

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING
THURSDAY, DECEMBER 2, 2010
7:00 P.M.

in

Senior Center
806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Brendan Sullivan, Member

Tad Heuer, Member

Thomas Scott, Member

Douglas Myers, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:00 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call this meeting to order. We're going to start, as is our custom, with continued cases first. If there's anyone here who is planning to record or film proceedings tonight, under our Open Meeting By-Law, you need to get permission from the Chair. So you have to make a request. Does anyone at this point want to make such a request?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to make such a request.

The first case we'll call tonight is case No. 9999, 1380 Massachusetts Avenue. 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 a letter from Daniel P. Brennan who was the Petitioner in this matter addressed to this Board dated November 23rd. "As per you request, we would like to withdraw our continuance case 9999 as we have been approved for the Special Permit under another case number. I also attached to the original notice of hearing for your records."

And as Mr. Brennan notes, we have separately advertised case granted relief for this matter. So this is a duplicate. And effectively this continued case is now moot by virtue of the Special Permit being granted.

All those in favor of accepting the request for withdrawal say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in

favor. Case withdrawn. I'll sign this
later.

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

(7:05 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will next call case No. 9956, 11 Linnaean Street. Is there anyone here wishing to be heard on this matter? Come forward, please.

ATTORNEY SEAN HOPE: I'd ask the Chair, I just got a call from the Petitioner. She's running a few minutes late. Is it possible to postpone about 15 minutes until she gets here?

CONSTANTINE ALEXANDER: Sure.

This case is going to be recessed because the Petitioner's counsel is here but not the Petitioner. So we will move on to the next case.

Sean, as soon as she comes in, please let us know and we'll take the case right away. We have other people here. I don't

want to keep them here any longer than I have to.

ATTORNEY SEAN HOPE: Thank you.

(Case recessed.)

(7:05 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10004, 169-171 Windsor Street. Is there anyone here wishing to be heard on this matter? Okay, you're here seeking a Variance. First of all, give your name and address for the record, for the stenographer.

NAJIM AZADZOI: Good evening. My name is Najim Azadzoi. I'm owner of this building at 169-171 Windsor Street. It's a six-family residential building, three-story high with a full basement. I own this building since the year 2000. And the purpose of this hearing is that I'm requesting to use the basement of this building. And I will describe that condition.

The building has a full basement. It's about approximately four feet above grade and four feet below grade, and there are a number of windows all around the building. The front half of the building has more than seven feet high. Has a concrete floor, drop ceiling, and it is mainly used for mechanical spaces such as water heaters, boilers, electrical meters and a washer/dryer that was installed previously. The other half of the building, a portion of it is a little bit shy of seven feet to be used for any purposes. And that's the 169 side if you're standing from the Windsor Street looking at the building, the left side of this building. It has a concrete floor, it has a ceiling, but the floor height we measured, it varies from six foot, eleven to seven feet or seven, one, something like this. It has been there for many years unused. The picture shows some furniture, but there is no furniture.

Actually, it's been just there. And it continued to become a space that's becoming a burden for maintenance and cleaning, spider webs gets everywhere. Now, in the meantime, this space is needed for residents there, the tenant.

CONSTANTINE ALEXANDER: Why is it needed for residents?

NAJIM AZADZOI: It is Cambridge. Space is valuable and --

CONSTANTINE ALEXANDER: You need it? It's not needed for Cambridge.

NAJIM AZADZOI: Yeah, definitely I need it. Because I don't -- I can't use it for any other purpose. But in the meantime I have seen request from tenant --

CONSTANTINE ALEXANDER: Any other portion of the basement used for residential purposes?

NAJIM AZADZOI: The 171 side has already been used for the one -- it has a high

ceiling.

CONSTANTINE ALEXANDER: What is it used for?

NAJIM AZADZOI: Recreation only.

CONSTANTINE ALEXANDER: Is there a bath?

NAJIM AZADZOI: There is a bath on the other side, yes.

CONSTANTINE ALEXANDER: On the side --

NAJIM AZADZOI: On this side, no.

CONSTANTINE ALEXANDER: No. The side that is now used for a recreation room has no bath.

NAJIM AZADZOI: It has a bath.

CONSTANTINE ALEXANDER: It has a bath?

NAJIM AZADZOI: Has a bath, yes.

TAD HEUER: Is there access to that bath from the --

NAJIM AZADZOI: Yes, from the first

floor unit.

TAD HEUER: So is the access to the bathroom through here? Is it that --

NAJIM AZADZOI: That's it there.

TAD HEUER: There's like a little hallway or vestibule?

NAJIM AZADZOI: That little bit of platform --

TAD HEUER: Yes.

NAJAM AZADZOI: -- steps up and then it goes to the bathroom.

TAD HEUER: Okay.

NAJIM AZADZOI: And that's it.

TAD HEUER: And this over here, does that exist now, this half bath?

NAJIM AZADZOI: No, it does not.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: If we grant permission, as I understand it, you're looking to add a bath.

NAJIM AZADZOI: To add a half bath.

CONSTANTINE ALEXANDER: Half bath.

NAJIM AZADZOI: And get the ceiling height to comply with the usable space.

DOUGLAS MYERS: And your intention will be to rent that?

NAJIM AZADZOI: No. It would be used for the first floor additional space. It will add --

CONSTANTINE ALEXANDER: It will increase the size of the first floor apartment?

NAJIM AZADZOI: Yeah, it will add it to that first floor, two-bedroom, to have access to this space and to use it as recreational space, study room. It has windows. It's just the ceiling height doesn't match.

CONSTANTINE ALEXANDER: As you say, this is Cambridge. I'm not sure it's relevant, but I'm skeptical that this is all going to be used for recreational purposes.

It's not going to be a rumpus room. It's going to be a third bedroom for this apartment.

NAJIM AZADZOI: It's not going to be a third bedroom. I'm not planning for third bedroom.

CONSTANTINE ALEXANDER: Even though it's going to be a half bath and a separate room, you're not planning to make this a three-bedroom apartment?

NAJIM AZADZOI: It's not my intention, no.

DOUGLAS MYERS: Do you live at either 169 or 171 yourself?

NAJIM AZADZOI: No, I do not.

DOUGLAS MYERS: Why in the process of your proposed changes are you eliminating the rear outside door?

NAJIM AZADZOI: I would say that will be a question we have to do it or to eliminate that door or to still to keep it.

DOUGLAS MYERS: On your plans you've shown that you're eliminating. That's the basis for my question.

NAJIM AZADZOI: Right, yes.

Well, it has another door exiting to this side of the basement and it can exit out. So it does provide another means of egress from that space to the outside. So that door may not be used, but, yes, it is true that I have shown drawings to be closed off and not to use it. But later on I thought maybe I can keep it because it's already there. I think that what I'm saying, the reason that keep it there is just an idea came out after the sketches I did, that I could keep that door and not go to the demolition of that stairway and (inaudible), you know.

DOUGLAS MYERS: So in other words, a considerable amount of the proposed changes you've shown on the plan may not ever occur?

NAJIM AZADZOI: It is intended to

take -- to get rid of that one because the entrance as you can see is kind of projecting into the room. It takes a space. So I was thinking that I should get rid of that one and add it to the space. If you can see on this sketch here.

DOUGLAS MYERS: I'm fully aware, yes.

NAJIM AZADZOI: It's just a second thought came after I submitted these things that if that becomes an issue and the question that why you're doing, I still have the option to keep it and it's not going to hurt it. It would still be another exit out from that room. But the plan for the proposal is to close off that.

CONSTANTINE ALEXANDER: Just to put it in a technical perspective. You're here seeking the Variance to do what you want to do because you're building substantially over the FAR requirements for our city. It's

a very densely occupied site. You're at 1.98 right now in a 0.75 district. So, you're almost three times more. And you want to increase the density even further to go to 2.08. That's my problem with this. That plus I'm not -- maybe -- well, as a personal matter, I'm not in favor of encouraging basement occupation of structures. I can see it in a single-family home to a large extent where you have a, you know, a recreation area or the like. I'm just a little bit skeptical that this isn't going to be a recreation. I see I third bedroom coming here. And again, even more intense use of the site. So I'm on the fence.

Questions or comments from other members of the Board?

BRENDAN SULLIVAN: Well, I think the half bath is somewhat suspect.

CONSTANTINE ALEXANDER: You've read my mind.

BRENDAN SULLIVAN: I think that may, you know --

CONSTANTINE ALEXANDER: If I haven't seen a half bath, I would feel a lot different.

BRENDAN SULLIVAN: I mean, it adds more living room -- living space, not living room, living space --

NAJIM AZADZOI: Living space.

BRENDAN SULLIVAN: -- to the first floor units.

NAJIM AZADZOI: I'm not requesting that this unit becomes a three-bedroom, but you are right, that something could suspect why you add it. But, you know, it's connected from the bedroom to the space down the stair. So who would go from one bedroom to another bedroom?

CONSTANTINE ALEXANDER: Three students.

TAD HEUER: Students.

DOUGLAS MYERS: It's much easier to visualize the use as a bedroom then the use really as additional recreational space, because you answer me, put my mind at ease, but who's going to use that typically as recreational space? It's not an apartment where there would be a number of children who would live in the upstairs part and then go downstairs for recreation, is it? If your answer is no, it's not, then are you talking about a number, a small number -- adults who are going to live upstairs but then like having a recreational room downstairs for recreational purposes? That's possible. But and as I weigh these things, other uses seem to me also very possible and even more possible.

NAJIM AZADZOI: On this existing site which has already been connected to the upper bedroom, and as far as I know and I currently -- the people are using it, they

have put a projector and a TV and they just go there and use it as a lounge, break space and that's what they do. And I got encouragement from that use that, you know, let's do that same thing from this side. And when I talked to one of the tenants that live there, he said yeah, this bedroom is too big for me. If I have an access down the stair to go over there, then that would be appreciated. That space would be used.

For me also, you know, I'm going to be living with this space as unused forever. And each time I go there, I say well, this is a space, it can be used. I can get more from it. The main thing, you know, it's a student area, I might see that people can use it. So there's advantages to both the owner and to the user. Why I do agree that I'm not planning to make this a three-bedroom apartment, that's definitely not my --

CONSTANTINE ALEXANDER: We

appreciate the advantages to the owner. I mean, we don't want to dismiss it. Of course there are advantages. You're taking on usable space that's not currently being used and making it usable.

NAJIM AZADZOI: Yes.

