

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING
THURSDAY, NOVEMBER 18, 2010 7:00 P.M.

Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Timothy Hughes, Vice Chair

Brendan Sullivan, Member

Tad Heuer, Member

Thomas Scott, Member

Douglas Myers, Member

Mahmood Firouzbakht, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

CONSTANTINE ALEXANDER: The Chair will call this meeting to order. And as is our custom, we will start with our continued cases. Before I start the continued cases, I would just mention that if anyone plans to either make a video or an audio copy of our proceedings, you have to get permission from the Chair. Is there anyone here planning to do that?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that no one is planning to do that. I'm going to make another announcement before we start our regular agenda as well. This is per the new Open Meeting Law.

* * * * *

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Douglas Myers, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9911, 10 Fawcett Street. Is there anyone here wishing to be heard on this matter?

ATTORNEY ANNE MALONE: Good evening. For the record, my name is Anne Malone from Prince, Lobel on behalf of Clearwire.

CONSTANTINE ALEXANDER: Okay. We sent you away before because -- we've continued this case many times. We sent you away because we're not happy with the visual impact of what you proposed to do.

ATTORNEY ANNE MALONE: Yes.

CONSTANTINE ALEXANDER: And we were not satisfied you were going to comply with the Zoning By-Law with regard to minimizing

the visual impact.

ATTORNEY ANNE MALONE: Yes.

CONSTANTINE ALEXANDER: Why don't you emphasizing the photo simulations.

ATTORNEY ANNE MALONE: Yes. This is just again what was originally -- actually first of all, just to refresh your memories, at this site Clearwire is proposing to add three wireless backhaul dish antennas, that's the new equipment that's going up. Initially we had sort of -- as you know, there are several antennas, other installations, other carriers on this building, and initially, you know, we had bigger pipe mounts with kind of next to what's there. And what we tried to do, we've been to the Planning Board several times as well, and they have given us finally a favorable recommendation the last time we were there.

CONSTANTINE ALEXANDER: Excuse me, I don't think -- unless it was put in the file

this afternoon I don't have a copy of it.

ATTORNEY ANNE MALONE: This was in May, and they told us not to come back.

CONSTANTINE ALEXANDER: Not to come back? But nothing since then?

ATTORNEY ANNE MALONE: So nothing new. Sorry, yes.

But what we tried to do is sort of consolidate what was up there with what Clearwire and Sprint originally had up there and minimize it as best as possible and then had Ben Karen (phonetic) as the Board requested, provide photo simulations. So, this antenna, this dish antenna originally was going to be cut off to the side with a bigger mount. We use a low profile mount, put it in between the existing antennas in order to minimize the visual impact. So I think significantly if you look at that and look what's here, you almost can't see the dish as -- I mean, not that you can't see it,

but it's minimized than what it was originally.

Then, if you look at -- I guess photo location 1 shows the two other dish antennas. And what we've done here is one -- this one mounted sort of close to the wall below the profile mount as close as possible. On that side of the building there were no other antennas to put them in between.

And then the third dish on the other side of the wall also shown on photo location 1, we had originally, if you look at the existing, there's an H-frame mount existing there with the antennas on either end of it. And because of the way that the dish was facing, we couldn't put the dish in the middle because we wouldn't be able to hit the line of sight because the antenna was blocking the line of sight. So, what we ended up doing in order to try and consolidate and use the existing frame that was there -- the existing

mount was there, was move over one of the antennas to the middle of the frame and then mount the dish on that existing frame next to it so that they were all on the same frame and not spreading out any further.

CONSTANTINE ALEXANDER: That H-frame is a pipe mount frame, is it not?

ATTORNEY ANNE MALONE: It's an -- the antennas I believe are a pipe mount, yes, pipe mount on the dish.

TAD HEUER: Why do you have an H-frame there at all?

ATTORNEY ANNE MALONE: I don't know. That's what's existing.

CONSTANTINE ALEXANDER: You made the point -- not to be so difficult so soon anyway, this is better than what you shown us before.

ATTORNEY ANNE MALONE: Yes.

CONSTANTINE ALEXANDER: That's not the issue. Is this as good as it can get?

ATTORNEY ANNE MALONE: I've been told that this is as --

CONSTANTINE ALEXANDER: Well, I don't know. I mean, we've had one of your competitors come in and now use pipe mounts. And that's what we object to as a Board. They put a frame around it, it looks like it's part of the structure. Much less visual impact than adding more to your pipe mounts.

ATTORNEY ANNE MALONE: Okay. And I agree on what we had -- and I know we spoke about this last time, and we also spoke about the BRA and sort of what we've done there. And so I went back and looked at some of the stuff, and spoke to some of the attorneys in my office that have been working with Matt Martin and BRA and sort of what's been approved there with respect to dishes -- and we've talked about this before, too. And because they -- you know, because they all communicate sometimes they need a little more

flexibility, and they're able to turn them and that's what they use the pipes for. Matt Martin has approved -- and they generally with respect to the dishes are using pipe mounts in Boston as well. Not necessarily they've been working on a way not to do that with the panel antennas, which we discussed last time. In this case these are three dishes and we've -- it's similar, the same sort of low profile mount we're using in Boston the same thing here.

TAD HEUER: You're also using two different type of pipe mounts for your backhall dishes, right?

ATTORNEY ANNE MALONE: In this particular -- at this site you mean?

TAD HEUER: Yes.

ATTORNEY ANNE MALONE: Yes. Well, one of them is because it's on the H-frame, it connects with the top and bottom of the H-frame and that's why that one's is a little

different than the other ones.

TAD HEUER: So you have one that's more intrusive because you're trying to use an H-frame that's already --

ATTORNEY ANNE MALONE: Already there, yes. And also with Boston if there's something there, generally we're using what's there.

CONSTANTINE ALEXANDER: We may think that's not a good idea. We may find that using something that's already there doesn't minimize the visual impact of what you're doing. It's a different type of mount somewhere else you might.

TAD HEUER: So on photo location
1 --

ATTORNEY ANNE MALONE: Yes.

TAD HEUER: -- I'm looking at existing.

ATTORNEY ANNE MALONE: Correct.

TAD HEUER: -- I see an H-mount and

I see two on the same facade on the right.

ATTORNEY ANNE MALONE: Yes.

TAD HEUER: Are those your antennas or someone else's? The ones that go above the roof.

ATTORNEY ANNE MALONE: I don't -- they're others. They're not ours.

BRENDAN SULLIVAN: Anne, do you have another set of simulations? A copy of what's in there?

CONSTANTINE ALEXANDER: Yes. We only have one in our files.

ATTORNEY ANNE MALONE: I was told only one.

CONSTANTINE ALEXANDER: It's not your fault.

BRENDAN SULLIVAN: I'm just trying to follow along.

Tad, go ahead.

TAD HEUER: Right, so photo location 1 shows an H-mount with two panel antennas on

on either end of it, and presumably at least one, if not two, empty bracket spaces in the middle. And then the two antennas that are mount to the building that go above the ridge line.

ATTORNEY ANNE MALONE: Those are not yours.

TAD HEUER: Which is not yours. And if they were yours, I would tell you to bring them down below the ridge line. But they're free-standing mounted antennas and they don't have this crossbar of the H. I'm not sure why the crossbar of the H that's there that sets up these bracketing spaces so intrusively, but it would seem that at minimum you would want to remove the H and have them free standing attached from the panel antennas, free standing attached on the backhall dish that would make it look more like the proposed on the next facade also on photo location 1.

ATTORNEY ANNE MALONE: The one on the right? This one here.

TAD HEUER: Yes.

And I mean -- yes, that's my question. I mean, why wouldn't you just remove the H-mount entirely and then put them on hinge mounts the way that your competitor proposed and we approved last week. So now we know it could be done. We asked a couple months ago, and either the architect and I think maybe your radio engineer says pipe mounts are the best we can do. And now we have someone else from T-Mobile coming in and saying we make a hinge mount that brings it closer to the facade, but we're back talking about pipe mounts.

ATTORNEY ANNE MALONE: Well, the diff -- A, and yes, I've been working with them trying to find out -- it's different technology. I mean, not that we couldn't use them or not, you know, I can't speak --

TAD HEUER: You're a huge telecommunications company. You can afford to go to your engineers and say don't give us pipes, give us hinges. T-Mobile did it. You're a billion dollar company. You can demand the product of a hinge mount if you wanted, right?

ATTORNEY ANNE MALONE: I, I can ask them to do that.

TAD HEUER: It boggles my mind to some extent.

ATTORNEY ANNE MALONE: These are dishes. What they were talking about the last time, the dishes. What they were talking about were panel antennas last time. The dishes is a different technology that T-Mobile uses, in that it's line of sight and they need some flexibility because the networks all communicate with each other. And if certain sites don't work out, then they have to readjust where they're pointing at.

And so that's where the pipe allows for that flexibility on the dish mount.

And I know we talked about the panel antennas last time. Also, with respect to those last time, I think we had had the pipe mounts that were closer to the facade than the hinge mounts that T-Mobile had. Not that that's relevant necessarily to this. But in the sense of closeness to the facade, the pipe mount at times still allows you to be closer than the hinge mounts.

TAD HEUER: Correct. Except you have a pipe in the background that everyone can see which is part of our original.

ATTORNEY ANNE MALONE: Correct, right. And with respect to coming forward with the panel antennas in the future. But the reason for the pipes here was because of the need to sort of rotate the dishes if necessary.

TAD HEUER: Is there a reason it

can't be done on some kind of universal joint mount? Where there's a pipe but it, you know, essentially looks like a smaller dish stuck to the wall like a suction cup out of which comes the attachment to the main dish and then it rotates on a universal joint. That would essentially eliminate the need for a pipe.

ATTORNEY ANNE MALONE: I was told structure -- I mean, we talked about that and I'd asked originally kind of what can we do without it? I was told structurally that this is the best that they could do.

CONSTANTINE ALEXANDER: Yes, and I'm sure they said that. But they're not facing us.

ATTORNEY ANNE MALONE: Right.

CONSTANTINE ALEXANDER: There's anonymous people back there. They just put the burden on you. And if they tell you the best they can do, all you can tell us is that.

And I think the notion is we have to accept it. I'm not ready to accept it. I want them -- the people who told you they can't do it to come down here and tell us they can't do it and answer some of the questions that Tad is raising.

BRENDAN SULLIVAN: I get the sense there is this huge warehouse where this vendor has a huge warehouse of equipment and it may be of another generation equipment that works for your application now and it will solve whatever, you know, you're trying to accomplish, but it's not the best we can do. And I really think that -- and unless we insist, unless we push for something that's more aesthetically pleasing to the eye, less intrusive, we're not going to get it. I mean, that's -- and, again, unfortunately like Gus said, you know, you're the gal sitting in the chair with the light bulb over your head. But, and, you know, engineering

is going to tell you go tell them this is, this is the best we can do. You're just the messenger.

ATTORNEY ANNE MALONE: Right.

BRENDAN SULLIVAN: And so I think I would send back the message that it's not good enough, folks.

ATTORNEY ANNE MALONE: So you want a structural engineer?

CONSTANTINE ALEXANDER: Someone here --

ATTORNEY ANNE MALONE: Somebody who can answer the questions with respect to the structural?

CONSTANTINE ALEXANDER: That's right. Somebody who is knowledgeable about this and can answer some of the questions we're going to ask about why --

BRENDAN SULLIVAN: And other than subpoenaing a catalog of telecommunication equipment that is available from vendors

across the country, and then we can say yeah, that's what we want. And why can't we do that? Well, because we have 10,000 of the other ones. And engineering tells us No. 1 it will work and it's the cheapest installation. It's an easy fit and it's cheap equipment.

CONSTANTINE ALEXANDER: Well --

BRENDAN SULLIVAN: We're pushing back on it.

ATTORNEY ANNE MALONE: Now, do you want me to also have them look into -- do you prefer not to have the H-frame there at all? And do you want me to see if they can do that? I don't know, but is that or the -- is that something you think --

TAD HEUER: As a practical matter, they concluded because I'm looking at the same facade at two single mounted pipe mount antennas that aren't yours and looking on the opposing facade, the backhall dish that you

want to put on is a pipe mount. So clearly there's no need for an H-frame.

ATTORNEY ANNE MALONE: I don't know what the structure -- maybe it's there --

TAD HEUER: Unless it's holding the building together, which I find difficult to believe, I don't think the H-frame needs to be there.

ATTORNEY ANNE MALONE: Okay. If they can find a way without it, you would prefer that. That's all I'm asking. Okay. I can ask that. And I'll see if I can someone come back in.

CONSTANTINE ALEXANDER: We're going to have to continue this case. I'm sorry. But you're the messenger that's being shot at. Not shot.

This is a case heard, so we need to pick a date that everybody can make.

BRENDAN SULLIVAN: What are you trying to reach? Obviously on one side

you're trying to go up and down Concord Avenue because -- other than that you're going across Fresh Pond. So you're trying to reach up and down Concord Avenue and you're trying to reach behind which would be Fresh Pond Shopping Center area heading....

ATTORNEY ANNE MALONE: In terms of the coverage?

BRENDAN SULLIVAN: Yes.

ATTORNEY ANNE MALONE: Or the line?

BRENDAN SULLIVAN: Yes, coverage.

ATTORNEY ANNE MALONE: Coverage.

So, this is the coverage spot. That green area is the coverage. But these dishes are actually the -- they're communicating with other sites. That's what the purpose of the dishes are. But the actual coverage for that whole facility is that green.

BRENDAN SULLIVAN: Okay. Four, five six, seven, eight, nine, ten proposed sites I think in Cambridge. Or seven or

eight more proposed.

ATTORNEY ANNE MALONE: Some of those may have already gone through.

BRENDAN SULLIVAN: Oh, okay. The only thing is that this band is up and down Concord Avenue and across Fresh Pond.

CONSTANTINE ALEXANDER: That's right.

TAD HEUER: My first thought is you're covering a lot of area here, aren't you? You're covering a body of water that's inaccessible.

ATTORNEY ANNE MALONE: I don't. I don't know.

TAD HEUER: Fresh Pond is fenced. It's a reservoir.

BRENDAN SULLIVAN: Well, as you jog and --

TAD HEUER: I mean, you're covering a large body of the water that's pointing to the southwest.

BRENDAN SULLIVAN: It's a nature trail.

CONSTANTINE ALEXANDER: That's right.

BRENDAN SULLIVAN: As you're walking, you can download at the same time I guess, I don't know.

CONSTANTINE ALEXANDER: Can we take that or that came from your files?

ATTORNEY ANNE MALONE: Yes, you can keep that. I should have another copy.

CONSTANTINE ALEXANDER: Sean, what's the date you have for us?

SEAN O'GRADY: December 16th.

CONSTANTINE ALEXANDER: Can everybody make the 16th?

MAHMOOD FIROUZBAKHT: I think so.

CONSTANTINE ALEXANDER: Does that give you enough time to get your people here?

DOUGLAS MYERS: And the engineers will come in and respond to the technical

issues that we raised and the questions are not just to say well, we have to go back and look into --

CONSTANTINE ALEXANDER: If they do, we're going to continue again. I think you get the message.

ATTORNEY ANNE MALONE: Get someone who has the technical knowledge to --

CONSTANTINE ALEXANDER: Yes, we're really going to press -- not just this case but other cases. You've seen the pattern. We want to be understand really why we can't -- you can't do better. Particularly -- not you but your client. Particularly since your competitors are doing that.

ATTORNEY ANNE MALONE: Okay.

CONSTANTINE ALEXANDER: That's the crux of the issue.

BRENDAN SULLIVAN: Kicking and screaming, but they're doing better.

TAD HEUER: I'll add to that, and it's similar and some not. Could you get your RF engineer to talk to us about why on a broader scale you can't do a distributed antenna system in Cambridge?

ATTORNEY ANNE MALONE: Okay.

TAD HEUER: Which remove a lot of these off the buildings. I know it might not be possible, but I'd like to hear from them and ask all the carriers that are out there, just to put people on notice if they're ever back, what the barriers are to doing a distributed system which would put things essentially on top of streetlights, other types of low profile entities, smaller and you would need more of them, but we'd get us away from a lot of these visual impacts and probabilities. So it's something I'd like to know about in Cambridge.

ATTORNEY ANNE MALONE: Okay.

CONSTANTINE ALEXANDER: Ready for a

motion.

The Chair moves that this case be continued as a case heard until seven p.m. on December 16th you said?

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: December 16th. On the condition that the sign that's now in place be modified to reflect the new date and time. Although I think it says seven o'clock there now anyway.

A waiver of notice for time of decision is in the file. And it's not part of the motion, you get the understanding of what we want to have happened on the 16th?

ATTORNEY ANNE MALONE: Yes.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

ATTORNEY ANNE MALONE: Thank you.
(Alexander, Sullivan, Heuer, Myers,
Firouzbakht).

(7:20 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10013, 89 Belmont Street. Is there anyone here wishing to be heard on this matter?

For the record please give your name and address to the stenographer.

ANTHONY SANCHEZ: My name is Anthony Sanchez. I'm at Nine Olive Square, Somerville, Mass.

JAMES COMEAU: And I'm Jim Comeau, C-o-m-e-a-u, and I live at 89 Belmont Street.

NANCY DOWLING: And I'm Nancy Dowling. I also live at 89 Belmont Street in Cambridge, Massachusetts.

CONSTANTINE ALEXANDER: Okay. Last time you were here you were seeking a

Variance to build a walk-in closet above your rear porch.

NANCY DOWLING: Correct.

CONSTANTINE ALEXANDER: And you need a Variance because you're over the FAR now and you're going to go slightly more over.

NANCY DOWLING: Yes.

CONSTANTINE ALEXANDER: And we had some concerns primarily with the design of what you're proposing today, specifically with the lack -- the fact that it's a blank wall. And we asked you to come back with new plans and you have. Why don't you go through them with us.

ANTHONY SANCHEZ: So we went through a variety of schemes that have smaller windows, you know, and one window, two windows, some type of detailing at the gable. And we think that the simplest and the most, I guess, effective scheme would be having the windows just be brought up and continue that

line across -- or to the third floor with those windows the same size and same comparability.

CONSTANTINE ALEXANDER: The south elevation is the one that's most directly affected.

ANTHONY SANCHEZ: Uh-huh, yeah.

TAD HEUER: No windows on the east or west elevation on the second floor right now?

ANTHONY SANCHEZ: There are not.

CONSTANTINE ALEXANDER: Myself I have no questions. Anyone else wants to ask 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. I checked, there were no letters in the file one way or the other on this. You have no letters with you?

NANCY DOWLING: No.

CONSTANTINE ALEXANDER: Not that you need to.

Questions from members of the Board or are we ready for a vote.

THOMAS SCOTT: Are they real windows or are they blocked in the back?

ANTHONY SANCHEZ: I think they'll be real windows with blinds like we had said. If there is anything open, they can open them up in the summertime.

NANCY DOWLING: I think they will be operable, but we probably will, you know, keep them closed because of hanging clothing. It is a closet. But they will be operable.

TAD HEUER: That would also give you the opportunity if you to in some future point if you wanted to come back for instance build the dormer as we suggest you might, knock out that wall and use that or put the closet elsewhere.

NANCY DOWLING: Right. And it is a possibility.

TAD HEUER: Not for tonight.

ANTHONY SANCHEZ: No, no, not tonight.

NANCY DOWLING: We do need another bathroom, but we can't afford it right now.

CONSTANTINE ALEXANDER: Tom, any observations?

THOMAS SCOTT: No, I think, I think it's definitely an improvement.

CONSTANTINE ALEXANDER: I think that's correct.

Tad, anything you want to add?

TAD HEUER: No.

CONSTANTINE ALEXANDER: Ready for a motion.

THOMAS SCOTT: Yes.

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

That a literal enforcement of the provisions of our Zoning By-Law would create a substantial hardship to the Petitioner. Such hardship being that they need additional living space or space as part of the living space, and is not otherwise available on the premises.

That the hardship is owing to circumstances relating to the shape of the structure. This structure is a non-conforming structure. So that any exterior modification, given the size of the lot of the location of the structure would require Zoning relief.

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

The relief being sought is modest in terms of its non-conformance with our Zoning By-Laws. That it provides, it upgrades the

inhabitability of the structure by providing a more desirable living space.

That there is no neighborhood opposition to this Petition. And that the Petitioner has made a diligent effort to design this addition in a matter that is consistent with the architecture of the building and with the goals of our Zoning By-Law and of our community in which we live.

On the basis of this, the Chair moves that a Variance be granted to the Petitioner to construct this walk-in closet above the rear porch on the condition that the work proceed in accordance with plans submitted by the Petitioner. They're numbered A1, A2, A3, A4, A5, A6, D1, E1, F1. The first page of which has been initialed by the Chair.

Before I take the vote, these are the plans. If you change them, you have to come back. You understand that?

ANTHONY SANCHEZ: Understand.

CONSTANTINE ALEXANDER: On the basis of this Motion, all those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Motion granted.

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

(7:25 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9880, 148 Larch Road. Is there anyone here wishing to be heard in this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that no one wishes to be heard. There's a letter in the file. Say again, I'm sorry?

UNIDENTIFIED MALE: I do. I'm waiting for a new date. I guess they're looking for a postponement?

CONSTANTINE ALEXANDER: They are. And I'll give you a new date in a second. When I said anyone wishing to be heard, I meant the Petitioner, and you're not the

Petitioner obviously. You're not the person seeking the Variance?

UNIDENTIFIED MALE: No, no, no. I'm against it.

CONSTANTINE ALEXANDER: You're an interested party.

There is a letter from the Petitioner in our files. It's addressed to Maria Pacheco. "After speaking with Ranjit about our case, he had our application to your Legal Department. We also consulted with our lawyer and have learned that we can move forward with our presentation to the BZA. At this time I respectfully request to move our hearing to a later date so that we can prevent our findings to the unit owners of 146 Larch Road. We are hoping that you might have a space for us in January 2011 which I believe will give us ample time to review our documents with everyone involved. As always, thank you for your assistance."

What dates do we have?

SEAN O'GRADY: In January, the 13th or the 27th. Brendan won't be here on the 27th.

CONSTANTINE ALEXANDER: This is a case not heard. We can do the 13th.

BRENDAN SULLIVAN: Doesn't matter to me.

CONSTANTINE ALEXANDER: We usually take them as soon as they open up.

SEAN O'GRADY: Okay, 13th.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until seven p.m. on January 13th. A waiver of time for decision already being on file. This being a case not heard. The motion to continue will be on the condition, that the Petitioner post a new sign with a new date and time, and that the sign be posted in accordance with the requirements of our Zoning By-Law.

I say this -- this is not part of the

motion. I say this because there's a question in the past about the posting of the sign. And the Petitioner needs to understand that it can't be behind some other objects. That the sign is largely obscured to the public way. Anyway that's to you Sean, to make sure they understand.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

(7:30 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10007, 135 Magazine Street. 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. James Rafferty on behalf of the Applicant. R-a-f-f-e-r-t-y.

The Petitioners in the case, Cameron and Michelle Hicks; Michelle to my left and Cameron to my right. The architect, Rob Trombour, T-r-o-m-b-o-u-r. Robert Trombour.

CONSTANTINE ALEXANDER: I'm sorry to ruffle papers. Keep going.

ATTORNEY JAMES RAFFERTY: No,

no -- okay.

The Board will probably recall that we were here a few weeks back with this application which is somewhat unique in that it's looking to change a two-family house into a single-family house. The result of the renovations proposed, actually a net reduction in GFA of approximately 300 square feet. The removal of a sun porch in the rear actually makes the property more conforming to the rear yard setback which it doesn't do now. But the issue that was the subject of a great deal of discussion was this stairway, projecting bay, dormer, depending on one's perspective, involving a relocated stairway. The current stairway you'll recall is in the location where they typically would appear in a two-family house, right inside the entry. The reprogramming of the building to accommodate more of a first floor living has relocated the stairway into the middle of the

house.

We understood from the comments at the last hearing that there was concern expressed about the extent to which this feature complied with the dormer guidelines. And I think it's safe to say that it didn't, but part of the reason was that it wasn't perceived, at least in its design and its application to the house as a dormer. So -- but we were asked and appreciate the opportunity to come back with the design that is more consistent with the dormer guidelines. So Mr. Trombour -- we have that plan, and we also have it in model form. So what's before the Board tonight is a model of the existing house, in the middle, and the two abutting structures on either side of it. This is a three-unit condominium building. It should be noted that the unit owner --

CONSTANTINE ALEXANDER: Could you roll it off your laptop, that's all.

