of them updated?

CAMPBELL ELSWORTH: They are all updated. And if they were modified, you'll see there's two dates. One is revised as of Cambridge Historical Commission with that date. So that's the current plan, current set.

So those were the five areas. And we came to an agreement on what to do and they were very happy. And I think that their letter to your Board reflects that.

CONSTANTINE ALEXANDER: That's a good segue. Let me read into the record the letter that we did receive.

CAMPBELL ELSWORTH: Sure.

CONSTANTINE ALEXANDER: It's addressed to Sean O'Grady. It's from the Mid Cambridge Conservation District Commission. It's dated October 11th referencing this case, 35 Roberts Road.

It reads as follows: (Reading) Staff of the Historical Commission have met with

the owner and his project architect to resolve the outstanding issues raised at the September meeting at the Mid Cambridge Conservation Commission that were also noted as a point of concern by the Board of Zoning Appeals. Notes of that meeting are included with this memo should members of the BZA wish to review the discussion details. The revised plans dated October 27, 2011, satisfied the Commission's request for further preservation for the historic 1870 structure and include the following improvements as agreed to by the property owner: Retention of the cedar clapboard exterior; retention of the historic house and window trim; retention of the original windowsill heights on the north elevation; removal of one rooftop skylight; modified front porch design. Where historic fabric is determined among repair, it will be replaced in kind to match the dimensions and detailing

of the original construction. The revisions to the front building and the design of the rear addition are in keeping with the character of the district and preserve the integrity of the original structure. We are pleased with the modifications and look forward to seeing the building rehabilitated and reoccupied.

Questions from members of the Board at this point?

(No Response.)

CONSTANTINE ALEXANDER: No questions.

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

(No Response.)

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

Further comments?

CAMPBELL ELSWORTH: I just wanted to say one thing. There was a further request

by your Board to make a couple of other modifications in the presentation. You'll notice that on these updated drawings, I think it was Mr. Sullivan who had asked it at the time, that the notes of those decisions are actually articulated here on the drawings. So they can all be seen.

In addition, Mr. Heuer had asked that I provide some additional calculation on the FAR on the dimensional calcu -- I had calc here. And that's there. And I also submitted some drawings for your information.

TAD HEUER: Right.

CONSTANTINE ALEXANDER: Thank you.

I'll close public testimony at this point.

Comments from members of the Board?

TAD HEUER: On the north elevation you're adding an -- not that -- it's just a matter of curiosity. You're adding an

egress window on the left; is that right, in the basement? Did I read that correctly?

CAMPBELL ELSWORTH: North.

TAD HEUER: Oh, I'm sorry. Front. So that would be the east elevation.

CAMPBELL ELSWORTH: Yes, I am.

TAD HEUER: Right.

And there's no window there currently; right?

CAMPBELL ELSWORTH: There is around --

TAD HEUER: Or is there one of these little three block?

CAMPBELL ELSWORTH: There's one bigger than that. Let me -- your -- the existing conditions which would be EX3 -- no, EX --

TAD HEUER: 4.

CAMPBELL ELSWORTH: EX4. No, it doesn't show it. No, there is none, there is none there, that's correct.

TAD HEUER: Okay.

Is that or will that be behind landscaping or something?

CAMPBELL ELSWORTH: It will, absolutely, yeah. Often we will landscape around those wells.

TAD HEUER: Okay.

CAMPBELL ELSWORTH: Yeah.

TAD HEUER: For the hardy plank on the rear are you planning on that being a wood imprint, wood variegated hardy plank?

CAMPBELL ELSWORTH: I don't think so. I would doubt it. I would prefer the smooth. But that never looks good to me.

LOU FERRARO: I think Historical prefers a smooth sort of uniform pattern.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Further questions?

TAD HEUER: No.

CONSTANTINE ALEXANDER: Anyone else

have any questions or comments? We ready for a vote?

The Chair moves that a Special Permit be granted to the Petitioner on the grounds that the work being proposed will not be substantially more detrimental to the neighborhood than the existing non-conforming structure.

That further, as required by Section 10.43 of our Zoning Ordinance that the Board make these following findings:

That the requirements of the Ordinance cannot and will not be met in view of the fact that the structure currently is a non-conforming structure.

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

That the continued operation of or development of adjacent uses will not be

adversely affected by the nature of what is being proposed.

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

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

The Chair would note in this regard as this project now has the support of the Mid Cambridge Historical Commission which I think is supportive of the notion of not impairing the integrity of the district.

The Special Permit would be granted on the condition that the work proceed in accordance with plans submitted by the Petitioner. They were prepared by Elsworth Associates dated August 8th and revised and

dated October 7, 2011. There are multiple pages. I will just initial the first page.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

TAD HEUER: Just one thing for the record. I very much appreciate your willingness to go back to Historic and take this into consideration. It's a short delay, but I think clearly this Board is pleased with it. We're obviously very pleased with it. I think you set a very good template, precedent, example for others doing this kind of project. You demonstrated that that kind of short delay on the front end really produces viable efforts on the back end. I wanted to commend you for

that. It's a great model.

CAMPBELL ELSWORTH: Thank you for
the strong recommendation last time.

(7:20 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Tad Heuer, Thomas Scott, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will now call case No. 10158, 8 Coolidge Hill Road. Is there anyone here wishing to be heard on this matter?

For the record.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, members of the Board, for the record, my name is James Rafferty. I'm an attorney with the law firm of Adams and Rafferty located at 130 Bishop Allen Drive in Cambridge. I'm appearing this evening on behalf of the property owner and applicant Salvatore Battinelli, B-a-t-t-i-n-e-l-l-i. Mr. Battinelli is seated to my left. To my right is the project architect, Bruce Greenwald, G-r-e-e-n-w-a-l-d.

CONSTANTINE ALEXANDER:

Mr. Rafferty, before we proceed on the merits there are two issues I want to get out and deal with initially.

One is the question of notice. This case was continued the last time because the notice was not properly posted according to the Zoning Ordinance. And the sign has now been posted on the street level. The abutter has raised a question through his counsel, Mr. Bracken (phonetic) pointing out that the notice that now is out there which is at the street level, is not on the Petitioner's property as required by our Zoning By-Law. On the other hand, I'm not sure how we could comply with the Zoning By-Law and have it on the property given the unusual nature of the property. And I take it from Mr. Bracken's letter, although he can speak for himself, he's not claiming that we should not hear this case tonight, he's just bringing it to our

attention.

I'm comfortable -- I'll defer to other members of the Board, but I'm comfortable that the notice requirements have been satisfied by where the sign is now posted and we can proceed with the case.

Anyone else feel otherwise?

(No Response.)

CONSTANTINE ALEXANDER: I guess not.

BRUCE GREENWALD: Mr. Chairman, if I can make a comment? Again, in order to get this within 20 feet of the street, there was no other place to place this. And per the site plan, I felt that that was in the right of way.

CONSTANTINE ALEXANDER: I would agree. I'm agreeing with you.

BRUCE GREENWALD: Okay.

CONSTANTINE ALEXANDER: You know, there may be a technical issue, but it's

not -- I think the notice requirements are substantially complied with and I'm comfortable that we can go forward and hear the case. So that's out of the way.

The other question is a little bit more serious. Not serious, but a little bit more weighty I think. You're seeking relief under Section 8.22.2.(c). And the issue is whether -- one of the issues that's been raised by the abutter is whether you are entitled to proceed under that section inasmuch as you're increasing the -- so he alleges -- increasing the size of the structure by more than 25 percent. And that's the cut-off of 8.22.2(c). And whether you're exceeding the 25 percent or not, turns upon this what has been covered -- described in a different way, but partially covered walkway and whether that's counted in the calculation and you take the 25 percent with the structure plus the

walkway or whether you ignore the walkway, in which case you would go more than -- the increase would be more than 25 percent. That's a predicate to this case because you're seeking relief under that Section 8.22.2.

Inspection Services Department advised us that they have not made a ruling yet, have not determined whether you're entitled to proceed under 8.22.2. I'm going to stop and just call it Section 8 going forward. It seems to me until we have that issue resolved, I don't see how we can consider the case tonight, because it would be in my judgment, we could decide the case, spend a lot of time and find out that the case is on completely wrong premises. I think the way to go, I wanted to hear you obviously, and anyone else, including my fellow Board members, I think the way to go is not to hear this case tonight. Get a ruling from the Inspectional

Services Department. If the ruling is such that you can count the addition, the partially covered walkway, then we can hear the case under Section 8. If they decide that you can't, then Section 8 doesn't apply. You're not entitled to the benefit.

And you have a number courses of action: You can appeal that determination. You cannot proceed under Section 8, accept the determination and proceed under the clause of Section 6.

There's a Special Permit with different standards set forth there.

You can seek a Variance. There may be some issues about whether you can get a Variance given some recent case decisions, but it's certainly not been finally decided.

Or you can D do any combination of the four going forward in the alternative; seek an appeal. If you don't, if the appeal doesn't go the way you want it to go, the next

step would be, the same night, same hearing, to deal with the Special Permit or and/or Variance.

So that's my view. I don't see how we can proceed tonight without a determination as to whether -- your application is on the right section. And that's not your fault. It's the fault -- it's not anyone's fault. It's the fact we don't have the final determination from Inspectional Services. I've said my piece.

ATTORNEY JAMES RAFFERTY: Well, I understand the issue. I would say that the dimensional form as submitted includes this area within the GFA of the structure. And I will say it comes to a surprise to me to learn that there's a question that that structure, that area with a roof over it, isn't -- doesn't fall within the definition of GFA, because I would take the reverse position. If I wanted to construct such a

thing today with a roof, I have every confidence that Mr. O'Grady would tell me that's a GFA. The application as it applies to this aspect of the product, which I think is most sensitive, doesn't add a single square foot to the project. The Petitioner is moving on the basis that that is already GFA. The issue around the 25 percent involves the basement to this project. There's not a basement there today. But the Applicant's position is there is no increase in GFA; not ten percent, not five percent, not one percent as a result of extending the walls of the structure. It has a roof and it's surrounded by four walls. And it was my understanding, until I sat in this chair tonight, that there was no dispute, that that would be included in GFA.

So, if I'm understanding the Chair correctly, there's a question at ISD now as to whether that's gross floor area?

SEAN O'GRADY: Okay. No. Well, the issue is several people; namely, some of the attorneys on our Board -- did you want to?

TAD HEUER: You can go ahead.

SEAN O'GRADY: Have engaged in discussion about the extent of the rights from the fact that that structure was, to our knowledge, built without a Building Permit. And so while we accept it as being cured because it's over ten years old, and accept it -- accept the GFA as there and not something that we can fool with, we're starting to understand that maybe the curing doesn't equal the legal non-conforming. Therefore, can you rebuild it? Can you use it as a starting point for a Special Permit when it itself would require a Variance?

We called legal. Frankly, this sort of all came to us late. It came to legal late. I was hoping as late as walking in here tonight to get a telephone call with the

answer, but we just don't have it. And I --

CONSTANTINE ALEXANDER: The issue is whether -- let me finish and then I'll let you speak, Tad.

The issue is basically, the addition was put on illegally. There was no Building Permit. Not the addition, the covered walkway. Well, there's no record of any Building Permit or Zoning relief.

ATTORNEY JAMES RAFFERTY: That would appear to be the case. I just think that the next conclusion that it was illegal, that might be a presumption, but I'm --

CONSTANTINE ALEXANDER: Okay. I'll rephrase it.

ATTORNEY JAMES RAFFERTY: I'm not completely convinced of that fact, but I can understand why it would raise the suspicion under what authority was it constructed?

CONSTANTINE ALEXANDER: Okay.

One interpretation is, and you have the

benefit of the statute of repose more than ten years that this has been built, one reading of the way the law should work is that statute of repose keeps you from having to tear that covered walkway down and that's it. Another one, if that's the case, I think you have some issues with regard to whether you can proceed under Section 8.

The other is that now that the ten years have gone, that covered walkway is part of the structure, it's a legal part of the structure, and you seek your relief off that. Then you would be entitled to proceed tonight. That's the issue we don't have a determination on. And until I have an answer to that or Inspectional Services has decided what their answer is, I don't know how we can proceed.

ATTORNEY JAMES RAFFERTY: No, I respect that and I understand that. Obviously the Board needs to be convinced

that the matter's properly before them. I recognize that.

I was just struggling with the idea when you fill out a dimensional form for this, I think there's little question as to where the setback is and what gets included in GFA. I do understand the question about what is the consequence going forward for a structure that we may not be able to demonstrate adequate authority to construct it. I think that's a legitimate legal question. I didn't know whether the Board was going to attempt to address that in its proceeding. Now I'm hearing you may wait for direction from the Law Department.

CONSTANTINE ALEXANDER: I think -- I'd like to know the total legal impact and consequences of that covered walkway, that structure, in terms of given its origin. Given the fact that it was built without apparently any proper documentation.

ATTORNEY JAMES RAFFERTY: So I think one of the ways to look at it is whether in 8.22.2(c) the reference to non-conforming structure applies equally to lawfully pre-existing non-conforming or any non-conforming.

TAD HEUER: That's absolutely the issue.

CONSTANTINE ALEXANDER: That's it. You said it very well.

TAD HEUER: That's what I was going to say. At this point, you know, the other question is whether non-conforming structure as defined in the definition of the Section 2, you know, speaks to provide a structure was in existence and lawful at the time of the applicable provisions of this or prior Zoning Ordinances have been effective. The request, I think is fully with the structure that it's speaking of is this component that was added on, but whether it's speaking of the

structure at large; i.e. everything within, you know, the pre-existing 1806 house plus anything else that's been added on. And whether that counts as the structure. If the entire entity is the structure, then you have a pre-existing non-conforming structure with pieces added to it. If the structure is just this new element that has appeared post-Zoning Code adoption, I think it would seem to me to logically follow that that is an independent structure that does not gain the benefit of the definition of non-conforming structure in Section 2 and, therefore, isn't a non-conforming structure of the exact same definition of 8.22.2.

ATTORNEY JAMES RAFFERTY: No, I -- like I said, I didn't know if the Board wanted to grapple with that issue in the context of this case or I certainly respect and understand the desire to get some direction. Because if that were to be the

reading of 8.22, I agree, I think the case is in a different posture.

Our reading of 8.22, and it would appear that it doesn't require that. And we've also tried to get a better understanding. There are other aspects of the house that make it non-conforming. Other setbacks and the like. Not GFA, but there are the other setbacks. So it's clearly a non-conforming structure. I agree with Mr. Heuer's assessment is does that non-conformity then need to meet every aspect of the non-conformity to be lawful?

Clearly if we were in a Section 6 finding, I think the case is pretty strong, it has to be lawfully pre-existing. So at the time it was originally constructed it was lawful. You know, the absence of a building permit raises suspicion as to how it was done. It may raise a question as to what is it? Is it a wall or is it something else? But

something could have been put up at the time it was put up, it was lawful, but because of changing definitions of GFA and other things, it now takes on a different characteristic. So that's why I kind of --

CONSTANTINE ALEXANDER: That's true.

ATTORNEY JAMES

RAFFERTY: -- bristled at the notion that it was there illegally. It could have been at the time it was structured it didn't require a building permit, but current interpretations and definitions would say to do it today you would need a building permit. But it isn't accurate to say that at the time it was constructed, it was done so illegally. I don't know the answer.

CONSTANTINE ALEXANDER: Yes, as lawyers say the case is now ripe I think at this point for a decision. I think we need, we need further guidance from the

Inspectional Services Department. You may want to do further research as to the origins of this covered walkway, whatever you want to call it. And when we have all of that, and I think this case, we can either proceed on this case on this relief, Section 8.22.2 or you may wish to seek an alternative form of relief. And as you well know, you can do it in the alternative, not one or the other.

I think at this point, unless other members of the Board disagree, I think we should continue this case and the Petitioner may want to bring a second case, a separate case or cases.

ATTORNEY JAMES RAFFERTY: I'm not sure when the date is. I'm explaining to the Petitioner that given the uncertainty over this issue, in my experience I would suggest that if the Petitioner was adamant about going forward, what we're hearing at least from few members, that they're not

comfortable enough with the legal issues that they can vote in favor of this. I think there's a lot of benefit to continuing the case and allowing the Board to get the direction they're talking about from the Law Department on this question. So we'll --

CONSTANTINE ALEXANDER: Well, it's sort of an alternative, if the Law Department comes down with something that says Section 8 doesn't apply, you're going to have to re-advertise and bring a whole new case seeking a different form of relief. It's not just a matter of continuing this case. We've got to continue it, but there may also be a parallel path you're going down, maybe. That remains to be seen.

ATTORNEY JAMES RAFFERTY: True.

CONSTANTINE ALEXANDER: Let's do the continued case.

SEAN O'GRADY: The next natural opening is December 15th. I feel personally

a little unhappy with the way we've served the Petitioner, and I can tell you how the nights are going to go and let you see if maybe there's something earlier.

ATTORNEY JAMES RAFFERTY: There may be an unnatural opening?

SEAN O'GRADY: Right. We're looking for unnatural openings.

ATTORNEY JAMES RAFFERTY: We would take the unnatural opening.

CONSTANTINE ALEXANDER: I think we should be accommodating to the Petitioner. And also I want to be accommodating to the abutter who has spent time coming down as well.