CONSTANTINE ALEXANDER: The question though is under our Zoning By-Law, there are limits to how intensity you can occupy the premises. And to get the relief you want, you have to show a substantial hardship to yourself that arises from circumstances relating to soil conditions, shape or topography of the structure. And especially affecting this structure and not generally the district in which you're located. We tie it to a legal standard. And it's not simply a matter -- I want to make sure you understand. It's not simply a matter of it's more advantageous for you to do what you want to do. We accept that. The question is

whether the Zoning law allows you to do that.

NAJIM AZADZOI: Definitely, I understand because I've been here before and I did request for additional porch that was approved, and I added the porch and that --

CONSTANTINE ALEXANDER: On this structure by the way?

NAJIM AZADZOI: Yes. It was five years ago.

But at that time we did make a mistake in the calculation, and I reviewed that with Ranjit. And at that time, we -- that percentage that you mentioned does include the 500 square foot of the mechanical room that we added mistakenly as a liveable space. This time I reviewed it with Ranjit, and he said no, that's not --

CONSTANTINE ALEXANDER: The numbers I've given you now corrects that.

NAJIM AZADZOI: Yeah. Corrects that.

Well, this time I thought well, maybe I can go and say well, that 500 square foot was not correct, a mistake, and now I'm asking for another -- for a 300 instead of, you know, balancing that thing. But that 300 square foot could help. And I think -- I like to do it, it's a building, it's a high ceiling. It's a -- I mean a high -- it has windows. It has egress. It's just the ceiling height doesn't conform. It's needed. And other than that, it will remain as with spider webs everywhere.

CONSTANTINE ALEXANDER: Any further questions or other questions from members of the Board at this point?

(No Response.)

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 believe we have anything in the file from anybody on this matter. No letters of favor or opposed from neighbors or the like. So, I will close public testimony and offer the Board the opportunity for further questions or comments. Should we go to a vote?

BRENDAN SULLIVAN: I don't know, I guess I'm torn as to, you know, what's the harm in a sense? It's not on the other side of the house. The intended purpose could be a media room, it could be, you know again, we've got the TV and somebody throws down a desk or two, and it becomes a work station area. I very much again -- it's --

CONSTANTINE ALEXANDER: I know.

TAD HEUER: Is there a washer/dryer in this unit?

NAJIM AZADZOI: The washer/dryer is in the very front portion of the building.

TAD HEUER: But that's not for the

unit that -- or is it?

NAJIM AZADZOI: No, no. It's for common.

TAD HEUER: So you get to that -- how do you get to that?

CONSTANTINE ALEXANDER: Yes, how do you get to that?

NAJIM AZADZOI: From existing stairway on the side of the building. That's completely separate.

TAD HEUER: Right. So if I'm living in the unit that is above the space that we're discussing --

NAJIM AZADZOI: Yes.

TAD HEUER: -- how do I get to the existing laundry?

NAJIM AZADZOI: All six tenants go outside, and from outside use this stairway.

CONSTANTINE ALEXANDER: Which stairway is that?

NAJIM AZADZOI: This stairway on the

side of the building.

CONSTANTINE ALEXANDER: I got it.
Okay.

NAJIM AZADZOI: It goes down.

TAD HEUER: Okay.

NAJIM AZADZOI: And I expect this one has a doorway can go, but it can also go from this stairway out.

TAD HEUER: Right. So, I'm kind of on the fence, too, for Brendan's reasons and for Doug's reasons. That here we're talking about an increase well over FAR in a building that's already over FAR. But it's found space. It's not new space. It's not bulking the building. It's not massing the building. We're talking about an inch that's not making it non-conforming to conforming. If the ceiling were at seven feet, he'd be able to use this as of right. This would be over two FAR at the 0.75 and that would just be the case so that sense it's

minimal. The neighborhood that it's in is a student neighborhood. And even if you were intending to rent it as a two-bedroom, I was a student not so long ago enough to know that students look for very large two bedrooms to put three or four, as many people as they can put in because it's cheaper and it's much more efficient. So even if your intentions for it to be a two-bedroom, I can easily see it becoming a third bedroom. And that goes to the issue of intensification of space.

Again, if it's a residential property that's owner occupied, I think it's less of a concern than if you have a situation where people are transient and you're trying to pack as much as you can into the cheapest amount of space that you can. I think part of what is concerning is the same thing that concerns Brendan is this half bath down there, because that converts it really into a potential quasi bedroom space. The reason I asked

about the washer dryer, I don't know if it's an amenity issue, but if that space were the, you know, the half bath were either removed or if that were a washer/dryer, I can't see people wanting a washer/dryer in their bedroom. You would probably convert it to more realistically an actual recreation type space. I don't know. But I think what's getting me is the half bath down there. To weigh it against the fact that it's a relatively minor structural change to dig out the floor and entrance door.

CONSTANTINE ALEXANDER: I must say I absolutely agree with you. That's what got my antenna up is that half bath.

One possibility is that when I make the motion we can make it on the basis of granting the Variance on the condition that there be no half bath. If that's the sentiment of the Board or if that's not, then we'll go on the motion as the gentleman wants. In other

words, the plans proposed to us with the half bath.

I for one would like to go with the condition that there be no half bath. That would get over my objections to take me to in favor of the granting relief.

DOUGLAS MYERS: I listened to both Brendan and Tad and frankly that's where I come out, too. Without the half bath, I would vote for it cheerfully. With a half bath I would vote against it reluctantly. But I would like to hear from the Applicant. I would feel more comfortable hearing his response to that suggestion.

THOMAS SCOTT: Whether there's a half bath there or not, it's still going to be used as a bedroom. I mean, let's face it. I'm not opposed to it, you know. Is it leased currently?

NAJIM AZADZOI: No.

THOMAS SCOTT: It's not. It's

vacant.

CONSTANTINE ALEXANDER: Well, what's the pleasure of the Board? I think we're ready for a motion -- I think. We're all on the fence, but I'm not sure we're going to shed any more light on this subject beyond what we've done so far.

NAJIM AZADZOI: I will do whatever is needed to not use this as a three-bedroom, and not make it as a three-bedroom. And I will keep it legally as a two-bedroom. But in the meantime, looking at that space downstairs and I have -- I have plenty of, you know, space here with high ceiling. I have, you know, boiler rooms, everything fit -- even if you go there, you can feel like it's such a -- but then, you know, it's just a waste of space that's sitting there and not being used. Personally I feel that if somebody can just go there for a moment and -- it has windows, three operable

windows. It's a four feet above grade. I personally think the space should be used. But definitely I would do whatever this requires not to make it this way.

BRENDAN SULLIVAN: I think we can go for a moment but a movement.

CONSTANTINE ALEXANDER: What's that?

BRENDAN SULLIVAN: Maybe we can eliminate the bath, the half bath. I'm saying the presentation is not for a bedroom.

TAD HEUER: How many bathrooms does that unit have right now?

NAJIM AZADZOI: Every unit has one bath. Except this side uses the downstairs.

DOUGLAS MYERS: 171?

NAJIM AZADZOI: 171.

TAD HEUER: Right.

CONSTANTINE ALEXANDER: I suggest I make the motion with the condition that there be no bath. If we vote it down, we'll make

a second motion with the bath. And we can decide on that basis. Is that all right?

TAD HEUER: How in the world could you do that without bringing a repetitive petition? But okay, that sounds good to me.

CONSTANTINE ALEXANDER: I'm assuming we're not going to get to that question. 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. Such hardship being that the Petitioner has got approximately 300 square feet that is not usable, and should otherwise be usable for habitation purposes which is now lying fallow if you will.

The hardship is owing to the nature of the structure itself; it's shape. It's an uneven basement. And, in fact, a portion of

the basement is seven feet or higher, and therefore, inhabitable and inhabited. And what would be done here would be to make the rest of the basement for the level consistent with the basement that is seven feet or so high.

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 fact, the relief would be to make better use of a structure in an area that this needs student housing, has a great deal of students renting apartments.

The relief would be granted subject to the following conditions or condition:

That the work proceed in accordance with a proposed basement floor plan submitted by the Petitioner. It's sheet 3 of 4 initialed by the Chair. But on the further condition that the work not proceed with

regard to the construction of a new half bath. In other words, the basement area could be excavated to create new living space, but it would not have the benefit of any bathroom facilities. The purpose of this condition being that it is the desire of the Board that this basement area not be converted into a bedroom, which the Petitioner has represented to us it will not be or seek it not to be. And this will make it less attractive by eliminating the half bath. Reduces the possibility that this might become a separate bedroom. Which we have a basement/bedroom area.

So, all those in favor of granting the Variance on this basis with the condition so indicated say "Aye."

(Aye.)

(Alexander, Sullivan, Heuer, Myer.)

CONSTANTINE ALEXANDER: Opposed?

THOMAS SCOTT: Opposed.

CONSTANTINE ALEXANDER: One
opposed. So your Petition has been granted
on the condition of no bath.

NAJIM AZADZOI: Thank you.

(7:30 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will now call case No. 11 Linnaean Street. Is there anyone here wishing to be heard on this matter?

ATTORNEY SEAN HOPE: Good evening, Mr. Chair, members of the Board. Attorney Sean Hope, 130 Bishop Allen Drive. Tonight I have with me --

CONSTANTINE ALEXANDER: You want to speak up, Sean. As you know, neighbors are interested in hearing so they may have trouble hearing.

JIE LIU: Yes, yes. I'm Jie Liu and I'm the owner of the 11 Linnaean Street and we have been trying to get --

CONSTANTINE ALEXANDER: One second. If you're having trouble hearing, if you like to come to the side, feel free.

SEAN O'GRADY: We don't have the mics tonight because of the conflict with next-door.

ATTORNEY SEAN HOPE: So before we get into the merits of the case I want to start off with I do want to recognize that people are here. We did try to put the word out to the neighborhood as best as possible. But we're actually here to try to continue the case to January 14th. There is an application filed that would actually resolve this case in one hearing. Just by way of background -- I understand this has been continued several times, and this is a contested neighborhood issue.

The original case was filed in May 2010 and it was supposed to come before the Board. There was a different attorney involved. And the application, although I don't think it was totally faulty, the relief that it requested wasn't accurate to the actual lot.

They did pull Article 5 and Article 6, but there were sections that were off, so that Petition as is, the Board couldn't have granted relief that was necessary for parking in that lot. When Mrs. Liu retained me, the first thing we did was we actually looked at the lot and did some measurements which weren't done to begin with. And we actually found the exception 5.3(b), the one issue, the main issue that was presented was the depth of the parking. They thought there wasn't sufficient depth so they were seeking a Variance to be able to park there. Footnote 3(b) allows for the front yard setback to be measured not in -- 15 feet is what is in Residence B, allowed being measured by the adjacent properties. I have been working with Inspectional Services. We had Boston Survey go and measure the adjacent lots. And so they're actually less than feet but ten feet is the minimum.