MICHELLE HICKS: I can hold it up more so you can look at it.

ATTORNEY JAMES RAFFERTY: What we could actually do -- we'd be happy to get as comfortable as you like with that.

MICHELLE HICKS: Watch out for that little piece right there.

ATTORNEY JAMES RAFFERTY: Oh, yes, that's the alternative that's inside. We should probably take that out. That's the alternative that we can show you in a minute. But as you probably hopefully gathered from my correspondence, there really is a strong desire on the part of the Applicant to stay with the original design. But of course they're being counseled to be pragmatic and understand the arithmetic involved in achieving that Variance. It's interesting to note the wall is non-conforming quite narrowly. It's a formulated setback here. The wall doesn't become non-conforming, and

it's only by inches, until you get three-quarters of the way down the face of the building. So the portion of the wall where this sits is actually conforming. But if you do some averaging or interpretation, it suggests that the wall at 10.75 -- should be 10.75, it's only at 10 feet. There are portions of it that exceed 10.75. So, it is a modestly non-conforming wall. The feature does have components of GFA. But as I noted, the net building reduction is over 300 square feet which is somewhat unique. And the abutters who faces this does support it. Two in the building. One right on the second floor who says I look right at it. The alternative scheme --

TAD HEUER: Are these abutters -- sorry, are they owners?

ATTORNEY JAMES RAFFERTY: Yes, condo owners.

CONSTANTINE ALEXANDER: And the one

you have here, before you get to the alternative.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Which you presented to us last time.

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: I think you said there were slight modifications on the plans --

ATTORNEY JAMES RAFFERTY: Yes, I think the only modifications I noticed was in reference to a roof vent that didn't appear, but I think it's -- is there any --

ROBERT TROMBOUR: We just added a little bit of detail around the roof edge and the siding on the elevation.

CONSTANTINE ALEXANDER: So essentially this is what we saw last time?

MICHELLE HICKS: Yes.

ROBERT TROMBOUR: Matching wise, yes.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: The most significant way, and I think it was pointed out by one of the members, that that scheme doesn't comply with the dormer guidelines is its relationship to the roof line. So we were asked I believe by Mr. Sullivan could we at least show what it would look like if it did follow the dormer guidelines? And it was -- Mr. Trombour studied it. You can see there was a great deal of effort put into the study. That, this relationship in the alternative is far more consistent with the dormer guideline and setback.

CONSTANTINE ALEXANDER: Can I just put that on?

ATTORNEY JAMES RAFFERTY: Yes. I think you have to be an architect to do it.

CONSTANTINE ALEXANDER: Certainly that leaves me out.

CAMERON HICKS: What's your

experience with Lego?

MICHELLE HICKS: No, that's not how it goes.

THOMAS SCOTT: That's wrong.

ATTORNEY JAMES RAFFERTY: So I know one of the issues, of course, was how it would be viewed from the street? And the model does give some perspective on that. As I said, the owner at 137 Magazine Street has a letter in support. She's literally -- she's on the first floor.

CONSTANTINE ALEXANDER: Could I -- I wanted to ask you that question later, but since you brought it up now. We have a letter in support for the original proposal.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: You now have the alternative which is not your preferred one, which may be our preferred one. Has she seen that and has she commented on that?

ATTORNEY JAMES RAFFERTY: I don't know the answer to that.

CAMERON HICKS: I don't think she's seen the alternative.

CONSTANTINE ALEXANDER: That distresses me a little bit simply because she took the trouble to write to us. To stress to you if -- I don't know where we're going to go with this -- but if we were to you say now you've got the new design, she's going to be a little bit surprised to see something that's different than what she signed off on. Follow?

ATTORNEY JAMES RAFFERTY: Well, I guess the characterization is quite different. I mean her issue was, and the reason we paid particular attention to her was that she -- there's -- what the original design is one that is less traditional and closer to her than this one. So I think it's a reasonable assumption that if she could

live with the other one, she could really live with that one. I mean, her point was she's very respectful of the fact that they're trying to make the house look good. That she's -- her comment was hey, it's opposite -- I mean, Mr. Hicks spoke to her. It's opposite my bedroom and I'm fine with it. So why should anyone else care? And that was her comment. She's the second floor person. So, I --

CONSTANTINE ALEXANDER: Except for the amount of window space that faces her is a lot more. I mean, it's one big window. You've got two smaller windows rather than one very large one. I don't know. She may have a reaction to that. I think it's a she.

ATTORNEY JAMES RAFFERTY: It is a she. Here's her letter. Her name is Olivia Fiske.

CONSTANTINE ALEXANDER: I guess I'll simply say I'm disappointed that you

didn't have her look at it and give us a signoff on it. But anyway, let's see where this case goes.

ATTORNEY JAMES RAFFERTY: Right.

I left the case with the understanding last time that there were not four members that seemed supportive of it. I heard and reviewed the transcript before here, and certainly, including yourself Mr. Chairman, expressed no reservation. Frankly, it was Mr. Sullivan and Mr. Heuer that had most difficulty. And Mr. Sullivan said, well, can you at least show us what it looked like? And I interpreted it that as not that we had to come back with that, but for purposes of understanding the impact of this, we should at least see it in the context of the dormer. I did caution my client well, now we don't want to come back and offend anyone because we were given an opportunity to redesign. And there's a little -- the Irish have a term

for this, "chutzpa" to come in and come back having redesigned and say by the way, I don't want the redesign, I really want that. But I told my clients, frankly, that the Board is very open minded and has the capacity intellectually to look at things and to visualize them. And that you should make the case and give it everything else that's happening here, with the reduction the GFA, the very mild nature of the non-conforming wall and the support of the abutter that this does help one understand, it's a little bit deviation from the traditional design feature. But I know there are some letters of support from neighbors and others who applaud it. And I think to put it mildly, that as enthusiastic as the Hicks are about their new purchase, they see the house as rather generic looking and they see this as a feature that will add a little interest to it and that's what they're hoping to achieve

here.

BRENDAN SULLIVAN: What does that scheme that's on there now, what does that do to your walking up the stairs? How does impact?

MICHELLE HICKS: On the cross-section?

ROBERT TROMBOUR: I can, but just answer to your question quickly. One of the reasons why we feel that this -- the original version is better is because we can distribute the windows, have some of the windows up higher and have some of the windows down lower. So we have that -- in the original scheme we have a band of solid facade across there.

BRENDAN SULLIVAN: So you're pushing the plane -- you're pushing the wall out obviously?

ROBERT TROMBOUR: Right.

BRENDAN SULLIVAN: That allows an

expanded landing.

ROBERT TROMBOUR: That's correct.

BRENDAN SULLIVAN: You're going up and continuing up with that line?

ROBERT TROMBOUR: Correct.

BRENDAN SULLIVAN: Whereas the --

ROBERT TROMBOUR: The alternate.

BRENDAN SULLIVAN: -- the alternate plan interrupts that.

ROBERT TROMBOUR: That's correct.

MICHELLE HICKS: Right.

BRENDAN SULLIVAN: Well, it doesn't restrict your travel up the stairs?

MICHELLE HICKS: No.

ROBERT TROMBOUR: No.

MICHELLE HICKS: But it limits the light. The natural light, because you're having to bring the windows down on the second scheme.

BRENDAN SULLIVAN: And you're facing north?

ROBERT TROMBOUR: Northeast.

MICHELLE HICKS: Yeah. So that triple decker obviously you get less light into the house on the first floor because the triple decker next to you. So, the idea is that we raise the windows up so we can capture more of the natural light so that it will go into all three floors of the house.

ROBERT TROMBOUR: There's also a privacy issue, too. Because in the original scheme we had a portion of that facade solid so that there was always a little bit more privacy going across the way. When we raise -- and having a window up high that helped us do that. With the dormer, with the windows not breaking the roof line, we have to -- to get the same amount of glass, you have to squeeze it into a smaller area down lower. And the window up top and a dormer because of the fact of it's setback on the roof, ends up having to be smaller in addition. So it puts

the glass where we would rather not have it.
And some portion glass.

TAD HEUER: What's your overall square footage of window in the original scheme and the new scheme? Because I'm looking at these and I'm eyeballing them and it looks like they're the same whether they're the original scheme or non-preferred scheme amount. It gives you a little bit more square footage. I understand your point about where the square footage is, but what's the actual number?

ATTORNEY JAMES RAFFERTY: You mean area of glass?

TAD HEUER: Area of glass.

ROBERT TROMBOUR: Windows probably about six feet -- it's probably -- I mean, I'm guessing. I'm just coming up with this off the top of my head. But I'd say it's six feet by 12 feet high. So, 72. But I guess my question is why -- I'm saying the square

footage is about the same.

TAD HEUER: Right. That's my question.

ROBERT TROMBOUR: No, there isn't that much of a difference. It's the location of it. Because we can have that glass up higher and be a little bit out of the privacy issue and also getting more natural light.

TAD HEUER: Glass up higher in which scheme? That doesn't seem to be --

ROBERT TROMBOUR: I'm saying more glass up higher. More of the glass is up higher.

TAD HEUER: But that doesn't seem to be true. I'm looking at these and where you have to put this dormer, this glass is higher than this one.

ATTORNEY JAMES RAFFERTY: Well, I guess one could continue this line of conversation, but at the end of the day, the question I was just presented by the Variance

admittedly because of the fact that the house is over the GFA, and this represents the GFA, we would clearly need the Variance. But at some point I think we were thinking that the relevance of the dormer guidelines to this particular design feature is something that obviously the Board will have to conclude. And we wouldn't make the case that it conforms with it. And I think the rationale that it doesn't is because it's not seen as a dormer in the traditional sense. And we can continue -- we have some interior sections we can show the Board. And I guess that's what these are now.

TAD HEUER: Mr. Rafferty, can you give us your thought to whom the dormer guidelines do apply?

ATTORNEY JAMES RAFFERTY: To whom?

TAD HEUER: Yes. In what situations would the dormer guidelines would we want to adhere to them?

ATTORNEY JAMES RAFFERTY: Well, I guess it goes to the definition of dormer. I was here a while ago and I had a no case with a no windows and a dormer. And I was convinced that that wouldn't qualify as a dormer. But I learn every week I come here. So, the dormer guidelines, I tell clients, were adopted because one of the common forms of expansion in the housing stock in the city is dormers for good reason. And the dormer guidelines are relevant when you need Zoning relief. If you were putting in a conforming dormer, you can ignore them. And we see plenty of examples where that occurs. So, one could make the argument that if the Board or the department went to the effort to promulgate the guidelines, there's some thinking that dormers, in certain situations, are warranted for purposes of relief. But they are a feature that we typically see associated with creating

additional living area in attic space. This is a little different. This really doesn't affect the living area. This is about the stairway. Admittedly a different kind of a stairway.

So, to whom does it apply? You would -- is every third floor addition -- is every third floor addition a dormer? No. But I would say given this style that's being proposed here, I think it's an open question as to whether it fits the definition of what a dormer is. It certainly wasn't contemplated as it was designed as being a dormer. I think the -- if you looked at the dormer guidelines, you would say there are ways in which this exceeds them significantly in terms of its length and its impact. It's setback from the street. Although it has that feature, but it's very -- of course the relationship between the roof and the third floor element is different.

CONSTANTINE ALEXANDER: I would answer Tad's question a little bit differently. It seems to me that the dormer guidelines are there as person are going to want to add additional living space through a dormer. And that living space is going to exceed our Zoning requirements, then I think the dormer guidelines are there to provide an aesthetic element. Saying that if you're going to have maybe something structural wise, too big, too much FAR, that the Board should take into account what's done from an aesthetic point of view to minimize the impact of this increased bulk of the structure.

ATTORNEY JAMES RAFFERTY: That's true.

CONSTANTINE ALEXANDER: And that gets right into -- maybe that's why Tad asked the question -- gets into why we're debating this one. It is an aesthetic issue.

ATTORNEY JAMES RAFFERTY: Agreed.

CONSTANTINE ALEXANDER: And I think the former guidelines give us some guideline of what the aesthetics should be. With your preferred one, which is the one you showed us last time with a slight modification, it raised some aesthetic issues with members of the Board. That's why we're here tonight.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: I have to say personally, and actually as efficient I am in aesthetics, I happen to like your revised structure better than the original one. I know it's not your preferred one. And I was ready to support the original one. But I would prefer this one tonight speaking for myself.

THOMAS SCOTT: Yes, I like the fact that the eave is not interrupted along this edge. I'm not understanding this section. I just don't see the thickness of this

structure.

ROBERT TROMBOUR: This is just an interior.

THOMAS SCOTT: This is interior line right here.

ROBERT TROMBOUR: Yeah, profile, correct.

THOMAS SCOTT: That's the profile as opposed to this line right here?

ROBERT TROMBOUR: That's right.

MICHELLE HICKS: Can we show you some pictures of houses that we saw in the neighborhood that had similar design features like the one we're -- our original proposal?

CAMERON HICKS: Start with the picture from in front of 135 Magazine because it is quite amazing. If you stand on the sidewalk, you can't even see the roof. A lot of what we're talking --

TAD HEUER: Are these additions that

we've granted Variances for?

MICHELLE HICKS: That, I don't know. It's just showing -- trying to show that the --

ATTORNEY JAMES RAFFERTY: No, I would agree with Mr. -- we are now clearly in -- and, you know, we are in the area of aesthetic. And on this side of the table it can start to feel a bit subjective, you know, in terms of gee, is this, this, that. But the numbers tell the story. It's a GFA question, so that puts us at the -- we're vulnerable. We need to -- I wanted to say at the mercy of the Board, but that sounds too draconian. I mean, so we're here saying it's part of the analysis of what's happening here. We're asking the Board to take a macro view of the manner in which the house is being reduced in its intensity. We don't see too many two-family houses becoming single-family houses. We don't see too many projects

coming in here and leaving with less square footage than they had when they arrived. We don't see too many cases where by removing an existing addition, we're going to increase the open space and make the rear setback conforming. So, balancing the equities here we're hoping that those things get included in the deliberation of the Board as to this particular feature.

CONSTANTINE ALEXANDER: To be sure. I mean, you do get credit for the -- to the improvement in the Zoning compliance with the structure. But you're still not in compliance and, therefore, you got to -- you're back to the dormer guidelines.

ATTORNEY JAMES RAFFERTY: I wouldn't have it any other way. I mean, we're here. But the dormer guidelines are guidelines and it's been said before. They're not in the Ordinance. I agree with you. I think they're here to guide people,

particularly architects. I often have clients come to me and they've designed this, and I turn to the architect and I say have you reviewed the dormer guidelines?

CONSTANTINE ALEXANDER: Exactly.

ATTORNEY JAMES RAFFERTY: Well, exactly. And I said well, you might as well, go back to read those. And it's a shame you paid someone to design a dormer for you. Because we know what we don't like. We don't like the long shed dormers that run the length of the building. We've seen plenty of them. And there's a whole bunch of hulking mass running the whole length of the building. I would suggest here the relationship of breaking the roof line is the one component of about five components in the designer guideline, in terms of where it meets the top of the roof, the expansion which it has, how setback from the front facade the dormer is. This meets many of those, not all of them.

And I know the Board in evaluating dormers, at times does recognize some latitude. And frankly, we won't take up much more time. I think that's where we are at the moment. We are asking for that latitude with this particular element. Probably not worth going back and forth. Mr. Shirley who sits on the Historical Commission looked at this carefully, doesn't view it as a dormer. The photos we're going to show you involve stairways that have some elements to it. I've probably taken more time than I should. I know you have many busy cases. I must say I do this a lot. When I first looked at this, I honestly said to the Hickses you really don't need me, because you're going from a two to a one. You're taking 300 square feet out of the building. You're making the rear setback conforming. You're making more open space. And this is no big deal. And the neighbor who -- the two people that live next

to it are for it, you're in pretty good shape. But they said well, no, Mr. Rafferty, we know if we go with you we'll feel much better.

CONSTANTINE ALEXANDER: I don't think she'll feel that way today.

ATTORNEY JAMES RAFFERTY: We've got plenty of time here, Mr. Chairman.

TAD HEUER: Does the non-proposed proposal still need relief?

ATTORNEY JAMES RAFFERTY: Oh, yes, because of the wall. And the GFA.

TAD HEUER: Because of the GFA and this? Because you're cutting down space, right?

CONSTANTINE ALEXANDER: Yes, but they're still over. They're cutting down space, but they're still over.

ATTORNEY JAMES RAFFERTY: Well, you got to get to conforming before you can. So essentially we're getting no -- I won't say no credit, but it's not a case of we're taking

that 300 and using it. Yes. It might need a little less to your point. I guess maybe I haven't run that math, but, you know, you're in for a penny, you're in for a pound. We need the Variance, no question.

As you can tell given the effort here, I don't think the Applicants have taken a casual approach to this. It's a feature of the house they feel very strongly about because, you know, my view is, okay, why don't you do what they want and then they'll approve it and you'll go on your way. They didn't want to simply throw a sock up and say okay, this is what you want, and this is what we'll take. I mean, we kind of know where we can go with that approach. There's a real integrity with this design that the Applicant and the architect feel strongly about. And they were very encouraged by some of the board members who expressed support for it last time. And the thinking that, you know, in

fairness let's give the full presentation and let the Board reach a conclusion after they see -- I mean, I found this exercise to be very helpful. I hope the Board does as well, the model and it's impact. Because it is somewhat unique. But I think Mrs. Hicks would love to show you just for a minute other homes that have this element. They're trying to add an element to their home that they think will give it a level of interest.

MICHELLE HICKS: This is actually 135 Magazine from the street. So you can see how being down on the sidewalk you don't actually see up to the roof. So, you wouldn't see it the way we're all looking at it which is from a perspective looking down.

This is the house in Cambridgeport that kind of has the similar feature.

CONSTANTINE ALEXANDER: Where in Cambridgeport is it?

MICHELLE HICKS: I don't remember

the street. We literally walked all around Cambridgeport. I mean, we have a number of --

CAMERON HICKS: Within four or five blocks of 135 Magazine.

MICHELLE HICKS: Yeah.

ATTORNEY JAMES RAFFERTY: I think the point is there's an eclectic myth of some very interesting houses. This one on the competition basis is rather plain and doesn't -- it's not an attempt to be showy. It's just an attempt to --

MICHELLE HICKS: And this one has a similar idea.

ATTORNEY JAMES RAFFERTY: If you look at the front facade as well, there are some interesting things happening in a modernistic way, all of which are occurring as of right. But I think this is seen as part of the overall genre of what they're trying to transform the house into a different --

MICHELLE HICKS: That's on Magazine. So it's nothing -- I guess our point is that we don't feel that what we're doing is unusual. It's just that it's aesthetic as you said. It's an aesthetic issue.

CONSTANTINE ALEXANDER: Just for my benefit, why are you so strongly in favor of the original proposal as to the so-called revised proposal?

MICHELLE HICKS: Right. We feel that the way -- and I should let Rob speak because he's the architect. We feel that the way -- what that facade is achieving brings in more consistent light into the stairwell. So there you see you have a break where the roof line is. And it also gives us a little more privacy. And this also makes it a little more interesting. I mean, the house I think I said this at the last meeting, the house is a rectangular structure. There's really nothing interesting about it. And so

we actually saw that as an opportunity to be a little more creative. And we see lots of houses in the neighborhood and otherwise that have lots of interesting features that we kind of take --

CONSTANTINE ALEXANDER: You don't think the revised plan is not -- it may not be as creative to your mind. It's not --

MICHELLE HICKS: Yeah, I don't think it's as elegant a solution to what we're trying to achieve is basically what it is. I just think it chops it up. And I think on the side of the house where we're not in the face of the street, you know, we're not trying to do anything too dramatic where the front facade is. We're trying to keep in line with the house to the right of it which is the exact same structure. It's kind of our opportunity to do something that's a little more interesting. And at the same time achieving more natural light into the entire

house.

BRENDAN SULLIVAN: The difference in the stairwell with the original scheme has an uninterrupted facade. Whereas now with the revised will be interrupted. That's when I go back to some of the larger houses off the Brattle Street, so on and so forth, that have these central stairways and those are uninterrupted stairwells.

Just point of reference so I can understand this. Where is the landing?

ROBERT TROMBOUR: The line is right here. The landing is down about right there (indicating).

BRENDAN SULLIVAN: Okay.

ROBERT TROMBOUR: The switch back landing. It's --

BRENDAN SULLIVAN: Right.

ROBERT TROMBOUR: So that's about two and a half feet. Two feet up.

BRENDAN SULLIVAN: And you're up in

here with the third floor?

ROBERT TROMBOUR: That's right.

Yeah, that's the third floor rail.

BRENDAN SULLIVAN: That's right. I mean, I was --

MICHELLE HICKS: Does anyone want to take a look?

BRENDAN SULLIVAN: -- at the original hearing I was not convinced that it was maybe the right thing to do. And I've gone by the house three or four times in the last couple of weeks, I am less adamant about my objection to it before only because -- I mean, the outside is the outside, but standing on the inside -- obviously the house is gutted what have you, but standing on the inside there's an uninterrupted flow in the stairwell. I think it makes a big difference on the inside. I was not convinced of that the last time, and now I may be flipping and you're flipping the other way. But anyhow,

I have less objection to the original plan.

CONSTANTINE ALEXANDER: Maybe before we get more confused with more questions let me put it out to public testimony and let me read some letters into the file. Do you have a question you want to ask right now?

Is there anyone wishing to be heard on this matter?

(No Response.)

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

There are two letters in the file that I will read into the record. They're not that long and I think it's good to have them read to all the members of the Board.

One is from Lester L. Sackett, S-a-c-k-e-t-t and Virginia A. Jonas, J-o-n-a-s who reside at 137 Magazine Street. "This letter is to confirm that we have reviewed the proposed window relocations in

case No. 10007 before the Board and that we have no objections to the Special Permit Petition for window relocations in a setback. The owner occupied the house that abuts the property on the side where the proposed window changes are to occur. We also have no objections to the Petition for dormers/bay windows that are proposed."

And has been observed earlier, this letter was in regard to the original proposal and they have not commented on or I guess have not seen the alternative that's been put before the Board tonight.

And then we do have a letter from Frank Shirley Architects addressed to this Board. "As a resident of Cambridge and a practicing residential architect, I am writing in support of the renovation at 135 Magazine Street. I find the changes proposed to be in keeping with the scale and character of the neighborhood of Cambridgeport. I would like

to direct more specific comments to the large window proposed over the formal stair. This window projects from the north facade and extends above the eave. In some respects it takes on the character of a dormer, but this architectural feature does not fit the traditional role of a dormer. Instead the nearly two-story stair hole window is intended to ornament, to add drama to an otherwise plain side wall. There's a long tradition of introducing interesting specialty windows over stairs. My house is an example. It has a two-story tall window asymmetrically placed above a turned gable on the rear facade. It is intended to attract attention by adding a visually intriguing feature to an otherwise banal facade. In the Victorian era in particular it was common to push and pull facades to create visual interest, to create drama. It is in this tradition that I embrace the proposed stair

window at 135 Magazine Street. Further, it would be my suggestion to allow the window to break the eave line as proposed. This playful gesture elevates the window to that of the compositional centerpiece of the long facade. Respectfully, Frank Shirley."

ATTORNEY JAMES RAFFERTY:

Mr. Chair, there's one other abutter and it looks like an original letter. She's the one that lives right opposite.

CONSTANTINE ALEXANDER: We didn't have this. I'll just read into the file a letter from Olivia Fiske, F-i-s-k-e, 131 Magazine Street, No. 2. "As an abutting neighbor, I am writing in support of renovations planned for 135 Magazine Street. I have no objections to the design of the architectural feature proposed to the northeast side of the building. I occupy one of the units that directly faces the side of 135 where the proposed change will be, and I

think it would be very attractive.

Actually, I think it will give a contemporary twist to an otherwise bland wall."

Those seem to be the sum and substance of our written comments. I will close public testimony at this time and open it back to the members of the Board for questions, comments before we take a vote.

We have to talk about what kind of vote we're going to take.

THOMAS SCOTT: Just, I really appreciate the fact that you brought the model. That really helps to better understand the relationship of that element to the rest of the building. The fact that you saved the dormer in the front in its original state I think is of value. The fact that you've kind of gone to more of a contemporary design, I'm definitely going towards the original design because I think it's more in with the design concept that

you've put together. It kind of follows the form follows function. I think what Brendan said having the tall uninterrupted stairway is definitely valuable for what you're moving doing. You're taking a major element of the house and you're moving it and you're trying to feature that in the home, and I think having that two-story space is important to that, to that statement. So I'm definitely in favor of the original design.