SEAN O'GRADY: Sure.

CONSTANTINE ALEXANDER: What's the unnatural date?

SEAN O'GRADY: So, the next available, the next hearing is 10/27, but you've got eight regular cases and five

continued cases.

The next hearing after that is November 10th, you've got eight regular and four continued. Although two of those are 175 Huron and that's probably a single case.

CONSTANTINE ALEXANDER: We don't know -- do you have any assessment of whether those cases are likely to be heard or if they're going to be further continued?

SEAN O'GRADY: There's somebody who might know the answer to that.

CONSTANTINE ALEXANDER: I think we should go for the November date.

SEAN O'GRADY: The November 10th date? Very good.

ATTORNEY JAMES RAFFERTY: We would be grateful, because the December date does represent a hardship. And I think that does give us adequate time. I don't disagree at all with the issues that are presented tonight, and I can see why the Board in the

whole process might benefit from continuing it.

CONSTANTINE ALEXANDER: In the matter of fairness, can you be here on November 10th?

UNIDENTIFIED MALE: Is that a Thursday?

CONSTANTINE ALEXANDER: Yes, oh, yes, always on Thursday. And at seven o'clock, too.

UNIDENTIFIED MALE: November 10th is acceptable to the abutter.

CONSTANTINE ALEXANDER: Okay. This is a case not heard so we don't have to reassemble the same cast of characters.

The Chair moves that this case be continued as being a case not heard, and a waiver of notice of time of decision being on file.

This case be continued until November 10th at seven p.m. on the condition that the

sign, the one we have outside on the street, be modified to reflect the new date and time. Make sure the sign stays up for the time required by the statute.

ATTORNEY JAMES RAFFERTY: And it can remain at the current location I think in fairness meets the spirit of the Ordinance. It gives better public notice than if it were on the property.

CONSTANTINE ALEXANDER: There's no need to change the location from where it is. Just make sure it gets modified and stays up.

TAD HEUER: Sean, when is the next regular opening?

SEAN O'GRADY: The next natural opening that doesn't, you know, is 12/15.

TAD HEUER: Regular agenda?

SEAN O'GRADY: Oh, you mean if they come in -- they could -- 12/1 has openings, I just don't know whether Maria has advertised. She was advertising something

today.

TAD HEUER: My only question is if -- that's pretty far out.

ATTORNEY JAMES RAFFERTY: She wasn't advertising 12/1.

TAD HEUER: I don't think so. My only questions is if this is determined that this is not eligible to go forward under 8.2.22, and the December 15th is a hardship, it may be advisable that Petitioner submit an application for a Variance to hold an earlier space in case that's needed instead of waiting for the outcome of this potentially being adverse and then having to advertise at that point for a Variance hearing that you would find yourself in January. Only pointing out logistics and nothing more.

ATTORNEY JAMES RAFFERTY: I appreciate that. I have to counsel my client as to whether the investment and the filing fee would be wise on a Variance case.

CONSTANTINE ALEXANDER: It's quite possible we would have a question to the 24, 48 hours.

ATTORNEY JAMES RAFFERTY: We would endeavor to try to ask whether we could write to the Law Department ask that a -- the sooner we get direction on this, the better everyone is served.

CONSTANTINE ALEXANDER: That I agree with.

Motion's been made. All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

(7:40 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Tad Heuer, Thomas Scott, Slater Anderson.)

CONSTANTINE ALEXANDER: We will now turn to our regular agenda. And the Acting Chair will call case No. 10160, 115 Harvey Street. Is there anyone here wishing to be heard on that matter?

Good evening.

AMELIA WESTMARK: Hi.

CONSTANTINE ALEXANDER: We have a stenographer, so you have to give your name and address to the stenographer.

AMELIA WESTMARK: Ok. I'm Amelia Westmark and I'm at 115 Harvey Street.

HAROLD JENSEN: I'm Harold Jensen, also at 115 Harvey Street. J-e-n-s-e-n

CONSTANTINE ALEXANDER: Okay, the floor is yours.

AMELIA WESTMARK: Sure. So we bought our house three years ago now. And for the past three years we've been trying to figure out how to best to fix the house up, and we've had Inspectional Services come in to look at the house.

HAROLD JENSEN: Mr. Grover. We've had him come in.

AMELIA WESTMARK: Mr. Grover. We've talked to architects. We've talked to neighbors. We've talked to our abutters, and so this is --

HAROLD JENSEN: Mr. O'Grady a couple years ago.

AMELIA WESTMARK: Of course, Mr. O'Grady. And this is what we've been working on.

CONSTANTINE ALEXANDER: Okay. Tell us about the fruits of your efforts.

AMELIA WESTMARK: Sure. I'm going to let you talk on that.

HAROLD JENSEN: Sure, okay.

I guess -- it's a major remodel as you can see. We -- the house was built in 1860, the main part, and then the rear addition was built in what appears to be the 1880's.

CONSTANTINE ALEXANDER: It was built on someone else's property, at least in part; right?

HAROLD JENSEN: It was, yeah.

CONSTANTINE ALEXANDER: Small detail.

HAROLD JENSEN: Yes, I know.

So there really hasn't been too much update to the house. There's plumbing and electricity, but no insulation. It hasn't been updated. Some of the rooms are rather confusing so it's really kind of a gut remodel that we're going for.

And there's three main parts to the

remodel. The first is the rear addition, the foundation is quite poor. The whole rear addition is actually in bad condition. Rotted. Rotted, you know, beams and framing. And then the foundation itself doesn't have a footing. Much of the structure was put straight in the concrete, so it's rotting. Some of the joists are being replaced. So that in itself is in bad condition. Plus it's on the property line, over the property line. So our initial intent was to rebuild that to the current location of that until we found out it was over the property line. So we were proposing to work with the abutter to move that rear addition to the side. So that's kind of the first big project of this proposal.

The second would be we'd like to develop the attic into usable space. There's kind of two reasons for that.

One, is that the layout of the house

right now is rather chopped up. There's three units. The third unit is sort of split on the back two levels. So we'd like to make it a much better layout and do one layout, one unit per floor. And so we put a one-bedroom apartment up in that attic space.

CONSTANTINE ALEXANDER: So it would be a three-family, three unit.

HAROLD JENSEN: Three-unit house, right.

So to do that we raise the roof, and that, the one reason to be able to use all that space. Right now there's only a couple hundred feet, square feet in the attic of usable space below the five feet. So we'd raise that. And then the other reason to do that is for solar panels. We'd like to raise it and change the pitch of the roof because to reach the 80 percent efficiency that we need to get rebates from the Mass. CEC, it needs to be 80 percent optimal.

So, I've got some numbers that I can show you if you like. But it's the current pitch is below that 80 percent. So the higher to flat we can get, closer we can get to 80 percent. Those are the kind of the two reasons for raising the roof and changing the pitch of the roof. So that's kind of the second major undertaking of the project.

And the third is kind of a complete gut remodel and change the layout of the main structure.

CONSTANTINE ALEXANDER: From the Zoning perspective the house right now is non-conforming in a number of respects.

HAROLD JENSEN: Yes.

CONSTANTINE ALEXANDER: And to some extent you're proposed work will bring the building more in compliance. Not in compliance but more.

HAROLD JENSEN: More.

CONSTANTINE ALEXANDER: In some

respects, but in particular you're going to be worse off than you are today from a Zoning point of view.

HAROLD JENSEN: On one particular setback, on that west side, that's correct. That's correct. In total, our goal is to -- our goal is to find a win/win we can in working with everyone. I think the only thing that would make it worse is that western setback which is right around 75 inches. Because we're moving the structure over to the left, it's reducing that by about I think three feet. But we're changing the setback on the right by eight feet. We're going -- we're bringing it over eight feet. So that the total side setback is reduced.

CONSTANTINE ALEXANDER: It just dawned on me, what about parking? You're going to have three units and you have three parking spaces.

HAROLD JENSEN: We only have off

street parking right now -- on street, excuse me. We only have on street parking right now. And just a recent addition, we -- the lumber yard is under development. They just passed the Planning Board. And so their proposal, and they actually suggested it to us, is that redoing the rear structure, because of how their site plan, their layout is, they have a road abutting into the side of where that rear addition is, they said we can put a garage in that basement of the new addition. So that would be two off street parking spaces. But we would, we would go through, we would access through their property into the basement.

CONSTANTINE ALEXANDER: The question I asked I thought I was going to get a different answer. What I was getting at is you haven't asked for any Zoning relief for parking. You need to provide three spaces. I assumed you have a -- it's non-conforming

that you only have one parking on-site for three units.

HAROLD JENSEN: We have zero parking on-site.

CONSTANTINE ALEXANDER: Zero?

HAROLD JENSEN: Yes.

CONSTANTINE ALEXANDER: Why don't you need Zoning relief to allow you not to have three on-site parking spaces?

HAROLD JENSEN: I guess I didn't know that.

SEAN O'GRADY: How many units do you have in the building now?

HAROLD JENSEN: Three.

SEAN O'GRADY: They're grandfathered.

CONSTANTINE ALEXANDER: It's non-conforming. Okay, that's the answer I thought I was going to hear.

HAROLD JENSEN: I didn't know that. Sorry about that.

SEAN O'GRADY: That's okay.

CONSTANTINE ALEXANDER: That issue -- there is no issue there. I wanted to make sure about that.

TAD HEUER: You're planning on demolishing the rear?

HAROLD JENSEN: The rear, yeah.

TAD HEUER: Entirely?

HAROLD JENSEN: Yeah.

TAD HEUER: All right. So, as a technical matter, I'm looking at Sean, demolition of the structure removes that FAR entirely from the calculation and makes the building more conforming. There's a reconstruction of a rear that, is that relief, I mean essentially Zoning is intended to get back towards conformity; right?

SEAN O'GRADY: Yes.

TAD HEUER: Even though it reduces by 100 feet of what you've got now? You've gone down to, my calculation, probably near

conforming or under conforming by removing the rear structure.

HAROLD JENSEN: Sure.

TAD HEUER: And then you're asking to put it back again.

HAROLD JENSEN: Sure.

TAD HEUER: Usually we would say stop at the taking it off.

HAROLD JENSEN: Right.

TAD HEUER: Right. So you are going down below conforming and then coming right back up again.

Is there a reason you haven't tried to adversely possess or do with a judgment on an adverse possession?

AMELIA WESTMARK: Actually, it was in the land, it's a Land Court document that that states that that property is theirs and so there is no way for us to legally own that property.

TAD HEUER: It's register land?

HAROLD JENSEN: Registered land, yes.

AMELIA WESTMARK: They've given us a use easement for our house if we are unable to fix it for some reason or another. But they would prefer it to be removed obviously.

TAD HEUER: So it was -- this is more out of curiosity than anything else. It was registered prior?

HAROLD JENSEN: In 1954 it was registered, and there's no building permits on record of when any -- when really actually anything was done. And so the part that sticks out -- well, actually the whole rear. They said, you know, the attorney said that we couldn't prove that it wasn't there beforehand, before 1954. And because it's a rather small area, and we were hoping to move it and fix it, we didn't really pursue it.

TAD HEUER: Right. I'm just thinking to assist with the setback issues if

you did possess the property on which the house currently stands.

HAROLD JENSEN: Okay.

TAD HEUER: All right.

CONSTANTINE ALEXANDER: Anyone else have any questions at this point?

(No Response.)

CONSTANTINE ALEXANDER: I'll open it to public testimony. First of all, I'll read into the record. We do have a letter of support in favor of the relief being sought. I'll read that into the record.

It's a letter from Terrence P. Morris, M-o-r-r-i-s. It's addressed to the Board of Appeals. It's dated October 11th.

Mr. Morris is an attorney. I should have mentioned that. (Reading) I represent Mr. Young H. Lee who recently received a Special Permit from the Planning Board to construct a 20-unit residential development on the site of the Cambridge Lumber Company

located at 119-135 Harvey Street and also an abutter to 115 Harvey Street. The configuration of the former lumber yard is such that it surrounds a dwelling at 115 Harvey Street on three sides. Throughout the Planning Board approval process, Mr. Lee has been in constant communication with the owners of 115, Amelia Westmark and Harold Jensen, III regarding not only his development but also their plans for renovation, which are now before you for approval. The purpose of this letter is to express Mr. Lee's support for their Zoning relief requested in the above-referenced petition and to urge the Board to grant the dimensional variances being sought. The exceptions to the setback and FAR limitations will result in a residential dwelling that is in keeping with the scale of the new buildings approved by the Planning Board and also removes an encroachment by the existing

structure onto land at 119 Harvey Street.

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

(No Response.)

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

So with this letter, I'm going to close public testimony.

Anything else you want to add, final remarks?

AMELIA WESTMARK: We do have letters from other abutters as well.

CONSTANTINE ALEXANDER: Oh, okay. Why don't you give those to me and we'll put them in the file.

HAROLD JENSEN: Sure.

CONSTANTINE ALEXANDER: I'll read into the record, they're identical letters. They're addressed to us. And it says that the abutters or abutters to the abutters to 115 Harvey Street, we are in full support of

Ms. Amelia Westmark's Zoning Board application and her plans to remodel. And persons to have signed seem to be located at 137 Harvey Street; 95 Harvey Street. And there was also a separate e-mail from a John Gallagher, 102-2 Harvey. It's addressed to Ms. Westmark and it says: (Reading)
Thanks very much for the notice of your intent to remodel your house. The plan looks great, and I wish you success with the renovations. Thank you.

HAROLD JENSEN: Also, I didn't know -- I had some additional information, and I don't know if -- elevation drawings or elevation photos that may --

CONSTANTINE ALEXANDER: In addition to what you've given us?

HAROLD JENSEN: In addition, yeah, I think that after we submitted that, Mr. O'Grady said that there was maybe a lack of elevation drawings. So I could have those

as well as some photos of the existing structure.

CONSTANTINE ALEXANDER: Well, we would like to have those in the file on the Monday before.

HAROLD JENSEN: Okay.

CONSTANTINE ALEXANDER: I think we can go with what you've given us.

HAROLD JENSEN: Okay.

CONSTANTINE ALEXANDER: Comments from members of the Board?

Tom?

THOMAS SCOTT: The third floor, you're basically adding dormers, right, to the top of the house?

HAROLD JENSEN: We -- it's a --

THOMAS SCOTT: Although -- well, you're making an addition disguised as a dormer I guess is what you're doing.

HAROLD JENSEN: We added the front pitch.

THOMAS SCOTT: Well, the front pitch is the existing pitch of the house.

AMELIA WESTMARK: Well, that's just the facade.

SLATER ANDERSON: Aren't you raising that, though, that the gable that we see on the front of the house is actually not the existing gable you raised.

TAD HEUER: It's a false gable.

SLATER ANDERSON: It's a false gable. It's not the one that's there. It's higher.

HAROLD JENSEN: Correct.

TAD HEUER: This is essentially a three-family disguised with a front gable.

SLATER ANDERSON: Yes. You're taking the third floor off and putting a whole new third floor on?

HAROLD JENSEN: Correct.

SLATER ANDERSON: There's nothing of the original construction that will remain

on the third floor?

HAROLD JENSEN: Correct.

THOMAS SCOTT: Okay, but -- and you're saying that there are three units in the building now. And the way they're configured now they're within the gable, the existing gable, correct? There's one unit within the gable?

SLATER ANDERSON: Is there a third floor unit now?

HAROLD JENSEN: There is not, it's just an attic space.

THOMAS SCOTT: There is not, right.

SLATER ANDERSON: Where are the three units?

HAROLD JENSEN: They're on the first and second floors.

AMELIA WESTMARK: So that on the first floor in the front there's unit one. On the second floor in the front there's unit two. And in the back, there's a back unit

that basically takes up two floors.

SLATER ANDERSON: How much living area is on the third floor or space that's above five feet?

HAROLD JENSEN: I believe it was 182 feet below five feet. Give me two seconds.

SLATER ANDERSON: Below?

HAROLD JENSEN: That is greater than five feet.

SLATER ANDERSON: That is greater than five feet?

HAROLD JENSEN: Excuse me.

THOMAS SCOTT: So you're adding an entire third floor to the building is what you're doing?

HAROLD JENSEN: Yes.

THOMAS SCOTT: That's what I thought.

HAROLD JENSEN: Maybe I didn't mention that in addition, the basement right now is seven feet to seven feet, two inches

on a dirt floor. And so we plan to use that space or we've counted that into our gross floor area. And then we plan to pour a foundation on that to bring that under seven feet as storage space and use that, that area.

THOMAS SCOTT: So you're removing FAR from the basement and putting it on top of the building?

HAROLD JENSEN: Correct, correct. And that overall our FAR goes down.

TAD HEUER: So I'm not sure -- well, that's not true. I can't vote for it the way it is right now. I do think that you guys are doing a good project. And I would encourage, speaking for myself, that after you hear some of what I'm going to say, consider a continuance to have you go back and look. My concern is that you are really adding a lot of space to this lot going up, and it's a very compact lot. It's very undersized. It's 5,000 in that district. So you're at

32-something?

HAROLD JENSEN: 3300.

TAD HEUER: To me, quite frankly, it looks like it's a lot that would hold comfortably given Cambridge and their Zoning requirements and its undersizeness, two units. And it looks like, even though you have three there now, clearly they're undersized and they're laid out strangely and other kinds of stuff. So I understand why you don't want to keep those. But I'm not -- I think the reason it works as three units now is because some of them are kind of undersized and laid out in weird ways and stuck in corners. Once you start moving two, three units back to the work of three units, you're really bulking up the structure and that concerns me a bit.