So once we found out that actually we did have the dimensional requirements, the next step was to find out if we had the open space. And so when we did the open space calculations, first we thought there was about 42 percent and 40 is the requirement.

CONSTANTINE ALEXANDER: Minimum requirement of 40.

ATTORNEY SEAN HOPE: The minimum of 40.

To back up, when this Petition was first filed, they went to the Avon Hill Neighborhood Association and they recommended that parking not be on Linnaean Street but it be on Humboldt Ave. One of the reasons was safety, but also there is a slope. And in many parts greater than 10 percent. That would make the parking impractical. That also affected us when we had the open space, because usable open space for any part of the lot that is greater or less than ten

percent can't be counted -- or greater than ten percent can't be counted as open space. So we thought we could actually do one car parking as of right the way Avon Hill had described in their Certificate of Appropriateness. But actually we found out that we only have about 35 percent.

Now this measurement has -- we have been going back and measuring over the last couple of weeks. So part of continuing the last hearing was really to get an accurate measurement of what we had. Now, we could have withdrawn the case and filed a new one. There was issues of repetitive petition.

Now, what the case that we have coming up for the 14th is specifically for open space. There's not any dimensional requirements. We actually meet all of them.

CONSTANTINE ALEXANDER: Has it been advertised for open space?

ATTORNEY SEAN HOPE: Not the case

that's now before us, no.

CONSTANTINE ALEXANDER: The one that's going to be heard on the 14th?

ATTORNEY SEAN HOPE: Yes. It's just specifically for open space.

CONSTANTINE ALEXANDER: All right. It hasn't actually been advertised yet?

ATTORNEY SEAN HOPE: It hasn't been advertised.

CONSTANTINE ALEXANDER: This is mostly for the benefit of the neighbors.

ATTORNEY SEAN HOPE: Definitely.

CONSTANTINE ALEXANDER: So if we continue the case now, it's going to be a separate case at which we'll hear both cases on January 14th. And if we grant relief for the open space, this Petition gets withdrawn.

ATTORNEY SEAN HOPE: Exactly.

CONSTANTINE ALEXANDER: But the net effect of it is there will be parking on the lot, which is I guess the nub of the

neighbors' objection. So it will be different legal skirmish, but the same basic issue over there. And if you should be so fortunate, this is for the benefit of the neighbors, as to when you do your measurements and the like, you can satisfy ISD that you have sufficient open space, then you do not need any Zoning relief from us.

ATTORNEY SEAN HOPE: Exactly.

CONSTANTINE ALEXANDER: And you'll be able to park in the rear lot as a matter of right subject to a neighbor taking legal action, challenging the decision of the ISD. And it wouldn't involve us at that point.

Did I summarize it right?

ATTORNEY SEAN HOPE: Exactly.

TAD HEUER: You're saying that this Petition in front of us right now 9953 is the faulty Petition that even if it were granted, cannot actually grant you the relief you're seeking?

ATTORNEY SEAN HOPE: Exactly.

Now, I know that the Board has interpreted when you quote sections, but I think this might have been too far of a stretch to actually find the proper relief especially when there is neighborhood opposition.

CONSTANTINE ALEXANDER: I'm not as troubled -- at first blush it doesn't strike me if you withdrew this, you would have a repetitive petition issue, because it's a completely different section of the code. But that's a technicality. There's no reason we're going to do anything not to continue.

BRENDAN SULLIVAN: It's a corrective measure more so than a --

CONSTANTINE ALEXANDER: Yes.

Than a withdrawal.

I know you're dying to be heard. We'll call you in due course, okay?

Anything further at this point?

ATTORNEY SEAN HOPE: That's it.

CONSTANTINE ALEXANDER: So, you're seeking to continue this case until January 14th at which time we're also going to hear a different -- the same case but different legal theory for relief?

ATTORNEY SEAN HOPE: Yes.

And I'd also like to say for the people who have come and have interest, we will have in the file for the January 14th case, you know, our measurements. So there will be a plot plan with the different measurement, and a Zoning opinion that will explain our legal theory as explained to ISD so that you won't have to wait until we come back on the 14th to figure out, you know, why we believe that we meet the dimensional requirements. We'll do that upfront and then we can --

BRENDAN SULLIVAN: All of the submissions have to be in by five o'clock the

Monday before the 14th anyhow.

CONSTANTINE ALEXANDER: And just one last point, one of the issues of continuing this case in the past has been a complaint by the neighbors, and I think well-founded, is that the property was being used for parking even though that's relief being sought. So continuing the case allows you to continue to do something perhaps you're not allowed to do. But, at the last hearing this was brought to our attention. We instructed Mr. O'Grady to take action to see that this stopped. And as far as I know based on the times I've walked by the property, you're not using that rear yard, I'm going to use that word now, for parking. So the concerns of the neighbors about the continuance just allowing you to have what you shouldn't have has been taken care of. All right? As far as you're concerned.

JIE LIU: Yes.

CONSTANTINE ALEXANDER: Now you can had been heard, all right?

ATTORNEY ROBERT LA TREMOUILLE:
Robert La Tremouille, 875 Mass. Ave.
representing Virginia Mae Burnes, Seven
Humboldt Street.

CONSTANTINE ALEXANDER: We're only go to speak to the issue of whether we should continue this case.

ATTORNEY ROBERT LA TREMOUILLE: I'm going to object to the continuance because of the falling.

CONSTANTINE ALEXANDER: A what?

ATTORNEY ROBERT LA TREMOUILLE:
Falling. A waste of time. Looking at the application the application's very clearly an application for a curb cut. Nothing else. You can't grant curb cuts so....

TAD HEUER: Is that maybe why Mr. Hope has told us we shouldn't be acting on this Petition at all and that's why he's

filed the new Petition?

ATTORNEY ROBERT LA TREMOUILLE: So, do the new petition --

CONSTANTINE ALEXANDER: We haven't advertised yet. We will do it January 14th.

ATTORNEY ROBERT LA TREMOUILLE: This one can't be approved.

CONSTANTINE ALEXANDER: Let me put it a different way. You may be absolutely right. But what harm is there continuing this case to January 14th so long as there's no parking in the area in question? What is the harm?

ATTORNEY SEAN HOPE: May I, Mr. Chair? Also the curb cut is one aspect the Petition, but there are also aspects that I intend to try to get dimensional relief that don't accurately quote the section. So, it's not all about just the curb cut. There is also dimensional relief and I think that's the reason why --

CONSTANTINE ALEXANDER: You're right. I didn't want to get into a big debate about it.

There's nothing to be -- what harm is there to continue this case that we're probably never going to hear this case on its merits. Why should we spend our time tonight, wasting our time and your time debating this?

ATTORNEY ROBERT LA TREMOUILLE: The parking -- he is no way requesting parking. There is no request for parking. He had nothing in front of you that you could grant.

CONSTANTINE ALEXANDER: Thank you.

Anyone else wishing to be heard? Only whether we should continue the case, not the merits.

UNIDENTIFIED FEMALE: All right.

CONSTANTINE ALEXANDER: You'll have an opportunity to speak on the merits. January 14th to be precise.

UNIDENTIFIED FEMALE: All right.

CONSTANTINE ALEXANDER:

Understanding, though, I want to make sure the neighborhood understands one thing, is that if when they do further studies and measurements, it could be that they will not need any Zoning relief. That does not mean neighbors who can still object don't have any legal recourse. You'll have to bring the Petition challenging, I suppose the -- I guess the Building Department. Do you have to grant a permit for the parking in there or not?

SEAN O'GRADY: This is for --

CONSTANTINE ALEXANDER: How would a neighbor appeal this case if we decide as a matter of right that they can park in the rear yard?

SEAN O'GRADY: If we decide as of right, and we've actively decided no, as of right. But if new evidence came forward,

then they simply would appeal us right back to you.

CONSTANTINE ALEXANDER: Okay.

So you would have a right to come -- this never gets swept under the rug. If they convince ISD that they don't need any Zoning relief, you feel that they're wrong, any neighbor feels wrong, you can take an appeal on that decision. And that will be heard just like this case is being heard, except you would be sitting up here at the front table. Or you being whatever neighbor is bringing the case. And they would sort of be sort of defending it. But, I'm sorry I digress a little bit too much. That's the nature of the case.

But tonight the only question should we continue this case to the 14th knowing that we're going to hear this case anyway on the 14th in a different legal theory. And that goes back to my point as to what harm is it

to continue this case at this point?

UNIDENTIFIED FEMALE: Could I just ask one question?

CONSTANTINE ALEXANDER: Go ahead, by all means.

UNIDENTIFIED FEMALE: And the case is defined as one parking space, correct? That's the case or is that not a question that's valid right now?

CONSTANTINE ALEXANDER: No, no. That question is valid.

TAD HEUER: We don't know yet because we haven't seen that case.

UNIDENTIFIED FEMALE: Okay. Thank you.

CONSTANTINE ALEXANDER: Thank you. Until we see the case. I think at the end of the day it's going to be about one parking space, but we haven't seen the case yet.

Anyone else wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: Ready for a motion?

The Chair moves that this case be continued until seven p.m. on January 14th -- yes.

SEAN O'GRADY: 13th.

CONSTANTINE ALEXANDER: 13th?

Thank you.

SEAN O'GRADY: Thursday, the 13th.

CONSTANTINE ALEXANDER: The case be continued until Thursday, January 13th at seven p.m. A waiver of time for decision already being in the file. And this being a case not heard.

It continues to be on the condition that the sign that you have on the property now be modified to reflect both the new date and time if the time is not seven p.m. now. So just for the benefit of everybody else, the sign has to be modified and maintained up until the

time of the hearing.

JIE LIU: Do we have to make the change or ISD make the change?

SEAN O'GRADY: You can change the date on the sign, yes. But just the date and the time.

CONSTANTINE ALEXANDER: Just a magic marker. You have a question?

VIRGINIA MAE BURNES: Yes, I haven't seen the sign. I've been by and there's --

CONSTANTINE ALEXANDER: I've seen it.

VIRGINIA MAE BURNES: Whereabouts is it?

JIE LIU: On the tree.

VIRGINIA MAE BURNES: On the big tree?

JIE LIU: Yes.

VIRGINIA MAE BURNES: Because I looked, it wasn't there a couple weeks --

CONSTANTINE ALEXANDER: Brendan?

BRENDAN SULLIVAN: Do we have a time for the other case on the 13th? I don't want this one to come off at seven and the other one be for 8:30.

CONSTANTINE ALEXANDER: What we'll do when this case is called, I'll just recess it until after the case on January 14th. We don't have the agenda.

BRENDAN SULLIVAN: So these people don't come -- so that they're aware of what we're going to do, too.