CONSTANTINE ALEXANDER: Further comments from members of the Board? None I guess.

Well, the question is here as you know, when we make a motion for a Variance, and assuming it we grant it, we tie it to conformance with a certain set of plans. And you've given us two set of plans that we requested; the original with a twist, and then the revised which responded to the comments we had at the last meeting.

Question to members of the Board:
Which plans do we want to tie the motion to?
I want to get a sense of which one where we're
going. The original with the twist or the
less desirable from their perspective with
the dormer style?

THOMAS SCOTT: Original.

BRENDAN SULLIVAN: The original
one.

TAD HEUER: I won't vote for the
original.

CONSTANTINE ALEXANDER: Mahmood?

MAHMOOD FIROUZBAKHT: I was in
support of the original last time, so I'm not
changing my mind.

CONSTANTINE ALEXANDER: I'm on the
fence at this point. I did vote for the
original the last time. I frankly do like
the revised one. However, I will --

THOMAS SCOTT: You can't separate
the inside from the outside? I think that's

the -- that's where the trouble comes.

CONSTANTINE ALEXANDER: I hear you.

THOMAS SCOTT: You know, it may look okay on the outside, but when you go inside, I think that interrupted plain is going to be really devalued what they're trying to do and the statement they're trying to make.

CONSTANTINE ALEXANDER: And I will defer to, you know, to the better aesthetician and the architects of our Board and contractors. So I'll go along with the original as well.

ATTORNEY JAMES RAFFERTY: Don't be too hard on yourself, Mr. Chairman. You had it right the first hearing. You should get credit for that. It's the others that took a while to get this.

CONSTANTINE ALEXANDER: All right. I'm trying to find the plans. Are these --

ATTORNEY JAMES RAFFERTY: I wrote right on them. I dated them on the back.

They're folded.

CONSTANTINE ALEXANDER: I don't know what happened to them.

ATTORNEY JAMES RAFFERTY: That's them.

CONSTANTINE ALEXANDER: That's the new one? You want the originals with the slight change. That's not that.

THOMAS SCOTT: Original elevation.

CONSTANTINE ALEXANDER: There it is. That's it. This is the one, okay.

And we have the original -- otherwise the plans that you submitted the last time which have other features that are part of the Zoning.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: So the package is this as modified by this.

ROBERT TROMBOUR: The original set modified by --

CONSTANTINE ALEXANDER: Modified

with the slight variation.

ATTORNEY JAMES RAFFERTY: Yes, it's change in the north elevation. It's the original submittal with the supplement on the north elevation.

CONSTANTINE ALEXANDER: Ready for a vote? Okay.

The Chair moves that this Board make the following findings -- and we're talking now just about this vote. We're talking about the full relief that's being sought in this case which is more than this bay window dormer issue we've been spending our time on this evening. So, it's a Variance to do various work as set forth in the Petition.

The Board moves that the enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. The hardship being that the Petitioner seeks to convert a two-family home to a single-family home and cannot do so without

some Zoning relief from us.

That the hardship is owed to the shape of the structure on its location of the lot. It is a non-conforming structure. Which almost any modification would require Zoning relief.

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

The Chair would note that the relief in toto will in fact reduce the non-conformance of the structure which is desirable. It would add an aesthetic element to the structure that is generally beneficial to the neighborhood and to the structure itself. That there is neighborhood support, including that from a member of the Historical Commission.

So, on the basis of all that, the Chair moves that a Variance be granted to the

Petitioner on the condition that the work proceed in accordance with plans submitted by the Petitioner prepared by Robert E. Trombour, architect. They're dated -- the main set is dated July 30, 2010. They're numbered A1.1, A1.0, A2.0, A2.1 and A2.2 as modified plans subsequently submitted also initialed by the Chair which have the changes to the north elevation. So it's a combination of those two plans. The second set is just a modification of the first and as to that modification, the second set controls.

THOMAS SCOTT: And the second set has a date.

CONSTANTINE ALEXANDER: Oh, I missed it. Thank you. Thank you. That's what I was looking for.

And the second set has also been initialed by the Chair, but it's dated 10/15/2010.

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

(Aye.)

(Alexander, Sullivan, Scott, Firouzbakht.)

CONSTANTINE ALEXANDER: Opposed.

(Heuer.)

CONSTANTINE ALEXANDER: One opposed.

TAD HEUER: Mr. Chairman, I would like to put why I oppose it.

CONSTANTINE ALEXANDER: By all means. Go ahead.

TAD HEUER: I voted against this type of relief because I believe while we've discussed the value to the Petitioners, the Board and the Ordinance speak to the protecting the citizens of Cambridge and the City of Cambridge. I think too much weight was placed on that. Given the admission of the architect, there was no hardship. This

was purely a design feature. I cannot find that there was a hardship as to windows. I believe that this does not meet -- clearly it violates two of the dormer guidelines, and that it does substantially derogate. I just wanted to put that on the record.

CONSTANTINE ALEXANDER: Make sure that appears in the decision.

SEAN O'GRADY: All right.

CONSTANTINE ALEXANDER: Thank you. Variance granted in any event.

ATTORNEY JAMES RAFFERTY: Thank you.

CONSTANTINE ALEXANDER: Don't go too far.

ATTORNEY JAMES RAFFERTY: Right.

CONSTANTINE ALEXANDER: We're now going to turn to our regular agenda.

SEAN O'GRADY: You got a Special Permit hanging.

TAD HEUER: That's in the regular.

ATTORNEY JAMES RAFFERTY: No.

TAD HEUER: Right, right.

CONSTANTINE ALEXANDER: The second half of the case involves a Special Permit to relocate windows, right?

ATTORNEY JAMES RAFFERTY: Yes, it's on the --

CONSTANTINE ALEXANDER: In the setback.

ATTORNEY JAMES RAFFERTY: On the other side. Maybe on that north facade as well.

CONSTANTINE ALEXANDER: Okay. And the relocated windows are shown on the plans that we've seen the last time?

ROBERT TROMBOUR: That's right.

CONSTANTINE ALEXANDER: Questions or comments from the members of the Board on the Special Permit?

TAD HEUER: Did the letters you just submitted come from the people who were

facing this side?

MICHELLE HICKS: Yes.

ATTORNEY JAMES RAFFERTY: Yes.

CAMERON HICKS: Yes.

ATTORNEY JAMES RAFFERTY: And he makes specific reference to the windows in his letter.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Is there anyone here wishing to be heard on this part of the Petition?

(No response).

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

The letters I already read into the file, letters from abutters.

Further comments or questions from members of the Board? Ready for a vote.

The Chair moves that a Special Permit be granted to the Petitioner to relocate windows as shown on plans that I will

subsequently identify.

The Special Permit would be granted on the basis that traffic generated or patterns of access or egress resulting from the relocation will not cause congestion, hazard or substantial change in established neighborhood character.

That the continued operation of and development of adjacent uses would not be adversely affected by the nature of the proposed use.

In this regard the Chair would note that the persons most affected by the proposed relocation of windows have expressed in writing their approval of the project.

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

And that the proposed use, in this case, the relocation of windows, would not impair

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

The Special Permit would be granted on the condition that the work proceed in accordance with the plans identified as part of the motion to grant the Variance. Those same plans -- and that condition will be incorporated into the Special Permit as well.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted.

(Alexander, Sullivan, Heuer, Scott, Firouzbakht.)

CONSTANTINE ALEXANDER: We're now going to turn to our regular agenda. And before I call our first case, again for the record, if anyone wishes to make or plans to make an audio or video recording of this session, you can only do so with permission from the Chair per our new Open Meeting By-Law, Open Meeting Law, the Commonwealth of Massachusetts. Is there anyone here wishing to do that?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to do that. Therefore there should be no audio or visual record of this meeting to be made.

ATTORNEY JAMES RAFFERTY: I was told one had to identify that they were doing it. But the Chair has to give permission?

CONSTANTINE ALEXANDER:
Permission.

ATTORNEY JAMES RAFFERTY: And the Chair is free to deny or approve?

CONSTANTINE ALEXANDER: There's no standards set forth in the statute. It just says with the permission of the Chair.

TAD HEUER: The Chair has the freedom I think in terms of disruption, and finds it to be overly disruptive to do so.

ATTORNEY JAMES RAFFERTY: I would assume that there would have to be some standard. Not that the Chair would act out. I could see some another set of -- interesting. Okay, good.

CONSTANTINE ALEXANDER: Okay, with that out of the way -- we've had people in here with cameras and have wanted to record

our sessions.

(8:15 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10016, 135 Magazine Street. Is there anyone here wishing to be heard on this matter?

ATTORNEY JAMES RAFFERTY: Thank you, Mr. Chairman. Again, James Rafferty on behalf of the Petitioners Mr. and Mrs. Hicks.

This case was filed because the case that the Board just acted upon, those plans included a deck in an area where there

currently is a sun room. And the description of the proposed work did not call out the deck specifically in that application. Although it did ask for dimensional relief and the plan did show it, I think it was the conclusion of the Board and the Department and others, that it would be for purposes of notice we should do that. So this case is a cousin to the case you just heard. And in this instance, I think this survey would probably tell the story most directly.

At the rear of the house currently there is this sun porch that the proponent proposes to take off. This wall, this wall is non-conforming perhaps more so than that one. This wall is just shy of seven feet?

ROBERT TROMBOUR: Yeah, it's 6.6 feet.

ATTORNEY JAMES RAFFERTY: And when you do the formula setback, it should be closer to 11. Correct?

ROBERT TROMBOUR: Yes.

ATTORNEY JAMES RAFFERTY: So what the Petitioner did is -- the desire was to extend the deck just beyond a foot or two beyond the house to allow for the pedestrian passage here to access onto the deck. Now, the interesting thing about the way the Ordinance is currently structured is this deck would qualify for the setback exception for decks that are on conforming walls that are not greater than four feet in height. And you'll recall that that setback exception says you can extend ten feet off the foundation wall. So if the Petitioner chose to not take off the entire sun room, but merely ended the sun room here, he could run this deck as of right to that point, 10 feet off this. All he's looking to do is take off all of the sun porch and run the deck a third of that distance to that location. So, I offer that just in the context of the nature

of the relief, because admittedly one could say there are other ways to access the deck, and I wouldn't want you to think that the Hicks are people who always want things their own way. They really aren't. It just feels that way sometimes. So this was a case of well, I said you could -- it is, it is of some relevance that you could -- a deck could go beyond this point as of right by a modification to this room. So the relief here is to allow for a deck that -- and the problem with this deck in the context of the Ordinance is the setback exception needs to be coming off a wall that conforms. It's as simple as that. In that it is a -- there is a mass reduction here. As I noted, there is wall here now. The wall goes away completely. There's a one-story --

MICHELLE HICKS: Two stories.

ATTORNEY JAMES RAFFERTY: Good point. It's a two-story wall that in along

that line that gets replaced.

What would you say, Mr. Trombour, what's the distance off the existing wall there?

ROBERT TROMBOUR: Three feet just to get a walkway.

ATTORNEY JAMES RAFFERTY: We've taken a lot of your time. That's that one. I don't think we'll involve --

CONSTANTINE ALEXANDER: And the plans are the same plans for this?

ATTORNEY JAMES RAFFERTY: Yes, the plans are the plans that's reflecting the plans that you approved.

CONSTANTINE ALEXANDER: Questions from members of the Board?

Is there anyone wishing to go heard in this matter?

(No Response.)

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

the file. I think we're ready for a Motion.

The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. The hardship being that the Petitioner desires to convert this two-family structure to a single-family structure. And as part of the work to be done requires a -- not requires, but may desire a modification of the deck and replace the sun room.

That the circumstances relate to the fact that the hardship is owing to circumstances relating to the shape of the structure and its location of the lot. Specifically that it is a non-conforming structure. So any modification of this sort being proposed would require Zoning relief.

And relief may be granted without substantial detriment to the public good or

nullifying or substantially derogating from the intent or purpose of this Ordinance.

The relief being sought in fact is very slight in nature, technical in nature. That overall, the project will result from a Zoning point of view, dimensional point of view, be more in conformance with the Zoning By-Law that is currently the case. That there is no neighborhood opposition.

So on the basis of all of this, the Chair moves that a Variance be granted on the condition that the work proceed in accordance with the plans -- I'll incorporate my reference, Sean, from the last case. So same plans. That would be the condition to the Variance.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Sullivan, Heuer, Scott,

Firouzbakht.)

(8:20 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10017, 1380 Mass. Avenue. Since we have two on that address. This is the one involving Starbucks. Is there anyone here wishing to be heard on this matter? Please come forward.

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

CONSTANTINE ALEXANDER: We're going to recess this case as I called it

momentarily.

(8:20 p.m.)

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

CONSTANTINE ALEXANDER: We're going to call case No. 10019, of 66 Oxford Street. Is there anyone here wishing to be heard on this matter?

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, James Rafferty on behalf of the Applicant.

We filed a request to continue the case, so there's going to be some further evaluation of the plans. We would think a

late January if your schedule permitted, would give us time to look at that and share it with an interested abutter.

CONSTANTINE ALEXANDER: I know the interested abutter is here, one interested abutter. Late January or early February?

KEITH LONG: There's a good bit of neighborhood concern about this and I know that at least myself and at least one other person wanted to come.

CONSTANTINE ALEXANDER: You should identify yourself for the record.

KEITH LONG: I'm sorry, my name is Keith Long. I'm a direct abutter to the project. So late January works for me.

ATTORNEY JAMES RAFFERTY: Thank you.

CONSTANTINE ALEXANDER: Would you like to sit on this case I can put it in on early February?

BRENDAN SULLIVAN: I'm away on the

26th.

CONSTANTINE ALEXANDER: I know.

BRENDAN SULLIVAN: Jim may want to load up the docket that night, I don't know.

ATTORNEY JAMES RAFFERTY: Early February is all right.

BRENDAN SULLIVAN: It makes no difference to me.

TAD HEUER: Unfortunately I'm not away.

ATTORNEY JAMES RAFFERTY: How would you like to take a trip?

CONSTANTINE ALEXANDER: Let's do it in February. Let's do it the first session in February. What date would that be?

SEAN O'GRADY: The 10th.

CONSTANTINE ALEXANDER: February 10th.

DOUGLAS MYERS: Case not heard?

CONSTANTINE ALEXANDER: Case not heard.

KEITH LONG: Any particular, time folks?

CONSTANTINE ALEXANDER: Seven o'clock. I'll make the motion now.

The Chair moves that this case be continued until seven p.m. on February 10th on the -- this being a case not heard. On the condition that the Petitioner sign a waiver of time for a decision.

And on the further condition that the sign on the premises be modified to reflect the new date and time. And that the sign be maintained until the hearing on February 10th.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

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

(8:25 p.m.)

CONSTANTINE ALEXANDER: I did call the case 10017. For the benefit of the stenographer, can you give the information about your name address, etcetera.

ATTORNEY BRUCE EMBRY: Good evening. My name is Bruce Embry, E-m-b-r-y. I'm an attorney here in Cambridge. My office is at 55 Cambridge Parkway. I'm here on behalf of Starbucks and Daniel Brennan who are the Applicants for this Special Permit.

CONSTANTINE ALEXANDER: And as you know, this Starbucks project, it falls within

our definition of a fast order food establishment. We have a special definition in our Zoning By-Law. It's not fast food as you might think of it as McDonald's only. It could be a local pizza joint, and we have to make various findings. So I want to go through the list of things that we have to deal with. Unless you want to make a presentation first.

ATTORNEY BRUCE EMBRY: Well, let me just briefly say that this is a fairly straight forward application. There is no change to the exterior of the building whatsoever. The only thing that we're here to discuss is the fast food use. And so having said that, I'm here with some of the Starbucks management folks who are able to answer operational questions about the use if you have any of those. And as we go through the criterion 11.30, they can chime in as you have questions about those things.

CONSTANTINE ALEXANDER: I have one preliminary question. Is this Starbucks owned by the same people who own the one on Church Street or different ownership?

RICH McILVENE: Same.

CONSTANTINE ALEXANDER: Same.

TAD HEUER: And same as the one in the garage?

RICH McILVENE: The garage, correct, yep.

CONSTANTINE ALEXANDER: There's Starbucks in the garage?

RICH McILVENE: And Broadway.

CONSTANTINE ALEXANDER: Okay. I'm just more interested in the immediate vicinity of this one. I don't care about Broadway.

RICH McILVENE: Yeah, we don't have -- the only other ones we have is in the Cambridge --

CONSTANTINE ALEXANDER: We're going

to come back to this. At this point there's a Starbucks on Church Street, which is about a block or so away. There's a Starbucks around the corner on JFK Street.

RICH McILVENE: Yes.

CONSTANTINE ALEXANDER: There's a Peetes down the street, maybe a block away, from your proposed location.

RICH McILVENE: Yes.

CONSTANTINE ALEXANDER: There's a Dunkin' Donuts about two blocks away from your proposed location. And there's an Au Bon Pan, among others. So you have -- there's a few hundred feet from your location am I right.

RICH McILVENE: Correct.

CONSTANTINE ALEXANDER: Okay. I wanted that on the record.

You want to go through the list?

ATTORNEY BRUCE EMBRY: Surely. I think there's not much argument that this is

a walk-in location, virtually exclusively a walk-in location. I think we all know where that location is. There's really no way that people can drive up to it and park and run out and get a cup of coffee. So I think the idea about parking and traffic I suppose is easily disposed of.

In terms of what the, what the physical building looks like or as I say, there's going to be no change whatsoever to the building itself. The interior of the building will be outfitted as a Starbucks location, and it is as in some ways similar I suppose in design and maintenance to other Starbucks that you may have taken judicial notice of.

CONSTANTINE ALEXANDER: Are you able to see in the windows? The windows are not clouded?

ATTORNEY BRUCE EMBRY: It's completely transparent to the street. And in fact that's one of the, that's one of the

design features that Starbucks thinks is important, is that people outside can look in and see this vibrant activity going on inside the location so that there's this inside/outside sense of activity. And since it's right up against the subway plaza there, it's sort of the whole circulation for the space and the location I think is well suited.

CONSTANTINE ALEXANDER: And tell me why the establishment fills a need for such a service in the neighborhood or in the city? Or say in the neighborhood.

ATTORNEY BRUCE EMBRY: Well --

CONSTANTINE ALEXANDER: Given all the other locations I've identified.

ATTORNEY BRUCE EMBRY: Right. I think what is -- there are a couple of concepts of need. There's the concept, about you know, whether another coffee location at this location is a need that the community needs, or -- and that has to be tied

in with I think with the fact that this is an expensive, high volume location which frankly has been vacant for the last couple of years because it's hard to find someone or some organization --

CONSTANTINE ALEXANDER: Let me push back on that one a little bit.

ATTORNEY BRUCE EMBRY: Sure.

CONSTANTINE ALEXANDER: It is vacant because of the rent that the owner wants to charge.

ATTORNEY BRUCE EMBRY: That's correct.

CONSTANTINE ALEXANDER: There is an answer to that. And maybe the owner has an exaggerated sense of what the rental value of this property is. And if the owner would lower the rents, it's not before us, there may be -- that structure, that space may be occupied by any number of persons. So to me, the fact that this is a high -- expensive

property doesn't move me at all.

ATTORNEY BRUCE EMBRY: That part I understand. And I think what I wanted to do is tie in the notion of need. And what I think is needed on that corner is a location that -- a storefront, something that will bring activity to that, what is at the moment a dead corner. And I think if we're all waiting for, you know, the equivalent of alpha omega to return, that's going to be very difficult. And I think --

CONSTANTINE ALEXANDER: A retail store -- there used to be a clothing store there at one point. It could have a lot of other retail activities in that space.

ATTORNEY BRUCE EMBRY: Right. So I think an appropriate high volume retail use in that corner is actually what the community really needs.

CONSTANTINE ALEXANDER: But does it need a fast food high retail use?

ATTORNEY BRUCE EMBRY: Well, I think if that's -- if that's going to be the measuring stick, then we have to look at every other one and the places surrounded by fast food establishments and eateries and coffee shops. I mean, that's, that's what this area services. And so to pick out one use and say well, this is no more or less supplying a need than any other, doesn't really, doesn't really help develop that corner.

TAD HEUER: But supposing it were a -- supposing instead of a Starbucks you were a marshmallow fluff proprietor, is there a need for that? I mean, certainly there must be something more than when it says in the Ordinance "need," there must be something that it means more than just if the market will bear it. Because if this were true, then the need proficiency would almost be superfluous, right?

RICH McILVENE: Well, it's not a

questions of whether the market can bear it. Does the market desire it? Does the community say we want something like this at that location?

TAD HEUER: So is there anything in your materials that says the community wants this at that location?

ATTORNEY BRUCE EMBRY: No, but what I'm saying is that's how you might think of need as opposed to what the market will bear.

TAD HEUER: Okay. What if I proclaim to you that's what I would think of it as. Is there anything in here that gets me to that? And the reason I ask this is because we have a case coming up right after you for Pinkberry at the same location in which they do. And it's up to the Board to judge whether it's sufficient or not. But they have letters from Harvard Square Business Association. They have something they called a statement of substantial need.

I mean, it's for us to figure out wither it's accurate. But at least it's in there. They made an effort at it. They have letters from other people saying we enjoy this product, etcetera, etcetera. I mean, is there any of that kind of paperwork --

ATTORNEY BRUCE EMBRY: Yes, and I think through Les Barber's office --

CONSTANTINE ALEXANDER: We have the letters from the Harvard Square Advisory Committee. We have mixed reviews if I can put my own gloss on it, but I will read it into the record.

ATTORNEY BRUCE EMBRY: Sure.

I think that those -- that those responses from the advisory committee are actually more favorable than not. And in many cases enthusiastically favorable with a couple of mild critiques having, you know, along the same need lines. But I think what you're looking at for that location is

essentially a perfect location for this use, and the community will thrive in that location. They'll be very happy to be there. The community will.

TAD HEUER: Well, I guess another question --

ATTORNEY BRUCE EMBRY: And if you're asking did we do any demographic studies for that? No. The answer is no.

TAD HEUER: Okay. I guess part of my other question is, and maybe it goes -- maybe you can answer this because of your other Starbucks locations in the area. One can claim there's a need for it because people will show up. How much of that is just cannibalizing from either your competitors or even from yourselves? People can say I can go in the Church Street entrance to the T or I can go in the pit entrance, and I've got a Starbucks that's ten feet from me from the pit. I've got a Starbucks 150 feet from

me at Church Street. You know, I usually go to Church Street, but I'll go in the pit, it's a lot easier, I've got an escalator, I don't like to walk, whatever it is. And I'll go to that Starbucks. And you just transferred your market with additional stores with no demonstration really of a need that you have more people you're servicing than actually demand this service that location.

ATTORNEY BRUCE EMBRY: Well maybe, Rich, do you have a --

RICH McILVENE: Yeah, I mean, we do take that. We look at that at our existing stores, less so about our competition. I mean, because we do have other locations in and around the area. So we do realize there will be cannibalization from our other stores. But we also look at it there's a lot of demand for us to be there. So we wouldn't be looking at another location if we didn't feel we had the patrons that want us and are

going to support us in another location. We're not looking, you know -- there's no plan to close the other stores. We think they'll be able to stand on their own even with, you know, the lost sales at this other locations that this is going to generate.

The other thing about this location, it's not -- there are some other design elements that we're adding to it. It's bigger space than, you know, our other stores are. The other stores are really small. We can't get the throughput. There are people that don't even come into our store. They want our product, but at really busy times they just, you know, go to a -- either one of our competitors or whatever. Just don't go in there. So we feel that this location is going to be able to sustain itself and not, you know, impact greatly where we have to close the other location. The other part of it too is it's attractive to us because we're

looking at this as like a flagship location for us. Where not all our stores are 34, 3500 square feet. We're going to have a second tier that's more going to be a gathering place. There's some other elements that none of our other Starbucks have in New England or throughout the country for that matter.

CONSTANTINE ALEXANDER: I was going to get to that later but you mention that. Your plan shows optional.

RICH McILVENE: Meaning what's optional?

CONSTANTINE ALEXANDER: I don't know. Your plans indicate a second floor.

RICH McILVENE: Oh, no, no. There was optional different bar set-ups up there where we have --

CONSTANTINE ALEXANDER: Oh, okay.

RICH McILVENE: We're going to have our full complement on the first floor.