Also, I agree with Tom, at least to the extent that it looks like dormers. You know, it's either a three-family, a traditional

three-family without traditional front porches or false front gable or it's a traditional two and a half story on steroids. If you go and look at North Mass. Ave. eastside up near the high school and others, it's kind of the typical where I think Cambridge has not done a good job in regulating with what goes on up there. It's a lot of build out to max height, max corners. Essentially boxes out lots of formerly two-and-a-half story gabled houses. And personally I just think that's the wrong way to go. I don't think it's an attractive thing. I think it looks like you're -- not you, but one is bulking up the mass without doing anything appreciable for the surrounding neighborhood. I realize you're abutting the lumber yard, so anything is pretty much better than what you've got now.

I guess my overall concern is the visual impact, the bulking up, and the fact that I

think this lot really is undersized, and is really more of a two-unit lot in its current -- maybe tear down the back and rebuild the back and work with the front house you've got solid. Right now you said the front house is good bones, but it looks like most of the front house is going for all intents and purposes, you're keeping interior stuff. But in terms of your shell, you know, anyone who walked by that house as proposed would not think it was the same house as the one you've got there now.

HAROLD JENSEN: Sure.

TAD HEUER: So my sense I'd like to see a proposal that is a bit slimmed down. You know, I understand the desire for the solar stuff on the roof, and I think it's really cool. I'm not sure that this is the right place to try to get that in, particularly it requires, you know, essentially a quasi flat roof. You're in a

neighborhood that doesn't really, flat roof itself is acceptable with three families. So I have enough concerns as designed presented to us that I don't think I can vote for it as is, but I think there are certain things that can be done to it and I certainly think it's a project worthy of being done. I don't say that there's no way I would ever grant relief. It's quite contrary.

SLATER ANDERSON: Let me ask a question on the solar. Do you need the -- I understand the 80 percent orientation of that, but do you need a certain square footage of solar area to meet some rebate or threshold or something or is it really can you have a smaller -- what I'm getting at is I'm thinking when I looked at that, it's technically a rebuild on the third floor. It's not a dormer request per se. But it sure looks like a dormer request is my feeling. And it's not in keeping with the spirit of what

we've tried to achieve with the dormer guidelines of building something that looks like a dormer within limits and it allows you to do 15 feet per side. You could, you know, would that be enough to get to achieve what you're trying to achieve with the solar, and frankly I guess there would be enough space on the third floor.

I have an issue with all of the space that you're going to give up in the basement, which I understand, being moved to the third floor. It's technically I get the math and the logic of it, but it's, you know, it to me it has a neighborhood impact, you know, that is not consistent with what we're trying to do I think achieve. So, you know, I appreciate everything you're doing here, but I sort of agree with Tad that it needs maybe another iteration here of design.

HAROLD JENSEN: Okay.

SLATER ANDERSON: The solar thing

I'm not sure if, you know, that could kiboshes that aspect of it.

AMELIA WESTMARK: Just to also kind of explain one of the reasons why we decided to go so high, is the development that's surrounding us is going to be 40 feet.

HAROLD JENSEN: 40 feet.

AMELIA WESTMARK: 40 feet, and it's pretty close on both sides. And so in order to get a lot of the sun, we also wanted to go up with it because if it was lower, because both buildings on both sides are --

SLATER ANDERSON: I don't have a problem with the height. It's the amount of height. It's the volume on the third floor. That's my --

HAROLD JENSEN: The front to back volume. No, we are -- there is currently 182 feet there currently, and it goes up to 519. So, you know, we're not increasing it by 100 percent. We're only increasing it by 60

percent. You know, it's 150 percent. So there is some space there that we're losing. And some of the basement space it's not 100 percent transfer. Some of it is going to the back part that's moved sideways. It's square out. It's more conforming the sides, but there's more space going towards that as well.

SLATER ANDERSON: I see my perspective is there is an alternative, which is that you finish the basement and you don't run into this massing issue on the third floor. So I appreciate you're giving that up, but there is an alternative path that you can take to create the living area you're trying to achieve without having the visual impact.

TAD HEUER: Certainly obviously we recognize at that a basement unit is not as attractive for a lease as a third floor unit. You know, we're looking at how Cambridge

works and the building's not in Cambridge. Yet financial hardship is something doesn't necessarily, at least as an extent to me to what's the maximum rentable unit that one can create.

SLATER ANDERSON: I'm not opposed to expansion of the third floor. It's not 100 percent one way or the other. There are situations where we see people give up a portion of the basement to achieve the, you know, net, no change in floor area. So you can expand the third and maybe, you know, you would expand the, you finish out part of the basement and give up part of the basement. I think there are some options with this floor.

HAROLD JENSEN: Okay.

TIMOTHY HUGHES: I will point out, thought, you can't put solar panels in the basement.

TAD HEUER: Well, you can they just won't work.

TIMOTHY HUGHES: Exactly. They just take up space, it's like storage.

THOMAS SCOTT: Given the extent of the work you're doing to the house, you're kind of trying to disguise the house as something that it isn't. It's a three-story house. It's a triple decker. And there are triple deckers in the neighborhood, I can tell from the photograph. So it wouldn't be unusual to just -- if you're going to do it, just put a flat roof on it. And instead of putting such a large addition in the back, you're tearing all that down, make that a more modest addition that helps each of the all of the three floors, you know what I'm saying? So that, you're not adding so much bulk to the entire house. You're adding it more to the footprint of the existing house.

TAD HEUER: I mean, I guess, you know, I agree with that. The only question is whether at that point you've just done a

full demo on the lot, you're now back to a blank slate and you're on a 3200 square foot lot. I mean, at a certain point you've gone into full demo and there's no turning back.

THOMAS SCOTT: Well, full demo in what sense?

TAD HEUER: If you were to, I mean, once you demolish the rear and then you've demolished other -- you've demolished the top and you're left with maybe two floors.

THOMAS SCOTT: Two stories.

SLATER ANDERSON: You're over.

CONSTANTINE ALEXANDER: I think you'll be okay.

SLATER ANDERSON: You've still got 50 plus.

CONSTANTINE ALEXANDER: Pretty close.

HAROLD JENSEN: I'm a bit confused on what exactly --

TAD HEUER: Pretty close, right.

If you were to go too much into demolition, you would end up with a demolished house. At that point it would essentially be a lot with 3200 square foot --

CONSTANTINE ALEXANDER: You have a blank slate. Now you have to comply with the Zoning laws.

THOMAS SCOTT: I'm not suggesting that.

TAD HEUER: I'm just saying you don't want to get to that point why don't I build a three -- this really should be a three-family, maybe two. On this lot had they been thinking about it back then.

THOMAS SCOTT: And especially given the development around them since it's going to be such large buildings, it's hard to tell because we have no, nothing to judge it against in terms of the design concept.

SLATER ANDERSON: Have you seen the design plans?

HAROLD JENSEN: Yeah. At the current state we'll still look like -- we'll be dwarfed. And they're tall, they're tall townhouses that are very tall and narrow and stacked on the four floors.

SLATER ANDERSON: Well, it might be helpful to see, you know --

HAROLD JENSEN: Their proposal.

THOMAS SCOTT: Your three stories there might blend in with everything else.

HAROLD JENSEN: And that's what Terry was suggesting. And we worked with them on -- because we've kind of gone through -- we have a number of iterations. We've looked at flat roofs. We've looked at a loft of these different things. And you're right, it is -- we've disguised it for that front fit.

THOMAS SCOTT: But you're not fooling anybody.

HAROLD JENSEN: We're not trying to.

That's the thing.

THOMAS SCOTT: I know. I think you might as well at that point --

HAROLD JENSEN: We can take it off. We thought -- we walked around the neighborhood just this last weekend, and in this packet -- I have a one block -- in one block we found -- within, within two blocks, we found six houses that have almost the same exact addition that we're talking about. I have photos of it.

SLATER ANDERSON: Yes, can I see it?

AMELIA WESTMARK: Can I ask a quick question? He mentioned possibly doing three floors with a flat roof, but you had said that it's too much bulk. If we were to look at doing something like that, would it be too bulky?

TAD HEUER: It's too much bulk for something that looks like a two and a half story gable with dormers.

THOMAS SCOTT: If you designed it with a triple decker, three-story building, it would look okay.

AMELIA WESTMARK: So, okay. You're not against having a third floor?

CONSTANTINE ALEXANDER: No.

AMELIA WESTMARK: That goes wide the same width of the house?

TAD HEUER: That's on a -- some of these are disasters of the past.

CONSTANTINE ALEXANDER: Yes.

SLATER ANDERSON: This is why there are dormer guidelines.

CONSTANTINE ALEXANDER: These are very helpful.

SLATER ANDERSON: Notice none of these are that new.

THOMAS SCOTT: We would never approve that today.

CONSTANTINE ALEXANDER: That's right.

THOMAS SCOTT: That's a dormer that is way over the guidelines.

SLATER ANDERSON: This one I will say, this one you get the idea of the scale and setback of it if you were going with a gable design. I think there is an opening potentially to do something, particularly if you're going to be surrounded by a flat roof, new, you know, design development.

HAROLD JENSEN: Yeah. Part of the solar, like you said, the area, the more area we can get the better. And so that's a lot of the reason why we just went straight up with it. And we had a design that was looking at just dormers, but it seemed like the complications of Zoning was more difficult with that. And since we had the floor space, and really our ultimate goal was to get as much on the fact that we're solar now that what we can get. So the more area up there the better from that standpoint.

THOMAS SCOTT: I think you can use a more modest addition in the back and be more conforming to the setbacks as well.

HAROLD JENSEN: Okay.

THOMAS SCOTT: You know? If you just be true to the structure and build it as a three-story structure. You know?

HAROLD JENSEN: So now -- basically narrower in the back but then go up three floors in the back?

THOMAS SCOTT: Yes.

HAROLD JENSEN: So then the whole thing would be three floors front to back?

CONSTANTINE ALEXANDER: What Tom is throwing out to you are concepts. It doesn't mean that --

THOMAS SCOTT: It's just a concept.

HAROLD JENSEN: Sure.

CONSTANTINE ALEXANDER: Giving you some things to think about.

THOMAS SCOTT: Some people may not

like that.

HAROLD JENSEN: We've lived there for two years. We talked people and we looked at a lot of different -- Sean suggested a lot of these same things. And so we've tried to weigh the different options and -- I guess a lot of things. We never quite thought we could go up the three floors in back since we didn't have it.

THOMAS SCOTT: But your proposal, you know, you're basically doing it. Especially from the street, that addition in the back is almost hidden, but it's huge. It bellows out behind the building, and I find that more offensive than something that was maybe in line with the, you know, the lines of the building.

HAROLD JENSEN: We couldn't go in line on one the side.

THOMAS SCOTT: Yes.

HAROLD JENSEN: Because of the

setback.

THOMAS SCOTT: Right.

CONSTANTINE ALEXANDER: Any other suggestions or helpful hints to the petitioners?

You get the drift obviously. We're not adverse to granting relief, but not with the plans that we have before us tonight. I think you have to think a lot harder about it. You've heard our comments. And come back before us with a new set of plans.

HAROLD JENSEN: Sure.

CONSTANTINE ALEXANDER: And we'll act at that point in time.

HAROLD JENSEN: Okay. And we have, we've looked at almost everything you've said we've got the plans, we've had them. And this is the one we thought that everyone would look for, and I'm looking for suggestions. Is there one of the things that you suggested that you're leaning towards? Because we are

very open to satisfying the Board.

CONSTANTINE ALEXANDER: We usually don't try to design the building for people. I think, maybe I'll try to summarize a little bit. I think the biggest issue we have is the massiveness of what you propose to do as it appears to the street scale.

TIMOTHY HUGHES: I would like to go on record and say it doesn't bother me. I think it's going to be dwarfed by the development that's going on around it by the time this thing gets built. The development around it is going to be 40 feet in the air. They're not going to be 40 feet in the air.

THOMAS SCOTT: But that's why I'm not opposed to them, you know, being what they're trying to be. That's a three-story building.

TIMOTHY HUGHES: I'm not at all opposed to kind of making it look like a traditional flat roof, three triple decker.

SLATER ANDERSON: I've seen before, I think what you've tried to do is commendable, but it's one of those design failures where you're trying to meet multiple goals.

HAROLD JENSEN: Sure.

SLATER ANDERSON: And what you've designed is something that tries to respect what was there, but is trying to be something else. Whereas maybe you should just go with something else that is, you know, consistent with -- because what it ends up looking like is you slapped some big dormers on a gable and that's what we don't -- I don't want to see. Speaking for myself.

TIMOTHY HUGHES: I don't like to look at the false gable on the front. I just assume see it turn into a sincere and real triple three-story.

HAROLD JENSEN: Flat roof triple. If we took that false -- we have the lot

there, would it change the look of it?

SLATER ANDERSON: There's a house on Rindge right across from the Peabody School that they did that. They raised the roof and they put some small dormers on it, raised. And it's a -- the scale of it is more -- it looks more natural and consistent. You might drive by and look at that place.

TAD HEUER: And I think also, I mean, I'll reiterate, you're over your FAR by a lot. You're looking at going over your FAR by a little bit less than a lot. Usually I would want to see not as much FAR period. It's a tiny lot. You got a three-family now, like I said in the beginning. The reason it works with the three-family is because it's undersized. I think this lot personally is really a two-family lot. You can get two really nice, two family units there. You guys can live in one. Somebody will pay a good price particularly when they've got the

other condos there and there's more of a sense that they're not in a lumber yard. You'll get a return on that. I understand doing the math, but, you know, I would suggest that at least as an option, you come back to us and say it doesn't work, we can't do the math. But this combination of what space are you getting? Can you do something with the basement? You know, can you make two really nice units as opposed to three serviceable units with a little bit less FAR, you know, higher quality finish or something else. And that will allow you to avoid some of the massiveness given the tiny size of the lot. Understanding the stuff around you, but you've only got this tiny little sliver.

HAROLD JENSEN: Yeah, no. And we have, we've done the math in terms of trying to define it obviously for us and two families is really tough. We prefer it because I mean, we're going to live there. We'd only

prefer to have one other tenant. But to achieve the green aspects of what we're trying for to pay for the solar panels and pay for the insulation and a lot of that stuff, that third unit's a big deal to us and that's why we've held onto it.

CONSTANTINE ALEXANDER: Let me say Tad is speaking for himself on this issue about too much FAR. I think we may come out that way, but I wouldn't say be driven entirely by that.

HAROLD JENSEN: Sure.

CONSTANTINE ALEXANDER: Come up with something that you think works for you, that you want to accomplish, taking into account the comments you've heard tonight.

HAROLD JENSEN: Okay.

CONSTANTINE ALEXANDER: And what you want to accomplish, and particularly with the building to maintain three units, I can understand the economics of it. And see how

it applies.

HAROLD JENSEN: Okay.

CONSTANTINE ALEXANDER: You need four out of five votes when the time comes. Not a unanimous vote, but you need a supermajority.

HAROLD JENSEN: Oh, sure.

CONSTANTINE ALEXANDER: So you're going to have to come to something that satisfies the four. It will be the five of us again when you come back. Same Board.

SLATER ANDERSON: Same Board.

CONSTANTINE ALEXANDER: That satisfies the wishes of four or the five of us.

HAROLD JENSEN: That's our hope. That really is our hope.

The last question is, to me, to both of us, it seems like you're talking about sort of the size of it right now, but being a flat roof and if I went all the way back and to

conform to the property lines and not go over the property lines in the back, if we shifted that back like we currently have, it seems to me that a flat roof that would be taller on the cornuses than it currently is and still shifted, it seems to me that would be more intrusive, more enlarged than what we would appear now.

TIMOTHY HUGHES: Sometimes things that are bigger don't look bigger.

HAROLD JENSEN: Okay.

SLATER ANDERSON: I understand. I'm not totally convinced that three stories in the back is the way to go.

CONSTANTINE ALEXANDER: Same here.

SLATER ANDERSON: The back piece, as Tad's pointed out, it's a little bit of a tricky piece because it's sort of disappearing and reappearing in a different -- it is a, you know, a demo rebuild which is a little tricky. So I personally

would want to -- but you're trying to correct the serious non-conformity which is you're on someone else's property.

CONSTANTINE ALEXANDER: Ultimate non-conformity.

SLATER ANDERSON: Yes. So I would, you know, not go too far with it, you know, doing a lot in the back.

CONSTANTINE ALEXANDER: In some sense you're getting mixed messages from this Board. You know, you've got five people -- four you're going to have to satisfy out of the five of us. But we're just throwing out ideas for you. At the end of the day, in my view, is you've got to do what you want to do. We may not agree with it, but I would not try to just guess what we want and then design around it. Listen to us but do what you want to do.

SLATER ANDERSON: I think it would be helpful to see whatever you're going to

propose in the context if this other, the other lumber yard project is truly down the road a ways with approvals, I'd like to see it in that setting. I think that would be helpful.

HAROLD JENSEN: Okay. Now, is it possible for me to bring maybe a couple ideas? I don't know because --

CONSTANTINE ALEXANDER: You can present plans to us. You can present alternative plans and tell us -- people have done that before. Tell us which one you prefer.