SEAN O'GRADY: I just don't know when that time is right now.

BRENDAN SULLIVAN: You don't have a time yet. So rather than showing up at seven and the other case is at 8:30, it could be very well that you could show up 8:15 and cover both cases. You know, you should be in communication with the Building Department to find out the actual time of the --

CONSTANTINE ALEXANDER: Or look at

the sign.

BRENDAN SULLIVAN: There will be a new sign up there also.

SEAN O'GRADY: And new notices and new everything from the ground up so everyone will know.

CONSTANTINE ALEXANDER: Yes, that's right. That's a good point. Don't come at seven p.m. even though we continued this case to seven p.m. We're not going to hear this case at seven p.m. We're going to hear the other that is yet to come first. Whatever time it's going to be, we haven't figured out the time yet and then we'll hear this case.

UNIDENTIFIED FEMALE: Thank you for letting us know that.

CONSTANTINE ALEXANDER: I'm sorry?

UNIDENTIFIED FEMALE: Thank you for letting us know that.

CONSTANTINE ALEXANDER: All those in favor of continuing the case on this basis

say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

DOUGLAS MYERS: No parking until then.

CONSTANTINE ALEXANDER: That's right. You've been good so far. Keep it up.

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

(7:45 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10024. One Percy Place. Okay, for the record.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman. For the record, James Rafferty appearing on behalf of the applicants Joshua Flax, F-l-a-x seated to my left, and Kate Anderson. Ms. Anderson is married to Mr. Flax and gave birth last week so she's not with us.

CONSTANTINE ALEXANDER: I'm looking around.

ATTORNEY JAMES RAFFERTY: The baby arrived six weeks ahead of schedule.

CONSTANTINE ALEXANDER: Do anything to get out on our good side.

JOSH FLAX: Anything to get out of

the house at this point, but a few hours of sleep is good, too. But, yeah, the baby's doing all right, too.

TAD HEUER: Congratulations.

JOSH FLAX: Thank you.

ATTORNEY JAMES RAFFERTY: So this case represents a little bit of Cambridge trivia. It's on Percy Place, and I'm willing to bet only a few members of the Board would have known where Percy Place was before they reviewed the file.

CONSTANTINE ALEXANDER: Did you know?

ATTORNEY JAMES RAFFERTY: I have to confess I did not. Percy Place. I never heard of Percy Place. I've certainly heard of Essex Street. That's the neighborhood that it's in. And there's a couple of things I'd like to draw on the Board's attention in your evaluation of this case. This is a case where Mr. Flax and Ms. Anderson recently

purchased the house back this summer. They're Cambridge residents now. They live on the other side of Central Square. And this house appealed to them for a variety of reasons. They are looking to move into a bigger home, but still wanted a single-family house and wanted to stay in the greater Central Square neighborhood. So, when this opportunity presented itself, they examined the house and came to understand that it was a significantly sized lot.

Now, I brought a little section of the Zoning map because there's this interesting history to this street. I bet one or two members of the board know it. It's an island of Res B in a neighborhood that's all C-1. And it's C-1 for nearly all of mid-Cambridge. The late Clifford Truesdale, an effective political activist who lived on Essex Street managed to get the City Council in a bit of -- a Zoning Amendment. So Essex Street

and a portion of the next street over are Res B.

The interesting thing about it is this lot is unique in that it probably is the only conforming lot in the entire Res B District that's there. If you look at it a little closely, you'll see in a Res B District there's a minimum lot size requirement of 5,000 square feet. Now, there are a few lots greater than 5,000 square feet, but you'll notice that their FAR is considerably over the 0.5 for the first 5,000 square feet, and you'll recall it then drops to 0.35. But as big as the lot is and as small as the existing structure is on the lot that's got an FAR today of I think of 0.34 FAR. Very modest FAR, the house does have one non-conforming feature to it. And that is its front setback. The setback as you know in the Res B District happens to be 15 feet.

In this street, however, both of the

houses on either side -- you'll notice on the site plan, are less than ten feet from the street. So the Ordinance allows an averaging up to a minimum of ten feet. So for purposes of Zoning this setback here -- the required setback would be ten feet. So this, if you look at the site plan, this house is two feet closer to the street than is permitted. That is the only non-conforming aspect of this lot. And because of that, the Applicant didn't have the as of right opportunity frankly that he thought he had when he initially hired his architect and developed his plans.

When they became aware of the consequence of the non-conforming front yard, they met with the staff and they were advised that they could apply under Section 6 of Chapter 48 as a single-family dwelling for a finding, a Special Permit finding under Section 6. So were directed by

Mr. Singanayagam to make such an application. And I know the Board has great familiarity with Section 6 on a case a few months ago, when the leading cases on that were vetted at Foster Street and Foster Place. So Section 6 as you all know, is a provision that allows an exception, the second except clause for single-family and two-family houses here with our conforming additions.

And what is proposed here is a conforming addition. But it was pointed out today by an alert member of the Board that -- and drawing to our attention that the stairs on the rear deck were actually projecting into the setback. And you'll recall there's a provision around setback exceptions where if they're coming -- they can come off a foundation with ten feet. So, in a funny kind of a way if that deck had a foundation on it, the stairs would be

conforming. But because the deck doesn't have a foundation, you measure the ten foot distance back to this wall, it didn't qualify. Well, the easiest thing to do, and it does represent a slight modification in the originally file plans, is a -- and I had the architect sign that, is he has scaled back the size of the deck such that the rear stairs coming off the deck, which is not an integral part of the house in the eyes of the Petitioners, it's kind of a placeholder. So those stairs now are within the setback.

CONSTANTINE ALEXANDER: The original plans, where were the stairs? Just show me.

ATTORNEY JAMES RAFFERTY: Yes, sure. In the original plan.

CONSTANTINE ALEXANDER: It's in the file somewhere. I have it right here.

ATTORNEY JAMES RAFFERTY: Right. So you can see the --

TAD HEUER: The stairs are now flush to the back wall rather than extending beyond it; is that right?

ATTORNEY JAMES RAFFERTY: That's correct.

CONSTANTINE ALEXANDER: Oh, yes, yes. Thank you. Now I see it. Okay.

ATTORNEY JAMES RAFFERTY: And for a variety of reasons, if those stairs were coming off a house or if they were coming off a foundation, they would have been permitted. Because they're on a deck, the ten foot rule brings it back. The easiest course of conduct here was to make a slight modification to be able to then state with greater precision that this is in fact a conforming addition. It represents an FAR below what's permitted. There's about 200 plus square feet that is not being utilized.

I also asked the architect to do a little measurement that I thought might

assist the Board to understand the side yard setbacks here. Because in the Res B District, there were a number of options where these additions could have gone, and you can see here that this is conforming in terms of the rear setback in it aligns nicely with the footprint of the house. And if you have an opportunity to look at the elevation here, you'll see that this really is an L-style addition. The roof line of the second-story addition is considerably lower than the main house. The second-story bedroom is set back from the side yard. The scale and character of it are very consistent with the scale and character of the main house would be our suggestion.

So the Applicant has filed an application pursuant to Section 6 demonstrating that it's a conforming addition to a non-conforming house that will not have any greater impact upon surrounding

houses. Now, there are surrounding houses as depicted on the site plan in the GIS plan, and few if any of those meet the required setback. And I think that's relevant in the context of understanding impacts. So, to have a house -- and the reason I drew the side yard setbacks is this house is considerably less. The width of the house is less than what the setbacks would allow. So it's more than just conforming. It conforms and exceeds those side yard setbacks. And we have had some -- okay.

So we all know what the alternatives are. If this were a Variance case, frankly, and before it came to me, I might have thought it was, then the Variance might have involved -- they'd have to lift the house up, move it back two feet and then they could do something a little like this but differently. They'd then be within the rear setback. So you would probably see the house spread a

little like those side yard setbacks show it could. This could be two units. It's 5,000 square feet. The district, it says 2500 square feet. This is a single-family house. So the density on this lot is less. The open space, when they're done here, is nearly 80 percent. The Res B District has a big open space requirement, 40 percent. And again, I'd be hard pressed to find a lot in this particular Res B District that meets that.

And as you might expect, some abutters have expressed disappointment that a significant amount of open space, basically the rear yard that's been purchased by Ms. Flax and Ms. Anderson, is now going to have more structure in it than is currently the case.

CONSTANTINE ALEXANDER: A couple things. I'm sorry, I didn't mean to interrupt. Are you finished?

ATTORNEY JAMES RAFFERTY: Yes.

CONSTANTINE ALEXANDER: Your position is that you don't need a Variance? Obviously you applied for --

ATTORNEY JAMES RAFFERTY: Well, I would say the position of the Department is they don't need a Variance because they were directed by Mr. Singanayagam as to what to what to apply for. They came to see me frankly after they had already applied and received that. So, when the property owner first went to the Building Department, their expectation was they could get a Building Permit. I then know that Mr. Singanayagam advised them because of the non-conforming nature of the front setback that they needed Zoning relief, and it was his interpretation that formed the basis of the filing. So, in his interpretation was that they could qualify for a Section 6 finding for a conforming addition to a non-conforming structure under the division of --

CONSTANTINE ALEXANDER: We may want to revisit this question about the Variance, because one of the members of the board has some views on this.

ATTORNEY JAMES RAFFERTY: I see his highlighted spaces, believe me.

CONSTANTINE ALEXANDER: Before we get there. Assuming it is a Special Permit, what is the standard that we have to apply? I want to put you on the record. What is the standard we have to apply? What findings do we have to make to grant the relief that you're seeking?

ATTORNEY JAMES RAFFERTY: Well, under Chapter 40-A Section 6, the leading cases, the Bransford case in which we know dealt with a lot as opposed to a setback.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: But the conclusion ultimately under Section 6, regardless of the current state of the case

law, is always that a finding that the conforming addition doesn't have an adverse impact upon the surrounding property.

TAD HEUER: Not substantially more detrimental than the existing non-conforming use to the neighborhood.

ATTORNEY JAMES RAFFERTY: Yes, that's more accurate. But he has notes in front of him. He knew that question. I was paraphrasing, but, yes.

CONSTANTINE ALEXANDER: I have my highlighted section here, too. Let the record be clear that not just one member of the board has a highlighted section.

UNIDENTIFIED FEMALE: Is it going to be open to the abutters to speak at some point?

CONSTANTINE ALEXANDER: Say it again, please?

TAD HEUER: Yes.

UNIDENTIFIED FEMALE: Okay.

CONSTANTINE ALEXANDER: If you have any problem hearing what's going on --

UNIDENTIFIED FEMALE: We can hear. It's very interesting. We can hear.