Second floor is going to have another bar -- it would be more like we're thinking different types of coffee. So, there will be more of a gathering, more specialty type things that people can offer.

CONSTANTINE ALEXANDER: There will be coffees offered on the second floor that are not offered on the first floor?

RICH McILVENE: Correct.

MARCUS ECKENSBERGER: And I can speak to that point. My name is Marcus Eckensberger. I'm the regional director of operations for New England. We're looking at this store as very different and unique from the other two stores that we have in the area. For one, we've created some what we feel is some pretty unique seating environments, study areas for students. People for the town to gather upstairs. And as Rich had mentioned, upstairs what you'll find is as you walk in downstairs, will be

more of a traditional Starbucks and regular product. As you go upstairs, we're going to present to the consumers what we call a slow coffee experience. So we have a different brewing machine. Some elevated coffee offerings that we will serve upstairs. And we really think that it will make a nice environment for the student population as well as the business population. Something that's very unique within our company at this time. So we're very, very excited to have an opportunity to business in Cambridge.

TAD HEUER: So can you just talk to me, just a maybe elaborate a bit more. When you said, for example, at Church Street you're in automotive garage, I believe, from years back. You know, you're spacing -- or you're up a small stairway, your service is off to your right. Do you have -- can you talk about like lines, your peak hours, you know, turnover of your tables. Like, are you

seeing things there or in your garage space that say you're over capacity at your existing sites that would -- demand.

RICH McILVENE: I mean, we track and monitor, you know, throughput, how long it takes somebody to get through a line. We have independent companies that go through and monitor and give us feedback on that. So it's not just us, it's not a feeling, it's actually --

CONSTANTINE ALEXANDER: Yes. What does that produce for you? What's the answer?

MARCUS ECKENSBERGER: I mean, there's not a -- a definition. We also look at bulk rate as operators as we're in the locations that we would discuss as far as people going in, seeing a line through the door and then walking away. Now, that is as the operators are in the stores. But as far as a survey that we would present to the

Board, we would-

CONSTANTINE ALEXANDER: No, a survey. The question was more specific. Are you losing business because there's lines outside the door in your Church Street and/or your garage location and, therefore, you need to have a third location to handle the people who can't get in the door at your other two places? I think that's the nature of question.

TAD HEUER: Yes, I mean I understand -- it is the nature of my question. I understand the point that Harvard Square locate at 1380 is more central. You may be getting people who would not go to other area locations. But what I'm looking for in addition to demand being generated by new location, people saying I never heard of this Starbucks place, but I would love to get a cup of coffee there because they're right in Harvard Square. Versus your customers who

are repeats who say the line's too long but I've got to go to work and I know I have other options and it spreads out, the people you're not capturing now that you would capture there which would in my mind suggest a "need" is what the Ordinance requires us to find.

MARCUS ECKENBERGER: Yeah, we do see absolutely some of that. You know, the Church Street is a very, very small location for the amount of customers that come through that store. The garage is a very popular area with the students. And the tables are really taken up by that. So, we do feel that there are some people in the area that are unable to grab our product because of those locations. I mean, we also feel the other need piece is a much bigger and different environment within the community, that we feel would be providing through this location.

RICH McILVENE: Right. And another

thing that we found, too, is you'll notice the garage and Church Street are two different locations, I mean, obviously. But even the design of them. So when we renovated the garage, we took some elements that were incorporating in a lot of other projects that we're doing right now. So the seating element that we have up there has been very well received. And customers have asked, you know, hey, can you do that more in other locations? Are you doing it over here? It was asked of us of Church Street which is limited because of the size of the space. There's only so much we can do. We can't create the same element we have at Church Street. So when this opportunity came up, it's like we can take it and take it a step further and develop that type of seating and environment in a bigger space. So, our customers have really liked what we've done with our stores, and the different design

elements that we've added to it and they've asked for more of that. We felt that this was -- when this opportunity came up in the space, you know, it was presented and the team came out and said, this would be a great store to call a Starbucks flagship and take more of those elements and develop them here.

Giving the same product, but also enhancing it on the second level as well. So, if you notice in our plans you'll see a lot of different seating elements that have been really well received. You mentioned community table which is in the garage. That was an experiment. I think that was one of the first stores we had in the -- in New England for that matter that we actually did that with, and we kind of developed it further and further. And we went along with that. And so there's multiple, you know, soft seating. More student kind of community table. And then individual seating as well.

And we really spread that out. We're limited on the first floor, but we -- really the second floor is all seating other than that other little service bar that we have.

CONSTANTINE ALEXANDER: Further questions at this point or should I open it to public testimony?

TAD HEUER: Do you want to keep going with your list?

CONSTANTINE ALEXANDER: Unless you have more --

ATTORNEY BRUCE EMBRY: Did you want to finish the 1130 list?

CONSTANTINE ALEXANDER: Oh, I'm sorry. That's what you were asking. I'm sorry. We got off on that track. Thank you.

ATTORNEY BRUCE EMBRY: Again, attracting patrons from walk-in trade. We, I think talked about that. And using biodegradable materials. I think we're all familiar with the cups and service equipment

that Starbucks uses. It's all paper which is by definition biodegradable. But actually what this does is it dovetails into the programs that Starbucks has to make sure that there's no trash or waste that's running around the store or that makes its way out into the street. They have -- their staff polices the store at all times to make sure that there's no stray trash around. There is an on-site trash storage location.

CONSTANTINE ALEXANDER: Inside the premises?

RICH McILVENE: Yes.

ATTORNEY BRUCE EMBRY: Well, it's apart from -- it's in the same location but in a separate room. It's essentially --

CONSTANTINE ALEXANDER: No, no. If somebody wants to throw away their coffee cup, are you going to have a receptacle outside the door or inside the door.

ATTORNEY BRUCE EMBRY: Well, there

are receptacles every, you know, like every five feet. So, and those will all be deposited into a large receptacle that will be taken away on a daily basis. And so the idea is that again, with the flagship concept in mind, that Starbucks wants this to be a pristine, warm, inviting environment that gives people who are coming in and out of the square and the student population and the shopping population a place where they cannot only go and buy a cup of coffee, but go and sit down in a relaxed atmosphere. And in a different atmosphere from many of the other coffee shops, and have a real interesting experience. And so I think the idea of the bio -- how do you say it? Biodegradable qualities of the materials that they use combined with their program of trash collection and removal I think is going to keep the location.

RICH McILVENE: One of the things in

our stipulations to the landlord was that we had to have a trash plan. And that is that they're doing that along with the rest rooms as well.

CONSTANTINE ALEXANDER: How do you remove that trash from your premises?

RICH McILVENE: Yeah, we have the big ones underneath --

CONSTANTINE ALEXANDER: I know the bins. That's in your waste room. Now it's filled with trash.

RICH McILVENE: Yeah. And there's actually in the plan there's a it goes out through the bottom floor and it goes back where the other --

BRENDAN SULLIVAN: There's an alleyway behind it.

RICH McILVENE: There's an alleyway behind there.

CONSTANTINE ALEXANDER: And that's how you get product deliveries, too, your

coffee and pastries and stuff?

RICH McILVENE: We get deliveries that come usually like -- what time do the deliveries come to Harvard Square? I mean the garage one right now? That's late. Like one in the morning or something like that.

LUCYNA SOJA: Probably prior to that.

RICH McILVENE: Yes.

CONSTANTINE ALEXANDER: For the most part there would be no deliveries at any time during regular business hours?

RICH McILVENE: No. It would be pretty much the same schedule as the ones we have now because it comes from a central location. And then we schedule the deliveries and it's all done. They have their own keys and they come in and deliver and stock it nightly.

CONSTANTINE ALEXANDER: And the

last one about complying with the -- having the facilities comply with the laws of handicapped and disabled persons.

ATTORNEY BRUCE EMBRY: Egress, ingress. Handicap accessibility.

CONSTANTINE ALEXANDER: What about the second floor?

RICH McILVENE: Elevator.

CONSTANTINE ALEXANDER: There will be an elevator?

RICH McILVENE: Yeah. We have an elevator that goes from the second floor all the way down to the basement. Yeah, so from the first floor all the way.

CONSTANTINE ALEXANDER: All floors will be accessible?

RICH McILVENE: Yes. All floors will be handicapped accessible. And we comply with handicap accessibility with all our hand off plains and stuff like that. Tables. Community tables and things like

that are all handicap accessible. So we meet all those requirements.

ATTORNEY BRUCE EMBRY: Certainly Inspectional Services is very much on top of all the requirements being met. But we certainly meet those easily.

CONSTANTINE ALEXANDER: Okay, you've now touched on all the elements that we have to deal with in terms of granting a Special Permit for a fast order food establishment. Anything else you want to add before I open it up to public testimony?

ATTORNEY BRUCE EMBRY: One other thing besides the summary letter that came in from Les Barber, and I think there was an individual letter from --

CONSTANTINE ALEXANDER: I have it.

ATTORNEY BRUCE EMBRY: -- John Digiovanni (phonetic) as well.

You may have also received something from the Historical Commission.

CONSTANTINE ALEXANDER: Well, basically there was no --

ATTORNEY BRUCE EMBRY: They don't do anything -- they just wanted to confirm that nothing was happening to the facade or the exterior of the building that would require them to have some review capacity --

CONSTANTINE ALEXANDER: Well, they gave permission for a non-conforming sign as I recall.

ATTORNEY BRUCE EMBRY: That's not about us, is it?

RICH McILVENE: I think that's for Pinkberry. Pinkberry had submitted their signage package to them already for review.

ATTORNEY BRUCE EMBRY: I know there was a second page with some write-up, but none of this actually applies to us.

CONSTANTINE ALEXANDER: All right. Anyway, it doesn't apply to you?

ATTORNEY BRUCE EMBRY: Right.

We're not doing anything to the outside.

RICH McILVENE: We're in communication with them, and we're tweaking a couple things just from, you know, our normal signage that we want to do.

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

PEBBLE GIFFORD: I do.

CONSTANTINE ALEXANDER: Yes.

PEBBLE GIFFORD: I'm sporting a new knee so that's why I have my cane.

My name is Pebble Gifford. I live at 15 Hilliard Street, Cambridge. I have been active in Harvard Square affairs as a community activist, concerned citizen for about 25 years. I've worn a number of hearts. My most current hat is I'm on the Harvard Square Advisory Committee which unfortunately has gotten a little lacks in its performance because of we don't meet.

Les calls us all up and polls us. I tried to get him to have a meeting on this particular matter because I think the Starbucks and the Pinkberry are two important applications. And I didn't think their applications -- their petitions and their applications are answering the criteria were sufficient. So I felt we should have sat down. But I'd like to bring a little legislative history to the Board if I could about this fast food ordinance. I think it was in the eighties. When was One Brattle Square developed?

CONSTANTINE ALEXANDER: Probably the seventies.

PEBBLE GIFFORD: Eighties. Well, there was a big push for development. It was One Brattle Square, and then it was the Trinity Properties, and then there was some more down on Mass. Ave. I can't remember them all, but we tracked them all. We

reviewed all the plans. And almost in every instant there was a fast food establishment that wanted to be in -- it started with McDonald's, Burger Chef and Dunkin' Donuts. Starbucks wasn't in business then. But we could see the handwriting on the wall. And Harvard Square was going to be very, very popular for just about any and every fast food operation. So, we did our homework. We researched the issue. We found that there were other towns and cities in the United States that had these Ordinances. They've been proven Constitutional. We even had a lawsuit over one that established that we were -- that it was valid. I'll get to that in a minute. And so we worked on that.

And finally, I think it was quite a few years, the City Council passed this fast food ordinance. And there were a lot of things that have been difficult to apply and require. For instance, the first one

we -- the first establishment to get a fast food under the Ordinance -- permit of the Ordinance was a Dunkin' Donuts. And they agreed to do china, coffee and cups. Well, that didn't last very long, and nobody wanted to enforce it. And it didn't persist. And nobody after that tried to enforce it again.

The litter problem has not gone away in spite of the trash barrels that these establishments put out. I live two blocks from Harvard Square, and there isn't a week goes by that I don't have Dunkin' Donuts trash on my step or a cup or, you know, something -- lunch. Whatever it is, it's there. And but we felt the need for the fast food ordinance and we got it passed. And initially the Board was quite good at enforcing it, and so was the staff. Inspectional Services came in. And we made them show there was a need -- we made the applicant show that -- the Board did and we

did too, that there was a need for this. And I would say that remains today the single strongest and most important criteria in the Ordinance is this need. And I think it's been obviously twisted around in a way. There's a need because there's so many already. That argument.

It strictly had to do with how many hamburgers were being sold, how many coffee places there were. The list goes on. I remember a number of times going out with the members of the Harvard Square Defense Fund and we'd count the hamburger places, we'd count the yogurt shops and we'd count them and we'd come in. And it was obvious numerous. And I guess somewhere along the line everybody got tired is what happens, and we haven't been here in force recently and to enforce that. But I have found something very helpful on the internet called Yelp. Are you all familiar with Yelp?

CONSTANTINE ALEXANDER: I'm not.

PEBBLE GIFFORD: Well Yelp is -- I don't know how to describe it. It lists all of the food establishments and restaurants in every neighborhood across the -- in Boston. And if you go into it, you look at in Harvard Square for instance. Takeout places selling coffee in Harvard Square, there are currently 27. So I didn't have to go around and count.

CONSTANTINE ALEXANDER: Are there 27 fast order food establishments or 27 eating places? Because there's a difference.

PEBBLE GIFFORD: Well, I know. But the Ordinance didn't say. There has to be a need to get coffee.

CONSTANTINE ALEXANDER: Need is tied to a fast order food establishment.

PEBBLE GIFFORD: You think it should be tied to that? All right.

CONSTANTINE ALEXANDER: Well, I

want to make it clear. I'm sorry to interrupt, but I think I want to make it clear for the record. Is that when we talk, it's part of our lexicon of our language fast order food places, and people immediately think of Starbucks or McDonald's or Burger King or what have you, that's not what our Zoning By-Law is about. We have a specific defined term, fast order food establishments. That applies to the definition of it. But that would apply to a 1369 House across the street, which is a local operation wanted to move into this location. They would be subjected to the same requirements, the same tests as Starbucks. This is not about Starbucks. I want to be very clear.

PEBBLE GIFFORD: No, no.

CONSTANTINE ALEXANDER: Not only for your benefit, but for the record. This is about whether there's a need -- one of the issues, a need for a fast order food

establishment as defined by our Zoning By-Law.

PEBBLE GIFFORD: Well, what do you do about a (inaudible) coffeehouse, you can walk in and get a cup of coffee and walk out.

CONSTANTINE ALEXANDER: Well, they have to meet the requirements --

PEBBLE GIFFORD: That's pre, pre. You can argue that Darwins is a fast food coffee place. It's not within the confines of the district of Harvard Square as we know it. Burdix High Rise (phonetic), Pronto, Veggie Planet, Pinocchio's, Leo's Place, Upper Crust. You can -- you know, you can walk in and get a cup of coffee at all those places. Now, this gets into a grey area because defining the fast food itself is difficult.

Look at the ice cream. We sort of lost control of that one because I don't know whether people just decided they fell through

the cracks, but if the place was serving ice cream, it didn't seem to ever fall under the need for a permit.

Anyway, so we have this Ordinance on the book. And I remember the first time it was challenged was this Dunkin' Donuts wanting to go into the new garage, JFK Street. And we challenged in Court that application, and the Court ruled -- upheld the Ordinance. Said it was valid. The need was valid criteria. And we ended up compromising with the owner of that particular place in that he didn't call it Dunkin' Donuts. It's the main -- the first thing you were going to see coming into Harvard Square, we see a pink and orange. It wasn't a come on. You know, why would you come to Harvard Square for that? So, Elliot Street Cafe and downplayed the signs, and he was willing to try with coffee cups -- the china coffee cups and so forth. And it's still Elliot Street Cafe. And every couple

years he comes back and wants to make his signs bigger in the window. We go back and forth with that. But the important thing about that is that particular case established the need was a valid criteria. And I'm sorry, I didn't get my hands on it.

CONSTANTINE ALEXANDER: It's all right. It is in our Zoning By-Law. It is the criteria. We're beyond that.

PEBBLE GIFFORD: Yeah, yeah. How it's defined in that case is what I think is important. Need being how many other places are selling this product?

So, I have been reading over the Applicant's applications, and I don't think they address this criteria in a way that's specific enough.

And the Cambridge Savings Bank restored that block, and they've had a tough time with tenants from the very beginning. It's one of the highest rents in Harvard Square. And you

pointed that out. And very few establishments that can pay that rent except maybe a Starbucks. Back when -- remember Warburton's? It was a coffee shop on Brattle Street and the Dow family --

CONSTANTINE ALEXANDER: You're going back far.

PEBBLE GIFFORD: No, it's not that far. That's in the Dow family building. Those are owned by the family that -- all those shops -- most of them are on Brattle, both sides. Richard Getz manages them. And we've met with the family many times. They didn't want a Starbucks in there.

CONSTANTINE ALEXANDER: I don't want to get into --

PEBBLE GIFFORD: No, no. I'm just telling you what they did to accommodate the fact there were other Starbucks. It was just -- they didn't let them take the name. They just kept it Warburton's. I'm trying to

say that Mr. Getz (phonetic) and the Dow family do find tenants for these places. Maybe they're charging the rents --

CONSTANTINE ALEXANDER: I'm going to cut you off. Whether the need to rent the space to a fast food order food establishment is not the issue. That doesn't go to need or any of the other criteria. So I just want to move your case along. Keep it relevant.

PEBBLE GIFFORD: All right.

I did have the chance -- as far as need is concerned, I did have the chance in one of these battles we had over another Starbucks was -- the owner of Starbucks. What's his name? He came from Oregon or Seattle or wherever he's from. And we met with him. I don't remember his name.

CONSTANTINE ALEXANDER:
Mr. Schultz the CEO?

PEBBLE GIFFORD: Yeah. And he felt strongly about Harvard Square. So he came

and met with us. And I'll never forget, he looked me in the eye, and he said, Mrs. Gifford, you don't understand, we want a Starbucks on every corner in Harvard Square and every corner of every retail area in America. And I said, oh, okay, what do we do now? So that is what we're up against. And if you feel there's a need, there's another Starbucks in Harvard Square. The Harvard Coop Cafe sells Starbucks, too. I count four within the area here.

CONSTANTINE ALEXANDER: I don't want to -- there's another place that sells coffee. Let's get away from the Starbucks notion. This isn't all about Starbucks. This is about fast order.

PEBBLE GIFFORD: All right. I'll talk about Peetes. I'll talk about --

CONSTANTINE ALEXANDER: Other establishments that sell coffee.

PEBBLE GIFFORD: I will just rest my

case and say there is not a need for another Starbucks in Harvard Square and in that location.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: Now, before you leave. Sean, is there a moratorium or a set number of fast order permits allowed in Central Square?

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: Pebble, has any such moratorium or a limit to the number of fast order food establishments been proposed in Harvard Square that you know?

CONSTANTINE ALEXANDER: Central Square.

BRENDAN SULLIVAN: No, no, Harvard Square.

PEBBLE GIFFORD: No. We've talked about it in our group, citizens group, but I've never -- there's never been one proposed as a limit.

BRENDAN SULLIVAN: No, it would have to go to City Council. And then there is --

PEBBLE GIFFORD: There is one in Central Square?

BRENDAN SULLIVAN: In Central Square. Right.

PEBBLE GIFFORD: Oh.

BRENDAN SULLIVAN: Ken Reeves was the driving force behind that.

PEBBLE GIFFORD: Oh, very good. Maybe there's time for one in Harvard Square. Thank you very much.

BRENDAN SULLIVAN: That's where it was leading to. Okay.

PEBBLE GIFFORD: What was the meeting you postponed to the 2nd? I thought it was this one, the hearing.

CONSTANTINE ALEXANDER: When we postponed this hearing, the petition was brought before, but under our Zoning By-Law we are supposed to have input from the Harvard

Square Advisory Committee. And these gentlemen didn't have that information for us. We continued so we could get that information. And there is a letter which I'm going to read. And we have your testimony and any other testimony we're going to get.

TAD HEUER: Mr. Chairman, this is a new case, right?

CONSTANTINE ALEXANDER: It's a new case only.

SEAN O'GRADY: There's a duplicative case out there.

PEBBLE GIFFORD: Another case?

TAD HEUER: It's a technical....

PEBBLE GIFFORD: Okay, thank you.

CONSTANTINE ALEXANDER: We continued the old case.

Anyone else wishing to be heard on this matter?

DENISE CHILSON: Good evening. How are you?

CONSTANTINE ALEXANDER: Fine. How are you?

DENISE CHILSON: Excellent. For the record, my name is Denise Chilson. I'm the executive director for the Harvard Square Business Association. And it seems like most of the matters have been addressed except maybe not fully satisfied within terms of need. And what I would say about need and fast food in the way that it's defined is absolutely we need fast food. In this day of instant messaging and texting and WI-FI access, kids, particularly the students want to have everything, just like this (indicating). Nonetheless, eight million visitors to Harvard Square. This place has been unoccupied, this location has been unoccupied for two and a half years. It's been dark.

CONSTANTINE ALEXANDER: I do not want to go there. I hope I made this clear.

If the place has not been rented, it's not because you need a fast food establishment. The landlord is asking for too much rent. That moves me nowhere.

DENISE CHILSON: Okay.

We need something that's going to have activity all day long, all night long. When people drive by in the evening and they see that building dark, it's just unacceptable.

The concept --

CONSTANTINE ALEXANDER: Is there a retail operation there?

DENISE CHILSON: A retail operation -- most retailers in the square close way too early. In my opinion.

CONSTANTINE ALEXANDER: That's their issue. But you could have --

DENISE CHILSON: You could certainly have a retail operation in there, but one that we would absolutely encourage to be open. Much like Urban Outfitters or the

Harvard Bookstore where they're open, you know, very late at night. That would be fine.

This particular concept absolutely encourages students and guests, people from around the world come in and hang out, people watch. It is without a doubt the best location in the square, bar none. Particularly when you're on the second floor looking out onto the plaza.

It's a flagship location, we're leading the way. And guess what? We always want to lead the way. There's no doubt about that. The thing that we found out that we're doing that you probably should know is that we've been working, really in discussions with the MBTA and the City of Cambridge. We would love to have that elevator that's in front of this location moved to the other side of Sheldon Cohen Island over to the Massachusetts Avenue side. And there's an

opportunity maybe to do that because the existing elevator is not in compliance. So, what that would do is open that up entirely. We would encourage outside seating there. The entire plaza is WI-FI'd accessible on the outside. Free to the public. It would just be wonderful.

The other thing that's happening right now in that location is that there are way too many kids and homeless people that are, you know, hanging out right in front of there. And I think by having activity all day long into the night, we've found from the Cambridge Police who say you know what, when there are more people, more activity, less homeless, less students, less runaways, less runaways hanging out by the kiosk, there's less petty theft in Harvard Square. So for all of those reasons we find that to be absolutely a need, and we are in full support of this petition.

CONSTANTINE ALEXANDER: Is the Petitioner a member of your organization?

DENISE CHILSON: Yes, they are actually -- no, this location is not. The other locations are. They've been long time members of the association. Actively participate in all our events and they're wonderful partners.

Thank you.

BRENDAN SULLIVAN: Denise, before you -- what is your hours, proposed hours of operation? Let me ask you is it 24 hours?

MARCUS ECKENSBERGER: No.

BRENDAN SULLIVAN: And no idea of going over 24 hours?

MARCUS ECKENSBERGER: Well, I would be determinative of that when we look at five a.m. to midnight as a range.

BRENDAN SULLIVAN: Okay. What happens -- nothing is open 24 hours in Harvard Square; is that right?

CONSTANTINE ALEXANDER: CVS maybe.

DENISE CHILSON: We have CVS. We also have Market in the Square is a 24 hour location. IHOP is open I think until four a.m.

BRENDAN SULLIVAN: But this corner is dark?

DENISE CHILSON: This corner is completely dark.

BRENDAN SULLIVAN: My only thought if it is open late and 24 hours, that that's going to attract more people out on the subway.

CONSTANTINE ALEXANDER: It's almost 24 hours. It's open about 19 hours a day.

BRENDAN SULLIVAN: Okay. Thanks.

DENISE CHILSON: We would encourage that. Thank you.

CONSTANTINE ALEXANDER: Thank you.
Sir?

DAN FRANK: Good evening. My name

is Dan Frank and I'm the senior vice president for facilities for Cambridge Savings Bank. I represent the landlord for the space, and I'd like to speak to the comments about the rent.