HAROLD JENSEN: Yes.

CONSTANTINE ALEXANDER: But you would say to us, let's say you have three sets of plans, we'll go with any of the three. We would like to go with plan No. 1.

HAROLD JENSEN: Sure.

CONSTANTINE ALEXANDER: We will either say yes or no, we like plan No. 2

better, or we'll say we don't like any of the three, back to the drawing board.

HAROLD JENSEN: Okay. We are here with what we thought was our favorite of everything that we've done. So I have the ideas and plans and drawings for the other ones that we've looked at. So I can bring them and see what you think. That would be acceptable?

CONSTANTINE ALEXANDER: Not too many.

TAD HEUER: And as long as you're aware that, you know, if we say that's the one, and we say we'll vote on it, that you're comfortable with what you just handed us. That you don't say well, that's just kind of schematic. If you hand it in to us, be prepared if we say yes, that's what you got.

HAROLD JENSEN: Okay.

TIMOTHY HUGHES: And have an accurate dimensional form for each of the

plans if you're going to show us more than one.

HAROLD JENSEN: Okay.

CONSTANTINE ALEXANDER: And the plans, by the way, have to be your final plans, not just some concepts. Because if we approve it, it's going to be tied to those plans.

HAROLD JENSEN: Absolutely, okay.

THOMAS SCOTT: One last thing. That third floor, that third floor had a massive deck. The deck was the entire addition.

HAROLD JENSEN: Yes.

THOMAS SCOTT: We really frown on decks that are that large, you know.

HAROLD JENSEN: Thank you.

TIMOTHY HUGHES: When he says we, he doesn't mean me.

CONSTANTINE ALEXANDER: You can have a lumber yard build a project around you

and I'm not sure how useful those decks are going to be.

HAROLD JENSEN: Well, we've worked very close with them. They've been very good to us in that they're doing the landscaping that we choose. They're separating our sides with trees. And then the back, lucky for us, straight between us and the bike path is that green garden space. So, it's kind of this extension, this continuation. So we thought the third unit, you know, a deck would be very nice. We actually use the roof now. We climb out a window and go up to the roof all the time. So it's very nice.

THOMAS SCOTT: A modest deck would be more appropriate.

TAD HEUER: And solar panels on the rest of it.

CONSTANTINE ALEXANDER: I think we're ready for a vote to continue the case. First of all, what dates -- give us a date that

looks good on our schedule and then we'll talk about whether it works for you.

SEAN O'GRADY: Again, the first natural one is December 15th.

CONSTANTINE ALEXANDER: Does that give you enough time?

HAROLD JENSEN: As early as possible. Like I said, I've got the plans for these other options.

CONSTANTINE ALEXANDER: I don't think we have an earlier date.

SEAN O'GRADY: Not without pushing it.

CONSTANTINE ALEXANDER: December 15th I think we're going to continue it. And I'll get to the motion. Now, whatever plans you're going to present to us, the one set or alternatives, have to be in our files by the five p.m. on the Monday before. You can't present --

HAROLD JENSEN: No problem.

CONSTANTINE ALEXANDER: I'm sure it's not a problem. But I just don't want you to forget otherwise we won't consider them.

HAROLD JENSEN: I'm sorry I didn't have those. I would have had those earlier.

CONSTANTINE ALEXANDER: Don't worry about. We're ready for a vote?

The Chair moves that this case be continued as a case heard until seven p.m. on December 15th, on the condition that the Petitioner sign a waiver of the time for a decision. Which you'll have to sign if you want to keep going.

HAROLD JENSEN: Yes, please.

CONSTANTINE ALEXANDER: And on the further condition that the sign that you have on the premises now, modify it with a magic marker. Scratch out the date and time for tonight and put December 15th at seven p.m.. and have it posted the requisite period of time because we won't hear the case if that's

not been done.

The plans have to be in our files by five p.m. on the Monday before and the sign modified.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued. We'll see you again.

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

(8:25 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Tad Heuer, Thomas Scott, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10161. Is there anyone here wishing to be heard on this matter?

For the record, Mr. Goldberg.

ATTORNEY BERNARD GOLDBERG:

Mr. Chairman, Attorney Bernard Goldberg, 620 Massachusetts Avenue, Cambridge, Massachusetts, representing the Petitioner.

THEOPHILOS VALLAS: Theophilos Vallas, 18 Emerson Road, Winchester.

CONSTANTINE ALEXANDER: And you are?

THEOPHILOS VALLAS: I'm the President of Mykonos Fare, Inc.

ATTORNEY BERNARD GOLDBERG: Doing

business as Zoes.

Mr. Chairman, for the purposes of your understanding why we're here to request a Special Permit, Mr. Mykonos has been operating the restaurant doing business as Zoes for a period of seven years. During that period of time and the --

CONSTANTINE ALEXANDER: Zoes has only been there for seven years?

ATTORNEY BERNARD GOLDBERG: Seven years.

CONSTANTINE ALEXANDER: Really?

ATTORNEY BERNARD GOLDBERG: He was operating in the Faneuil Market for the previous three years doing business as Mykonos and also as Zoes.

The depiction will show that he's been operating his business in retail space No. 2 and retail space No. 3. And there was no space for him. And you'll be able to see that in the operation of the business and the

kitchen he had no storage space, as a result of which he had to rent a space above him for storage. The plan will suggest that now he has space retail space No. 2, retail space No. 3, and retail space No. 4. And the purpose of No. 4 is not only to provide him for storage space on the location, but also to remove an eleven-foot wall and open that up to the business operation and have storage in back of that, and building a wall so that the storage space will be enclosed.

CONSTANTINE ALEXANDER: Plus there will be more seating in the restaurant.

ATTORNEY BERNARD GOLDBERG: There will be more seating in the restaurant, approximately 32 extra seats. And that's why we're requesting a Special Permit to reduce the parking requirement. This is on-site. This is within the building of the 1105 on the first level, and there will be no substantial danger to anybody in the area.

There will be no congestion at all. It would not affect the other businesses that exist on the premises. On his level there are two other operations; a convenience store and a pizza store. And above that there is the Dolphin restaurant, and also -- what is the other one?

THEOPHILOS VALLAS: Sushi Cafe.

ATTORNEY BERNARD GOLDBERG: Sushi. So they're all working together and providing a service to the public with a different touch of the operation.

CONSTANTINE ALEXANDER: Do the other occupants of the building, particularly the restaurant occupants, do they have any objection in terms of what you're doing taking additional space.

THEOPHILOS VALLAS: No.

CONSTANTINE ALEXANDER: They haven't expressed any objection?

THEOPHILOS VALLAS: No, this was a

space that was occupied by three, four different restaurants in the past three four years.

CONSTANTINE ALEXANDER: I know. It's been a revolving door for restaurants.

THEOPHILOS VALLAS: Right.

ATTORNEY BERNARD GOLDBERG:
Mr. Vallas, has three spots, parking spots on the premises for his employees; for himself and his chef. And he's making a determination once this operation goes into effect in retail space No. 4 what to do with the other space that is allotted to him by the business.

There is activity in the area. Think as you know, Bell, Bowl and Board is coming down and its intention, as I understand it, to build condominiums.

CONSTANTINE ALEXANDER:
Residential. Multi-unit residential structure?

ATTORNEY BERNARD GOLDBERG: Right. So there would be retail spaces there I would think. In addition, at this moment in time, they have taken away the bus stop and moved it. And there will be construction on the site as a result of which there may be congestion. But so far as his space is concerned, there's no congestion whatsoever. As you can see, they are within the business block, the residential block of 1105. So whatever happens in this space will not affect the public.

CONSTANTINE ALEXANDER: Given the nature of your menu, my assumption is that most of the people, as best you can tell, walk or take public transportation to the restaurant. It's not like you're a destination for people from Weston to come driving in. No offense.

THEOPHILOS VALLAS: No.

ATTORNEY BERNARD GOLDBERG: None at

all. You have seen the menu?

CONSTANTINE ALEXANDER: I haven't seen the menu. I am familiar with the restaurant.

ATTORNEY BERNARD GOLDBERG: Oh, okay. The menu is varied and appetizing so far as the customers are concerned. You're absolutely right, they walk to him. There's no place to park in the area as it is. I think on Massachusetts Avenue there may be eight spaces. And on Remington Street there's two. So that there's no spot whatsoever. So necessarily his customers have to come from the walking, pedestrian.

CONSTANTINE ALEXANDER: Okay.

Any questions from members of the Board at this point? None.

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

(No Response.)

CONSTANTINE ALEXANDER: I'm opening

it to public testimony. The Chair would note that no one wishes to be heard.

There's no letters in the file that I'm aware of. No commentary.

SLATER ANDERSON: I'll check.

CONSTANTINE ALEXANDER: So, I'll close public testimony. Any final remarks?

ATTORNEY BERNARD GOLDBERG: No, there are no further remarks, Mr. Chairman. The recitation that you have and will have, cites my supporting statement which is in the file and I think it speaks for itself.

CONSTANTINE ALEXANDER: The relief you're seeking is under Section 6.35.1, and there are certain findings we have to make which I'll get to when we get to the motion. Planning Board just says they have no comments.

Comments from members of the Board?

TIMOTHY HUGHES: Just what formerly was restaurant space is being combined with

a restaurant?

CONSTANTINE ALEXANDER: Yes.

TIMOTHY HUGHES: No change of use or anything. So presumably there's no exacerbation on whatever parking that was there to begin with?

CONSTANTINE ALEXANDER: Exactly.

THOMAS SCOTT: The seating plan doesn't show bathrooms. Are there bathrooms?

ATTORNEY BERNARD GOLDBERG: There are male and female in the back.

CONSTANTINE ALEXANDER: Ready for a vote?

TIMOTHY HUGHES: Yes.

CONSTANTINE ALEXANDER: The Chair moves that this Board make the following findings as required by Section 6.35.1:

That the reduced amount of parking spaces will not cause excessive congestion, endanger public safety, substantially reduce

parking availability for other uses or otherwise adversely affect the neighborhood. And I think as Mr. Goldberg's already cited the evidence for that. The fact of the matter is that most of the people who patronize the restaurant and who are likely to patronize the restaurant in the future, walk. That we're talking about swapping one restaurant space for another restaurant space so we're not, almost by definition, increasing the parking demands on the neighborhood.

That having a food use at this property is positive for the neighborhood, which is the very nature you're looking to expand the amount of seating in the case of the restaurant does fill a need for the neighborhood.

We'd also note that you're located on Massachusetts Avenue, so that there is ample public transportation for those who want to

travel to your restaurant other than on foot. And that otherwise -- I've got to get to the other requirements of our Special Permit requirements that we make the further following findings:

That the traffic, and some of these I've already covered but I'll have to repeat them, the traffic generated or patterns of egress, the results of what you're posting to do will not cause congestion, hazard or substantial change in established neighborhood character. In fact, as I said, the restaurant nature of the premises will continue just under a different guise.

That the development of adjacent uses will not be adversely affected by what you're proposing to do. Testimony to that is that there has been no opposition to what you're seeking to do by neighboring business interests or by residences of the area.

That no nuisance or hazard will be

created to the detriment of the health, safety, and/or welfare of the occupant or the citizens of the city. So assumes your food will not have any salmonella.

TIMOTHY HUGHES: They're not serving cantaloupe.

CONSTANTINE ALEXANDER: And that the proposed use will not impair the integrity of the district or otherwise derogate from the intent and purpose of this Ordinance.

On the basis of these findings, the Chair finds that we grant a Special Permit to the Petitioner to allow reduced parking in connection with increasing the occupancy of the restaurant from 82 seats to 114.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Relief granted.

(Alexander, Hughes, Heuer, Scott,

Anderson.)

(8:35 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Tad Heuer, Thomas Scott, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10162, 13-15 Florence Street. Is there anyone here wishing to be heard on this matter?

Hello.

ATTORNEY SEAN HOPE: Good evening, Mr. Chair and members of the Board. For the record, Attorney Sean Hope, Hope Legal Offices, 130 Bishop Allen Drive in Cambridge. Here with me tonight is the owner of 13-15 Florence Street, Scott Zing (phonetic) of

13-15 Florence Street, LLC.

This is a Special Permit application to allow a small portion of a driveway and parking space to be within the five foot side yard setback. The property is located in Residence C. This is a development proposal to allow for a two-family existing development to be converted into three attached dwelling units. Due to the generous size of the lot, the dwelling units actually conform to all the dimensional requirements except for the small portion of the five foot side yard setback. The initial proposal was to do this all as of right. Two issues came up working with ISD and their closer inspection.

One was the actual fence wasn't on the property line. And also the fact of the existing parking which was two tandem spaces, were not in the location we thought they were. So initially we thought we were going to do

this as of right. We noticed there was an -- and I think the exact measurement's one foot and one and a quarter inches that this driveway and parking space would be within the five yard setback.

When we looked at it, we came up with a design solution to do this as of right. The architect looked, and we could have shaved about less than two feet of the portion including the foundation off the building to allow for as of right parking. This was undesirable. One, it was extremely expensive when we talked to Historical. Part of the reason why we're actually using the existing structure, it was the desire, although it wasn't part of any conservation district, to maintain that front building. So we're keeping the existing structure and we're adding two dwelling units to that.

We spent a lot of time and effort on their part to remain that structure. So the

idea of chopping off a portion of the building, which we could do, and have sufficient parking, created a hardship as well as it wasn't as functional for the interior layout which was another thing. Cutting off this front portion of the building would obviously tighten -- you couldn't actually move the building over because we have one parking space on one side and we're having proposing two parking spaces on the other side.

The other element of this is initially there was close to -- there was five and possibly more parking spaces on the lot. That property database has five parking spaces, but they were grandfathered. I'm not sure which ones are conforming or not.

On the right-hand side we're asking for a Special Permit relief. There were two tandem spaces. As you know with tandem spaces, the car that's furthest in whenever

you want to get, out you have to have another car in its place. So that layout was less functional because when you pull a car out, you're blocking, you're creating a potentially congestion. If another car's coming up, they have to wait for both cars to move out.

The side by side parking layout is much more functional. We wouldn't add any congestion or hazard to the neighborhood. What we're doing is consistent with the neighborhood character. Essentially we've talked with the neighbor who's on the direct abutter on the right-hand side. There's no objection to having that parking space within that foot, one foot and one quarter inches into that five foot setback. The overall proposal would add additional landscaping and green space to the lot. Also we would be reducing the amount of cars. There's five. We're only asking for three, which means the

one parking space per dwelling unit on the lot.

CONSTANTINE ALEXANDER: The question for you. You're seeking obviously a Special Permit as you point out. I mean, you've also pointed out which is in fact the facts that you can do this as a matter of right. You'd have to shave off a foot or so of the building. One of the requirements, the first requirement for a Special Permit, is that it appears that requirements of the Ordinance cannot or will not be met. You can meet the requirements of the Ordinance. You have to shave off a foot of the house, but you can meet the requirements of the Ordinance. Therefore, how is it that we can grant you the Special Permit that you're seeking? Because you don't satisfy this requirement.

ATTORNEY SEAN HOPE: Well, it's not that it's impossible to meet the requirements of the Ordinance. I would say to the fact

specifically under 6.41 they do allow for Special Permit relief and they do look on the Special Permit relief that we're not going to be causing hazard or congestion.

CONSTANTINE ALEXANDER: No, no, you're right. I'm sorry to interrupt you. I apologize. You're right 6.44.1 says you can reduce parking by Special Permit. You turn to the Special Permit requirements to see whether you meet.

ATTORNEY SEAN HOPE: Right.

CONSTANTINE ALEXANDER: One of them is hazard and traffic. That's one. But there's a separate one. That's the one I've just cited. It's the very first one in fact. In that you get a Special Permit if you can't meet the requirements of the Ordinance. And what I've heard is that you can meet the requirements of the Ordinance. Now, you don't want to do it, it's expensive.

TIMOTHY HUGHES: Can I ask a

question?

CONSTANTINE ALEXANDER: Yes.

TIMOTHY HUGHES: Doesn't that presume that you can't meet the requirements of the Ordinance with the present structures that are on the lot? You don't think so?

CONSTANTINE ALEXANDER: It's a question.

TIMOTHY HUGHES: Because shaving a house is not like shaving your face, you know. Shaving a foot off of a house is a --

THOMAS SCOTT: It's a big deal.

TIMOTHY HUGHES: -- it's a tricky and expensive proposition.

THOMAS SCOTT: Yes.

CONSTANTINE ALEXANDER: Okay. That's why I'm asking for his reaction.

TIMOTHY HUGHES: So they can't meet the requirements.

ATTORNEY SEAN HOPE: And to the point, I don't think that provision means

it's impossible. I guess in any case it's possible. You could buy an adjacent lot if you didn't meet the requirements. You could apply to try to demo the whole building. I don't believe that means that it's impossible. I did point out there is a solution. There's probably always a solution, but I think practically there's not a viable solution that would allow for functional layout of the interior as well as substantial. And I would actually say shaving off that house, depending on how much, and as well as the foundation, would actually even make it impractical to purchase the property.

Now, I was saying we did look at design solutions so we didn't just presume to come here for the Board for Special Permit. We did look at all possibilities. But to that point --

CONSTANTINE ALEXANDER: Go ahead.