CONSTANTINE ALEXANDER: All right. I'll bet.

Okay, so your position is you need a Special Permit per instructions from ISD?

ATTORNEY JAMES RAFFERTY: Correct.

CONSTANTINE ALEXANDER: And the standard we're supposed to apply is that what you want to do will not be substantially more detrimental than the existing non-conforming structure. And your position is that you've stated already, I'm not going to repeat it.

ATTORNEY JAMES RAFFERTY: Right.

So what's non-conforming about the house, we all know, is the front setback. And Section 6 suggests that the Board should look at that non-conformity, and that's what's putting this house in that category,

a somewhat of a stepchild, if you will. It doesn't get full benefits. And then evaluate the proposed addition and see if there's anything about the proposed addition that either exceeds or makes the non-conforming aspect of the house have a greater impact upon the abutters. So, in this case, I think one can make the case that the house is theoretically two feet longer as a result of the fact that the setback is at eight feet as opposed to ten feet. But the point I wanted to emphasize to the Board is that there are geometric options that design-wise are not as I would think favorable to the neighbors, particularly the side yard neighbors. The narrow setbacks, and while they are generous exceed the Ordinance requirements significantly, by holding the house in the way they have, and that is by taking advantage of the full 25-foot rear setback, they're able to have

greater side yard setbacks.

So, the greatest setback in the proposal is the rear setback. The side yard setbacks -- and that setback is admittedly -- and then that house is admittedly approximately I guess you can say two feet longer. I recall the case we had on on Cherry Street not too long ago --

CONSTANTINE ALEXANDER: Right.

TAD HEUER: I was just about to ask.

ATTORNEY JAMES RAFFERTY: All right. Good thing it's not my first night here.

But in that case, of course the width of the house and analysis came down to are we getting a wider house and should we compensate for that? I was mindful of that, that's why I asked Mr. Artley to kind of draw the other setbacks to show where the other as of right options are. And to demonstrate that, I think those options could arguably

have more of an effect on the neighbors. The setbacks here on the side yard really, particularly in the side yard -- the abutter on the left has provided a letter in support. We've had an opportunity to have some conversations with the abutter on the other side, and I would not attempt to speak for them. But that letter wasn't in the file this evening.

So that is the issue. And I suspect it's for those reasons that the Commissioner directed him to make application under Section 6.

CONSTANTINE ALEXANDER: Questions from members of the Board?

BRENDAN SULLIVAN: See, I'm not convinced that a conforming addition is not more detrimental than the existing non-conformity. And under your scenario saying that we are going to do a conforming addition and all the other numbers are all

less than the threshold, if the house were right up to the sidewalk line, what then? You could come down and say well, you know, that's creating a detriment to the house. That's our hardship in a sense for us even being here because that's what's created the non-conformity. So, yet but what that front yard encroachment is doing is actually becoming a benefit here because it allows you to build more house than would normally be allowed if this were an empty lot.

ATTORNEY JAMES RAFFERTY: Can I correct you? That's not the correct statement. It allows you to build a longer house. More is defined by -- you can build a much wider house. So to be perfectly accurate --

BRENDAN SULLIVAN: Right, not big, but longer.

ATTORNEY JAMES RAFFERTY: It's not correct to say a much bigger house. Longer

by two feet.

BRENDAN SULLIVAN: Correct.

ATTORNEY JAMES RAFFERTY: You can build a much wider house. So as I tried to address in my opening. That is correct, the house is two feet longer because it goes to the full yard setback. There are ample opportunities, though, to make the house wider.

BRENDAN SULLIVAN: Correct. But I think the issue that we're playing with here is whether or not allowing a conforming addition to a non-conforming structure by way of Special Permit, is that the proper venue? I would proffer that it is not.

CONSTANTINE ALEXANDER: Your position is it should be a Variance case?

BRENDAN SULLIVAN: That's correct.

TAD HEUER: So, I would like to ask some questions because I have similar concerns. So, when I read 40-A, 6 and it

says: Shall not be substantially more detrimental than the existing non-conforming use to the neighborhood, am I incorrect to read the word "use" as broader than the offending non-conformity? So in your presentation you said we have to look at the front being -- and I agree. I can see that the front setback is the only non-conformity here. Because you have a huge lot, an unusually huge lot for this neighborhood.

Are we restricted by 40-A Section 6 to look only at the front encroachment and say that anything that's not increasing the front encroaching non-conformity is okay? Or does use by necessity mean something that is broader than simply that front setback for the house? And the reason I ask this is because I'm looking both at Bransford and Beurklin (phonetic). And in Bransford which is the case that came before Beurklin -- these are both Massachusetts

Supreme Court cases -- that was the split case which was then resolved, the issue was resolved by Beurklin, but the opinion that eventually was, you know, it was a split opinion, the opinion that eventually became the Beurklin majority, notes that "Other decisions of the Appeals Court have on different facts also indicated that consideration of a structure's footprint is a fact to consider intensification."

And then when you look at the Beurklin case, just the screening goes into great detail about what this kind of intensification of a use means and what's substantially more detrimental to existing non-conformity means. And he gives a set of examples where he says, "The Board does not dispute that the Plaintiffs could reconstruct a house on the lot." It was a tear down, or modernize. "In keeping with the existing structure's building footprint

and living area." And then he goes to say, "Concerns over making a small scale alterations, extensions or structural changes to a pre-existing house are illusory, examples of such could include the addition of a dormer, the addition or enclosure of a porch or sun room, the addition of a garage for one or two vehicles, the addition of small scale proportional storage structures such as sheds used to store gardening or lawn equipment, or sheds used to house swimming pool heaters and equipment.... More substantial improvements or reconstructions would require approval under the second except clause and under the terms of an existing Ordinance by-law that would usually require findings of the types specified." In that case a (inaudible) by-law which I believe was the Variance standard.

ATTORNEY JAMES RAFFERTY: No.

and --

TAD HEUER: So given that, why isn't this more properly a Variance case because you're expanding the footprint, you're looking at a non-conforming use beyond just the non-conformity. And the case law seems to push us in the direction of it's not small scale because you're not in this shed dormer issue.

ATTORNEY JAMES RAFFERTY: I respectfully don't agree with your analysis.

The Bransford case you'll recall, but the controlling issue there and with all Section 6 findings, is who is going to make the finding? They were making the case in Bransford that it was so automatic that the Building Commissioner, the permit granting authority should make the finding. And the Court held there no, there are other factors to be considered. And it was appropriate to send it to the Board, to the Special Permit granting authority to look at those type

issues. So, when this case is before you tonight, the fact that it has more open space than is required, the fact that it has greater side yard setbacks than is required, the fact that it has fewer number of dwelling units that are required, are all things you can look at. You can look at the scale of the addition and make a determination. And those are certainly the things that you should be looking at. But the Bransford doesn't send you to a Variance, nor does the Beurklin. They say it's a matter of determination for the Board and not simply the Commissioner.

TAD HEUER: Well, correct. But --

ATTORNEY JAMES RAFFERTY: And you'll recall that counsel for the property owner on the other case was making the case that that was a Section 6 automatic right. And we know also in the Bransford -- and the Bransford case -- I mean it's an easy call. The take away in most land use circles from

these cases are if you're on the same footprint and you're rebuilding, you're pretty much get the Section 6 finding by the Commissioner. If you're looking to build a conforming addition, then you need to then go to the Special Permit granting authority.

TAD HEUER: I understand that.

ATTORNEY JAMES RAFFERTY: And it's for that reason that I'm con including, and I know how much stock this Board placed in the Commissioner's determination because I've tried on occasion to convince the Board that every once in a while he may have gotten something wrong, and I've never been successful. So, the Applicant was directed to apply for a Section 6 finding under the Special Permit process.

TAD HEUER: And I understand that that really my argument is essentially with ISD and then you're the beneficiary getting the brunt of it because you were instructed

to do that and you dutifully did what you were told to do.

ATTORNEY JAMES RAFFERTY: Well, I didn't do it, they did.

TAD HEUER: Right the Petitioner. I guess my concern is that in reading the examples of what does not intensify a use in Beurklin, that gives me some examples that are not this case. And then I think if I go to the Ordinance, if I'm looking at the Ordinance, and the Ordinance says while you need a Variance, what are the conditions that constitute that we believe as a city constitute intensification, it says 25 percent conforming addition on a non-conforming structure. So, pairing what I'm told does not create a non-conformity with what the city has suggested does put you so far into non-conformity issue land that a Variance would be required, melding those two together, cognizant of what 40-A and Section

6 clause allows for still seems to suggest to me that this is really a Variance because that's what the City Council has told us is a Variance, right?

ATTORNEY JAMES RAFFERTY: Well, I don't think the City Council -- I mean, there still is the exception for -- in the state statute for single-family houses. So the 25 percent applies to commercial buildings, institutional buildings, all multi-family housing. This is a single-family house in a district where two families are allowed. And the conclusion is that while that's -- Article 8 paints a broad brush as to non-conforming structures, and it doesn't draw the distinctions in this section as a single-family house. And that's where Section 6 comes in.

Your earlier question was do we only look at the front setback? No, I don't think you're limited to looking at the front

setback. But I do think you look at the scale of this addition and the extent to which this addition is consistent or even exceeds what the dimensional requirements are. Because at the end of the day, I mean, that's what a section -- that's why this special class of relief is available. Obviously if the conclusion of the Board is that an addition that conforms and in fact exceeds the setback requirements, and the GFA requirements and the FAR requirements, if that isn't sufficient to meet the standards under Section 6, then I guess the Petitioner does have to seek an alternative form of relief. And if we're going to have a conversation about whether it's an appropriate candidate under Section 6 relief, I assume that's what we're doing now. And, you know, I don't think frankly it's a bit of a -- I don't think it's that tough of a call frankly for all the reasons I've cited. That document that I

provided you I think is extremely relevant to the notion of how this house impacts other houses. It's not simply enough to say I look out my window now and I see open space, and I'll look out my window in the future, and I'll see structure, therefore, it doesn't qualify for section of relief.

TAD HEUER: But if this were a commercial site, we wouldn't even be having that argument, right? Because that de facto would be under 25 percent of the complying condition --

ATTORNEY JAMES RAFFERTY: Oh, correct, right. Sure, Section 6 wouldn't apply.

TAD HEUER: Right. So, if we're going to look at that, even though there's the exception for a single-family residences which I agree is applicable here and gives a bit more of a boost towards that argument, I still am not convinced in looking at

everything together we're in a situation where that boosts you enough, particularly given the upper limit that's been provided by the Ordinance of -- you should be looking at Variances when it goes this side. I mean, there's been a determination, maybe arbitrary maybe not, that at 25 percent of the conforming addition to a non-conforming structure, you're looking at a Variance. And --

ATTORNEY JAMES RAFFERTY: But you're reading -- that reading of that section of Article 8 ignores Section 6.