As was mentioned earlier, the space has been vacant for two and a half years or so, and I'd just like to say that the landlord -- I've been personally involved with leasing the space. And we had no illusions about the current market and what it calls for as far as the price. And we have significantly reduced the rent. And on top of that we are looking to invest significant dollars into demising the space and separating utilities. On top of that you've got 6,000 square feet there. 2500 on the second floor. 2500 on the street level. 1,000 square feet in the basement which was generating rent. We're actually giving that space back to common area for what was touched

on earlier, the trash rooms and the rest rooms. So the landlord has given back one-sixth of the space and addressed the current market with the rent as well. So, I just wanted to make that point.

CONSTANTINE ALEXANDER: Thank you. Thank you very much. Appreciate you coming down.

Anyone else wishing to be heard on this matter?

(No response.)

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

We do have correspondence that I do want to read into the record. Because it is from the Harvard -- well, it's a report of the Harvard Square Advisory Committee. Ms. Gifford referred to it.

By way of preference under our Zoning By-Law, given the Harvard Square location, we are required to receive the advice from the

Harvard Square Advisory Committee, and that's why the case was not heard originally on the day we had scheduled it for.

And what I have is a memorandum from Lester Barber, Community Development Department. And he's writing on behalf of the Harvard Square Advisory Committee. And his comments by the way apply to both this case and the Pinkberry case which we're going to hear next. "The application documents to the above-referenced cases were distributed to the committee members on Tuesday, October 26th. The Board is currently not a full membership. Five of the eight current members of the committee responded with comments. Responding by e-mail, member Alexandria Offiong, institutional representative, indicated support for the granting of both permits suggesting that each is an active, transparent pedestrian-oriented use at an important

location.

Hugh Russell, architectural expertise representative, also responding by e-mail, suggested that both enterprises were reasonably uses for the location and preferable to another bank. He indicated confidence in the ability of the several boards having jurisdiction; Cambridge Historical, Board of Zoning Appeals and License Commission to protect the public interest.

Frank Kramer business owner representative in a phone conversation expressed regret at the proliferation of national chains as epitomized by Starbucks' presence to the detriment of any efforts to maintain a distinctive character for the square.

Gladys Gifford, neighborhood representative, also in a phone conversation expressed her opposition to the request

citing the Ordinance requirement that a need must be demonstrated for approval."

And, Ms. Gifford, I'm not going to read the rest of your comments because you've already given it to us in person.

And then John Digiovanni (phonetic) commercial property owner representative supports both applications at this location in a district that has heavy demand for food services. He asked that his letter be transmitted to the Board and is attached."

The letter is here. I am not going to read it unless other members of the Board would like me to. I am not going to read this letter into the file, I will just summarize it. It will a part of our record in toto.

And essentially he is in -- he's in support of the petition, both petitions, saying that the block desperately needs active storefronts that will open early and close late. And that they -- he gets to the

question of need, which I think is a key issue here. Finally as for each of the applications filling a need, as I have previously stated, the need criteria was not intended and should not be applied to create to moratorium on fast food uses in Harvard Square. The need for the service is evidenced by the amount of activity in a particular district. The highest concentration of visitors to Cambridge is in Harvard Square.

RICH McILVENE: If I can make a note to that, too.

CONSTANTINE ALEXANDER: Sure.

RICH McILVENE: He is the landlord to our garage property as well. So, you know, he goes and visits, you know, that one and he knows, you know, he sees it. You know, the amount of people going in and --

CONSTANTINE ALEXANDER: He's the landlord that's across the street from you in

the building that has the Fire and Ice restaurant and other places?

RICH McILVENE: No. He's in the garage.

CONSTANTINE ALEXANDER: He's only in the garage?

RICH McILVENE: Yes.

CONSTANTINE ALEXANDER: Oh, that's right, I'm sorry. I'm confusing it with the other property.

TAD HEUER: He does state that in his letter for full disclosure.

CONSTANTINE ALEXANDER: I didn't read that part of the letter. Thank you.

And that's all I have in the file. I'm going to close public testimony, but I'll give you an opportunity for any closing remarks if you like.

ATTORNEY BRUCE EMBRY: Well, I think, I think the summary is basically as we have gone through the list, and that we meet

all the criteria. Obviously the need issue is the most controversial one. I think we tried to address that. I think Denise was quite articulate in demonstrating why the community needs this kind of service at this kind of location. And unless you folks have anything more to add.

CONSTANTINE ALEXANDER: Okay.

Comments from members of the Board or do you want to go to a vote?

TIMOTHY HUGHES: I have one quick comment. When the Chairman makes the motion, he's going to tie this project to the plans as submitted. Does that mean there is going to be a piano? It's in the plans.

ATTORNEY BRUCE EMBRY: I think that was just a decorative element.

RICH McILVENE: That is to represent, you know, a different type of --

ATTORNEY BRUCE EMBRY: Maybe.

RICH McILVENE: -- opportunity in

this space.

TIMOTHY HUGHES: So yes, piano, or no piano. I don't need a song and dance. I just need an answer.

RICH McILVENE: I guess if we're submitting it, it is there. We would not want to limit it out, leave it that way. And I guess that goes to the point of we want to make it a different space. We want to have different opportunities. If we're encouraging local musicians to want to perform on a small scale level, we would like to have that opportunity.

CONSTANTINE ALEXANDER: You might have performing musicians on this site?

RICH McILVENE: We might want to open it up on the second floor where students may want to do something where --

CONSTANTINE ALEXANDER: That changes the nature -- the impact quite a bit.

RICH McILVENE: Well, we're

not -- it's not like come and pay and come and do that. But if it's there, and it might be another element that we add to it, that's all.

BRENDAN SULLIVAN: So if something unsavory goes on and the guy comes along, I don't know, don't ask me, I'm just the piano player.

CONSTANTINE ALEXANDER: Shoot the piano player.

TIMOTHY HUGHES: Don't shoot the piano player.

BRENDAN SULLIVAN: This is somewhat of a tough one only because I'm sort of a very much of a free market, open market and the marketplace dictates whether a place will survive or not and whether they are needed. If they survive, they're needed. And if the need is not there, then they don't survive. And so probably sort of favored establishments that go in, they've obviously done the marketing. I'm a little bit

concerned, though, with that said with over saturation and let's grab this spot before our competitor does. And obviously Harvard Square has changed dramatically over the years. There are no more Bailey's. There are no more Ryan's Sporting Goods and the like and so on and so forth. But I also don't want to turn Harvard Square into a mall which is what it's becoming. So then the alternative, the alternate question is okay, if not this, then what? And what survives in Harvard Square? There are no more shopkeepers. There are no more mom and pop. As those people die off, the kids aren't going to run the business, and the economics dictate that they don't, you know, run the business. This is not a simple yes for me anymore. I mean it's getting a little bit maybe not. But I don't know if I'm there just yet.

CONSTANTINE ALEXANDER: Okay. I

will say that I've expressed my views about needs in Harvard Square. I just don't see, particularly in this case, I don't see a need in Harvard Square for a Starbucks at this location. I think there are many other uses that will produce the pedestrian traffic if given the chance. Retail, and it can be large national chains as well. But there are other uses, and we'll never find out if we have continued to proliferation of fast order food establishments. So I for one -- I haven't supported applications in the past. I certainly will not support this one.

BRENDAN SULLIVAN: You know, like what else survives there?

CONSTANTINE ALEXANDER: We never know until --

BRENDAN SULLIVAN: Again, we can go round and round. We can discuss this for weeks.

TAD HEUER: We know that jewelry

stores don't.

BRENDAN SULLIVAN: What's that?

TAD HEUER: We know that jewelry stores don't.

BRENDAN SULLIVAN: Well, jewelry stores that were not well run. I mean, there's a little history there. But at any rate, I don't have an answer to it. I don't know.

CONSTANTINE ALEXANDER: Anybody else want to express an opinion or go to a vote? Your pleasure.

TAD HEUER: One thing I point out and may be apropos of nothing is that we have a fast order food ordinance as you pointed out, Mr. Chairman, not a chain ordinance. And a chain ordinance is challengeable and will not usually hold up to legal scrutiny. So when we're talking about this in the context of Starbucks, I think it's important to point out that it cannot be the presence of

locations elsewhere in the country that dictate whether they appear here. I think it is appropriate to look at number of coffee places in the square. And I think it is also reasonable to look at cannibalization in terms of overall again as was pointed out in my accenting comments in the previous case. The ordinance isn't designed for Cambridge as a whole not necessarily owners or proprietors, and although this Board is to protect the Ordinance and city as a whole, looking at other establishments that sell the same product in essentially close proximity is reasonable. But the fact that it's a Starbucks, it can't have any impact in our decision.

CONSTANTINE ALEXANDER:

Absolutely. I want to support that. This is not a referendum on Starbucks. I want to make it very clear. This is a referendum of a coffee place. A place selling coffee and

pastry in Harvard Square in this location.
Not about Starbucks.

DOUGLAS MYERS: And that's a point that I find that's giving me quite a bit of difficulty. Is it really about Starbucks or isn't it? If there were an applicant sitting before us who intended to carry out the exact same function that this applicant is saying, but that applicant were named The Charming Coffeehouse, The Independent Coffeehouse, I wonder if that applicant would receive the same type of scrutiny that this applicant is receiving from this Board. Or whether we would say Cambridge is a city of coffeehouses and there's nothing the matter with The Charming Coffeehouse or The Independent Coffeehouse even if it's doing the exact same thing. And I'm troubled that this really seems to be about Starbucks. And the question is whether or not there is over saturation because of the presence of other

Starbucks. And whether this Starbucks is somehow a tipping point. And ultimately then the question is about Starbucks, whether if that's really the mode and forces that are controlling people, motivating people on the question of need. Let's assume that that's what is in fact going on here tonight. I have to say that a case to me it's a close case. If you put it in that light. Granted most of it has been developed here tonight with testimony from the applicants and not in any demographic surveys or research which I think the Board would find extremely helpful in really addressing this question of need. But as I sit here, I wonder do they seem to be doing a lot of things that do meet what the Ordinance calls a need for such a service in the neighborhood? And --

RICH McILVENE: Well, I think that's what we want to provide, too. It's not just about -- and Starbucks' philosophy isn't, you

know, we just want to sell everybody a cup of coffee. Obviously that's where we make money. But it's about creating a third place, come in, we want to be part of the community. Our operations team and store managers and everybody's encouraged to go out and connect with the people. Give them what they need. Do some things to support the community. I think that's what we're all about.

The other thing that's interesting to us here is that as a need, which seems to, be you know, the biggest issue, is there a need for another coffeehouse? There's no other coffee place here out of the many that are here protesting us to go in there. So, the need is -- they're looking at it well it's not --

TAD HEUER: They couldn't though.

CONSTANTINE ALEXANDER: We wouldn't give them five seconds worth of time.

Because they've got a conflict of interest. We're looking here to uphold the community interest. And we're very suspect. We've had competitors on other kind of projects come before us. We show them the door because we know where they're coming from. And we would have done the same here.

And I have to go back to what Doug said. I want to make it very clear, my view would not be any different if this were -- as I said, the 1369 House across the street. This is -- not for me anyway, and I hope not for other members of the Board, this is not about Starbucks. This is about a coffee shop offering the kinds of services and food that your Starbucks would offer. But it's not about Starbucks. Because if it were about Starbucks, we would legally be -- we could not legally turn you down as Tad has pointed out. That would be probably unconstitutional. We can't discriminate

against national chains, and that's not what this is about. I want to be very clear at least speaking for myself that that's where we're coming from, whichever way we come out.

TIMOTHY HUGHES: I'm troubled by the idea that need is restricted to the number of shops that serve the same kind of things. You know, even if it's a number of Starbucks, I personally think that we have not reached a saturation point for coffee in Harvard Square yet, you know? Or for fast food either, because of the nature of the high volume of visitors that students -- that the nature of the student population in the area. And I think, you know -- I think this place can do very well there.

BRENDAN SULLIVAN: Well, it's the last thing you see before you go down the subway, and it's the first thing you see when you come up.

TIMOTHY HUGHES: I don't have a

problem with that.

BRENDAN SULLIVAN: No, that's what I'm saying. Again, as far as the need, a location --

TAD HEUER: Well, the first thing you see when you come out is a Dunkin' Donuts.

TIMOTHY HUGHES: I have problem with that. No, I don't. I just don't like pink.

ATTORNEY BRUCE EMBRY: May I ask a procedural question?

CONSTANTINE ALEXANDER: Sure, go ahead.

ATTORNEY BRUCE EMBRY: Since there are five members, to vote to four?

CONSTANTINE ALEXANDER: Matter of state law and our Zoning By-Law.

ATTORNEY BRUCE EMBRY: I understand.

CONSTANTINE ALEXANDER: Further comments or are we ready for a vote. Yes, sir.

ATTORNEY BRUCE EMBRY: May I ask for a moment you get your vote?

CONSTANTINE ALEXANDER: We'll give you a slight recess. Go ahead.

(Case recessed after discussion off record.)

(9:25 p.m.)

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

CONSTANTINE ALEXANDER: The Chair is going to call case No. 10020, 233-235 Huron Avenue. Is there anyone here wishing to be heard on this matter? For the record, name and address.

JOHN SULLIVAN: John Sullivan, 29 Longbow Circle, Winfield, Massachusetts.

CONSTANTINE ALEXANDER: You're the owner of the property?

JOHN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: So that means you do not reside on the property?

JOHN SULLIVAN: I do not reside on the property.

CONSTANTINE ALEXANDER: And is it a two-family home?

JOHN SULLIVAN: Yes, it is.

CONSTANTINE ALEXANDER: Rental property?

JOHN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: Okay. You're seeking a Variance for a dormer. And you know to get a Variance, you've got to meet certain standards like substantial hardship and special circumstances that relate to the hardship. So why don't you address -- I think the -- I will say for the record to move things along, your proposed dormer does meet the dormer guidelines.

JOHN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: So there's no issues about that.

JOHN SULLIVAN: Correct.

Basically there's a defect in the roof design. And it limits the head space in that third floor, and we are looking to create a dormer within the guidelines to take advantage of that --

CONSTANTINE ALEXANDER: You say a defect. You have two units in the place right now. You want more space for one of the units?

JOHN SULLIVAN: Correct. It's taking existing space and making it more usable.

CONSTANTINE ALEXANDER: Yes.

TAD HEUER: How is the roof defective?

CONSTANTINE ALEXANDER: Yes, thank you.

TAD HEUER: Is it just that the roof is too short?

JOHN SULLIVAN: Yeah. Pardon my verbiage.

CONSTANTINE ALEXANDER: You know, I mean, what you're seeking here -- I'm going to be very blunt.

JOHN SULLIVAN: Yep.

CONSTANTINE ALEXANDER: You're looking to increase the value of your property. If we give you more space, you can increase the rent because you've got more space to rent out. That's not the hardship. It's not the hardship of a family that needs more space.

JOHN SULLIVAN: My brother and I have owned this house since 1991. We bought it from our dad who got it from his dad who bought the house in 1925.

CONSTANTINE ALEXANDER: Okay.

JOHN SULLIVAN: My intent is sometime in the near future to move there myself. I have two kids. Next year I'll have two kids in college, one more after that. Once my third kid is in -- and I hoped to move

there myself and live there myself.

CONSTANTINE ALEXANDER: It's not like I mean you live there. What you're still talking about is increasing the value of the property. It's not like you have two small kids and you need another bedroom.

JOHN SULLIVAN: Understood.

CONSTANTINE ALEXANDER: By the way, the dormer as you face the house from the street, your dormer is on the left-hand side, right?

JOHN SULLIVAN: Correct. I think we've put some photos in there.

CONSTANTINE ALEXANDER: You probably did. I have the plan in front of me.

JOHN SULLIVAN: I have them here, too, if you want to see them.

CONSTANTINE ALEXANDER: I've seen the property. Maybe other members of the Board haven't.

JOHN SULLIVAN: It would be here on

the driveway side.

CONSTANTINE ALEXANDER: So the hardship is what? You have space and you would like to -- that you say is potentially usable but not without a dormer essentially?

JOHN SULLIVAN: Yes, correct.

And the other point I'd like to make is that the surrounding properties, many of them have dormers and many of them are on smaller parcels and are quite large.

CONSTANTINE ALEXANDER: They're probably -- assuming they're either legal non-conforming or --

JOHN SULLIVAN: They're pre-existing as this house was, yeah.

CONSTANTINE ALEXANDER: Questions from members of the Board?

BRENDAN SULLIVAN: I think I can probably count seven or eight houses that surround this locus that have usable third floors either by design or next-door right on

the very corner where Mrs. Pierce lives is a third floor unit actually. The Downey's house probably has a third floor unit also. So I think it's not inconsistent, No. 1. I think that the deficiency if it were, when the house was built back at a time attics were not used other than for just storage. And so consequently the peak is probably 30 somewhat feet.

TAD HEUER: 31.8.

BRENDAN SULLIVAN: 31.8. So if it had gone up another four-foot, two, four-foot, four or something like that, they may get sufficient headroom to make it usable space up there. So I mean it's not inconsistent. It's not inconsistent with other petitions that have come down before us. And so I --

CONSTANTINE ALEXANDER: I should mention -- thank you. I'm sorry, I didn't mean to cut you off.

I should just mention for the record that the reason why you're before us is that your FAR currently is at -- according to your form, 0.957 in a 0.5 district. So you're almost twice as much as permitted. And you want to go slightly more to the dormer. You'll be now at 0.976. Even closer to twice what is permitted in the district. That's why you're here tonight.

TAD HEUER: I just have a technical question. On your dimensional form you say the Ordinance -- your lot area is 5,000. You're in a 0.5. The Ordinance requires 2650 for GFA. That's mathematically not right, right?

BRENDAN SULLIVAN: Right. That number's wrong.

JOHN SULLIVAN: My apologies.

TAD HEUER: It should be 25.

BRENDAN SULLIVAN: 25, right. The existing may be 26.

TAD HEUER: Okay. Right.

BRENDAN SULLIVAN: It's the right number for something but not for that.

TIMOTHY HUGHES: I have to admit that the percentages are a little disturbing, but really it is only an addition of 100 square feet what it boils down to.

CONSTANTINE ALEXANDER: Right. It's only a slight increase. It starts out being significantly non-compliant, but you're not really significantly increasing the non-compliance.

TIMOTHY HUGHES: You know, no land -- this lot was never bigger and land got sold from it?

JOHN SULLIVAN: No.

TIMOTHY HUGHES: No. This was always the size of the lot. So the Ordinance got imposed on this lot and this house, and the percentages got imposed on it. It didn't get built that way, you know, post-ordinance.

This is the way. It's non-conforming by virtue of the way the law being instituted.

BRENDAN SULLIVAN: It predates any Ordinance.

JOHN SULLIVAN: And the house to left and to the right, their ratios far exceed ours.

CONSTANTINE ALEXANDER: Tad, you want questions now I'll go to public testimony?

TAD HEUER: No. You have two application forms supporting your statements. I presume the November 15th one includes the statement of hardship is the one we're looking at, right?

JOHN SULLIVAN: I believe, yes.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair

notes that no one wishes to be heard.

I don't think there are any letters in the file so I'm going to close public testimony.

DOUGLAS MYERS: What is the status of the abutter comment? Comments by your abutters?

JOHN SULLIVAN: Comments from both sides of the abutters were favorable. They're looking forward to seeing the house improved and new tenants moving in. It's been vacant for about nine months. So both abutters were pleased.

TAD HEUER: How much space does it give you in the upstairs unit?

JOHN SULLIVAN: Additional?

TAD HEUER: It gives you 100 extra. But what's the floor area now?

JOHN SULLIVAN: It's on the plans. I don't know exactly square footage. What is it, 1,000?

MORTIMER SULLIVAN: 800 maybe.

JOHN SULLIVAN: 800 maybe. It's going to be one big room and a bathroom.

CONSTANTINE ALEXANDER: What is it now? What's that unit now and what will it be -- in terms of square footage, and what will it be if we grant you relief roughly?

MORTIMER SULLIVAN: Roughly about 800 more.

JOHN SULLIVAN: 800 additional.

CONSTANTINE ALEXANDER: How many additional square feet?

JOHN SULLIVAN: 1200 maybe. Does that sound about right? Yeah.

CONSTANTINE ALEXANDER: So you're going from 1200 to 2,000?

JOHN SULLIVAN: Correct, yeah.

CONSTANTINE ALEXANDER: So you're going to almost double the size of the apartment?

JOHN SULLIVAN: Right.

CONSTANTINE ALEXANDER: You look puzzled.

TAD HEUER: 1200 to 2000.

CONSTANTINE ALEXANDER: That's what I'm hearing. They're going to be able to use 800 square feet in the attic. Attic plus dormer.

JOHN SULLIVAN: Well, it's actually probably going to be less because there will be foot walls on the sides. So maybe 600.

CONSTANTINE ALEXANDER: All right. 600. So from 1200 to 600 -- 1800.

TAD HEUER: Well, all right, I may be slow, but somebody walk me through that. It's two units. First floor unit is how big?

JOHN SULLIVAN: 15.

TAD HEUER: 1500.

JOHN SULLIVAN: Yeah.

TAD HEUER: Second floor unit is currently how big?

JOHN SULLIVAN: 12.

MORTIMER SULLIVAN: 12. Because you have the basement unit. It's the first unit.

CONSTANTINE ALEXANDER: The first floor is a basement plus first floor that's 1500 square feet.

JOHN SULLIVAN: Correct.

CONSTANTINE ALEXANDER: And the second floor right now just one floor and nothing up above?

JOHN SULLIVAN: Correct.

TAD HEUER: The second floor is 1200?

JOHN SULLIVAN: Correct.

TAD HEUER: And there's a half story.

MORTIMER SULLIVAN: Yeah, walk up attic.

JOHN SULLIVAN: Exactly, yes.

TAD HEUER: And that's zero usable right now.

JOHN SULLIVAN: Correct.

MORTIMER SULLIVAN: Well, the center area.

JOHN SULLIVAN: It's not living space, it's storage space.

TAD HEUER: Right. So certain part of the center area counts but not any usable.

JOHN SULLIVAN: Right. Correct. It was never finished.

MORTIMER SULLIVAN: No, the center does count because of the height.

TAD HEUER: That's included in the 1200 or that's extra space? My question is: When you add this dormer in, you're going to --

MORTIMER SULLIVAN: To your point, you're right.

JOHN SULLIVAN: To your point, let's say 15 to 18. If you were to count that center space.

TAD HEUER: Okay, so if you count the

center space right now, you can't use -- it's 15 for the second story.

JOHN SULLIVAN: Correct.

TAD HEUER: When you put the dormer in, you're actually going to be recapturing new space under the dormer --

JOHN SULLIVAN: Correct.

TAD HEUER: -- plus this space what's there now --

JOHN SULLIVAN: It becomes more -- that's it.

TAD HEUER: All right.

CONSTANTINE ALEXANDER: Questions or questions or comments from members of the Board at this point or are we ready for a vote?

TIMOTHY HUGHES: I'm ready for a vote.

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

That a literal enforcement of the

provisions of the Ordinance would involve a substantial hardship to the Petitioner.

That the hardship being that there is space in the building, specifically attic space, which is not functional for use for habitable use and would be if we were to grant relief.

That the hardship is owing to circumstances relating to the fact this is a non-conforming structure on an older lot, and therefore, any modification of the structure requires Zoning relief as witnessed by the fact that the structure is not now in conformance with our FAR.

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

The Chair would note with regard to this is that the additional space -- well, if we grant relief, it would allow additional space to be used by the residents of the city and

that is desirable.

On the basis of these findings, the Chair moves that a Variance be granted the Petitioner on the condition that the work proceed in accordance with the plan, a single page of plans, submitted by Petitioner initialed by the Chair. They are dated it would appear 09/0 1/10 and prepared by Construction Design Services.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Hughes, Sullivan, Heuer, Myers.)

CONSTANTINE ALEXANDER: One opposed.

(Alexander opposed.)

CONSTANTINE ALEXANDER: Variance granted.

(9:35 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10022, 12 Hubbard Park Road. Is there anyone wishing to be heard in this matter? Please come forward and state your name and address for the record.

BLAKE ALLISON: It's Blake Allison. Dingman Allison Architects at 1950 Mass. Ave.

DR. JOSEPH GLENMULLEN: Joe Glenmullen, 12 Hubbard Park Road.

CONSTANTINE ALEXANDER: You're here seeking a Variance for various structural

additions or changes.