TAD HEUER: So you're upgrading, this is a two that's going up to a three?

ATTORNEY SEAN HOPE: Yes.

TAD HEUER: Is that right? So, that to me suggests two things: Either you can buy -- we just had this conversation half an hour ago. You've got a three-family on a tiny lot in that situation. And my thought was isn't it really just a two-family lot? I know you've got three, but three doesn't work. Here I understand that three works on this lot because you've got this additional space, and you can meet the lot area per dwelling unit, but you can't meet the parking. So, you know, one solution is you make a really nice two-family, generous sized. You know, it's in an area that people like to be in. It's close to Memorial Drive, but it's still residential. You've got some good selling points there.

The second is instead of applying to put

more parking on the lot, couldn't you have come to us and requested relief for one parking space and say, you know, we'll take one on the left, one on the right, and the third unit kind of has to park in the street like lots of other people do? I mean, that's clearly an option, right? And that's one that doesn't require dimensional relief that you're seeking. It requires different types of relief.

ATTORNEY SEAN HOPE: Yes. And as I pointed out before, this proposal meets all the dimensional requirements but for one -- for less than two feet. To your point, I think if we were applying for a Variance, because we didn't need setbacks, we're asking for more relief I can see that point being valid. But this -- in a sense we're only asking for a di minimus amount of relief as well as the fact that there were five parking spaces on that lot, one of which I think

actually causes more hazard and congestion the way the tandem parking spaces are laid out. So I would actually argue that we're actually improving the functionality of the parking spaces by putting them side by side instead of tandem spaces as well as, you know, the lot has sufficient room for three units. So, I think if you can improve the parking that's on there as well as having less parking on the lot, I think that's actually an improvement for the overall structure.

TAD HEUER: But I mean didn't you just say that you don't know whether -- I mean, have five spaces ever been used on this lot?

ATTORNEY SEAN HOPE: Yes, I mean we have pictures. And if you look at the Cambridge database, there was a structure in the back, but because the property is very long, it's over 112 feet, they could actually park three on one side and two on the other.

So we actually took pictures and we actually thought about this. We actually tried to grandfather, take advantage of these spaces. One in practicality it didn't work. And, two, it affected the open space. Now, this property was grandfathered in so they didn't have an open space issue. And as we tried to add dwelling units, we had to meet all of the requirements. So for us having that open extra space, not having those extra parking spaces on the lot, we just really wanted to meet the one space per dwelling unit. And that's probably the reason why we had the support of our neighbors because we weren't going for extra parking, but we were just actually meeting the minimum requirements.

I think more importantly, though, that what we're proposing is actually improving the functionality of the parking on the lot.

So the one element of relief that we're asking for I believe is actually improving

that by not having the tandem parking.

Now to the point tandem parking can't be used for more than just one unit. So we had to address that issue. But having the side by side parking on that right-hand side does allow for both cars to access and egress without having to have a car in the street blocking traffic coming down Florence Street. And I mean, so you know, as you said, some of the other elements are meant and actually improved as opposed to the existing site.

CONSTANTINE ALEXANDER: But you haven't addressed Mr. Heuer's point. It seems to me that an alternative to asking for dimensional relief and putting a car too close to the neighbor is to just reduce the number of parking spaces required. And I trust, I suspect I should say, the reason why you don't want to do that is it makes the property less valuable. You want to be able

to offer it to whoever buys these units or rents these units, that they're going to have an off street parking space and that's really what's driving this.

ATTORNEY SEAN HOPE: We have sufficient space. We meet all the other requirements for three units.

CONSTANTINE ALEXANDER: Except you don't have sufficient space for the three units that comply with our parking requirements unless we give you relief.

ATTORNEY SEAN HOPE: Right. And if by adding that second parking space we were going to add hazard, nuisance or congestion to that, you know, there would be a much greater hurdle to climb. But like I said, we're improving the elements of the Special Permit. And I think the code specifically offers that as a Special Permit as opposed to a Variance because of the fact if you meet those traffic congestion and nuisance of

hazards, then, you know, the Board would approve it as a Special Permit. When you look at that, you know, throughout the code when they offer things for the Variance, is a tougher hurdle to climb than for a Special Permit.

TAD HEUER: You're not planning to live in the property, right?

SCOTT ZING: Right.

TAD HEUER: That troubles me only because -- I understand that we're in Special Permit land and not in Variance land, usually when people are coming for relief and we're looking at options, it's frequently something that's tied to some owner in these circumstances, I can't do this because I need, you know, I'm at least going to be live here and I need -- I'm going to need more space. I'm at least going to be an owner and I'm using this for income. Here we're looking at a flip. There's nothing wrong

with it, but you're going to be there and then you're out. It's not as though you live with the repercussions as long as you've gotten the relief required and you're off to the next thing.

ATTORNEY SEAN HOPE: And to the point, I mean, if we were asking for a hardship and we were saying if it was a Variance and we were saying we had to have a hardship, I guess that would be relevant whether or not they're going to have to live with the condition or not. I would say regardless of whether they're going to flip it or decide to keep it, I still think that within that five foot setback, it is a Special Permit. We do meet the traffic nuisance. We're not creating a hazard. I think we actually are improving the condition on the lot for parking. So, I don't necessarily see why, what they're going to do with the property afterwards. If we had a hardship

standard to make and we were saying oh, we're going to be substantially affected by that, that would be the case. But in this case, I mean, it's really about less than two feet of parking and then we're going to improve the parking layout. And I don't necessarily know the relevance of what they're going to do with the property post relief or not.

TAD HEUER: Well, I'd say the one thing that might be relevant is that I don't think if someone is going to live there, there would be a proposal to shave a foot off their house. I don't think most people would say this is going to be my house, we're going to live there, we're going to shave a foot off in order to get an additional parking space. You don't say I don't think I'm going to tamper with the house, I'm going to figure out another way to get parking. It may be six of one, half dozen of the other.

ATTORNEY SEAN HOPE: I understand

that point. I mean, also the condition of that front house, not that it couldn't be lived in, it was habitable condition at the front. I don't know if you've been by the lot. I meant the idea was to be able to improve that property and improve the whole thing, and to do that you have to have that additional parking. So, yes, the as of right option would be to shave the house, and that's actually what we presented, but I think this is a much better option. It actually allows us to improve, and I think since we're not going to be causing a hazard or congestion, I don't see why we don't meet the requirements for the Special Permit.

CONSTANTINE ALEXANDER: You still haven't addressed the issue, though, and I don't want to beat this to death, about the alternative to Special Permit relief, and that is to reduce the amount of parking spaces on the site. You don't have to shave the

house.

TIMOTHY HUGHES: I'd like to go on record as saying that a developer coming before me asking for relief from parking by reduction of one space puts more of a burden on the community in general than the developer coming before us and just asking for setback relief so that he can keep the space on the lot.

CONSTANTINE ALEXANDER: I understand that.

SLATER ANDERSON: Can I ask a clarification? The dimensional form shows the proposed as three being compliant. That's the three that we're showing or because you could do three with two tandems?

ATTORNEY SEAN HOPE: Yes, so the three is not compliant. Three is what we're asking for. It's not compliant.

SLATER ANDERSON: Okay. It says compliant on the form. Okay. Could you do

the tandem?

ATTORNEY SEAN HOPE: So we couldn't do the tandem. One, because the tandem has to be for one unit. So you couldn't use the tandem spot for having them serve for two separate units.

TAD HEUER: Can we give you relief for tandem? I mean, maybe not under this advertisement. Is that within our jurisdiction if you came in and said I want tandem?

ATTORNEY SEAN HOPE: I believe that would be a Variance and I mean -- in terms of the hardship for that, and yes.

TAD HEUER: But we could do it, it's just not --

ATTORNEY SEAN HOPE: But I also think, too, that as well as not being marketable, it would have the same difficulty that you've already had with cars pulling out causing congestion, and it's a narrow street.

There's parking on both sides. So that would be less palatable. I think especially since we talked to the abutters, it's actually a functional layout. We have two curb cuts on that side. I think also the fact that we're reducing the total number of cars on the street is probably why we didn't fit in -- as well as marketing factors.

TAD HEUER: Where does the right-hand side of the end of that curb cut on the right line up as to your property line? I mean, is it within --

SCOTT ZING: It's probably four or five feet.

ATTORNEY SEAN HOPE: Four or five feet.

TAD HEUER: So that would be the edge of where the parking space would be, the edge of the curb cut on that right-hand side?

SLATER ANDERSON: It shows it. I don't know how accurate that is.

CONSTANTINE ALEXANDER: I'm not sure if it's to scale.

ATTORNEY SEAN HOPE: It's actually -- I have a plot plan right here. So there's the curb cut.

TAD HEUER: Right.

ATTORNEY SEAN HOPE: This is what the existing driveway was.

TAD HEUER: Right.

ATTORNEY SEAN HOPE: And this is dirt area. And there was a fence there. And so as you see on the parking site plan, it would still maintain this curb cut and --

TAD HEUER: You're off slightly to either side?

ATTORNEY SEAN HOPE: Yes. Eight and a half feet would be in the middle here. So you'd have two feet overhanging the five foot line, and then you'd have -- so you would have almost split down the middle, would be the one parking space and the second parking

space there. So you would actually back up or drive out, whatever you planning on which way you came in.

SLATER ANDERSON: So if someone parks poorly and you end up on the street anyway. It's a tight squeeze in there.

CONSTANTINE ALEXANDER: Cambridge Street.

Any other questions from members of the Board at this point? No questions? I'll open it up to public testimony.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. I don't think we have any letters in the file one way or another.

Do you have any letters?

ATTORNEY SEAN HOPE: No.

CONSTANTINE ALEXANDER: I trust you

spoke to the abutter most affected by this?

SCOTT ZING: Yes.

CONSTANTINE ALEXANDER: No objections.

SCOTT ZING: No. He's okay with it. I discussed putting a retaining wall.

CONSTANTINE ALEXANDER: Any questions by members of the Board?

SLATER ANDERSON: What did you say about a retaining wall?

SCOTT ZING: I already discussed how we're going to deal with the existing lot and put in a retaining wall in there and he's satisfied with it.

THOMAS SCOTT: Will there be a landscape buffer in that the space that's left with the --

SCOTT ZING: We haven't determined that. Probably do like a small mulch bed or something like that.

THOMAS SCOTT: The abutter didn't

request anything like that?

SCOTT ZING: No.

CONSTANTINE ALEXANDER: Ready for a vote?

TAD HEUER: How close is your abutter on that side? Sorry, the structure, not to the lot.

SCOTT ZING: Five feet, something like that.

ATTORNEY SEAN HOPE: Yes.

SCOTT ZING: Five or six feet.

CONSTANTINE ALEXANDER: It's a pretty tight neighborhood.

TAD HEUER: So it would be ten in that between the car and the house roughly?

SCOTT ZING: Yeah, probably about that.

ATTORNEY SEAN HOPE: I think with the tandem space because the house is set back, you'd actually have a car that is closer to the window thing, than you would having two

cars closer to the front and one car for the back. But I actually think two cars in the front would actually pull it away from again the left side or the right side property line.

CONSTANTINE ALEXANDER: Further questions, Tad?

TAD HEUER: No.

CONSTANTINE ALEXANDER: Ready for a vote.

The Chair moves that a Special Permit be granted to the Petitioner to allow parking and driving within the five foot side yard setback as permitted by Section 6.44.1 on the basis of the following findings:

That the requirements of the Ordinance cannot and will not be met unless we grant relief. In fact, that although the point being that or in fact that you can meet it if you shave off a foot or so of the house or take other action. It's the Petitioner's position, which we will accept if we vote in

favor of this, that the benefit to the community is far outweighed by the expense and disruption to the structure that would be required.

There will be no congestion, hazard or substantial change in established neighborhood character.

That the continued operation of adjacent uses will not be adversely affected by the nature of what is being proposed. Support for this would be the fact that the abutter most directly affected by this has been approached about the relief being sought, and it has been represented to us by the Petitioner that the abutter has no objection to what is being proposed.

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

And that what is proposed will not

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

The Special Permit would be granted on the condition that the parking layout would be as set forth in a plan submitted by the Petitioner. It's sheet 0 prepared by Peter Quinn Architects and dated September 22, 2011, and initialed by the Chair.

All those in favor of granting the Special Permit on this basis, say "Aye."

(Aye.)

(Hughes, Heuer, Scott, Anderson.)

CONSTANTINE ALEXANDER: I'm going to abstain. Relief has been granted.

(8:55 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Tad Heuer, Thomas Scott, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10163, 61 Church Street. Is there anyone here wishing to be heard on this matter?

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman. For the record, James Rafferty on behalf of the Applicant. The LLC is called Riverside Management Group, LLC. Seated to my left is Mr. David Carvalho, C-a-r-v-a-l-h-o. He's a principal with Riverside Management. And seated to Mr. Carvalho's left is Mr. Richard Fraiman, F-r-a-i-m-a-n, he is the owner of

the property.

This is application for a fast order food Special Permit in Harvard Square. I'm going direct my comments --

CONSTANTINE ALEXANDER: I figured you brought this just to torture me, Mr. Rafferty.

ATTORNEY JAMES RAFFERTY: No. The definition of torture is for the poor guy in the Dunkin' Donuts business to have his fate being decided by Starbucks, 1369 and 1369. He's very nervous as he's sitting here, why doesn't anyone have a Dunkin' cup up there? Well, this is Cambridge.

At any rate.... Some members of the Board may know this site. This particular site, only because it's had a food use in it for about 50 years. Mr. Fraiman and his family have owned some property in the Harvard Square. So this was probably for the last 20 years or so Lee's Diner for those who

spend time in Harvard Square. Distinguished by the narrowness of the space, it's about 750 square feet. It's exceptionally narrow. Mr. Fraiman is widening the mouth of it a little, if you've had a chance to go out there, just to give it a little more frontage on the street. But it's an exceptionally narrow place. But it has had a food use. And frankly a food use that would meet our current definition of a fast order food. So we all know that one of the key tests of the Special Permit is of course compatibility with surrounding uses. And we would suggest that in this case, the surrounding use, the prior use has been in existence and predates many of the other uses around it. But Church Street is a primary commercial street in Harvard Square. It's used by people walking to the T. It has office buildings at one end of it. The complex where the Harvest Restaurant is. It has retail at the ground

level. It actually even have some residential in this building or the building next-door. There are a couple of residential units upstairs?

RICHARD FRAIMAN: One.

ATTORNEY JAMES RAFFERTY: One.

And it's in the heart of Harvard Square. And Mr. Carvalho has some experience in operating businesses in Harvard Square. He operates a Dunkin' Donuts or what is called the Eliot Street Cafe and we can only whisper Dunkin' Donuts, but that was from a long time ago. That's in the garage at the JFK Street intersection with Eliot Street.

CONSTANTINE ALEXANDER: One aspect, I was going to raise this later, but since you brought it up now. One aspect of the Eliot Street Cafe is it doesn't have the traditional colors, if you will, and appearance of a Dunkin' Donuts, the orange and -- the orange and the pink and the like.

It's more subdued.

What is your plan for the exterior appearance of your restaurant or your establishment should we grant relief? Is it going to have the usual Dunkin' Donuts colors and signage or is it going to be more like the Eliot Street Cafe?

ATTORNEY JAMES RAFFERTY: Yes, well you can talk a little bit about what you're --

DAVID CARVALHO: We're trying to keep the integrity of the building the way it is. It's a brick facade. But one thing that we've learned from the Eliot Street Cafe, that the word Dunkin' Donuts means a lot to the consumers. Compounded with the franchisor Dunkin' brands are requiring when we built Eliot Street Cafe 18, 19 years ago, requirements from the franchisor were much different than what they are today. Today they say we have to have those -- that name

there. So it is our plan to keep the color and the name, but to match that with the integrity of the building as well as Harvard Square. Hopefully doing something a little more unique possibly with a cup actually coming out of the building. Something a little different. So it's not just a standard Dunkin' sign so to speak.

CONSTANTINE ALEXANDER: So there will be some signage?

DAVID CARVALHO: Correct.

ATTORNEY JAMES RAFFERTY: And we've --

CONSTANTINE ALEXANDER: That's a separate issue.

ATTORNEY JAMES RAFFERTY: Right. We haven't applied for it and --

TAD HEUER: Well --

CONSTANTINE ALEXANDER: What? Well, if they want relief for signage.

TAD HEUER: Yes, relief for signage,

but certainly requires us to know what the scheme is.

CONSTANTINE ALEXANDER: Yes.

ATTORNEY JAMES RAFFERTY: You mean the compatibility question in terms of -- yes. I would say, you know, it's a fairly established storefront so I think, you know, it would have traditional glazing and the masonry opening. But probably would have an awning.

Do you have awnings on those buildings?

RICHARD FRAIMAN: There's a new store there, Free People, that just opened, yeah. And they've done their own treatment. They don't have an awning. The Cambridge Art is Cooperative to the right. It doesn't have an awning either. But there was once an awning there in the not too distant past.

CONSTANTINE ALEXANDER: What do you want to do? Are you going to have an awning?

DAVID CARVALHO: We've put a cup,

the conceptual design is we have the Dunkin' cup sign coming from the higher elevation, and then something that breaks up that from above the entrance. Some sort of either angled awning or just a blade awning coming out to break it up. Because I think we only have 14 linear feet of space there. So it's something to break up that facade.