TAD HEUER: Oh, no, I don't think it does.

ATTORNEY JAMES RAFFERTY: Oh, it certainly does. Just by your own words you've suggested that the 25 percent is the call and the Board should look at that regardless of whether it's a single-family or a multi-family or a commercial building,

you're saying that Ordinances is 25, but that's -- I mean, maybe I missed what you said. But that's how I --

TAD HEUER: I think it's a factor and I think if we're looking at not substantially more detrimental than the existing non-conforming use, I mean, that's suggesting that any time that if you have, you know, 100 percent addition to your building, you're saying well, it's substantially more detrimental. I think at a certain point the Board can take that into account as a factor and say doubling the size of it actually is substantially more detrimental. I'm not saying it's dispositive.

ATTORNEY JAMES RAFFERTY: No, no, I don't disagree. But what I heard you saying, which I took exception with was the notion that the direction of the Ordinance would control here. And that because the 25 percent is a signal to the Board that 25

percent, in making Section 6 findings, you should see 25 percent as some type of a threshold that's been imposed upon you, and if you're exceeding the 25 percent, you really ought to go get a Variance.

TAD HEUER: Agreed.

ATTORNEY JAMES RAFFERTY: And I'm saying that reading, when applied to single-family houses, ignores the rights in Section 6.

TAD HEUER: Right. And I think I would clarify to say I don't think it's dispositive, but I think it does factor into analysis of when something is substantially more detrimental than the existing non-conformity.

CONSTANTINE ALEXANDER: I don't think Mr. Rafferty is disagreeing with you right now.

ATTORNEY JAMES RAFFERTY: Right.

TAD HEUER: Right.

CONSTANTINE ALEXANDER: And I think the point is, to me anyway, I think you're absolutely right about the Variance. And I think that for a single-family or a two-family residential structure, non-conforming conforming addition, Variance -- Section 6 says you don't need a Variance, period end of story. But we have to make a finding of whether it's substantially more detrimental. I think the larger the non-conforming addition is, and it is large in this case, the more we have to de-probe.

ATTORNEY JAMES RAFFERTY: The conforming addition.

CONSTANTINE ALEXANDER: I'm sorry, the conforming addition. The more we have to probe as to whether what you want to do is substantially more detrimental. We take into all the different various factors. Almost like a Variance, but not calling it

Variance. You don't have to get to the hardship and all that. But I think we do have to take a long, hard look, that's where I draw the line on this case.

What you want to do is a substantial conforming addition. And we have neighborhood objection to it. And I'm going to get to that in a second. At least one person, maybe others. One person has written to us. Maybe others are going to speak to us. And I think we have to take our discussion in my view.

Anyway, any questions or further questions at this point?

DOUGLAS MYERS: Just one.

CONSTANTINE ALEXANDER: Go ahead.

DOUGLAS MYERS: And it's a factual question as opposed to the legal discussion. I just have some factual questions about the deck that's shown on the plan. And I wondered if you could say what the dimensions

of the deck are?

JOSEPH ARTLEY: Front to back. The projection for the side yard is about 12 foot, 8.

DOUGLAS MYERS: Eleven and a half by 13, something like that.

What floor of the house is it located on?

JOSEPH ARTLEY: It's located below the first floor.

DOUGLAS MYERS: Along the first floor. And what is its view and orientation to the nearest neighbor?

JOSEPH ARTLEY: It's -- do you have a site plan?

ATTORNEY JAMES RAFFERTY: It's --

DOUGLAS MYERS: Unobstructed view?

JOSEPH ARTLEY: Yes.

ATTORNEY JAMES RAFFERTY: It's in this area here (indicating). That's the neighbor that has sent a letter of support.

DOUGLAS MYERS: That's 38 Essex Street?

ATTORNEY JAMES RAFFERTY: No, no. That's Percy Place. Essex Street is out here.

DOUGLAS MYERS: Oh, it's a neighbor of support?

ATTORNEY JAMES RAFFERTY: Yes.

DOUGLAS MYERS: I'm sorry.

ATTORNEY JAMES RAFFERTY: And this is where the deck. And this is where the addition is going, in this area here (indicating). The deck is some 20 plus feet off -- it's double almost what the setback requirement is.

TAD HEUER: Could you state for the record who you're other -- who your rear abutting properties are?

ATTORNEY JAMES RAFFERTY: Who they are by name?

TAD HEUER: One of them is

commercial, isn't it?

UNIDENTIFIED FEMALE: No -- oh, oh, right. Yes, you're right, it is.

TAD HEUER: The rear one is commercial, right?

ATTORNEY JAMES RAFFERTY: Yes. This is 32-R Essex, I think is a commercial building.

BRENDAN SULLIVAN: Back up. The deck is how far from the side yard setback?

JOSEPH ARTLEY: No, the deck is 15 feet.

BRENDAN SULLIVAN: 15 feet?

ATTORNEY JAMES RAFFERTY: Oh.

JOSEPH ARTLEY: Uh-huh.

BRENDAN SULLIVAN: Which we are seven point -- well, we're 12 and a half would be the Ordinance.

ATTORNEY JAMES RAFFERTY: But it's also below four feet. So it actually -- it's only a foot beyond -- it can go 10 feet beyond

12 and a half feet.

BRENDAN SULLIVAN: Right.

ATTORNEY JAMES RAFFERTY: Right.

So it's considerably --

BRENDAN SULLIVAN: Because I was counting the risers, and there were seven or eight -- I'm not sure if there's eight risers or not. They're right close to --

JOSEPH ARTLEY: It's close.

BRENDAN SULLIVAN: Yes, close to it. Okay. Right. Okay.

DOUGLAS MYERS: That's all.

CONSTANTINE ALEXANDER: Any more questions, Doug?

DOUGLAS MYERS: No, thanks.

CONSTANTINE ALEXANDER: I'll open this up to public testimony. Is there anyone wishing to be heard on this matter, please come forward. We have a stenographer. Give your name and your address if you would.

ETHAN CASCIO: I'm Ethan Cascio,

C-a-s-c-i-o, 36 Essex Street. So directly abutting to the right. Right next to Bob Hilliard.

It's an interesting case. I know this doesn't apply to the law itself, but the plaintiff makes the case that every other, you know, this is going to be conforming more than every other property. And in some sense is from a point of view of the detriment of the neighbors, it almost acts in the other way. That since every other property is violating the setbacks and is very close, you know, for those of us who have lived in this area for a long time, the fact that the previous tenant kept this open space, was a great advantage to everybody around. Because every other lot was maxed out, and you had this one lot that was significantly open. And it was wonderful. We had trees there and it was great. And I guess, I know that Bob Hilliard shares this, and I believe he wrote

to you, shares the issue that this being the last really open lot in the area, we need to think carefully with how much we fill it. And I think our position would not be -- I mean, Josh had told us about their plan to add a family room and add an addition. But looking at the scale of it, I think as neighbors, what we would say is we don't object to their right to make an addition. But from our point of view, the smaller the better. The less space that's taken up, the better. And the fact that there was a second story on it, which we weren't expecting it, sort of like, you know. So I think we would simply say that from the point of view of at least us, you know, we want as little of that remaining open space filled.

TAD HEUER: Sir, if you had an option to have little amount of open space filled, would you prefer it to go more up than out or would you prefer it to be more out than up?

ETHAN CASCIO: Well, I think extending the present line of the building -- for instance, they already made the case that, you know, it's longer but it could be wider. If it was wider, it would extend passed the present footprint, and I think that would be objectionable. I think the fact that they're maintaining the present footprint along the side is very nice.

The second story is a little -- was kind of a surprise, and we weren't expecting. You know, just in some senses we would want the case to simply reduce the mass of it as much as possible, either up or back. The side continuing the footprint of the house doesn't really make that much difference.

UNIDENTIFIED FEMALE: Bring up the carpentry.

ETHAN CASCIO: Oh, yeah, I had an analogy we were talking about. I know this isn't in the law, but it's an interesting idea

that in a neighborhood where everybody else is in violation, there's sort of a cap and trade kind of concept, where, you know, you've traded away a lot of open space and here's all this open space, you don't want to trade that away, too.

UNIDENTIFIED FEMALE: It's like the cap and trade. I think it would be something -- I should actually....

ETHAN CASCIO: We just put that into consideration. That maintaining as much of the open space as possible is desirable and that's really the issue.

CONSTANTINE ALEXANDER: Just one small point to comment on your comment. In the past this Board has not given an awful lot of credence to the fact that well, we want to do everything else in the neighborhood of non-conforming, so we want to do something as well. We don't give -- we treat each case as if everything else is conforming. So, your

point's well taken but I got to try to reassure you that's not going to be a big issue for us. The point that was made.

I'm sorry.

ALLISON CASCIO: Allison Cascio with two Ls, 36 Essex Street. Just one thing -- and I mean obviously this isn't going to be subtle with. Something I would love to have the Board think about in the future, part of the cap and trade idea of open space. The other thing is this property, Carla Johnson grown -- planted a lot of trees and they were 20-year-old trees. And they were cut down. And maybe one of them needed -- they were healthy trees, and they were a vibrant part of the community in terms of birds. We had a hawk that was there. We had all kinds of exotic birds that came there, and the squirrels and everything. And there was a real community, especially the pussy willow tree in the center of the yard. I didn't even

know pussy willow trees existed. I thought they were all bushes. It was the most amazing tree. I once saw 21 morning doves sitting in at a time. And it was an amazing tree. And I was wondering -- I thought it might be good to consider that when you buy a property with big old trees on it, that they at least have to be looked at before the new owner cuts them down. I mean, maybe it would have to be something before they bought the house. Maybe they wouldn't want to buy the house if they couldn't take down that huge tree in the middle of the yard. But I think that -- I've heard Cambridge and dealing with the Commissioner is Cambridge being a green city. And obviously having tall trees it helps with global warming. I mean, we all know the value of trees. And it was a very -- Carla basically turned her yard into like an urban sanctuary. I mean obviously I'm speaking from a person who enjoyed it, and

leaning in a naturalist direction. But I think that even if I didn't see it as kind of like when the tree falls in the forest, it doesn't matter if no one hears it. I think if you -- there weren't going to be people that enjoyed it, there were so many creatures enjoying a vibrant world there, and I think that it does fit in with for having Cambridge be a green space. And just something to consider when people buy property with old trees.

CONSTANTINE ALEXANDER: Question: Have you removed trees now already?

ALLISON CASCIO: They already removed the third week in September.