BLAKE ALLISON: Yes, we were here a few months ago.

CONSTANTINE ALEXANDER: Yes, you were.

BLAKE ALLISON: And that was basically to expand the floor of the --

CONSTANTINE ALEXANDER: I was given the wrong file.

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

BLAKE ALLISON: So, the house is non-conforming because the ridge of the existing roof is 36 feet and in the zone it's a 35 foot limit. So we're here seeking a Variance for a small addition.

CONSTANTINE ALEXANDER: It's really a conforming addition to a non-conforming structure. Because of the nature of the conformance is more than 25 percent, you have to get a Variance?

BLAKE ALLISON: That's right, yes.

CONSTANTINE ALEXANDER: All right.

BLAKE ALLISON: So, the unfortunately we didn't catch all of this the first time around. So I apologize for coming back again. But the evolution of the design has been such that the owner's commitment to the house has grown as we've explored the design. And finally, the decision was made that the first floor layout with the existing kitchen and so on just wasn't -- this wasn't going to work for a house that -- with all this work being done to it, being brought to a -- for this to be a much more liveable property. So I pulled the usual architect's trick of throwing something irresistible in front of him. And he said, well, we've got to do it.

So, consulted with the neighbors about this small addition. Nobody really had a problem with it at all because it's taking the

place of an existing deck which you can see in these pictures here. It's this structure which has a very high lattice wall facing toward the neighbor. So in terms of the footprint of what's on the property, we're filling in this block right here (indicating). That's the easiest way to describe it. It will have a full basement underneath it, so coming back as new FAR, but we're still able to stay underneath the 0.5. We're getting pretty close, but it's under 0.5. There are no setback issues. If it weren't for the 36 foot height of the ridge, we wouldn't need to be here wasting your time. But that's what boils down to.

DOUGLAS MYERS: In course of the new constructions are you creating a new deck?

BLAKE ALLISON: No, no. There's a large rear yard, and this deck was really the consequence of just kind of a hodge-podge of additions that were put on several times in

the sixties. And it wind up being a leftover space and they filled it in with this deck and a lattice wall, which is kind of out of -- as you can see, the whole thing was very out of keeping with the architecture of the house. So all of those aspects are going to go away as part of the renovation that we're doing.

I'd like to give you if I may, giving you new paperwork because in the process of working with the neighbor who is rather close on the west side, he requested some changes to what we had proposed for the side porch.

DOUGLAS MYERS: You said there was no new deck? Did I ask -- my question was in the course of the construction of the addition, will there be a new deck? And your answer was no, wasn't it?

BLAKE ALLISON: That's right.

CONSTANTINE ALEXANDER: There is on the plans on the second floor you're going to have a deck.

DR. JOSEPH GLENMULLEN: No. He's about to tell you.

BLAKE ALLISON: The neighbor has requested that we take away the deck. And the neighbor also wanted us to modify the side porch.

DR. JOSEPH GLENMULLEN: Scale it down.

BLAKE ALLISON: Scale it down a little bit. So these are new drawings that reflect those changes.

CONSTANTINE ALEXANDER: You know our rule about submitting them the Monday before.

BLAKE ALLISON: Well, we would have. The owner -- the neighbor next-door didn't give us his final signoff until --

CONSTANTINE ALEXANDER: Go with some specificity the difference that are in our files and the new ones you have right there. One, you're removing the deck.

BLAKE ALLISON: It removes the second floor deck at his request.

CONSTANTINE ALEXANDER: So just take out deck.

BLAKE ALLISON: That's right, eliminate the deck.

CONSTANTINE ALEXANDER: And the other change?

BLAKE ALLISON: The other change is this little side porch, which you see right here, has been shrunk in just a little bit. It's --

CONSTANTINE ALEXANDER: Where is the side porch? These are the plans that are in our file. Where's that side porch?

BLAKE ALLISON: Find the page. This side of the porch here.

CONSTANTINE ALEXANDER: Okay.

BLAKE ALLISON: What we're trying to do there is replace an existing side porch with a new one that's enclosed. It has a roof

over the landing, and then it encloses steps that give access to the basement which replaces a --

CONSTANTINE ALEXANDER: What are the dimensions of the new deck? The same dimension -- the external dimension the same?

BLAKE ALLISON: The --

CONSTANTINE ALEXANDER: The new.

BLAKE ALLISON: The neighbor asked us to shrink it a bit. So this is just a little bit smaller than what's on it that one.

CONSTANTINE ALEXANDER: Is it any closer to the neighbor's lot line?

BLAKE ALLISON: No.

DR. JOSEPH GLENMULLEN: Also, if you look at the elevation, it's considerably less conspicuous on the side of the house.

BLAKE ALLISON: Right.

DR. JOSEPH GLENMULLEN: Compare that to what we have.

CONSTANTINE ALEXANDER: Let me ask a

question before we continue for members of the Board. Are you satisfied going forward with this case on the basis that we're looking at these new elevations and new changes on the fly given the nature -- I would point the nature of the changes.

TIMOTHY HUGHES: Given the nature that they're reductions, I'm cool with it.

CONSTANTINE ALEXANDER: I wanted to make sure.

BLAKE ALLISON: We also have a written -- I'm sorry, we have the written signoff from the neighbors.

CONSTANTINE ALEXANDER: That's not the issue. The issue is whether we as the Board, we have the responsibility whatever the neighbors say, to be sure we know what plans we're approving. And we're being asked to approve plans that we never seen before until minutes ago.

BLAKE ALLISON: The plans were

altered at the request of the neighbor.

CONSTANTINE ALEXANDER: That's again irrelevant. The fact of the matter is that we're seeing new plans. If we're comfortable with the nature of the new plans is not significantly different from what we've seen, I'm prepared to go forward. I just wanted to make sure my fellow board members are comfortable with going forward on these new plans never having seen them before until right now. And I think we've heard -- I'm satisfied.

DOUGLAS MYERS: My first impulse is to say go home, do it right, and come back again. But I listen to my fellow board members, and I just asked Sean whether he will have any problems applying the -- enforcing and applying the new plans as they're presented here tonight?

SEAN O'GRADY: I'll take a look at them. I haven't looked at them.

BRENDAN SULLIVAN: Has the dimensional form changed to reflect the new plans?

BLAKE ALLISON: Yes. Here's the -- this is it. This was also done at the neighbor's request to confirm our FAR. And so I thought I would supply you with that document as well.

BRENDAN SULLIVAN: So the neighbor who had comments, and these plans reflect those comments, has seen these when? When was the last time they approved it?

DR. JOSEPH GLENMULLEN: They got them on Friday and they agreed to it on Wednesday. And I think he signed the forms today.

BRENDAN SULLIVAN: Okay. So they had them for a number of days, and that's the reason why it didn't get into the file because they were basically holding it.

BLAKE ALLISON: Yes.

CONSTANTINE ALEXANDER: Quickly looking at the dimensional form, it looks like you're still, it's still a conforming addition to a non-conforming structure.

BLAKE ALLISON: Yes.

CONSTANTINE ALEXANDER: You reduced the setback, you're still within the setback of our Zoning By-Law.

BLAKE ALLISON: Yes.

DOUGLAS MYERS: This is yours.

CONSTANTINE ALEXANDER: We're going to need it for our file.

BLAKE ALLISON: For the record.

CONSTANTINE ALEXANDER: These are the ones that you're looking to now?

BLAKE ALLISON: Yes, they are.

And did you want to talk about the neighbor approval?

DR. JOSEPH GLENMULLEN: I had gone to the neighbors when we had done the third floor dormer. And everyone readily agreed

to it with the one exception of the very next-door neighbor who would be looking out of that side entrance. And they requested that I remove the deck which would overlook their yard, and that we scale down the side entrance which we were happy to do. And we got the new plan and they signed off on it. And there was one other neighbor very friendly with them who held off until they had agreed and then they did as well. So, there were nine neighbors that used mail, too. I sent -- I left material for everybody. I've got signatures for eight of the nine. The ninth person I talked to, they didn't have any objections. I just haven't coordinated with them to get the form back.

CONSTANTINE ALEXANDER: Are those for our records?

DR. JOSEPH GLENMULLEN: Yes.

CONSTANTINE ALEXANDER: Anything further you wanted to add?

BLAKE ALLISON: That's it. Any questions?

CONSTANTINE ALEXANDER: Any questions from members of the Board at this point? I'll open it 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.

The Chair is in receipt of letters, identical letters saying that there is support for the proposed plan. And the plan that these people signed off on are the plans that you were asking us to approve right now?

DR. JOSEPH GLENMULLEN: Yes. You'll see the next-door neighbor has a later date because last Friday.

CONSTANTINE ALEXANDER: November 15th.

DR. JOSEPH GLENMULLEN: Well, that

was -- if you go one more further, the next-door neighbor is the one that got it last Friday, November 12th.

CONSTANTINE ALEXANDER: The letters actually are a little bit different, but they are all in support. They're from the residents of 8 Hubbard Park Road, 5 Hubbard Park Road, 6 Hubbard Park Road, 100 Foster, 98 Foster. It looks like 15 Hubbard. The person -- the occupant or resident at 14 Hubbard Park Road approves assuming the renovations conforms to all setback and FAR. And you've represented, and your form shows that that is the case.

BLAKE ALLISON: Yes.

CONSTANTINE ALEXANDER: And there's also a letter from 20 Hubbard, the resident of 20 Hubbard Park Road.

I will close public testimony at this point.

Anything else you want to add besides

what you've said so far? Last time to talk or forever hold your peace.

BLAKE ALLISON: Well, just to reiterate with the supporting statements. That the hardship is owing to the non-conformity of the existing roof line. It's a de minimus application for a small addition, and the neighbors are in support and that the new entryway will make for a more energy efficient and safer pattern of egress and entry.

CONSTANTINE ALEXANDER: Comments, questions from members of the Board. Ready for a vote. Okay.

The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of our Ordinance would involve a substantial hardship to the Petitioner. The hardship being that a structure and need of renovations and updating can go forward on

even a better basis than was proposed before with the relief being sought.

That the hardship is owing to the fact that this is a non-conforming structure. Non-conforming as to height due to the roof line and, therefore, any modification or any substantial modification requires relief of a Variance from our Board.

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

In this regard the Chair would note that the change is minor in fact. That otherwise the structure as modified will conform with the conforming addition to a non-conforming structure.

That the proposed additions will be largely hidden from view by existing trees, and that the neighborhood -- there seems to be unanimous neighborhood support for the

project.

The Chair moves on the basis of these findings that a Variance be granted to the Petitioner on the condition that work proceed in accordance with the plans submitted by the Petitioner prepared by Dingman Allison Architects. They are numbered L1-1, A1-1, A1-2, A2-1 and A2-2. They're dated 11/12/2010 all of which have been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Myers.)

TAD HEUER: Abstain.

CONSTANTINE ALEXANDER: Abstain.
One abstention. Variance granted.

TAD HEUER: That's only because the

materials came in late. I have no problem I don't believe with the substantive issues. It's just the amount of paper we received given our clearly stated deadlines, it's difficult to make a decision on that basis.

BLAKE ALLISON: I apologize.

CONSTANTINE ALEXANDER: In that regard Mr. Heuer's point is very well taken, and I think with the accommodation we made, but in the future we're not going to be so kind.

BLAKE ALLISON: Appreciate it.

DR. JOSEPH GLENMULLEN: Thank you.

(9:55 p.m.)

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

CONSTANTINE ALEXANDER: 1380

Massachusetts Avenue is ready to be heard again. We'll reconvene the case.

Okay, you've had a chance to huddle.

ATTORNEY BRUCE EMBRY: Thank you for the time to be together. And I think just in summary before you folks vote we'd like to say that Starbucks is very much looking forward to making this location into a vibrant exciting two-story 100 seat sit down different kind of experience for all of the coffee drinking public in Cambridge, and

we're also looking forward and excited to be next-door neighbors to the Pinkberry folks in making that location, that corner really exciting.

CONSTANTINE ALEXANDER: You're assuming we're going to give them relief.

ATTORNEY BRUCE EMBRY: Well, no, I'm just saying it's going to be a nice whole environment there that we'd be very happy to participate in. Thank you very much. And we're happy to hear from you.

CONSTANTINE ALEXANDER: We've had substantial discussion or do you want more discussion or are you ready for a vote?

TIMOTHY HUGHES: I'm ready.

CONSTANTINE ALEXANDER: The Chair moves that a Special Permit be granted to the Petitioner to operate a fast food establishment on the grounds that the Petitioner will meet the requirements of Section 11.31, including the requirement

that the establishment fulfills a need for the service being proposed in the neighborhood or in the city.

And on the further fact that the Special Permit would be granted on the grounds that the traffic generated or patterns of access or egress will not cause congestion, hazard or substantial change in established neighborhood character. Although I think there will be a bit of traffic. Presumably there will be a bit of traffic generated by the proposed use that's consistent with the nature of that area of Harvard Square, and will not be undue the traffic -- the traffic will not be unduly and adversely affected by the hopeful patronage of the structure, of the use.

That the continued operation and development of adjacent uses will not be adversely affected by what is proposed. In fact, there's been testimony of evidence

presented by other business owners that they do not feel that to be the case. This is business owners in the area.

And 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. We're talking about essentially a coffee -- an establishment that will primarily provide coffee and pastry and other food items. It will even have a piano.

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

The Special Permit would be granted on the basis that the work proceed or the nature of the use, the configuration and nature of this organization will be consistent with plans submitted by the Petitioner. There are three pages all of which have been initialed by the Chair.

On this basis, the Chair moves that a Special Permit be granted to the Petitioner. All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Hughes, Sullivan, Heuer, Myers.)

CONSTANTINE ALEXANDER: Opposed. I don't believe that you meet the requirement for a need as required by our Zoning By-Law. But the motion --the Special Permit's granted.

ATTORNEY BRUCE EMBRY: Thank you, sir. Thank you, Board.

(10:00 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10018, 1380 Massachusetts Avenue, New England Frog Pond, LLC doing business as Pinkberry. Is there anyone here wishing to be heard on this matter?

ATTORNEY MICHAEL OVERSON: Good evening, Mr. Chairman, members of the Board. Michael Overson, 131 Oliver Street, Boston, Massachusetts is my address here tonight on behalf of the Petitioner NE Frog Pond, LLC doing business as Pinkberry.

CONSTANTINE ALEXANDER: Do you have

a business card you can give to the stenographer?

ATTORNEY MICHAEL OVERSON: I do.

To my left is Mr. Trip Lonian, L-o-n-i-a-n. Mr. Lonian is cofounder and CEO of the Petitioner. To his left is Mr. Peter Pitman. Pitman and Wardley Architects who put together the floor plans and other specification drawings for the application.

If it pleases the Board, I would do a quick introduction and just try to address as quickly as I can some of the criterion and go into more detail as the Board wishes.

Pinkberry, for those of you not familiar with it, it's a well-known premium first class yogurt concept. And it's new to this region. Trip has done an excellent job recently in trying to bring this concept to this area. Trip is a resident of Cambridge. He's a native of this area. And it's a very

unique product.

CONSTANTINE ALEXANDER: Is it like an ice cream type of yogurt or like a soft like a soft ice cream?

ATTORNEY MICHAEL OVERSON: It's different than ice cream and it's really not aimed at sort of the ice cream crowd. It's been described as sort of an almost a health food concept. So this is not the type of yogurt that some of the ice cream vendors would offer as sort of a secondary choice. It's not something that's meant to imitate ice cream or to be, you know --

CONSTANTINE ALEXANDER: Are you going to offer smoothies and things like that sort?

ATTORNEY MICHAEL OVERSON: Yeah. There are beverages and other menu items. The principle offering is this tangy yogurt product. And what makes this distinct, what makes it unique --

DOUGLAS MYERS: How is it served when people take it out from the store?

ATTORNEY MICHAEL OVERSON: It's served like a takeout similar in terms of the service items to an ice cream vendor.

Meaning --

DOUGLAS MYERS: So more specifically cups, cardboard cups, plastic tubs?

ATTORNEY MICHAEL OVERSON: Cardboard cups, plastic utensils. The same kind of thing you'd have --

DOUGLAS MYERS: Is it fair to say it's like an ice cream vendor's store?

ATTORNEY MICHAEL OVERSON: Yes, the service of the products, same thing. The uniqueness, the distinct nature of it is really the product. And also to a certain extent, the demographic, the customer base. Pinkberry tends to aim at somewhat of a younger crowd. Almost a more

environmentally aware crowd. You know, again, it's a youthful concept. It's become very popular in other parts of the country. But what I want to emphasize is that although this is a brand, you know, Trip is a resident of Cambridge and he is the local franchisee. This is his business. He's very familiar with the community. He's very familiar with Harvard Square.

CONSTANTINE ALEXANDER: Are there any other Pinkberries in the Greater Boston area?

ATTORNEY MICHAEL OVERSON: Right now Trip is working on -- well, the Boston store on Newbury Street.

CONSTANTINE ALEXANDER: There is one operational right now on Newbury Street?

TRIP LONIAN: We just opened earlier this month on Newbury. And then our first store was actually opened in August in Hingham, Massachusetts.

CONSTANTINE ALEXANDER: In Hingham?

TRIP LONIAN: Yeah.

ATTORNEY MICHAEL OVERSON: So again, Trip has been very much responsible for introducing this brand to this area of the country. And he's sensitive to the City of Cambridge and the Harvard Square neighborhood in particular. And that's helped him really put together an idea which we'd like to present to the Board that there is a need. A substantial community need in this part of Cambridge for this type of product and this type of service. As I mentioned before, the Pinkberry concept can really be distinguished from say the JP Licks or the Lizzy's Ice Cream because of the product. Because of the people that it's aimed at, and the lifestyle that it's aimed at. It's a health food concept. The yogurt is accompanied at these locations by fresh cut fruit and dry toppings that really have

a different sort of attraction than the ice cream.

CONSTANTINE ALEXANDER: What will your hours of operation be?

TRIP LONIAN: Likely 11 to 11 weekdays. 11 to 12 on weekends.

CONSTANTINE ALEXANDER: So you're not there for breakfast crowd even though it's health food?

TRIP LONIAN: You know, we talked about it in Harvard Square. A lot of Pinkberries open for breakfast, for the breakfast business are in airports and that type of thing. So one of the concepts that we'd like to pioneer a little bit, and frankly corporate is anxious for us to try the do breakfast. So we've talked about it.

CONSTANTINE ALEXANDER: You've talked about it, but you're not planning on at this point? You'll open up 11 to 11?

TRIP LONIAN: If we -- the standard

hours are 11 to 11. If we opened today, we would try to open with breakfast. I think that's where we're internally kind of leaning. We'd love to have a breakfast product. I mean we serve a parfait and we have a fruit bowl, I mean, it's still the same products.

CONSTANTINE ALEXANDER: If you're pitching this on health food basis, do you think you'd want to tell us you're going serve healthy breakfasts?

TRIP LONIAN: We would love to. We would love to. We'd have to do a little bit of re-education to convince people they can eat yogurt for breakfast.

CONSTANTINE ALEXANDER: But you're not telling us you're going to. You'd like to do it, but it's not in your plans right now unless you change your mind or whatever.

TRIP LONIAN: I would say we're leaning towards opening for breakfast. But,

you know, if that was a concern to the community, we would certainly not do that. But we'd like to do breakfast.

TAD HEUER: Can you differentiate yourself? Can you talk about Berry Line?

ATTORNEY MICHAEL OVERSON: Berry Line, somewhat similar concept and look. The Berry Line locations in this part of Cambridge are obviously not in the square.

TAD HEUER: Arrow Street isn't in the square?

ATTORNEY MICHAEL OVERSON: Well, it's not fronting this park. I mean, it's --

TAD HEUER: Oh, yeah. I mean, there are only four buildings fronting that street.

ATTORNEY MICHAEL OVERSON: There's different channel of foot traffic. Obviously that's in close proximity. And we would distinguish ourselves in a variety of ways.

TAD HEUER: Primarily on the ground

of tanginess?

ATTORNEY MICHAEL OVERSON: Degrees of tanginess, yes. You know, we obviously think that our product is different, distinct.

CONSTANTINE ALEXANDER: I wish you had mentioned Berry Line in your comparison. You conveniently omitted that when you talked about your comparison to J --

ATTORNEY MICHAEL OVERSON: It's in our written materials. We did cite it.

CONSTANTINE ALEXANDER: Okay.

TAD HEUER: It's written.

ATTORNEY MICHAEL OVERSON: You know, I was getting to that as the non -- I was addressing the ice cream stores. I mean, some people might not think that they're very different, but Pinkberry has a following in other areas of the country. You know, people are very loyal to this product and, you know, we would suggest that we are distinguished in

terms of taste, in terms of service, in terms of decor. I mean, you know, there's a possibility that there was sort of some similarity that was maybe even intended by Berry Line. But, you know, we would distinguish ourselves as sort of the innovator and as a different operation.

TAD HEUER: A second innovator?

ATTORNEY MICHAEL OVERSON: You can debate. Well, they got there first.

But, you know, in terms of the need, what we've submitted to the Board is a summary of these various factors that we think distinguish us, as well as a series of letters of support. I actually have an updated version of that. There's only different in that it has one additional letter from the Cambridge Chamber of Commerce.

CONSTANTINE ALEXANDER: I think we have that in the file.

TAD HEUER: I think that's here.

ATTORNEY MICHAEL OVERSON: I wasn't sure if that --

TAD HEUER: It's October 20th.

ATTORNEY MICHAEL OVERSON:

Basically what these letters from business owners and from residents indicate to us and indicate to Trip as a member of the community, is that there is a substantial need, a substantial desire for this type of operation, this product. And, you know, in addition to that, we think that the other criteria that are required by the Zoning Ordinance are also met here.

This is a high foot traffic area, and that's the kind of traffic that we think we'll be able to attract at this location. We don't want to think that, you know, traffic is going to be a concern as far as vehicular traffic because of the location and because of the fact that it really is difficult to pull up in a car and stop here. As far as the

other criteria --

CONSTANTINE ALEXANDER: Let's address the physical design to be compatible with and sensitive to the visual and physical characteristics of other buildings, public spaces and uses in the particular location. I mentioned that because in one of the comments from the Harvard Square Advisory Committee, you have the letter there. One of the persons commented was concerned about the windows would appear to be screened and people -- unlike let's say the Starbucks next-door, you wouldn't have the visual in and out. Is that right? Are you going -- are there going to be clear glass windows and you can look it in and look out?

TRIP LONIAN: Yeah, there seems to be a little confusion. We prefer clear glass. We have a very bright sort of glass heavy concept. And so we want people to see it. The only thing that we have on our

windows -- you know the technical term for the material.

PETER PITMAN: It's a mylar applique on the interior of the windows that goes across the series of benches that would just screen the backs of people's heads as they sit on those benches. So if we were to turn to the elevation, there's some seats and benches here. As pedestrians are walking by, they would be able to see in absolutely. This mylar is still --

CONSTANTINE ALEXANDER: We don't have this in our files.

PETER PITMAN: It's the last page.

CONSTANTINE ALEXANDER: You said 4A. This is 3A. On your plans it's 3MR.

PETER PITMAN: Oh, okay.

CONSTANTINE ALEXANDER: That's why I'm confused.

PETER PITMAN: My bad. I apologize.

CONSTANTINE ALEXANDER: All right.

PETER PITMAN: We're on the same drawing.

CONSTANTINE ALEXANDER: All right.

PETER PITMAN: The mylar applique is -- does not prevent pedestrians from looking in from seeing the store, seeing the menu, seeing the product. It just provides a little bit of screening for the customers in the store who are sitting down, you know, enjoying their yogurt.

DOUGLAS MYERS: So in effect is it a band across the window --

PETER PITMAN: Yes.

DOUGLAS MYERS: -- which is non-transparent, which is opaque with respect to what it covers?

TRIP LONIAN: Here it is actually. You can see our Newbury store in the picture. So it really doesn't obstruct. It's very light. You can probably hardly see it.

CONSTANTINE ALEXANDER: You're right. I don't see anything.

TRIP LONIAN: But they're a light green circle --

CONSTANTINE ALEXANDER: How far up the window? It looks like about the bottom half roughly covered.

PETER PITMAN: Yes, sir. Absolutely.

TRIP LONIAN: Yeah, but it's really circles that are on smaller circles. And it's designed to provide a subtle screening but it's transparent.

DOUGLAS MYERS: It's for privacy for the customers?

PETER PITMAN: A subtle screening.

DOUGLAS MYERS: Aesthetic value.