ATTORNEY JAMES RAFFERTY: This location is in the Harvard Square Historical Overlay District and exterior alterations, including signs and awnings require approval from the Historical Commission. So the thinking was that we would get the issues around the use resolved here, and if there was a desire to pursue -- there used to be an infamous tomato on Palmer Street, if you remember, there was a Veggie Planet and they had this tomato.

CONSTANTINE ALEXANDER: Veggie Planet is still there.

ATTORNEY JAMES RAFFERTY: Right. But they had -- their sign was this plastic tomato, and they put it up and then it became a question of when is a tomato a sign and when is it a tomato?

TAD HEUER: You also have a reclining cow just down the road.

ATTORNEY JAMES RAFFERTY: Exactly right. So the question then became in that case, the Historical Commission, even though they favored it, there was actually a restrictive covenant placed by someone who granted something. So, it's become kind of a running commentary about signage. And you've got the cow, and you've got this. David did share with me wouldn't it be kind of funky and interesting to have a cup protruding out, not necessarily the equivalent of the steaming kettle in Government Center, but something to give it a little interest. And I said I think that

probably takes further thought and everything else. We're really obviously only focussed on the requirements of the fast food ordinance and demonstrating to the Board that this use and this location meets those requirements.

As you know, I was intrigued kind of by the earlier case because, you know, the supporting statements given up by the office, of course, is that the requirements of the Ordinance can be met. And that's the first -- and I've always interpreted that to mean so I have to demonstrate to you -- and in this case the relevant section of the Ordinance is 11.30. I know there was some commentary about showing that it cannot be met. So I was a little --

CONSTANTINE ALEXANDER: That was in a different context.

ATTORNEY JAMES RAFFERTY: Okay.

So we've identified, of course, the

11.30 criteria and then the generic criteria. On the generic criteria, which the Board is familiar with in all Special Permit cases, the things around traffic patterns and the like. We think given the nature of the location, we think it's reasonable to conclude that people will not be driving to this location. That it historically has served coffee, particularly breakfast items. This section of Harvard Square, Church Street is not particularly active in the morning. There are sections of JFK Street that see a lot more volume and delivery. Mr. Fraiman's intimately familiar with the level of activity on the street. So, we have a high level of confidence that the compatibility and the adjacent mix of uses would not be affected by this. We then need to satisfy the Board that the criteria under the Ordinance. They range from the extent to which the use will align walk-in trade,

compatibility from design perspective, and then one of the ones that we seem to spend a fair bit amount of time on is the notion that the use will satisfy a need in the neighborhood for such a service. And lots of conversation and discussion over the years as to how need gets defined. What is intended by need. I think taking the view that historical interpretation is that need is established when there is evidence of a prior use, such as this case, there was a need being serviced there for years. This use has gone out. So does that mean there's a need? Need is a cousin of demand. If the demand exists, the marketplace responds. Mr. Carvalho is in the business. They believe strongly that people don't go four blocks for a cup of coffee. That they'll buy it on their block and close in locations like this. And admittedly there's another Dunkin' Donuts in the square, but not to compare but there are

other --

TIMOTHY HUGHES: There's only one other one?

ATTORNEY JAMES RAFFERTY: Yes, just the Eliot Street.

TIMOTHY HUGHES: The T.

ATTORNEY JAMES RAFFERTY: Right, there's one in the subway. Right.

TIMOTHY HUGHES: How did we let Starbucks get ahead of Dunkin' Donuts?

ATTORNEY JAMES RAFFERTY: He was asking me the same question.

If you drew a permit -- I love Starbucks, but if you start at the Broadway Market and go to Shepard Street and you include those two, we count five Starbucks in greater Harvard Square. We count one and then one below grade. But I think it's probably fair to assume that there aren't too many, and I don't know why I say this other than my own sense of experience, are there

many people going into the subway to buy coffee and come out? Or would they -- do you find -- you run that Dunkin'?

DAVID CARVALHO: Yes. It's more convenience. It's travelling -- the T rider that comes through there coming up. No one goes there as a destination.

ATTORNEY JAMES RAFFERTY: That's my point. You have to know it's there frankly.

But at any rate, so, I think it's fair to ask, you know, are there other places to buy coffee in Harvard Square? There certainly are. And that will continue to be the case. In this location, though, the notion of having a place to get a cup of coffee, to gather, a cafe, these prove to be effective community building locations. People tend to go here regularly, see the same people. And it is a very narrow space. So as a retail destination, it's got limited effectiveness.

CONSTANTINE ALEXANDER: How many seats will be in there for people who want to have their coffee within the premises?

ATTORNEY JAMES RAFFERTY: Eight.

CONSTANTINE ALEXANDER: And really mostly a walk in, walk out?

ATTORNEY JAMES RAFFERTY: Yes.

And there are some examples of that in more urban locations. But that's winding up at the window would allow people to sit there. It's probably, yes, but it's more of a -- I mean, it's clearly fast food by any definition because clearly that way. But the thinking is that the historical use of the property containing what would be considered a fast food. The fact that the street itself can accommodate this, and that there is ample activity in the surrounding buildings, both in the office side and the academic side, to support the notion that walk-in trade will be the primary use of this. You know, we didn't

have a fast food ordinance until about 1981, and then what was fast food -- and the notion then was well, the big thing about fast food is wrappers and things will be filling the street, that led to a lot of conversation. The Ordinance has gotten refined. One or two amendments since then, and one of the more restrictive amendments is that as you know, these Special Permits are limited to a particular operator and a particular food use. So you couldn't open, you couldn't open one thing and then shift to something else. And we used -- some people refer to that as the anti-McDonald's rule. And until Mr. Bartley decides to build a burger cottage, I suppose we can contest whether that's a pre-existing hamburg use but that will come at another hearing.

But this location and this, everyone certainly knows what a Dunkin' Donuts is. The menu has expanded over the years. It

does include cafe sandwiches. They do see a reasonable amount of business during the lunchtime. Obviously they service the public. Harvard Square is a place in addition to the people that are there everyday. If Ms. Gilson was here, she would rattle off statistics about the number of people who come through Harvard Square everyday, and having an opportunity for those people to, when they're on Church Street, be able to go there. Not to suggest that -- and I don't think the test is here, we have to demonstrate that there's no other place on Church Street to get a cup of coffee, but just given the historical use of the property and level of the pedestrian activity in this area, that the need does exist here. It's been satisfied by prior operators for 40 plus years, and Mr. Carvalho's looking for the opportunity. I think he's demonstrated on the operational level that his store that he

operates particularly the one at the Eliot Street is really, it's really impressive in terms of it's tidiness, the amount of effort they put into sweeping the street, picking up and keeping it clean. All the things that really we concern ourselves with fast food. If this wasn't fast food, if this was just sit down cafe and give them a china cup, this is an as of right use. So I think the focus and the granting of the Special Permit, well, this has -- clearly is fast food, so what's the impact for people who will be leaving the store with this product? And are they likely to throw their -- is there a history here of people throwing coffee cups around and how can you guard against that? And that's why the Ordinance speaks to Styrofoam. And they don't use Styrofoam cups.

CONSTANTINE ALEXANDER: I'll get you to touch on that. Are they going to use biodegradable materials?

ATTORNEY JAMES RAFFERTY: They do now. And they will continue to do so.

CONSTANTINE ALEXANDER: And suitable and well marked waste receptacles?

ATTORNEY JAMES RAFFERTY: They have them in the store and they'll have one on the sidewalk.

CONSTANTINE ALEXANDER: And they'll have one on the sidewalk as well?

ATTORNEY JAMES RAFFERTY: Which they maintain.

CONSTANTINE ALEXANDER: And will you comply with all of the requirements for handicap and disabled persons?

ATTORNEY JAMES RAFFERTY: Oh, easily. By necessity and for other reasons as well.

On grade space. And so we would hope that we've demonstrated conformity with both the generic requirements of Article 10.30 and the particular requirements of 11.3.

CONSTANTINE ALEXANDER: Have you received the advisory opinion from the Harvard Square Advisory Committee that's required by our Ordinance?

ATTORNEY JAMES RAFFERTY: No, we haven't but we did ask about that, because I was mindful that it came up once before in another case.

I'm informed that Mr. Barber used to work with the Harvard Square Advisory Committee. No one can tell me where the Harvard Square Advisory Committee is.

The Ordinance requires that for every Special Permit in Harvard Square. There's a similar requirement for Special Permits in Central Square, through the Central Square Advisory Committee. I'm not opined as to the extent to which that is being --

CONSTANTINE ALEXANDER: Let me ask the question a different way. Have you requested an opinion -- tried to request an

opinion from the committee? We have to deal with the requirements of our Ordinance obviously, and you're supposed to -- your proposal must be reviewed by the Harvard Square Advisory Committee for an advisory opinion. If the committee is disbanded or otherwise unapproachable, we can't hold you to this.

ATTORNEY JAMES RAFFERTY: Well, I can tell you that a copy of our application was sent to CDD. The Community Development Department is the agency that has jurisdiction over that.

CONSTANTINE ALEXANDER: Did you request them to further forward this to the Harvard Square Advisory Committee?

ATTORNEY JAMES RAFFERTY: I didn't make that specific request. I told them that they received a copy of this application, and I assumed that they would exercise their responsibilities accordingly. I don't know

if they filed it. I just know from other conversations that it has been many years. I don't know --

CONSTANTINE ALEXANDER: We have received advisory opinions --

ATTORNEY JAMES RAFFERTY: Have you?

CONSTANTINE ALEXANDER: Oh, yes, in almost every case we've had in the last several months.

ATTORNEY JAMES RAFFERTY: Oh, okay.

CONSTANTINE ALEXANDER: They've been sort of haphazard. We may get individual comments from individual members rather than a nice formal opinion. But they have been contacted, and they have responded to us with their views on matters.

ATTORNEY JAMES RAFFERTY: Oh, okay.

CONSTANTINE ALEXANDER: So it's not like they're not -- at least in the past, they've been available to give an opinion.

ATTORNEY JAMES RAFFERTY: Well,

that's encouraging. I mean, in the sense that maybe there's an opinion out there.

CONSTANTINE ALEXANDER: We don't have it certainly.

ATTORNEY JAMES RAFFERTY: Do we have it? I haven't seen the file.

CONSTANTINE ALEXANDER: No, I haven't seen the file.

ATTORNEY JAMES RAFFERTY: So I'm thinking if some of the more recent fast food cases I've had. I don't --

CONSTANTINE ALEXANDER: Well, not just fast food. Any Special Permit in Harvard Square. For example, I can't remember -- well, we had the Starbucks and the Pinkberry's around there, you know, where the old Warsaw people used to be. We got opinions on that.

ATTORNEY JAMES RAFFERTY: Did you?

CONSTANTINE ALEXANDER: Yes. It's my recollection anyway.

ATTORNEY JAMES RAFFERTY: Well, I better not cite cases that may be -- okay. No, I'm mindful of that requirement and frankly I'm not sure what -- I sent a copy of the case to CDD because I know the Planning Board was commenting. I was eager to see what comments they might offer, and they had none. I didn't inquire as to the advisory committee frankly. I don't know if that's a jurisdictional question or not.

CONSTANTINE ALEXANDER: When I get to making a motion on this, the Board members can, each of us, can decide whether the fact of what you've done is not sufficient to comply with the Zoning By-Law with regard to the advisory opinion and leave it at that. I mean, you've told us what you've done and understood. And I guess we'll have to decide whether that's appropriate or whether you need to do more. I'm not trying to push it in any one direction.

ATTORNEY JAMES RAFFERTY: No, no. I'm just saying if it were a case that people felt that the matter was not properly before the Board, I would hate for it to go to a vote and a member not to have to vote against it because it was before the Board as opposed to --

SLATER ANDERSON: Procedural.

CONSTANTINE ALEXANDER:
Procedural.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: I think procedurally I'll start by saying whether we'll -- I'll ask Board members whether they think we can procedurally consider the case.

ATTORNEY JAMES RAFFERTY: Thank you.

CONSTANTINE ALEXANDER: You're right, I don't want to taint the merits of the case.

SLATER ANDERSON: Can I ask a

procedural question?

CONSTANTINE ALEXANDER: Yes, sure.

SLATER ANDERSON: Sean, an application comes in in a designated district like this, is there notice given at that point for the way abutters are notified to the neighborhood district committee?

SEAN O'GRADY: No. Just to Community Development.

SLATER ANDERSON: It's on the burden of the applicant to notify?

TIMOTHY HUGHES: Find them.

SEAN O'GRADY: Frankly, this section of the Ordinance had been lost for quite a while I think is maybe the most kind way to say it. And it wasn't until six months or nine months ago that it was refound. And by that time there was not a lot of -- well, there was really no advisory committee left. So what had been happening was when we caught it, it was Liza I think e-mailed the one or

two people who had been on this committee, and they just opined really just as people and just said, I don't have a problem and that's it.

SLATER ANDERSON: So it was the Community Development Department that -- it seems that -- I don't sit every Thursday, but I've been here twice now where this issue's come up and they're being a non-existent Harvard Square Advisory Committee.

SEAN O'GRADY: Yes.

SLATER ANDERSON: Does it fall on Community Development to re-populate something like that?

SEAN O'GRADY: Well, I mean --

ATTORNEY JAMES RAFFERTY: Well, in fairness to the Department, I mean if you read the Ordinance, the committee is one appointed by the City Manager.

SLATER ANDERSON: Okay.

ATTORNEY JAMES RAFFERTY: And it's

supposed to be half residents and half property owners. I don't think there's been an appointment to this committee in 15 years.

SLATER ANDERSON: It just troubles me that, you know, we've had some procedural requirement and there's no --

ATTORNEY JAMES RAFFERTY: I can represent that one of the longstanding members of the committee --

SLATER ANDERSON: -- process in place.

ATTORNEY JAMES RAFFERTY: -- is also a head of the neighborhood association, the Harvard Square defense fund, Mrs. Gifford. And we have reached out to Mrs. Gifford, Mr. Fraiman did, and informed her of this and of this application, and solicited her feedback. And I'll allow to you speak that she didn't find it to be objectionable.

CONSTANTINE ALEXANDER: But that's very helpful, I mean, in terms of whether you

complied with the requirements of the Ordinance. You have reached out.

RICHARD FRAIMAN: I had a pleasant meeting with her for about an hour and a half.

CONSTANTINE ALEXANDER: We have not received anything that says she on behalf of herself or others object to what's going on.

RICHARD FRAIMAN: She took the initiative to call me and said they had no objection.

ATTORNEY JAMES RAFFERTY: She discussed with her Board I think is what you told me. We were very mindful of her role. And I said even though there's no letter of support, providing her notice and her saying she doesn't object, and they're not a group that historically has been trying to express their views on that as in Harvard Square. And I alert both Mr. Carvalho and Mr. Fraiman early on it would be important to find, to get their perspective on this, because it would,

I would think could have an impact on the outcome. So he was very diligent in reaching out. And like he said, spent over an hour.

CONSTANTINE ALEXANDER: I'm going to rule unless Board members overrule me, that I think the efforts you've undertaken satisfy the requirements of our Ordinance regarding getting an advisory opinion from the Harvard Square Advisory Committee under the circumstances that the committee being almost defunct. And that you have reached out, and I think it's sufficient. So I'm not troubled by going forward on the merits.

TIMOTHY HUGHES: I'm not troubled at all. And I would say in the last couple of attempts that we've made to have the Petitioner reach out to the committee, the responses we got hardly qualify as a response from a committee.

CONSTANTINE ALEXANDER: That's true. Individually.

ATTORNEY JAMES RAFFERTY: That's exactly what happened. An e-mail goes out, and they don't convene a meeting. And then if you have a comment, send it. And Mr. Digiovanni is on the committee. We usually like his comments, and sometimes other people send it. But they're fairly predictable I would say from the people that continue to serve there.

TAD HEUER: Can I ask one question about Lee's? And only because, Mr. Rafferty, you mentioned that it's been a fast food use for 40 years, that demonstrated the need, but then Lee's of course is no longer there. Is that a suggestion that there's no need or was there another intervening factor that led to Lee's demise?

ATTORNEY JAMES RAFFERTY: That just means Mr. Lee got tired and the need remains unmet. There's a dire need, but we just haven't found someone to get up that early in

the morning and cook the food.

TAD HEUER: So it was his voluntary decision to close, notwithstanding that there was business to be had?

DAVID CARVALHO: They had been in the business -- Connie Lee and his family well over 20 years, 25 years. I can't remember how long. And they were just, you know, that's a long time to be in that kind of business.

CONSTANTINE ALEXANDER: That's not fair, Lee's was really a different fast food operation than what you're proposing. That was more of a sandwich, diner type style. I mean, you had coffee in the morning.

ATTORNEY JAMES RAFFERTY: I think it was more of a deli style.

CONSTANTINE ALEXANDER: More of a deli kind of thing.

ATTORNEY JAMES RAFFERTY: True.

CONSTANTINE ALEXANDER: There may

not be a use for that, but could be a use for the Dunkin' Donuts you're trying to propose. What I'm trying to say the reason why Lee's went out of business to me is not necessarily definitive on the issue of whether there's a need in the neighborhood.