CONSTANTINE ALEXANDER: But not in connection with the construction or just --

ETHAN CASCIO: Well, the pussy willow tree was removed to make a space for the addition.

ALLISON CASCIO: The pussy willow

tree --

THE STENOGRAPHER: One at a time, please.

CONSTANTINE ALEXANDER: In the anticipation that you're going to get approval or on the mistaken belief that you didn't need Zoning relief?

ALLISON CASCIO: They didn't need it.

CONSTANTINE ALEXANDER: I'm just curious why you took the tree down.

ATTORNEY JAMES RAFFERTY: We have a letter on that from an arborist. Decisions were made about trees.

The property, the property is not habitable in its current form. So, beauty might be in the eye of the beholder. It's a great need of work that needs to be done to this property. So, it represented urban wild and people have different affection for that. But I would say that we have a letter

from the arborist because that did come up. And Josh and Kate sent letters to all their neighbors alerting them to the fact that they were going to take the trees down. And I'm suspect that these neighbors received it at well.

ALLISON CASCIO: No, actually we didn't. No, no, we didn't receive the letter.

CONSTANTINE ALEXANDER: Okay. I just wanted to give everybody -- whether trees come down or not is not a Zoning issue. I wanted to give everyone an opportunity to speak and get their views in, that's the reason I let that go.

Sir?

ANDREW TARSY: Andrew Tarsy, T-a-r-s-y and I'm at Eight Howard Street.

I really just wanted to say that I know Josh and Kate to be just extraordinary citizens. They're exactly the kind of

people in our, shall we dare say, generation of buying homes in the city that tends to be here for the long haul and add not just physically, but to the community. And that -- I know that property well, and it's beautiful in its size. It is the urban wild for sure. It's still going to be the biggest yard in Central Square after this is done. It's going to be a place where neighbors gather and friends come around because the kind of people they are. And the value that they bring just to be in this community is huge. They're just good people starting a family tending to be part of the public schools. They're the kind of people that will be sitting in seats like yours, you know, being a part of making it that kind of a city. So when I hear about them getting, you know, right after the baby's born into a scenario they didn't anticipate trying to get into the house, get the, you know, pink I guess is

going to be on the walls in the baby's room, I just feel bad and I know that as long as the law is on their side, that they should be able to just get going with their life. And I mean it sincerely that they care about the nature and the trees and the neighbors a lot from the heart. And they're not just looking to sort of, you know, steamroll their way in and, you know, find the right page in the Ordinance book to show that they don't have the care because it's not just who they are. So I just wanted to say that.

Thank you.

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. They're not that long. I am going to read them into the file verbatim. I think it's

also for the benefit of the neighborhood as well.

We have a letter from Jeffrey and Melissa Keating. It's actually a letter addressed to Josh Flax. "Thank you for taking the time to meet with us on Sunday, November 14th to go over the architectural drawings detailing the planned work for your future home at One Percy Place. I was very pleased with the plans. They are consistent with the scale and historic character of the house. We are also gratified that the planned work will preserve the home as a single-family and maintain the large yard. We're thrilled to have new neighbors who are willing to invest in the neighborhood and continue to make Percy Place a great place to call home. We support your plans without reservation. And please feel free to share the e-mail with the appropriate city authorities as a show of our support."

We also have a letter addressed to Maria Pacheco, the Secretary of the Board, from a Robert Hilliard, H-i-l-l-i-a-r-d who resides at 38 Essex Street. "Thank you for your special courtesy and for making it possible for me to comment while being unable to be at the December 2nd hearing. I'm an abutter to the property requesting a Variance." It's not a Variance. Parenthetical, but just for the record. "The requester has not consulted with me as to the desired Variance so that I might judge its aesthetic, environmental and economic impact on my property and on the neighborhood. The requestor's property is one of the few, perhaps the only one in the immediate vicinity, with open space. The requestor has already cut down at least two apparently healthy trees, negatively affecting the environment and aesthetics of five abutters. Adding building density and encroaching

closer to abutters' property would further harm the enjoyment of home and property of abutters. If the requestor of the Variance would provide me and other neighbors with detailed plans of the proposed Variance, I could seriously consider it. After that information and courtesy, I have to protest against the granting of a Variance."

And that's it for letters in our file.

Closing comments, Mr. Rafferty?

ATTORNEY JAMES RAFFERTY: Yes, thank you.

I appreciate the Board's comment. And I'd like to take a minute to ask the Board to focus a little bit on the design, because there were some very deliberate design moves done with this addition, particularly the second floor to accommodate or to anticipate impacts on abutters. The closest setback other than the front setback is the side yard setback. It's at 13 feet.

CONSTANTINE ALEXANDER: What page?

ATTORNEY JAMES RAFFERTY: A02. If you look at the second floor plan and if you look at the right side elevation depicted at A07, which you'll see what's happening here. This second --

CONSTANTINE ALEXANDER: If you want to see, come up.

UNIDENTIFIED MALE: We actually looked at them beforehand.

ATTORNEY JAMES RAFFERTY: This second floor addition is an additional five and a half feet in from the mud room on the first floor. So the wall here, the bedroom wall here is around 18 feet off the setback for a district of probably seven and a half feet. The fenestration here was done to have a single window on that side. And it's at the end of the bedroom. And I think I'm showing you the wrong elevation. No, no, it's the right one. It's there. It's not in there.

So the Board when they're dealing with non-conforming walls, of course is always mindful of impacts on privacy and the like. And I respect Mr. Sullivan's position, which is true, the house is two feet longer. But by contrast it could be exceedingly wider in the L nature of this, the height of this addition, the fact that it is tucked behind the main house, as even the abutter acknowledged, those are all the type of considerations that I think are appropriate for the Board in the context of a Section 6 application to decide how those features are in the house.

I mean, if this was a square box, maxing out the FAR or going to the full setback with the exception of the rear setback, and even there it's slightly exceeded -- there isn't any minimal setback requirements here. It exceeds on both sides. So, I think the intent here and the design scale to mitigate

the impact of this house on its abutters should be recognized as part of any ultimate conclusion around a Section 6 determination.

Thank you.

CONSTANTINE ALEXANDER: Public testimony will be closed.

Further questions, comments from members of the Board?

BRENDAN SULLIVAN: Well, I think the initial question was to seek a determination. And determination is, and I believe that it requires a Variance and not the Special Permit.

CONSTANTINE ALEXANDER: Well, they're seeking a -- of course, it's framed as a -- the advertisement language is not as precise as I would have liked it, but they are making it clear they are speaking a Special Permit. So, the first question is we could vote, in my view, if you believe that there's a Variance is what's required here, you vote

no on the Special Permit. I do not think that creates an issue of a redundant petition, because you would come back if we turned you down on the Special Permit seeking a Variance. That's a different form of relief. At least from my perspective, that's not a redundant petition. So we could turn that view and we could turn them down and we wouldn't be putting the people in the penalty box for the two years.

ATTORNEY JAMES RAFFERTY: And I appreciate that thinking. That may not be conclusive frankly. I mean if one returns with the same plan, with the same everything, one could, one could see someone if they were intent on making a complaint. I mean, I would ask that it seems that in this case, and I'm not putting anyone under the bus here, but if it seems in this case that the direction to seek a Special Permit was seen as not appropriate, and that there isn't adequate

support for a Special Permit, that we might consider, being giving the opportunity to continue this case and not have to confront that issue.

CONSTANTINE ALEXANDER: You have to be advertised. You can continue the case --

ATTORNEY JAMES RAFFERTY: We'd have to file a new application, frankly. It would be a new application with the suggestion that --

CONSTANTINE ALEXANDER: Right. Fair point.

ATTORNEY JAMES RAFFERTY: But I also think in terms of efficiency and everything else, I mean obviously if there isn't four affirmative votes that this qualifies under Section 6, then it's a moot point. But we'd be returning with the same everything and making a case that the hardship is the -- we don't want to demolish the house and build ourselves a conforming addition that could be

200 square feet bigger than what we've got here. And I know in some cases it's a legitimate question about could you really get it? I don't think there's any question given the size of this lot that you could comfortably build this house or with easy adjustments to it. And we have a land use policy in the city that taking structures down of this vintage is not encouraged. So, we have a demolition delay ordinance that is in place to discourage that. So I think --

CONSTANTINE ALEXANDER: If we hear this case as a Variance, if that's ultimately what the Board wants to do, your legal hurdle is much greater. The standard is much different. That's just the way it works. I for one am not -- I'm comfortable that this is a Special Permit case. So, if you're looking for that straw vote or trying to get some sense of where the Board's going -- I think it's a fair question -- I'm prepared to

vote in favor -- well, on the question of whether it's a Special Permit. I don't feel you need a Variance for the reasons you've stated earlier in your presentation. So if other members feel it should be a Variance case, let's get it on the table now so the case can be continued.

TAD HEUER: I mean, I think it is a Variance case. Sorry, Doug.

DOUGLAS MYERS: No, go ahead.

TAD HEUER: I think it is a Variance case. That being said, even though our prior are not precedential, I would suggest that the Petitioners look at a case a couple months ago that we decided out in the Larches where a very similar Petition was put forward for a Variance presenting nearly identical issues in which the encroachment was a front yard non-conformity only with an attempt to build the conforming addition to the remaining elements of the lot. And I believe

that the Board recognized that that was a hardship on that particular Petitioner.

So, in recent months very similar Petitions have come before the Board and have been successful. And not prejudging any Variance application that may come, if it looks similar to this, I would not have difficulty on the presentation similar to the one that was given tonight, finding that there is a hardship on the Variance standard. I simply don't think that this is a Special Permit given the state of the law right now. So it's a strange position for me to be articulating.

ATTORNEY JAMES RAFFERTY: No. But just to follow on that if I might quickly.

Is it that you think the case doesn't qualify for a Special Permit or that this is simply the wrong form of relief that a house that didn't have as much of an addition -- I'm not saying that that's an option. But I

guess I'm trying to take advantage of your thinking here. So notwithstanding Section 6 I think what I'm hearing is the Ordinance is going to be more controlling than the state statute.

CONSTANTINE ALEXANDER: I think what you're hearing is that at least two members of the Board so far do not construe Section 6 as you want us to construe it. And therefore a need for a Variance.

JOSH FLAX: Can I get on this briefly? You, sir.

CONSTANTINE ALEXANDER: You'll have a chance.

DOUGLAS MYERS: I just -- I'm trying to grapple with the legal issues here, and I haven't seen my way to a conclusion and I'm not just equivocating. I'm really trying to think it through. But it would be helpful to me even at this point, even though it might be premature, if any other members of the

Board could articulate for me or express what they see under the special variance standard as the substantial detriment that would be greater or the thoughts along those lines, if we were to get to that, which I assume is part of the consideration of the merits, it would be helpful to me in trying to decide the legal issue. If anyone is so inclined. If not, I will make a decision.