PETER PITMAN: And the pedestrians to focus more on the product and the goods than perhaps the people.

DOUGLAS MYERS: The people.

CONSTANTINE ALEXANDER: Okay. I raise that because someone else had raised it.

PETER PITMAN: Oh, yes.

CONSTANTINE ALEXANDER: Keep going, sir.

ATTORNEY MICHAEL OVERSON: So just to touch on that, the Pinkberry stores have a very distinctive modern sort of elegant decor, and that's really what that fits into, the decals on the window. So, as far as the physical appearance, the only -- obviously this is a special building, a historical building, and the only exterior changes would be the one Pinkberry sign which is denoted in the picture with the window treatments on either side of it.

CONSTANTINE ALEXANDER: And you've got a certificate, correct me, Historical Commission for non-conforming sign?

ATTORNEY MICHAEL OVERSON: We

submitted an application to the Historical Commission. What we were actually told was that the sign was conforming with the Zoning Ordinance and therefore didn't require a hearing or determination by Historical.

CONSTANTINE ALEXANDER: There's something in the file.

ATTORNEY MICHAEL OVERSON: When that was mentioned at the previous hearing, I was confused.

CONSTANTINE ALEXANDER: I thought I saw something.

TRIP LONIAN: Maybe it was Starbucks or something.

CONSTANTINE ALEXANDER: This is something from the Cambridge Historical Commission. It says: "The Commission has no jurisdiction to review matters of use." Which is correct. "The Commission issued a certificate of non-applicability for new exterior signs. See attached."

ATTORNEY MICHAEL OVERSON: That is more consistent with the communication we received, which is that they actually did not make a determination because we weren't applicable to their criteria.

TAD HEUER: Is it internally illuminated?

ATTORNEY MICHAEL OVERSON: It was -- we got a communication actually from Les Barber that the sign was compliant and, therefore, the Cambridge Historical Commission wasn't going to make a determination on the appropriateness of the signage. So that's, as far as the exterior, the physical characteristics. Now suitability for the use, we think this location and also the premises is very suitable and very well fitted for the proposed use. Aside from its location, its proximity to this foot traffic areas, it's ground floor commercial space, about 900

square feet. The use itself doesn't require any cooking. Any, you know, any heat sources. So, although it's obviously a fast order food use within the meaning of the Ordinance, it doesn't carry with it some of the, you know, the more strenuous uses of say, you know, a full service fast food restaurant.

Adequate facilities for trash disposal, Trip, as he's already put into place at the Boston store, his staff vigorously polices the area in and outside the premises.

CONSTANTINE ALEXANDER: Will there been any trash receptacles on the outside of the premises? That's a really busy, heavily traffic area. Are all the receptacles you're going to encourage people to use inside the --

TRIP LONIAN: They're inside. In

fact, most of our customers they end up walking down the street. And then we do have a small patio area, that's by our policed by our staff.

DOUGLAS MYERS: Will you police the immediate vicinity in front of your store? You know, outside -- even though it's outside the store premises?

TRIP LONIAN: We do both in Newbury and Hingham. In fact, the neighborhood association in the Back Bay was extremely interested in us doing that. Absolutely. Absolutely.

CONSTANTINE ALEXANDER: We have to address the issue of biodegradable materials and packaging the food and any utensils and other items provided for the consumption. You mentioned plastic spoons, obviously. They're not biodegradable, are they?

TRIP LONIAN: No.

CONSTANTINE ALEXANDER: I don't

know if you have any alternatives other than them cones. But I take it everything else is biodegradable, paper goods?

TRIP LONIAN: It's all paper goods. We have, you know, for the to-go, if somebody -- and frankly we don't give out that many, if somebody wants to put it in their car and take it home, we have a plastic top for it. But outside of that it's all paper.

TAD HEUER: I know we when we had the Canteen come, they proposed I believe either corn-based or potato-based utensil based products just as an option that they were using up on Mass. Ave. in Harvard Square.

TRIP LONIAN: Okay.

TAD HEUER: So that might be something you might want to look into. I don't know what the price points are. But there are those kind of utensil options. It's not a requirement but as FYI.

TRIP LONIAN: Thank you.

CONSTANTINE ALEXANDER: And handicapped accessibility. You're going to address that as well?

PETER PITMAN: The facility's handicapped accessible. The lavatory facilities are on the lower level and are --

CONSTANTINE ALEXANDER: Lower level? Are you going to be on the second floor, too?

PETER PITMAN: No. We're on the first floor. But there are common rest rooms in the basement level that would service our space and the adjacent space. And that would be serviced by an elevator that's completely handicapped accessible.

DOUGLAS MYERS: Adjacent space in this case meaning as Starbucks?

PETER PITMAN: Yes.

CONSTANTINE ALEXANDER: You and Starbucks would be sharing the same elevator to that basement?

PETER PITMAN: Yes, sir.

CONSTANTINE ALEXANDER: Anything else?

ATTORNEY MICHAEL OVERSON: Well, I believe that addresses the criteria. Again, we just, we do want to point out, you know, because we've been sort of aware of this neighborhood from the beginning, that our view is that this is a very distinct product and one that's going to do well in Harvard Square, and one that's going to be well received is already well received in anticipation, at least the concept by the residents, the business owners. We think it works at this space and we're hopeful that the Board will see it that way and we're looking forward hopefully to doing great business here.

CONSTANTINE ALEXANDER: I'm sure you do. Questions or should I get public testimony first?

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

PEBBLE GIFFORD: My name is Pebble Gifford. I live at 15 Hilliard Street, Cambridge. And I would like to see what those circles look like on the front.

TRIP LONIAN: They're actually on there. You really can't see them.

PEBBLE GIFFORD: That's good. Okay.

I think it's time to go back to the drawing board for the fast food ordinance because it's 27 places in Harvard Square where you can take out coffee, and there's a need for another one, then there's something wrong with the drafting of that Ordinance.

CONSTANTINE ALEXANDER: That case is gone. We've decided that one.

PEBBLE GIFFORD: Well, I'm just, you know, putting that on the record because that's one of the reasons we've sort of given

up coming. You know, we feel that we haven't got the right tool for fast food. I think Ken Reeves has figured out the solution.

On the subject of yogurt in Harvard Square, I'll point out to my handy source here, Yelp. They show 11 -- 10, 10 takeout yogurt places. And these are takeout. I mean, whether they predated the fast food ordinance.... I think Baskin Robins has takeout yogurt, and that was there before. So I can't qualify the many much more than that, but this is JP Licks, Ben and Jerry's, Basin Robins. And they give you this little map just to show you how concentrated they are.

DOUGLAS MYERS: But many of those are yogurt in conjunction with ice cream. Ancillary or part of an ice cream.

PEBBLE GIFFORD: Well, I'm not going to distinguish between whether they give you frozen yogurt or an ice cream. I think both

are fast food.

TIMOTHY HUGHES: But I think this establishment is distinguishing between handling an ice cream or frozen yogurt.

PEBBLE GIFFORD: But the Ordinance doesn't.

TIMOTHY HUGHES: But this one is different enough from all the others like that. You can't lump it in. And so you can't make a case for a need.

PEBBLE GIFFORD: No, each one of these happen to serve ice cream, but they all serve yogurt. So unless there's places to get yogurt, in fact, that they serve ice cream as well. I don't think there's a distinguishing factor. We couldn't get into, you know, whose is better yogurt or whose was more like yogurt or which was the best hamburger? You can't legislate that.

And I will just -- one last thing. And say that one of the things that was important

behind -- the impetus behind this Ordinance when it was passed, that threat to Harvard Square was -- it was -- hopefully it still will remain, not as much as it was, but a viable, very healthy retail area. One of the most successful in the country. And I remember somebody telling me once that more people came to Harvard Square that went to Disney Land in a year. I don't know how you count that out. But what we've witnessed in Harvard Square in my time and I hear from many others that used to shop here, that the trend is for just this, more fast food, too many paints. A lot of turnover, seeing that because it's a reflection on the times I think. Vacancies. And I think there's a change in the quality. And I'm not saying that -- your yogurt is probably very high quality. That's not my point. It's the whole tenure of the place. And we know for a fact that people are not going to come to

Harvard Square to buy yogurt, takeout a coffee, or do all of these food things. They can go to the mall and not have to pay for parking to get the same thing. I don't know about Pinkberry Yogurt because I've never had it. But it's certainly the case with all the fast food stores that want to come into the square. They're everywhere. They're in all the malls. There's one in Porter Square. There's a McDonald's in Porter Square. There's one in Central Square. We had to make that argument. The Harvard students want their McDonald's late at night. Well, we'd say you might have to hop on a bus go walk to Central or Porter Square.

CONSTANTINE ALEXANDER: For the record, there are no longer a McDonald's in Porter Square. Its successor closed, too.

PEBBLE GIFFORD: All right, well, there's Dunkin' Donuts there.

CONSTANTINE ALEXANDER: That's

still there.

PEBBLE GIFFORD: Anyway, I'm making my point. That there was -- we tried to wrap a lot into this, but legally there were only so many things we can control. And we tried to do it. And I think this is not succeeded.

We're trying to do something about it. And in the meantime I would hope that you would decide that there's no more need in Harvard Square for yogurt to be served in a cup or a cone. There is currently nine places that serve yogurt.

CONSTANTINE ALEXANDER: Thank you.

PEBBLE GIFFORD: Thank you very much.

CONSTANTINE ALEXANDER: I saw another hand up.

DENISE CHILSON: Denise Chilson, executive director of the Harvard Square Business Association. And for all the previously stated reasons in terms of

activity and during the day and into the night in that location, and for the record, Pinkberry has become a member of the Harvard Business Square Association.

CONSTANTINE ALEXANDER: Thank you. I was going to ask you that.

DENISE CHILSON: And we're delighted to have them. We haven't done -- unlike Starbucks we have no experience with Pinkberry. We do have lots of experience with Berry Line. Also, members of the association with two locations. And, you know, frankly we consider both locations in Harvard Square, Arrow Street and the other just beyond the law school were there next to that area.

TAD HEUER: Do you consider the Starbucks at 16 whatever somewhere are they also Harvard Square?

DENISE CHILSON: Which one?

TAD HEUER: 16 whatever Mass. Ave.

Across the street, across from Lesley --

DENISE CHILSON: We like to think of that as Harvard Square north. Yes, ys.

DOUGLAS MYERS: Isn't there also an exclusively yogurt outlet passed the law school on the --

DENISE CHILSON: That's Berry Line. Berry Line. Yeah, yeah. Very popular and a wonderful product and great members of the association. And, you know, looking forward to having some friendly competition with Pinkberry.

CONSTANTINE ALEXANDER: He may not be but you may be.

DENISE CHILSON: But you know it's a consumer driven society. We figure that, you know, competition's good because the consumer benefits. So, you know, I thank you for your decision on Starbucks and hope that you'll also consider this application because we think that they'll bring a great

excitement and a wonderful product to that corner.

Thank you very much.

TAD HEUER: Can I just ask what the business association's position is on the need provision? Is there any limit to the need provision or is it purely what the market bears?

DENISE CHILSON: You know, we feel like the market will eventually -- look it, here's the reality: There are over 100 restaurants in Harvard Square. You can buy coffee in probably 95 of them. You can likely buy ice cream or yogurt in 90 of them. That's the reality, right? I mean, you can go to Upstairs on the Square or you can go to Zoë's.

TAD HEUER: That may be true and that may be the fact. But at what point is needs -- it's more legal than anything else. The Ordinance is the Ordinance, and the

Ordinance -- everything it says has to be given some weight. And defer to the lawyer, too. At some point if need has to mean something, does it just mean we believe that people would come and show up?

DENISE CHILSON: Here's the deal: I can't really answer that. This is what I can tell you just in terms of my purchasing experience for frozen yogurt, a product that's very similar to Pinkberry. You can go into -- maybe you've done it, to Berry Line on a cold Tuesday night in January and you likely have to wait in line because they have such a following for that product. It's unbelievable.

This passed summer I have gained ten pounds buying yogurt at the Berry Line on Mass. Avenue, and inevitably I've had to wait at least 20 minutes every single time to get my yogurt. It's addictive. It's delicious. It's -- and people buy it. So,

do we have -- is there a possibility that we can say there's a need? Absolutely there's a need. There's a need. There's no doubt about it.

CONSTANTINE ALEXANDER: I would just take issue with that. I mean, you address need from your perspective, which is if there's people who want to use the store, there is a need. That's not what the Zoning By-Laws, in my judgment -- let me finish. We're supposed to make a judgment about what's needed for the community of Cambridge. And the fact that there are a lot of people that want to go to it, doesn't necessarily mean, doesn't necessarily mean that there's a need in the meaning of the Zoning By-Law. Otherwise we wouldn't have a need requirement if market forces would dictate it. If we take out the requirement for need in our Zoning By-Law, and either the operation would fail or succeed depending on whether people

show up. We're supposed to do more than that, in my judgment.

DENISE CHILSON: My question is if you have people waiting in line for frozen yogurt --

CONSTANTINE ALEXANDER: You're not listening to me. I said -- you're talking about it from a market base. If there's a need because people want to go there. I'm saying --

DENISE CHILSON: What else would you give them if it wasn't --

CONSTANTINE ALEXANDER: Because I think we're a Board that's supposed to look out for the interests of the city.

DENISE CHILSON: But do we put something in there just because we think -- I'm asking. I mean I'm really not being cavalier about this, but would you put something in there -- you know, you might say look around, what do we need? We need an

Apple store.

CONSTANTINE ALEXANDER: We don't get into a need except for fast food establishments.

DENISE CHILSON: Okay.

CONSTANTINE ALEXANDER: Another kind of business use --

DENISE CHILSON: Yeah, okay.

CONSTANTINE ALEXANDER: -- meets the requirements of our Zoning By-Law goes in. We don't get into need. But City Council says when it comes to fast order food establishments, as defined by the City Council, we have to, among other things, look at whether there's a need for that in the neighborhood and in the city. I will suggest, speaking for myself, that that need is an overarching need, a social need, it's not simply a matter of if we build it, they will come. Is your approach.

DENISE CHILSON: I'm not sure, maybe

you and I are exactly the same. So, what would you be looking at? I mean, would you look at the location?

CONSTANTINE ALEXANDER: I would look at the fact -- in my case? Okay, I'll be very blunt. I'll look at the fact that Harvard Square is one of the most important parts of our city. It has got its fame and its reputation and its popularity historically through its diversity. Through the fact that it's a diverse area of all different kinds of business. It was not an outdoor urban mall.

DENISE CHILSON: Right.

CONSTANTINE ALEXANDER: To the extent that you allow one after another of fast order food establishments, we are becoming -- Harvard Square is becoming an outdoor urban mall. And that doesn't satisfy the needs of our city. Our needs of our city is to make Harvard Square as diverse

as possible to attract, to make -- they're a microcosm of the diversity of the City of Cambridge.

DENISE CHILSON: Okay, so the fact that we are 97 percent occupied and that 80 percent of our business in square are locally owned independent, is that a good thing?

CONSTANTINE ALEXANDER: As I said before, we don't get into the issue whether it's a national chain or whether it's locally operated. It's a question of the nature of the operation. And this is a specialized nature per our Zoning Ordinance. Fast order food establishment. Do we -- does the City of Cambridge, looking at all the benefits and detriments to the city, do we need another one there or should we prefer, hold out for a different kind of a use for that property? One that would have to meet whatever the economics are. I think that's what it's all about when it comes to the need requirement

of our Zoning By-Law. That's just me speaking personally.

DENISE CHILSON: And I would say that you and I are probably looking at it quite the same way, and I would say yes, that there's definitely -- that there's definitely a need. Yes.

BRENDAN SULLIVAN: Denise, do you know why Finagle A Bagel did not survive?

TIMOTHY HUGHES: Now we're talking about bagels?

DOUGLAS MYERS: Too much finagling.

DENISE CHILSON: I would say because they weren't a member of the Harvard Square Business Association.

BRENDAN SULLIVAN: Was it just that they didn't do well there?

DENISE CHILSON: They didn't. You know, we tried to talk to them about a lot of things. I mean a lot of it had to do with merchandising --

BRENDAN SULLIVAN: So, it's not necessarily a corporate program as it was an individual?

DENISE CHILSON: No, I don't think so. It was that particular location. They didn't keep it clean. The set-up was strange. And there were so many things that they could have done and they didn't do. And we tried to, you know, really work with them, get the neighbors to work with them, got the property owner to work with them. And it just didn't work.

BRENDAN SULLIVAN: So the business plan did not --

DENISE CHILSON: That particular manager, I think it had to do a lot the with manager at that location, just didn't get it. Didn't get it. It was unfortunate. And I think, you know, we just looked at the new place coming in, at 1430, this Otto Pizza, and you know, they've gotten amazing reviews.

And they do a really good job. They have a beautiful concept. And we're thinking that they're going to be able to do an amazing business. And in fact, it's another -- as we talked, about it's another pizza location, and you might think does Harvard Square need more pizza? But the reality is they're just -- they're going to -- they're going to do a thing up there. They are.

BRENDAN SULLIVAN: Okay.

DENISE CHILSON: You know, and the most important thing for us is they're going to keep it clean and they're really going to discourage the kind of activity that we see out there right now which really Finagles didn't work with the community on that particular element.

BRENDAN SULLIVAN: Okay.

DENISE CHILSON: So thank you very much.

CONSTANTINE ALEXANDER: Thank you.

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.

The Chair will note that as eluded to by the Petitioner's counsel that we have numerous letters of support in our file from various business owners, and I believe citizens as well as from the City of Cambridge Chamber of Commerce. There are no letters that I'm aware of in the file that are in opposition.

And we also have heard -- I should have mentioned this even before that. We've heard from the Harvard Square Advisory Committee as required by our Zoning By-Law. And I'm just going to -- everyone's heard it before -- the same comments that were made with regard to the Starbucks applies to the Pinkberry. Those in favor and those

opposed, with the exception of the issue about the screening which you've address here. So I don't propose to read those -- I incorporate those again per what they say in here, and everybody's heard, referred to them and read what is relevant.

Comments, questions? I'll close public testimony unless there's something you want to add or are you finished?

ATTORNEY MICHAEL OVERSON: I wanted to add quickly in connection with the last discussion we had about need, that, you know, the language of the Ordinance talks about the need for this service.

CONSTANTINE ALEXANDER: I want to get the exact language.

DOUGLAS MYERS: Such a service.

CONSTANTINE ALEXANDER: The establishment fulfills a need for such a service in the neighborhood or in the city. Those are the words.

ATTORNEY MICHAEL OVERSON: I think, in my opinion, that that phrase has to do more than just with the actual products that are being sold. There's -- and when you mention Finagle A Bagel, there are a lot more things that go into a service that's being provided to the neighborhood than just exactly what it is that's being served. What category you can put it in. You know, there's decor. There's management. There's interaction with the community. There's benefits to the community. There's policing of the area, not only that you're responsible for, but the area outside of your store. And I think that focusing only on need for a particular food item, as much as we consider our product unique and distinctive, I think there's more to our overall concept than just what it is that we're serving. And I think that's an important part of what we're hoping to do for this neighborhood. And I think that's why

we've gotten the community support that we've gotten so far. I just wanted to add that.

TAD HEUER: Would you take a different position if there were already 85 frozen yogurt places in Harvard Square and you were the 86th applicant? Would you still be saying that there's a need for you?

ATTORNEY MICHAEL OVERSON: I would have a lot more difficulty in that situation distinguishing, I mean, again, if these were operations that were doing things that we thought we could do better, not just in terms of the product, but again, in terms of, you know, we want to last here and we want to provide something that no one else can provide. Then we think we can do that, and it's more than just a product. It's the overall package.

So if there were 86 yogurt operations in the square, it would be a hard case to make. But I would still want to see how they

operate, how they're managed, how they're decorated, how they're designed and how they treat the neighborhood. How they interact with the neighborhood. I mean, I would be up against it. But, you know, there's always the possibility that they could be serving the same product, but the service that they're giving to the community is much different.

CONSTANTINE ALEXANDER: I just want to comment on your point others have made about the letters of support. I would point out that the letters of support are all from business owners in Harvard Square. And of course they're going to support anything that's -- it's logistic. To the extent that the storefront is being used, they would support it. They would support it if it were a craft shop or anything else that might -- it's something that doesn't require -- it's not a fast food

establishment. So I don't think -- I don't give as much, personally, as much credence to the fact that you've got all these letters of support. They're all self-serving. Except for anybody who is a direct competitor, and as you pointed out, in your belief, no direct competitors because your product is unique.

TAD HEUER: Although I would point they've gone through the effort of finding them when unlike other applicants looking for space, provided a very thin file for our review.

ATTORNEY MICHAEL OVERSON: There were resident letters as well.

CONSTANTINE ALEXANDER: There are some residents. But most of the letters are from either business owners or the Chamber of Commerce which obviously has an interest of promoting that space being occupied.

Anyway, further comments or go to a vote?

DOUGLAS MYERS: Well, I would like to join in the discussion, but I really will keep it brief.

CONSTANTINE ALEXANDER: Okay.

DOUGLAS MYERS: I have a little difficulty just simply using this language, a need for such a service in the neighborhood of the city as a barrier entry for a business that on its face is viable, has a business plan, appears to offer services that would be desirable. And I have to say the language of the Ordinance, although I'm all in favor of civic virtue and diversity in Harvard Square, the language of the Ordinance doesn't give us a lot of help. A need for such a service. I think it's going to require some case with a lot of evidence with 85 sole yogurt selling stores before the members of this Board are going to feel confident in saying yep, there's no need for such a service.

Now, to give you an idea of when I might

feel confident in saying there's no such need as when you want to open a store on Linden Street, on Holyoke Street, when you want the multiplicity of stores in Harvard Square, I would have no problem in stiffening my backbone and saying there's no need for such a service. And I would say that to Starbucks, too. But to me this language here is so difficult to interpret to, and I'm reluctant to use it as a varied entry unless it's very, very strong. And I would think it has to be, for myself, and thinking now and answering to the debate this evening -- of the discussion this evening, I would think it would have to be a case that is about as clearcut of the examples as I've given before I would construe need as a barrier to entry.

CONSTANTINE ALEXANDER: Any other further comments?

TIMOTHY HUGHES: I like the way that Doug put that. I kind of agree that it's just

a grey area and I think that the underlying aspect of the Ordinance had, you know, had, you know, nefarious reasons in the first place in terms of keeping out, you know, the McDonald's and the Burger Kings and the stuff. And it's tough for me to use that as a barrier, too.

CONSTANTINE ALEXANDER: Well, I guess I only observe -- I would certainly agree that the language is vague and it's hard to apply, but that's the language we've been given and we just can't turn our back on it. We have to do our best to apply it. And we've reached different conclusions. That's what makes the world go round. But I certainly agree with the sentiment that it is -- it is somewhat vague as to how we apply it. It would be nice to get further guidance, but there are many things in our Zoning By-Law if we had further guidance and we don't.

Further comments? Ready for a vote?

The Chair moves the Special Permit be granted to the Petitioner to operate a Pinkberry fast order food establishment as defined by our Zoning By-Law. On the basis that the Petitioner has satisfied all of the requirements that are set forth in 11.31 that are required to be satisfied. Including that the establishment fulfills a need for such a service in the neighborhood or in the city.

And on the further basis that as required for all Special Permits under our Zoning By-Law, that the traffic generated or patterns of access or egress will not cause congestion, hazard or substantial change in established neighborhood character. In fact, this is a high traffic area under all circumstances. So to the extent that you increase the traffic, it's not going to make a substantial change.

And that there's nothing in the nature

of the business that you propose to operate that effects patterns of access or egress.

That the continued operation of adjacent uses will not be adversely affected by the nature of the proposed use. That may be is in part supported by the fact that the letters from business owners in Harvard Square who are in support.

That there's no nuisance or hazard will be created to the detriment of the health, safety or welfare of the occupant or the citizens of the city. In fact, you have a health food, so you're going to improve the health of the citizens of the city.

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

The Special Permit would be granted on the condition that the work will be, and the store will be configured in accordance with

the plans you submitted. No changes unless you come back before us. They've been prepared by Pitman, P-i-t-m-a-n and Wardley, W-a-r-d-l-e-y Architects. There's one -- the coverage page is A1, A1A, A2A, A3A, and then two further pages, C2, C and S1. And the first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Hughes, Sullivan, Heuer, Myers.)

CONSTANTINE ALEXANDER: I'm opposed. I don't believe they meet the requirements for a need as required by our Zoning By-Law. But anyway, the Special Permit has been granted.