ATTORNEY JAMES RAFFERTY: Right, I think it's a contributing factor but may not be seen as dispositive on the question, but I think that the historical use of the site in serving food, they had an active coffee and muffin -- I can attest to their morning business because if you wanted a place to actually -- a more quiet place, that's where people went. But I think that whole genre of coffee shops has gone by the Board for the most part.

CONSTANTINE ALEXANDER: Other questions from members of the Board?

SLATER ANDERSON: Is this tended to be like a full menu Dunkin' Donuts? Like it

will have the sandwiches and the little pizza things and the wraps and all the, the whole --

DAVID CARVALHO: Correct. It's our intent to fit -- we do have some size constraints and the width and the narrowness of the space. It's our intent to put that full menu there with the exception of pizza. But yes.

CONSTANTINE ALEXANDER: Not yet anyway. You'll get there soon enough.

ATTORNEY JAMES RAFFERTY: But many locations, particularly like this one, we were describing a delivery once a day. A van truck arrives with product. It's not cooked on location. The baked products arrive.

SLATER ANDERSON: Yes, it's heated up there.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Dunkin' Donuts has long ceased baking their own donuts on premises, right? It's some sort

of a central commissary?

DAVID CARVALHO: That is correct.

CONSTANTINE ALEXANDER: Any further questions?

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes in one wishes to be heard. I don't think we have any letters or other communications in our file including from the Harvard Square Advisory Committee. So I'll close public testimony.

Any further comments?

ATTORNEY JAMES RAFFERTY: No, thank you.

CONSTANTINE ALEXANDER: I think we're ready for a vote or further comments I should say. Anybody have further comments or do you want to go to a vote? Ready for a

vote?

TIMOTHY HUGHES: I'm ready for a vote.

CONSTANTINE ALEXANDER: Okay. We shall have a vote.

The Chair moves that we grant a Special Permit to the Riverside Management Group to operate a fast order food establishment, specifically a Dunkin' Donuts operation, by the Petitioner at the premises at 61 Church Street. Such fast order food -- that word, I just can't get it right. Fast order food establishment will be in accordance with the proposed floor plans submitted by the Petitioner, initialed by the Chair.

The Special Permit will be granted on the basis that the Petitioner whose testimony so far has complied with or will comply with all the requirements that they have to pursuant to Section 11.31 of our Zoning Ordinance.

And further, that the Petitioner meets all of the requirements generally for Special Permits in Section 10.43 of our Ordinance. Specifically that the traffic generated or patterns of access or egress will not cause congestion, hazard or substantial change in established neighborhood character.

The continued operation of adjacent uses will not be adversely affected by what is proposed.

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

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

On the basis of these findings, the Chair moves that a Special Permit be granted the Petitioner as I've already indicated.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Hughes, Heuer, Scott, Anderson.)

CONSTANTINE ALEXANDER: One opposed.

(Alexander.)

CONSTANTINE ALEXANDER: Variance granted.

ATTORNEY JAMES RAFFERTY: Thank you very much.

(9:25 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Tad Heuer, Thomas Scott, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair will now call the next two cases together; one, because essentially they're one case. So the Chair is going to call case No. 10164, 42 Bay State Road and also 10165, 54 Bay State Road. Please come forward and identify who you are.

KIN LAU: Good evening, Mr. Chair. My name is Kin Lau, K-i-n Lau, L-a-u. I'm working for Abodez Development. We represent Stuart Lubin who owns 54 and Ling

Yi Liu who owns 42 Bay State Road. We're located at 277 Broadway, Cambridge.

CONSTANTINE ALEXANDER: And then your position as representative of these people you have no objection to hearing the two cases simultaneously?

KIN LAU: None. They're relative to each other.

CONSTANTINE ALEXANDER: I just wanted to make sure for the record.

Sir.

JAMES PIATT: And my name is James Piatt, P-i-a-t-t. I'm an architect working for the developer Abodez for both projects.

CONSTANTINE ALEXANDER: The floor is yours.

KIN LAU: I know there's -- I have to apologize before I start for the Board, there's two or three drawings that relate to building elevations, that when I picked these up at our printers just before the meeting

they didn't have. So if we need to address the elevations, they'll be in what we've submitted.

CONSTANTINE ALEXANDER: They're in here and not on there?

JAMES PIATT: You got it. I asked for them all. And they somehow didn't receive them.

So the Kin can address issues of the ownership if that comes up. But what we're basically here to discuss, the picture of the building, and we can discuss that if we get into it. And then we have the plans and everything. But the fundamental thing that's going on is that there are two buildings. Here's the property line in question. This is 42 and this is 54 Bay State Road. Here's the property line in the middle. Each site is intended to have a building that is more or less similar, not quite identical, each will have five

residential units.

KIN LAU: What's there existing now is actually two existing buildings there that used to be offices. Okay? They were offices at one time.

CONSTANTINE ALEXANDER: Really?

KIN LAU: Yes. And they were single-family homes at one time. And then somewhere along the line it was converted into offices. And then back three, four years ago there was another developer who wanted to develop it into housing, and then they tried and then they kind of sort of went --

CONSTANTINE ALEXANDER: So when this project is done at least as to these two addresses, you're going to have a total of 10 residential units?

KIN LAU: Five units in each one, but separate buildings.

CONSTANTINE ALEXANDER: I

understand separate buildings. And you're going to maintain as separate lots?

KIN LAU: Correct.

CONSTANTINE ALEXANDER: The idea is you can sell one or so someone can sell one lot off and keep the other?

KIN LAU: Right.

JAMES PIATT: Separate condominium associations.

CONSTANTINE ALEXANDER: They're going to condominiumize?

JAMES PIATT: Possibly if the market goes in that direction.

CONSTANTINE ALEXANDER: Oh, okay. But you want to preserve the option of more flexibility by having separate blocks rather than one, ten-unit condominium you're going to have two, five-unit condominiums.

JAMES PIATT: Correct.

KIN LAU: There are two different owners. One owned it before, Stu Lubin and

then the developer came by, new owner came by, Ling Yi Liu who bought 42 which is over here which helped him out paying off the other. So that's why they're separate owners. They're not -- and what they want to do is just, you know, since the lots are not really unique shapes, if they develop together, they might be able to get some value in doing it at the same time. So that's where this whole they asked us to develop it for them.

CONSTANTINE ALEXANDER: I'm sorry, I'm being a little bit dense. So at the end of the day you're basically going to have two owners. Right now obviously the properties are owned by separate people.

KIN LAU: Yes.

CONSTANTINE ALEXANDER: That's going to continue, and when you say effectively, you want to talk about loosely the partnership to develop the two properties and that's why you want to have the

mutual -- the easement?

KIN LAU: Yes. Well, the easement -- what we're trying to do with the easement -- I'm sorry I'm speaking out of turn.

JAMES PIATT: No, that's okay. Go ahead.

KIN LAU: We're trying to minimize the amount of impact as far as the curb cuts right now. Okay? Right now there is the old existing ones, there's a curb cut coming off this property here and there's a curb cut coming right off here on this property. So if we were to decommission one of these curb cuts right on the corner here, which we don't feel is appropriate, safe and so forth, and we combine the two, yeah, I guess there's some value in savings in combining the two. I think it makes the neighborhood a lot nicer because you're not --

CONSTANTINE ALEXANDER: Are there

curb cuts there? I mean is there any sidewalk there now?

KIN LAU: Yes. This goes right around here and it stops right about there.

CONSTANTINE ALEXANDER: Yes, I understand. I thought it was just sort of --

JAMES PIATT: There's a little asphalt sidewalk here.

CONSTANTINE ALEXANDER: There is?

KIN LAU: But it's fairly narrow.

JAMES PIATT: A tiny little strip of grass, but it's not --

CONSTANTINE ALEXANDER: Okay.

KIN LAU: We have some photographs with this proposal here, and it should show the sidewalk there.

CONSTANTINE ALEXANDER: Okay.

JAMES PIATT: So anyway, this is the shared driveway which would conform to the width of two feet, and each individual building would come from your driveway and

then park underneath your building on the side. So that's the one thing that we're asking for within the shared driveway Special Permit provision. And then the other thing we're asking for that in order to fit the five parking spaces that are required, one of which is required to be van accessible parking space which needs access for pedestrians that is equivalent in terms of shelter.

CONSTANTINE ALEXANDER: Is that a Zoning requirement? Where does that requirement come from?

SEAN O'GRADY: At ten you're required to have a handicap.

JAMES PIATT: We have the -- well, I guess the way we read it that we have to have one no matter what. I thought --

KIN LAU: So you're saying at five we're not required to have handicapped parking space?

SEAN O'GRADY: This is Building Code stuff so I'm a little bit off. But I was talking to one of the building inspectors today, and my understanding from him was you didn't trigger it until ten. But you don't really have a ten, you have two fives.

CONSTANTINE ALEXANDER: Two fives.

JAMES PIATT: Well, yeah, that's what we had. I guess we looked at -- we either read it wrong --

SEAN O'GRADY: And everything that I'm saying, you know, I would actually defer to you if you had a different opinion because this is pretty much hearsay for me.

JAMES PIATT: Since you're raising it right now, without the Code right in front of me, I'm not going to go from my memory. I thought we were required to do this, and we thought we read it several times. It could be the ten, but I thought it was --

KIN LAU: Let's continue what we

have for now, because we can always say if we don't -- or if we are not required to have a handicap parking space, then we don't need the request.

CONSTANTINE ALEXANDER: That's the reason for the question.

KIN LAU: Yes, yes. Well, if we don't, then we don't have to request it. If we do, then ask right now is if there is an eight-foot parking for the cars, which is fine, it meets the requirements.

JAMES PIATT: If it's underneath the building away from the property line.

KIN LAU: And meets the side yard setback away from the property line. But there's an eight foot van handicap accessible path that would overlap onto that five foot area, basically a corner of it, would overlap onto that five foot setback. That's what we're asking if it required a handicap space. If we're not required to have a handicap

parking space, then we comply. Then the only thing we're asking for is the shared driveway. And, yes, you are correct, Mr. Chairman.

CONSTANTINE ALEXANDER: I guess the problem is we don't have an answer as to whether you need -- a definitive answer as to whether you need that van space. So I suppose we should leave it on the table as you point out. If we grant it and you don't need it, you don't need it.

KIN LAU: Correct.

CONSTANTINE ALEXANDER: The alternative is if you do need it, and we don't vote on it tonight, you would have to come back before us.

KIN LAU: Yes, we would miss our window. Thank you.

CONSTANTINE ALEXANDER: Your window?

KIN LAU: Well, we're trying to get

the foundations in before the winter. But that's an issue here. I don't want to bring that up as an issue.

CONSTANTINE ALEXANDER:

Understood.

KIN LAU: I just said that.

JAMES PIATT: We have our own questions.

TAD HEUER: Context is not irrelevant.

CONSTANTINE ALEXANDER: You know, one thing that puzzled me and troubles me, I'm going to put this out for members of the Board, what you haven't given us is a copy of the easement.

JAMES PIATT: For the shared driveway?

CONSTANTINE ALEXANDER: Yes. You're asking for a Special Permit -- you know, if you came with a building plan, if you came for a dimensional requirement, you know,

a Variance, we would say show us your building plans and we'll tie our relief or decide whether we grant relief depending on what you have on the building plans. Here we don't see -- the very thing that's the subject of our decision, the easement, we don't have it in front of us. You can do an easement for 30 days and it will expire after 30 days and, you know, there are 87 ways you can run around it. I'm disappointed that you don't have the proposed easement before us so we can consider that in the context of the relief you're seeking.

JAMES PIATT: I mean, it's -- we interpreted it -- we talked about it. We interpreted the Ordinance to say that if we were granted the Special Permit within this Board, it would not become effective until such an easement was created. But if we needed that language here, we clearly don't have it.

CONSTANTINE ALEXANDER: It's a chicken and an egg. If we're going to approve an easement, we have to know what the easement terms are. Or at least make sure, as I've said, that they're --

JAMES PIATT: They're cross referenced in the rules.

TAD HEUER: You can grant an easement on your own. I could draft you an easement. Not as a member of the Board, but I as an attorney could draft you an easement agreement and you can ease to each other, you know, to walk on each other's property every 30 days as long as somebody's wearing a green hat. You can do whatever you want.

KIN LAU: Right.

TAD HEUER: And that's between the two parties, whoever is the surrogate in tenement and dominant tenement, right? I think what the Chairman is saying is you could do that yourself. If you want it to be

incorporated into relief for Zoning, it makes more sense to have it first rather than say if an easement that meets these standards exists, then --

JAMES PIATT: I'm totally hearing you now.

CONSTANTINE ALEXANDER: I realize that. Let me suggest that one of two ways.

The first way, it's not the way I think I'm going to recommend we go, is to continue this case until you file a copy of the easement so we can see an easement and make it our decision. I know you must have constraints and I'm tired of continuing cases.

The other alternative, if the other Board members will buy it, is if we decide to grant you relief, it will be on the basis that the terms of the easement have to be signed off by me as Chairman. So we can at least know, if the Board members will trust me, or

some other member of the Board if they want to do that, that what the terms of the easement are such that they don't raise any issues that we weren't aware of when we had the hearing.

Members of the Board have a problem with that approach? In other words, signing off -- we do that with building plans from time to time when the plans are not exactly right.

TIMOTHY HUGHES: Is it possible for us to outline the terms of the easement in our decision?

CONSTANTINE ALEXANDER: I think it is. And one I'm going to outline is that the -- my belief, easements must be in perpetuity. I don't want one that's going to be 30 days or three years.

TIMOTHY HUGHES: Exactly.

CONSTANTINE ALEXANDER: Beyond that I'm not sure I can think of it without -- maybe

Tad can.

TIMOTHY HUGHES: I don't think -- that's the thing that I'd be concerned about. It's not --

KIN LAU: I don't think that's an issue.

CONSTANTINE ALEXANDER: Yes, I think everything --

TIMOTHY HUGHES: The size and width of the easement, that doesn't concern me at all. It's practical matters for that, but how long it's going to be in effect.

JAMES PIATT: I think the two parties want that as well.

CONSTANTINE ALEXANDER: To your point, and what I was going to suggest when we get to the motion, is that the motion would be to grant an easement in perpetuity. It cannot be amended without our approval. And any other terms of the easement must be satisfactory to someone we designate to

review. So, again, someone on this Board on behalf of the Board signed off on the total easement.

KIN LAU: Sure. And I think speaking on behalf of the owners, I think that was always their intent to do that. We just got our signs mixed up a little bit, you know, in the order it came in, the chicken or the egg thing, and we apologize for that.

TIMOTHY HUGHES: Never been clear about the chicken or the egg thing anyway.

JAMES PIATT: It has to be the egg.

CONSTANTINE ALEXANDER: Tad, are you all right?

TAD HEUER: Yes, I mean, it's cross easements in perpetuity as shown on the plans presented to this Board.

CONSTANTINE ALEXANDER: Yes.

TIMOTHY HUGHES: Signed good.

CONSTANTINE ALEXANDER: Any further questions?

TAD HEUER: Does there have to be a term of burdening by the easement?

CONSTANTINE ALEXANDER: Term of burdening, what do you mean?

TIMOTHY HUGHES: Well, you can't overburden an easement. Essentially it's for the reasonable use of five units in addition to the use being used by the serving in tenement. So the dominant could -- can't come in and say we're going to use 15 cars. You have to use that to drive over your part of the driveway.

KIN LAU: The way it's shown in this plan right now it's 50/50 pretty much. The easement goes down the middle of driveway. Half the driveway, half the driveway. Five parking on this side. Five parking on this side. There's no way you can increase the amount of parking on either side, but the building's in the way.

TIMOTHY HUGHES: Well, except the

buildings aren't built yet. You know, so there is a possibility --

KIN LAU: It's based on these drawings.

TIMOTHY HUGHES: But based on the drawings.

TAD HEUER: That's fine.

CONSTANTINE ALEXANDER: Based on the drawings.

SLATER ANDERSON: Where does this plan stand? Is it approved plan by the Planning Board? Or is this a by right?

KIN LAU: This is by right.

SLATER ANDERSON: It's by right. You have Building Permit or not?

KIN LAU: No.

JAMES PIATT: No.

SLATER ANDERSON: You do not.

KIN LAU: Building Permit was pending this.

SLATER ANDERSON: How about the curb

cut? That curb cut doesn't exist, the one --

JAMES PIATT: Not precisely, not where we have it, correct.

SLATER ANDERSON: You still need to get --

KIN LAU: We still need to get their verification.

JAMES PIATT: We understood talking to ISD, Ranjit told us we needed to come here immediately.

SLATER ANDERSON: That's fine. I'm just trying to understand where things are procedurally.

KIN LAU: We did talk to Community Development and they were encouraged that we're trying to diminish curb cuts and realign this curb cut away from the corner. They were encouraging us and they would support that. That was the first check first of all, before we got here that this was our next step here. And we just missed the stuff

about the easement.

SLATER ANDERSON: I'm good.

CONSTANTINE ALEXANDER: One second I'll give you an opportunity, one second. I'm going to open this matter up to public testimony now.

Is there anyone wishing to be heard? You have to come forward, give your name and address.

HELANA MENDELSON: My name is Helana Mendelson (phonetic) and I live at 26 Bay Street Road which is a residential condominium on the other side of the office building. And I'm wondering -- we are not abutters. We are not have been told about this project until this Zoning meeting, so I -- and this is my first time in front of the Board, so here we are. I have not lived in Cambridge very long, so perhaps I'm asking the wrong questions of the wrong Board but here they are.

This is a street that has no residential restrictions on parking. It's zoned industrial. We have very active parking traffic going to Bonnie's Garden Store, which we would love and Bonnie's is considered an asset by the people of the building and by the community of Cambridge, and we'd like to make sure that they can continue to have the kind of traffic so they need people to be able to park. And certainly, this is not -- has nothing to do with you, your responsibility, or your responsibility, but this is a street that people use to bypass Concord Avenue and Fresh Pond Parkway and they go down that street at terrible speed. So I want to know who is going to be looking at your curb cuts and your driveways and your ten cars coming in and out in relationship to the existing use of this street by passersby who use it as a speedway, and by neighbors who have larger community use it as a commercial street?

CONSTANTINE ALEXANDER: I think I'm right, the curb cut is the decision of the City Council? It's not your decision.

HELANA MENDELSON: And is anybody looking at this bigger picture besides me?

SEAN O'GRADY: It essentially goes like this. If anything that happens on the lot of private property, is the Building Department. Anything that happens on the street is Traffic and Parking. And anything that happens on the sidewalk is the DPW. That's roughly how the responsibility for those things are spread around the city.

HELANA MENDELSON: All right. And is anyone sort of, is there any review that integrates this or is it, you know, three different decisions for three different boards?

SEAN O'GRADY: Well, in fact, when they come for their curb cut, they'll be going to all three of those departments, plus

they're going to historical, plus in front of City Council. So there is very thick layers.

HELANA MENDELSON: What is Historical?

SEAN O'GRADY: I think you should come to the Building Department and have a conversation with me.

HELANA MENDELSON: I should come to the Building Department?

SEAN O'GRADY: We can't engage in this.

HELANA MENDELSON: I'm just making sure I'm in the right place because this is the first notice that owners have had of this development. Well, we got a letter, but also when the poster went up on the front lawn, I'm not saying I'm opposed, I'm just trying to see what the larger impact will be and maybe the architect and the Council can speak to them.

CONSTANTINE ALEXANDER: You understand what we're talking about?

HELANA MENDELSON: Yeah, I know. I know that.

CONSTANTINE ALEXANDER: They're just ten parking spaces --

HELANA MENDELSON: There's no one else we've been able to ask. You're the first people to meet, and so I reserve -- this is not a hostile question.

CONSTANTINE ALEXANDER: No, I understand that.

HELANA MENDELSON: This is just an informational -- a request for information as to how this will impact the street.

CONSTANTINE ALEXANDER: And my point to you would be that Mr. O'Grady is a fountain of information with regard to getting information. I think he's the person you can talk to. He can give you the lay of the land, how it would work, as he has done, you know --

HELANA MENDELSON: This is not a

hostile question. Perhaps the architect and counsel would like to say something.

JAMES PIATT: I mean, basically we've tried to design a building that conforms to the existing Zoning Ordinance. We're not asking for a Variance. We're, in terms of density, in terms of numbers of cars parked on this site and numbers of units, in many respects we're doing what the Zoning Ordinance allows us to do. Therefore, we presume that the city has looked at these issues again, the realistic way of talking about, and embodied those thoughts in the Zoning Ordinance or at least that's our belief.

HELANA MENDELSON: By presuming their existence within the Zoning?

KIN LAU: When the Zoning laws were established and assuming --

HELANA MENDELSON: So the holistic view is the in the law? Do you

expect -- (inaudible).

JAMES PIATT: That's what we would say.

HELANA MENDELSON: And just, again, this is informational, this is not hostile. Do you expect to be coming from Bay State Road or from Birch Street?

JAMES PIATT: It will come from either direction.

KIN LAU: I mean, we tried to make this building as contextual as possible. If you look at what's on Bay State Road and all the buildings that are there, I think we're fairly contextual.

HELANA MENDELSON: Are you going to have the same --

KIN LAU: Have you seen the --

JAMES PIATT: The same appearance as what?

HELANA MENDELSON: The two owners.

KIN LAU: Why don't you show them,

this picture is --

JAMES PIATT: This picture is 54 Bay State Road. The space in between that we're talking about is 42 Bay State Road.

HELANA MENDELSON: So it's not going to be --

JAMES PIATT: They're supposed to be a compatible, two buildings.

HELANA MENDELSON: But they're not townhouses as they are across the street --

KIN LAU: No.

HELANA MENDELSON: -- that sideways development?

KIN LAU: No.

HELANA MENDELSON: Between the plumber and the auction house.

You are actually doing an integrated facade quite a bit closer to 24 Bay State?

KIN LAU: Yes.

HELANA MENDELSON: Townhouses?

KIN LAU: And more -- looks a little

more contemporary, but more in the family of what's it there already.

HELANA MENDELSON: Which is what basically industrial plus us.

KIN LAU: No. If you look at -- not, if you look at it just the block itself, yes. But if you look at the neighborhood, okay, and I truly believe -- I'm sorry if we're running longer.

CONSTANTINE ALEXANDER: I might want to suggest though --

HELANA MENDELSON: I'm sorry to be taking your time.

CONSTANTINE ALEXANDER: No, no. Yes, I think there's a conversation you should have after we -- let us do our job. And you can get further information. They seem to be very cooperative folks.

KIN LAU: We'll talk.

CONSTANTINE ALEXANDER: Why don't we just, if you don't mind, we'll move on.

HELANA MENDELSON: Oh, no, no, I don't mind. I said I came here to ask if I was asking the right questions of the right Board because there has been no other boards to ask any questions of.

SLATER ANDERSON: And that's largely because this is a by-right proposal aside from what they're asking for with the shared parking. The buildings they can build. The only thing wild card here is there's presumption that you're going to get the curb cut. Because if you don't get that curb cut and you're forced to rely on the existing curb cuts, your plan is going to have to change.

KIN LAU: But we've already talked to Community Development --

SLATER ANDERSON: Yes, I think your concept is sound. I mean, I'm not on those other boards. And the curb cut process is a process.

KIN LAU: Yes, it's a process. Yes.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one else wishes to be heard. I'm going to close public testimony.

Any concluding remarks you want to make? You've said everything you want to say?

KIN LAU: Yes.

TAD HEUER: Are we voting on the need for a rear space?

CONSTANTINE ALEXANDER: I think under the circumstances I think we should vote on to whether to grant the Special Permit, whether we want to grant it. It will either be superfluous or it will be necessary. But I don't want to be put in a position where if it turns out to be

necessary, they have to come back before us a second time.

TAD HEUER: So, there's that wedge that kind of makes the lot strange. And there's obviously a building that comes right into that wedge. Have you spoken to those owners about what you're doing and specific about what you're --

KIN LAU: Not specifically about the parking.

TAD HEUER: Okay.

KIN LAU: About the project, yes. The owners, not me personally, the owners have talked to them, yes, about this project.

TAD HEUER: Okay. And there's going to be fencing in the properties?

JAMES PIATT: Fencing along the whole back edge and along this side.

TAD HEUER: Okay.

JAMES PIATT: And some form, the lower fence, a yard fence and picket fence

around this area.

TAD HEUER: Do you have a height for the rear fence? Height style?

JAMES PIATT: I think six feet is what we're allowed. I think this building is right on the property line. It's about 10 or 11 feet to the flat roof. I think the Ordinance allows us to go to six feet. We're not trying to build more fence.

TAD HEUER: What's the windows situation on that building in the rear, do you know?

JAMES PIATT: This one?

TAD HEUER: Yes. Are they looking out into this?

KIN LAU: There are some high clear story windows. I call them sort of like your alleyway. There's a little alleyway where they keep the trash cans and a set of stairs back there. You sort of see it on the photographs. They asked that the windows be

a little higher up. I think they're factory type or warehouse space.

TAD HEUER: Yes.

KIN LAU: And they have this sort of higher window up there.

TAD HEUER: So you're essentially abutting a non-residential structure that, you know, if it has -- with a fence in between. If there's an additional encroachment of this loading zone, and this is the loading zone space essentially for the handicap spot. This is how you get in and out of the handicap van. Not intended to be self-parking.

JAMES PIATT: Not to put the vehicle --

TAD HEUER: It's just the lines -- it looks like one of those line spaces that essentially says don't park here.

KIN LAU: Right. This is submitted over there.

JAMES PIATT: You just added these

rough notes so you can sort of see it.

TAD HEUER: Right, okay.

SLATER ANDERSON: We should just be clear that, to interpret, that's not the 11th and 12th spaces?

JAMES PIATT: No.

KIN LAU: They're not spaces.

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

(No Response.)

CONSTANTINE ALEXANDER: Ready for a vote? Let's try this.

The Chair moves that pursuant to Section 6.43.6, that we grant a Special Permit.

SLATER ANDERSON: Can I ask a question?

CONSTANTINE ALEXANDER: Go ahead.

SLATER ANDERSON: I hate to go down this road, but if for some reason you don't

get your curb cut, but we granted an easement in this area for shared parking, do we want to make sure we tie the easement to the granting of the curb cut by other city departments? Because they may end up with this parking easement, driveway easement in a zero lot line situation where they may have saying, well, we'll drive and park in this central area in the two lot lines.

JAMES PIATT: You'll get the final review of the easement in conjunction with the Building Permit.

SLATER ANDERSON: Or just tied with the granting of a curb cut in that location.

SEAN O'GRADY: You can just tie it to the plans.

CONSTANTINE ALEXANDER: That's what I'm going to do.

SEAN O'GRADY: If they can't get the curb cut, they can't meet the plans and the whole thing unravels.

TAD HEUER: Plus it's tied to the plan, building, and --

SEAN O'GRADY: Please don't do that. We've had trouble with that. To the plans only as it relates to the driveway and parking.

TAD HEUER: You can do that --

SLATER ANDERSON: But they end up with a big parking easement in the middle and they just end up using the existing curb cuts, and they can do all kinds of stuff across the two property lines.

SEAN O'GRADY: We would say no to that.

TAD HEUER: I'm thinking even worse that we grant a --

KIN LAU: Can I respond to that for a minute?

TAD HEUER: Yes.

KIN LAU: In order for us to use the existing curb cuts with the granting here in

the middle. Essentially destroys where the buildings are around.

SLATER ANDERSON: Understood.

KIN LAU: There's no way of getting there for here without getting rid of the buildings.

SLATER ANDERSON: You can drive through the building.

KIN LAU: Okay, yes, you can.

SLATER ANDERSON: We've seen it before.

JAMES PIATT: We didn't think we can give away that kind of space.

TAD HEUER: In the worse case scenario, and for some reason the buildings can't get built if we allowed an easement for parking not related to buildings on that site, that is created a non-building connected parking easement across lots that is not wired to anything else substantial. It's unlikely, but that would happen.

CONSTANTINE ALEXANDER: Well, ten parking space commercial parking spaces. That's what it will come down to.

SEAN O'GRADY: You couldn't even do that.

CONSTANTINE ALEXANDER: You couldn't even do that?

SEAN O'GRADY: No. Then they would have a use problem. You are in a residence C-1A Zone. I mean, is the fear that somehow the building won't go up and yet the parking will?

TAD HEUER: Yes. Do we just end up creating a parking lot in this neighborhood?

SEAN O'GRADY: No, I mean, it would have to be an accessory parking lot to build things on that lot.

TAD HEUER: Okay.

SEAN O'GRADY: On those lots. Or actually lot by lot technically.

KIN LAU: We wouldn't be able to make

it work financially.

SEAN O'GRADY: The only thing you're granting for them is the right to share a driveway. Not even the easement.

TAD HEUER: Granting to whom, though?

SEAN O'GRADY: Well, you're granting it to --

CONSTANTINE ALEXANDER: Two petitioners.

TAD HEUER: But I'm granting to the lots, right?

SEAN O'GRADY: Yes.

TAD HEUER: That's my --

CONSTANTINE ALEXANDER: Granting it to what?

TAD HEUER: I'm granting it to the physical parcel. The owners have it, they sell it.

CONSTANTINE ALEXANDER: Right. But it will be tied to that plan, and they can

only have those ten spots and plus a van spot.

KIN LAU: If we need it.

CONSTANTINE ALEXANDER: That's all.

SLATER ANDERSON: Okay.

SEAN O'GRADY: I mean, you can craft it as however you want. If it went without any sort of kind of restrictive language it would be -- we couldn't stop them from driving on each other's property and claiming each other's property for compliance for the driveway. So it's really just to get you through the Ordinance to share the driveway. And then just the invasion of the -- I forget this, when you get out of the van, you have that hatched area.

CONSTANTINE ALEXANDER: Let me start again.

The Chair moves that we grant a Special Permit to the Petitioner pursuant to Section 6.43.6 authorizing the two petitioners in this matter to establish common driveways

under mutual easements.

Such easements to be in perpetuity.

Such easements shall be in accordance with the plans submitted in each of the cases before us.

And further, that such easements otherwise contain terms and conditions that are satisfactory to the Chairman of the Board.

So in other words, if we grant you -- if the vote we're going to take in a second is positive, you still got to put together that easement and show it to us and I'll sign off on it.

Anyway, that's the motion I would make. All those in favor of granting the relief as moved say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Relief granted.

(Alexander, Hughes, Heuer, Scott,

Anderson.)

KIN LAU: Thank you very much.

JAMES PIATT: Do we submit the easement through ISD?

SLATER ANDERSON: Through Sean. I would bring it to Sean.

CONSTANTINE ALEXANDER: I said the parking plan which would include the relief for parking spaces that you requested. Namely, that you're allowed to have van accessible parking space within five feet of the rear property.

TAD HEUER: And that is satisfied under Section 6.44.1(b).

TIMOTHY HUGHES: And do we have to vote twice because of the two separate cases?

CONSTANTINE ALEXANDER: I'm going to suggest that the vote when we do the minutes, that those are for both cases so I don't have to repeat the vote all over again.

SEAN O'GRADY: Ditto is fine.

KIN LAU: You want us to give the easement to Sean and Sean will give it to you?

CONSTANTINE ALEXANDER: Yes.

KIN LAU: Thank you.

(9:55 p.m.)

(Sitting Members: Constantine Alexander, Timothy Hughes, Tad Heuer, Thomas Scott, Slater Anderson.)

CONSTANTINE ALEXANDER: The Chair wants to bring to the attention of the Board that we have a request for an extension of a Variance that's previously been granted. The Variance is connected to the property of 139 Pearl Street. There is a letter to this Board dated September 28th stating the following: (Reading) On October 29, 2010, the Board of Zoning Appeal granted a Variance for work I am planning at 139 Pearl Street. I've been working with my architect to complete the planning required prior to construction. There were some complications involving structural

engineering which delayed the process somewhat. I'm currently negotiating with contractors to select one two additions to actually perform the work. With one month remaining before the expiration of the BZA letter, however, I am concerned that work may not have been begun by October 29th. Therefore, I am requesting a six-month extension. Thank you for your consideration.

So I think the letter is self-explanatory. He's looking for another six months to act on the Variance that we previously voted for at 139 Pearl Street.

Discussion? Comments?

SLATER ANDERSON: I remember that little house.

CONSTANTINE ALEXANDER: I know.

TAD HEUER: I opposed this proceeding at the time. I think it's inappropriate for the size of the lot. I

think it does derogate from the intent and purpose of the Zoning Ordinance because it expands a use that should be under the Ordinance diminished or sort of removed and I am going to vote against the extension of the request.

CONSTANTINE ALEXANDER: Thank you. Anybody else have any comments?

SLATER ANDERSON: Well I -- it was approved a year ago, and I remember. And it needs obviously -- I would assume spent some time if his letter is truthful, time and money trying to get somewhere. And knowing that seasonal nature of the construction in the northeast and in Cambridge, I would sympathize with the situation and I would go along with his extension request.

CONSTANTINE ALEXANDER: So would I. I mean, I see, in my judgment, you know, we approved this once before by a four to one vote. I don't see any reason to change our

mind at this point.

THOMAS SCOTT: Was I on this case?

CONSTANTINE ALEXANDER: I think you may have been. There was a lot of architectural issues.

THOMAS SCOTT: Oh, right.

CONSTANTINE ALEXANDER: Maybe not. Do you want to look at the plan?

THOMAS SCOTT: Yes.

CONSTANTINE ALEXANDER: Tim, do you have any problems?

TIMOTHY HUGHES: I have no problems with it.

CONSTANTINE ALEXANDER: I'll let Tom look it over before we take a vote.

No, you did not sit on. It's Tim, myself, Brendan --

THOMAS SCOTT: So, can I vote on this?

CONSTANTINE ALEXANDER: Yes.

All those in favor of granting the

extension as requested, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Scott, Anderson.)

CONSTANTINE ALEXANDER: All those opposed?

(Heuer.)

(Whereupon, at 10:00 p.m., the Meeting of the Board of Zoning Appeal concluded.)

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**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a
Certified Shorthand Reporter, the
undersigned Notary Public, certify that:

I am not related to any of the parties
in this matter by blood or marriage and that
I am in no way interested in the outcome of

this matter.

I further certify that the testimony hereinbefore set forth is a true and accurate transcription of my stenographic notes to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of October 2011.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
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My Commission Expires:
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