ATTORNEY MICHAEL OVERSON: Thank you very much.

TRIP LONIAN: Thank you.

(10:45 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10021, 509-511, 515 Franklin Street. Is there anyone here wishing to be heard in this matter?

ATTORNEY TIMOTHY TWARDOWSKI: Good evening, Mr. Chairman. My name is Tim Twardowski of Robinson Cole representing the Applicant Larry Coassin. I would be happy to give you a brief overview of the application if it's the pleasure of the Board.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY TIMOTHY TWARDOWSKI:
Essentially the property contains three structures, two of which are interconnected. They're on 511. 509 through 511 is a three-story connected in the front of the property connected to a two-story structure in the rear of the property. Adjacent on the corner of Franklin and Bay Street is 515 Franklin Street, which is a one-story structure. The reason why we are here, we've gone through extensive renovation work, interior and exterior as well. However, the proposal is to change the use of the single-story structure at 515 Franklin

Street from a non-conforming architectural office use to a residential use.

Essentially what the proposal would do is add that floor area to the existing first floor unit on the adjacent 509 Franklin Street.

CONSTANTINE ALEXANDER: And in fact you've done that already?

ATTORNEY TIMOTHY TWARDOWSKI:

That's correct.

CONSTANTINE ALEXANDER: This is after the fact that you're seeking relief to validate or to legitimize what your client did.

ATTORNEY TIMOTHY TWARDOWSKI:

That's correct.

CONSTANTINE ALEXANDER:

Non-compliance with our Zoning By-Law.

ATTORNEY TIMOTHY TWARDOWSKI: As I understand, during the interior remodeling, as the work was undergoing there they discovered the framing four doorways between

the two structures which led the builders to believe that previously these structures were joined. And then at some points -- the Building Department records only go back I believe to the 1978 Variance, but it appears based on the structure itself that there's evidence that these structures were previously joined. So essentially the connection was to rejoin the structures in the location where it had been done so previously.

CONSTANTINE ALEXANDER: And the reason you're here before us is by actually adding the connections, connected space of 12 feet, that causes you to be further out of compliance with FAR.

ATTORNEY TIMOTHY TWARDOWSKI:
That's correct. That's correct.

TAD HEUER: It's also in conflict with the 1978 Variance. Mr. Sullivan maybe will be able to comment on the 1978 Variances

he sat on them.

CONSTANTINE ALEXANDER: I know.

ATTORNEY TIMOTHY TWARDOWSKI: It is, it's two-fold. Just to briefly summarize, the 1978 Variance my client's predecessor in interest Mr. Miterocci (phonetic) had applied for relief to use the one-story structure as an architectural office, and it was granted that relief. One of the conditions to that Variance was that the property owner reside in the adjacent residential building. So essentially the existence of that 1978 Variance prevents, you know, the current owner from using the one-story structure.

CONSTANTINE ALEXANDER: You're not asking for relief for that on the Variance condition, are you?

ATTORNEY TIMOTHY TWARDOWSKI: Well, we are asking for relief. When I met with Mr. Singanayagam, he had described it as

superseding Variance, essentially allowing us to --

CONSTANTINE ALEXANDER: You didn't advertise that though.

ATTORNEY TIMOTHY TWARDOWSKI:
Right.

CONSTANTINE ALEXANDER: What you really want to say is if we grant you the relief that you're seeking and allow the non-residential use to come back to residential, that you'll abandon the Variance that was granted before because you no longer need -- you don't need a Variance to have residential use. But if you're asking us to overrule as to owner occupancy for that Variance, we're not going to hear the case tonight because you haven't advertised it.

ATTORNEY TIMOTHY TWARDOWSKI:
You're correct. The language that you used, I apologize for misspeaking on that point,

but that is correct.

TAD HEUER: I also suggest that -- this is a sideline, but I'm not sure if that condition is legally valid.

CONSTANTINE ALEXANDER: I had the same reaction. Maybe in 1978 it was. I don't know if it would be today.

BRENDAN SULLIVAN: Those were the good old days as Jim Rafferty would say.

What was the Building Permit in the application, Sean, do you remember what the -- for this particular project what the application said in the Building Permit or why -- or did you review it at all or not?

SEAN O'GRADY: I'm trying to think. There was just renovation. This is -- they built the mansard roof; is that right?

ATTORNEY TIMOTHY TWARDOWSKI: Yes.

SEAN O'GRADY: There was a parapet that was allowed on the office?

BRENDAN SULLIVAN: Yes, there's a

whole bunch, right.

CONSTANTINE ALEXANDER: Who discovered the violation? The violation occurred when they connected the building. I think that goes to Brendan's question?

SEAN O'GRADY: I'm not sure how exactly it was found.

BRENDAN SULLIVAN: Shanere or Pete (phonetic) is the inspector. Shanere is the inspector.

SEAN O'GRADY: Shanere is the inspector. Yes, I don't know how it was found. I just one day knew about it.

BRENDAN SULLIVAN: Maybe there was an application for a CO. I mean, you were at that point I think. The work is completed.

ATTORNEY TIMOTHY TWARDOWSKI: I assume so, yes.

BRENDAN SULLIVAN: Yes. So maybe that's what triggered it.

SEAN O'GRADY: It could be. It

didn't come directly through me. I didn't speak to anybody about it. I must have learned about it internally.

BRENDAN SULLIVAN: Okay.

ATTORNEY TIMOTHY TWARDOWSKI: If I could add and just piggy back what Mr. O'Grady has said. I at one point I did have a meeting at the ISD office with Mr. O'Grady after it had come to light the need for Zoning relief here at which point we had agreed that, yes, we understand the nature of the relief that's necessary in order to complete the conversion of the use as well as to address the connection.

CONSTANTINE ALEXANDER: Is the former architect's office is it now being used for residential purpose? Is the construction done and your client using the property?

ATTORNEY TIMOTHY TWARDOWSKI: Yes.

CONSTANTINE ALEXANDER: About how

long? Off the top of your head.

ATTORNEY TIMOTHY TWARDOWSKI: I don't know quite honestly.

CONSTANTINE ALEXANDER: Okay. Any other questions from members -- oh, I'm sorry, are you finished with your presentation?

ATTORNEY TIMOTHY TWARDOWSKI: Just briefly, I did touch upon the specific criteria for the Variance relief in the material submitted to the Board.

CONSTANTINE ALEXANDER: Why don't you just summarize it for us.

ATTORNEY TIMOTHY TWARDOWSKI: I can summarize those just very briefly. The hardship essentially arises from the non-conforming nature of the existing structures. We're over the FAR, and with the connection we add 12 square feet which I think adds 0.002 to the overall FAR. So it is de minimus. And also the restrictions as to use

arising from the 1978 Variance would prohibit us from using the one-story structure for conforming residential use, and forcing us to continue with the non-conforming architectural office use.

In terms of -- it actually benefits and -- benefits the neighborhood, is consistent with the Zoning By-Law in that it removes a non-conforming use. And with this application we're decreasing the intensity of the use on this property. We're not adding any residential development units or even adding any bedrooms here. So, essentially we're benefitting the neighborhood by decreasing the intensity of the use of the property as a whole.

CONSTANTINE ALEXANDER: Have you got letters of support from neighbors?

ATTORNEY TIMOTHY TWARDOWSKI: We did speak with a number of neighbors during the construction -- while it was

undergoing -- a number of neighbors stopped by. Universal comments were in support of the work that was being done. I had a telephone conversation earlier this week with one of the neighbors at 524 Franklin Street who did express that she was happy with the work that had been done and was satisfied with -- she'd had some questions as to why we were -- needed to be here, and after I responded to them, she did express satisfaction that she was happy with the what we were doing.

DOUGLAS MYERS: You made no systematic effort to track down all the people who received notices?

ATTORNEY TIMOTHY TWARDOWSKI: We did -- I personally and the property owner Larry Coassin kind of combined on phone calls to as many of the neighbors as we could. Larry's -- the Applicant's son is one of the residents --

DOUGLAS MYERS: Did you say how many you actually reached and how many you didn't?

ATTORNEY TIMOTHY TWARDOWSKI: I reached --

DOUGLAS MYERS: Together, altogether.

ATTORNEY TIMOTHY TWARDOWSKI: Altogether probably about half dozen.

DOUGLAS MYERS: Of how many?

ATTORNEY TIMOTHY TWARDOWSKI: I don't know the exact number on the list, but it was pretty substantial.

DOUGLAS MYERS: No negative comments from anyone?

ATTORNEY TIMOTHY TWARDOWSKI: No.

TAD HEUER: 23, four?

CONSTANTINE ALEXANDER: Further comments?

You'll have an opportunity to summarize your comments, but if you want to say more now, go ahead.

ATTORNEY TIMOTHY TWARDOWSKI: I'd be happy to defer to any questions from members of the Board and respond as is appropriate.

CONSTANTINE ALEXANDER: Questions from members of the Board at this point? None.

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

JOSEPH BERKOVITZ: Here.

CONSTANTINE ALEXANDER: I assumed so. Please come forward and state your name, give your name and address for the stenographer. We're making a transcript of the hearing.

JOSEPH BERKOVITZ: Sure. My name is Joseph Berkovitz. I live at 579 Franklin Street.

CONSTANTINE ALEXANDER: 579?

JOSEPH BERKOVITZ: Yes.

CONSTANTINE ALEXANDER: So that

would be down the street?

JOSEPH BERKOVITZ: That's towards Putnam Ave. about halfway, uh-huh.

And first of all, I'd like to say that the quality of the exterior renovation is superb. The building and the structure looks great. I do however have some concerns about the potential future uses and impact on the neighborhood of the connected structure. The storefront, the former storefront in question is a recreation room. It contains a bar and a home theatre.

CONSTANTINE ALEXANDER: Excuse me, a what?

JOSEPH BERKOVITZ: A bar and a home theatre.

CONSTANTINE ALEXANDER: You've been in it?

JOSEPH BERKOVITZ: I've seen in it because it was open to the elements for a while the workmen were working on it. They

were excited to share some of the interior features because they're unusual.

And while I have no complaints or no knowledge, really, of anything unpleasant going on in the building now -- I don't have any particular knowledge or complaints about any of the behavior of the tenants now, but in the past on Franklin Street there have been problems with loud disturbances and student parties. And so one of the concerns that I have and have been shared by a few of my neighbors, is that a structure of this kind, that's essentially a recreation room attached to the first story, may render the building more attractive to what you might call a partying population than a normal three-decker joined by an architect's office or something of that nature. So, I would just like to ask the Board to consider the potential impact on the neighborhood.

CONSTANTINE ALEXANDER: There

are -- and you're probably aware, there are other ordinances, not Zoning.

JOSEPH BERKOVITZ: Noise ordinances.

CONSTANTINE ALEXANDER: Noise ordinance.

JOSEPH BERKOVITZ: Absolutely, those are police matters.

CONSTANTINE ALEXANDER: And there are other means of controlling it. But this issue you raise, I don't know if you're familiar with Lincoln's Inn.

JOSEPH BERKOVITZ: I'm not.

CONSTANTINE ALEXANDER: Okay. On Follen Street. But that was an issue on the side of the square. The Board allowed -- well, now Lincoln's Inn is gone, but that became a source of disturbance for the neighborhood. And not much the neighbors could do.

JOSEPH BERKOVITZ: I mean I think if

there's a feature of the current arrangement that I would suggest might be modified it's the external door from that reaction room opening up onto the corner of Franklin and Bay, which to me suggests, you know, a means of ready entry and exit for the people who are coming not to visit but to party.

CONSTANTINE ALEXANDER: To party.

What would your client's reaction to that suggestion be? If we were to impose it as a condition, that that door be removed so the only means of access and egress to this family room or party room would be to the residents of the structure itself?

ATTORNEY TIMOTHY TWARDOWSKI: You know, it's a new issue obviously so I really can't speak to specifically how they would respond to that. I can't say that that --

BRENDAN SULLIVAN: I think the state building code may come into play there that's all. It may be a required exit.

DOUGLAS MYERS: Fire exit.

BRENDAN SULLIVAN: So --

TAD HEUER: But from a residence?

CONSTANTINE ALEXANDER: Yes, what would be the difference? As long as they have a back door and a front door and that probably --

BRENDAN SULLIVAN: I don't know the whole layout, that's all. I'm just saying that for us to say block it up, we may be flying in the face of another problem, state building code.

SEAN O'GRADY: I would definitely agree with that.

DOUGLAS MYERS: I would want to see how far that door is from the nearest other means of egress in the house.

BRENDAN SULLIVAN: Before we impose we would have to be told whether it's required or not. If it's not required, if it's convenience or whatever it may be.

CONSTANTINE ALEXANDER: What that would suggest, if other members of the Board are interested in this issue, is continue the case until we get some sort of advice on that.

BRENDAN SULLIVAN: Well, that then addresses --

CONSTANTINE ALEXANDER: Yes, I know. There is an alternative as I said, to continue the case to get the answer to what you want if other Board members are sympathetic to --

BRENDAN SULLIVAN: I think it raises a legitimate question.

CONSTANTINE ALEXANDER: Oh, I agree with you. I agree we shouldn't just act on it without having the answer to the question. I don't know how the other two members to my left feel about this.

TIMOTHY HUGHES: We're looking at the plan.

JOSEPH BERKOVITZ: May I ask you a

procedural question?

CONSTANTINE ALEXANDER: Go right ahead.

JOSEPH BERKOVITZ: Does the Board consider cases where construction is already complete using the same criteria?

CONSTANTINE ALEXANDER: We don't like to do that. I mean, and basically the Petitioners have come before us, at least in my judgment, start with the black mark against them. But on the other hand, people do make honest mistakes. And this -- the nature of what they did is rather modest. It's not like they put a new wing on the house. And then after that we caught them and sort of a "I gotcha" situation. So I'm again only speaking for myself. I'm not too troubled by the fact that it's after the fact, again, given the nature of what's involved. Maybe other members of the Board have different views, I don't know.

TAD HEUER: I understand the concern, it seems like an awfully long room to the leave the exit through a breezeway.

CONSTANTINE ALEXANDER: Well, the question is do we want to continue the case until we get some definitive answers on this issue or not or go forward with it? None of us here have the answer as to what's required by our state building code.

DOUGLAS MYERS: To, I mean, it's conjecture upon conjecture before we impose this on the applicant it seems to me. I mean, this door to the street may be used for party goers. Maybe not. It may be completely legitimate. Even if there are party goers, there's no assurance that there's going to be abuse and inconvenience to the neighborhood. So to me it's -- I'm not persuaded that it's -- the game is worth the candle to start down the road.

CONSTANTINE ALEXANDER: Okay.

Anyone else have views on this?

ROBERT KATOWSKI: I do.

CONSTANTINE ALEXANDER: You'll have a chance. We'll give you a chance now since these guys are still pouring over the plans.

ROBERT KATOWSKI: I just have an opinion on that because I was listening.

CONSTANTINE ALEXANDER: Give your name and address.

ROBERT KATOWSKI: Robert Katowski (phonetic).

CONSTANTINE ALEXANDER: Where do you live?

ROBERT KATOWSKI: Berkshire Street in Cambridge.

CONSTANTINE ALEXANDER: Where is that in relation to the property?

ROBERT KATOWSKI: Well, it's in East Cambridge, but I own property in Cambridge and I live over there.

CONSTANTINE ALEXANDER: You own

property in the vicinity of the structure?

ROBERT KATOWSKI: No, no.

CONSTANTINE ALEXANDER: Oh, okay.

ROBERT KATOWSKI: But I have an opinion because I'm very familiar with this.

CONSTANTINE ALEXANDER: Okay.

ROBERT KATOWSKI: I'm retired from the fire department. I was a captain on the fire department, and this was my fire district. What you're talking about for the exits on this property, because I was familiar with this project, because I was interested in buying it before the other person bought it. You can't eliminate that exit from my standpoint, my opinion, from being on the fire department so many years and doing all these inspections. It's square footage of the unit, and you'd have to have that exit. And you couldn't use that exit all the way through the building to exit the property properly if you wanted to have that.

So to eliminate that exit, probably would be out the question from the Building Department standpoint. But in my opinion, too. So I just wanted to add that to you.

And I wanted to tell you also why I was here, is because of the job that was done on the project, it was phenomenal, I thought, because I was interested in doing it. And I was going to renovate the property myself, but it wasn't anything like what was done there. So that was my opinion. I like the mansard work that was done. And all the outside stuff that was done on the property. So that's my opinion.

CONSTANTINE ALEXANDER: Well, thank you for giving us your opinion. Thank you.

DOUGLAS MYERS: Thank you.

BRENDAN SULLIVAN: I would suggest that we continue the case to get a definitive answer on that particular issue about if the door is required or not.

CONSTANTINE ALEXANDER: Okay. We have one person who would like to continue the case. I would -- I think I'd like to -- in the fulsome of making an informed decision, I would like to have the same answer. I agree with Brendan. We need three to continue the case. Is there any sentiment from other members before I put it to a vote? I can make a motion and you can vote at that point. Let me do that.

TIMOTHY HUGHES: I'm just not sure that --

CONSTANTINE ALEXANDER: I'm not putting anybody on the spot. Let me make the motion and you can vote yes or no.

The Chair moves that this --

TIMOTHY HUGHES: Don't put me on the spot until the vote.

CONSTANTINE ALEXANDER: You can't get off that way.

The Chair moves that this case be

continued as a case heard until -- it won't take a long time to get an answer to this question.

BRENDAN SULLIVAN: Can we do it quickly? Sean, where are we now?

SEAN O'GRADY: December 16th.

CONSTANTINE ALEXANDER: So December 16th. And I think all the members are here. They're ready.

On the condition that the Petitioner sign a waiver of time for a decision.

And on the further condition that -- this case will be continued until seven p.m. on December 16th. On the further condition that the sign that's posted on the property -- make sure that sign is posted by the way. Your client -- it was down when I was there recently. Modify the sign to reflect the new date, December 16th, and the new time, seven p.m.

All those in favor of continuing the

case on this basis, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Two.

(Alexander, Sullivan.)

CONSTANTINE ALEXANDER: The motion does not carry. Okay. We are back to the merits of the case.

You made your presentation. Is there anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: No one else wishes to be heard. I don't think there's anything in the file as of a couple days ago.

Is there any final comments, sir.

ATTORNEY TIMOTHY TWARDOWSKI: Just to briefly, you know, close the external door issue. You know, that is an existing door that, you know, it certainly wasn't added. It was existing previously. And as to any activity that may be done on the interior, you know, with all due respect to the comments

received, I can't say that definitively, you know, is the absence of that were going to change the use of this particular property? And also the, you know, the gentleman had, you know, clearly stated that there have been no problems with this property and the activity going on on the property. And, you know, was noted previously it has been occupied for sometime.

CONSTANTINE ALEXANDER: The Petitioner is a single person? The current occupant of the property a single individual?

ATTORNEY TIMOTHY TWARDOWSKI: Yes. And as I stated, it's the son of the property owner.

CONSTANTINE ALEXANDER: He now resides in Cambridge; he works here, going to school here?

ATTORNEY TIMOTHY TWARDOWSKI: Goes to school.

CONSTANTINE ALEXANDER: He's a

student.

ATTORNEY TIMOTHY TWARDOWSKI: Yes,
a student.

CONSTANTINE ALEXANDER: I can see
the concerns of the neighborhood in terms of
noise and partying and the like.

Further comments from members of the
Board or questions. Ready for a vote?

The Chair moves that this Board make the
following findings:

That a literal enforcement of the
provisions of the Ordinance would involve a
substantial hardship to the Petitioner.
Such hardship being that the property now
contains an architect's office or an office
use which is incompatible with the adjoining
and other residential structures on the
property.

That the hardship is owing to the nature
of -- this is a non-conforming lot, structure
or structures, and that the only ability to

provide additional living space for the prime unit on the property is to allow the connection of this former architect's office to the residential structure.

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

In this regard the Chair would note that the relief being sought is rather modest; it's 12 feet of additional FAR. That it will result in the property being restored to a conforming use. Previously per a Variance it was a non-conforming commercial use. Now if we grant relief, we'll have only a residential use on the property.

On the basis of these findings, the Chair moves that a Variance be granted the Petitioner on the condition that the work proceed in accordance with plans submitted by the Petitioner. Proceed, they have

proceeded. They'll have to -- will proceed. The pages are numbered 2, 4, 6, 8, 10, 12, the first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

CONSTANTINE ALEXANDER: Can't say good luck because you've already done it.

DOUGLAS MYERS: No parties.

CONSTANTINE ALEXANDER: That's an issue for another group. But I think your client will be well served.

DOUGLAS MYERS: You might want to convey just to reinforce your client's understanding of everything tonight. It won't do any harm.

CONSTANTINE ALEXANDER: The neighborhood is very antsy about this, given the nature of the fact that your client is a student. Students have parties. So you really should go out of your way to dissuade the neighbor's concerns.

ATTORNEY TIMOTHY TWARDOWSKI: We understand the expressions made by the neighbors this evening and by the Board as well and we appreciate that.

CONSTANTINE ALEXANDER: Thank you.

(11:10 p.m.)

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

Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10023, 6-8 Sycamore Street. Is there anyone here wishing to be heard on this matter?

ERIC PFEUFER: Yes.

CONSTANTINE ALEXANDER: And at long last. You're here for a Special Permit to relocate and replace windows in five locations.

ERIC PFEUFER: Right.

DOUGLAS MYERS: Will you introduce yourself, sir.

ERIC PFEUFER: My name is Eric Pfeufer, I'm an architect. And I am a neighbor of -- I live directly across the street from 6 and 8 Sycamore. I'm at 9 Sycamore Street, and was asked to help and draw some modifications to an existing plan. And in the process, which I did for the Building Permit, and then it came to my

attention that some windows had become slightly altered and that we needed a Special Permit. So, we're here to do that with you.

It's essentially -- I mean, this is the house after it's been largely renovated. It's one of a series of merely identical houses in the development sometime near the turn of the century or last century. And the changes are on the rear elevation and the side elevation. And they are, for example, two windows very much like -- this is an abutting house. You know, there are -- a number of these houses have similar configurations of pairs of windows in the gables and the dormers. These were adjusted to conform with a minor change in the layout in the kitchen. This at the rear of the house. There were two later small windows. Five windows that were replaced by a what is really a typical window size. Two windows were replaced by one, and they were -- this window

was deleted, these were added. And that's essentially what is happening.

DOUGLAS MYERS: Abutters' comments?

CONSTANTINE ALEXANDER: We have letters.

ERIC PFEUFER: We have 13 signatures from abutters. Everybody's they're thrilled with what's happened. They've even repaved Sycamore Street.

BRENDAN SULLIVAN: In celebration thereof.

ERIC PFEUFER: So everybody has benefitted from this work.

CONSTANTINE ALEXANDER: Questions from members of the Board or further questions?

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

(No Response.)

CONSTANTINE ALEXANDER: No? Okay, you had your chance.

The Chair notes no one wishes to be heard. As the Petitioner has indicated there is a petition in support of the relief being sought signed by many persons, including residents on Sycamore and Cypress Street. Cypress Street is the next street over?

ERIC PFEUFER: And Walden, yes.

CONSTANTINE ALEXANDER: And Walden as well.

Ready for a vote?

TIMOTHY HUGHES: Indeed.

CONSTANTINE ALEXANDER: The Chair moves that a Special Permit be granted to the Petitioner on the grounds that the location and replacement of windows will not impact traffic on the street or patterns of access or egress or cause congestion, hazard or substantial change in established neighborhood character.

That the continued operation or

development of adjacent uses would not be adversely affected. In support of that there are other petitions signed by many of the persons who are in the neighborhood who are in support of the relief being sought.

That no nuisance or hazard will be created to the detriment of the health, safety and welfare of the occupant or the citizens of the city. We're talking about relocation of windows and setback.

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.

The Special Permit will be granted on the condition that the work will proceed in accordance with two plans submitted by the Petitioner, dated 09/06/10, both of which have been initialed by the Chair.

Before I take a vote, this is it. If

you're going to re-change the windows, you have to come back before us.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(Whereupon, at 11:16 p.m., the meeting adjourned.)

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a
Certified Shorthand Reporter, the
undersigned Notary Public, certify that:

I am not related to any of the parties
in this matter by blood or marriage and that
I am in no way interested in the outcome of
this matter.

I further certify that the testimony
hereinbefore set forth is a true and accurate
transcription of my stenographic notes to the
best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set
my hand this 29th day of November 2010.

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

My Commission Expires:
April 23, 2015

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