CONSTANTINE ALEXANDER: I'm -- go ahead, Tad. I'm having trouble understanding your question.

DOUGLAS MYERS: Okay.

ATTORNEY JAMES RAFFERTY: Oh, I think it's a great question.

TAD HEUER: And I know what the question is, and I can at least give my answer which I think has been articulated earlier this evening. In looking at the cases that are on, I believe, are the closest to being on point, the issue of the footprint comes up

in each of them and is the question that the footprint being changed here is not a case as in, for example, the case decided earlier this year up in Gloucester where there was a reconstruction of a burned down structure in a different style. It had gone from a colonial and they put up a Mediterranean villa. And the issue was that there was no construction outside of the non-conforming footprint, and therefore it could not by law be more substantially more detrimental than the previous now burned down structure. I think in these cases looking at footprint expansion, is something that can indeed be substantially more detrimental if it's substantial.

DOUGLAS MYERS: If it's not just dormers and the sheds and things.

TAD HEUER: Again, this is my interpretation not counsel's. But my reading of these cases that that footprint

can indeed be something that is substantially more detrimental. And that in this particular case, the amount of footprint expansion does indeed make it potentially substantially more detrimental for the Special Permit situation which brings us out of Section 6. Does not bring us out the Section 6 --

ATTORNEY JAMES RAFFERTY: That's where I take exception.

TAD HEUER: -- makes us read Section 6 in a way that is not as conclusive as requiring and limiting such relief to one- or two-family houses only to Special Permit uses. I don't believe the Section 6 is intended to say that for one- or two-family houses, only a Special Permit may be granted. It suggests that in most situations a Special Permit is permissible, but that in other situations --

ATTORNEY JAMES RAFFERTY: But to

Mr. Myers' question, the conclusion you're reaching is that this is substantially detrimental.

TAD HEUER: Yes.

ATTORNEY JAMES RAFFERTY: And he's asked what is it about it that is substantially detrimental?

TAD HEUER: Footprint.

CONSTANTINE ALEXANDER: Mr. Flax, you wanted to speak?

JOSH FLAX: What about the footprint is --

TAD HEUER: I can't go into it. We've been on this case for about 45 minutes.

ATTORNEY JAMES RAFFERTY: And to view any footprint is substantially detrimental or there comes a point and you're guided by the criteria in Article 8?

TAD HEUER: Yes.

ATTORNEY JAMES RAFFERTY: I'm just thinking the next time I'm told what to apply

for.

JOSH FLAX: I guess it was really only to note with the -- and my wife and I both lived in Cambridge for many years and sold our apartment in order to finance the purchase of this property. And the intention obviously is to raise our daughter in this house and have room for our mother-in-law to come in. Right? And that's -- there's nothing more going on here than that.

ATTORNEY JAMES RAFFERTY: It wouldn't be the worst thing to be turned down for.

JOSH FLAX: She's not bad actually. She's a good gal.

The thing I guess that's been puzzling to us from the beginning is has the guiding principle of the project with our article, who is working here a long time, was to keep it within all of the -- any existing Zoning rules that might be. And the whole

non-conformity due to its the location closer to the Percy Place Street is something that threw me for a loop. I didn't understand that being a lay person in this area. But in terms of conceiving of it, designing the project, it was always to stay within all of the applicable rules. So, and then the Building Department, the Commissioner, we met with him a number of times, he specifically guided us to this Special Permit process. That's been his position from the very beginning and we followed his good advice.

The question that I have for you is, I don't want to waste your time. If we have to come back and do a Variance on this, then we'll probably ask for something bigger. The whole purpose was to keep it within the rules.

TAD HEUER: I wouldn't advise to doing that because you'll run into problems

with me again.

DOUGLAS MYERS: Don't say that.

JOSH FLAX: I don't want to run into problems with you. I'm just saying in terms of sitting, spending more time to create a more complete application, and it might look a little different.

CONSTANTINE ALEXANDER: I suspect it won't. I think Mr. Rafferty he'll advise you don't. And let me make it very clear on behalf of the Board, no one is suggesting a lack of (inaudible) on your part. We understand, and we believe that you thought you could do this as a matter of right. Unfortunately as it turns out you can't. And then the question is what's the form of relief you need to get? And you were directed with -- this is somewhat of a grey area. And the relief you are suggesting you should seek is a Special Permit. What you're hearing now from some members of the Board, at least

enough members of the Board who will shoot down a Special Permit, that you probably needed to get a Variance. It's a different standard. Technically it is a more difficult standard to satisfy. As Mr. Heuer has pointed out, in a case somewhat I don't know similar, but a case of a conforming addition to a non-conforming structure. We did grant a Variance a few months ago. And in fact, because the Petitioner never even sought a Special Permit, came right in for a Variance and we never dwelled on the Special Permit situation that we have right now. So I wouldn't throw -- I wouldn't despair that you wouldn't get the Variance. I won't tell you that you're going to get it.

JOSH FLAX: Right.

CONSTANTINE ALEXANDER: I would tell you if you want to change the project to make it even bigger, the odds of getting the Variance are going to go down.

JOSH FLAX: Okay.

CONSTANTINE ALEXANDER: You still might get it. I wouldn't think it's a good idea. That's just my thoughts. But I think where we are, it looks like you're going to need to continue this case and file a new application for a Variance and we'll take -- well, this case is going to be continued until after we hear the Variance case and then we'll decide this case if at all.

TAD HEUER: Your other option at that point, if you do decide to continue this case and then file for a Variance, is that you can file for a Variance on substantially what you filed here, and you also have the opportunity -- if you're going to continue this case, if you wish, and you don't need to, to reduce the size of your proposal here and bring it perhaps below the 25 percent. I don't know what your numbers are. And then

say this is not substantially more detrimental because it is substantially smaller and make perhaps a case for the Special Permit should the Variance not be granted on the petition as presented here which I presume you would just retitle and submit your new supplemental form and you'd be on your way. I don't think that the materials here would need to be changed substantially if you were going to submit a Variance application tomorrow. I think they would be substantial if not merely identical.

DOUGLAS MYERS: It may not be helpful or germane anymore, but I would just like to state my opinion is that I would vote in favor of a Special Permit, and I would go forward with this matter tonight. I just don't want to be in effect be silent behind the limitation.

THOMAS SCOTT: And I'm of the same position as well.

JOSEPH ARTLEY: We're kind of none pressed here, because Ranjit, Mr. Singanayagam consulted with the City Solicitor about this. And, you know, they mulled it over for a couple of days. And it was on their advice that Josh and Kate went in this direction.

CONSTANTINE ALEXANDER: We understand that. But you've heard at least two members of the Board don't agree with Mr. Singanayagam, and the -- and so you need four votes. And so I thought and on anybody's part, on the city or you, but that's just how the cookie crumbles I guess.

ATTORNEY JAMES RAFFERTY: Well, I'm guessing then that we would need to, if the -- at the moment my keen sense of math says that three affirmative votes.

CONSTANTINE ALEXANDER: Well, three. You need four on a Special Permit.

ATTORNEY JAMES RAFFERTY: Special

Permit, understood. And I've explained to Mr. Flax that four affirmative votes are required. And one member has set forth a standard that suggests that Section 6 is going to be limited by the provision of Article 8 in his view. And that if you exceed the 25 percent permitted by Special Permit you are de facto --

TAD HEUER: Not de facto. It's interpreted as a one factor to consider.

ATTORNEY JAMES RAFFERTY: And another member thinks similarly I would imagine?

BRENDAN SULLIVAN: The other member thinks that you need a Variance.

ATTORNEY JAMES RAFFERTY: We'll say good-bye and not take up any more of your time.

CONSTANTINE ALEXANDER: How quickly will you be able to get the Variance case on the agenda?

ATTORNEY JAMES RAFFERTY: Tomorrow. And I spoke to Mr. O'Grady, and I know just from my own filings, there are slots available on January 13th. So if the case can be continued, I think it's unlikely we'll ever have a hearing on the continued case, but it would avoid us of having to deal with the potential legal issue that might complicate people's lives. I appreciate the opportunity to continue the case as well as allow us to file.

CONSTANTINE ALEXANDER: The Chair moves that this case be continued until seven p.m. on January 13th. This being a case heard. So I guess at least can every member of the Board be here at that time?

DOUGLAS MYERS: I have to say that I will be here. I do not have a conflict. However, we are expecting our second grandchild on approximately that date. And I will do everything I can in terms -- I mean

I regard this as a very serious commitment to the city and the public, however, if the conflict is really close and really direct, I would probably be under considerable pressure to attend the hearing.

CONSTANTINE ALEXANDER: If we do grant the Variance on that date --

ATTORNEY JAMES RAFFERTY: If your grandchild could hold off on one more day it would be my birthday. He would share my birthday.

DOUGLAS MYERS: Our first grandchild --

CONSTANTINE ALEXANDER: The Chair continues this motion to continue this case until seven p.m. on January 13th. This being a case heard, on the condition that the Petitioner sign a waiver of the time for a decision.

And on the further condition that the sign that's on the property right now, you

have to modify that, change the time and date to seven p.m. on January 13th. And with regard to your Variance, Mr. Rafferty will tell you, with regard to the Variance application, it's going to require a second sign.

JOSH FLAX: Okay.

CONSTANTINE ALEXANDER:

Advertising the Variance.

JOSH FLAX: Yeah. That makes sense.

CONSTANTINE ALEXANDER: To the neighbors, you understand, you won't have to be here at seven p.m., because whatever the Variance case, that will be the case we'll hear first.

ETHAN CASCIO: We'll go to the website.

ATTORNEY JAMES RAFFERTY: We'll send you a letter and we'll call you up.

ETHAN CASCIO: Thank you.

CONSTANTINE ALEXANDER: I don't know if this Mr. Hilliard --

DOUGLAS MYERS: That was my last question. Have you been in touch with as far as you know, to the 38 Essex Street?

ATTORNEY JAMES RAFFERTY: Well, we have. We saw the letter and I know he's going to continue to reach out.

DOUGLAS MYERS: Just to be in touch.

ATTORNEY JAMES RAFFERTY: Yes, absolutely we will do that.

And I will only offer, and I understand your schedule, but in the likelihood you're not available, because the continued case is unlikely to be heard, we can certainly go with four on the continued and it's likely to be a withdrawn case.

CONSTANTINE ALEXANDER: Yes, certainly.

ATTORNEY JAMES RAFFERTY: So I just want Mr. Myers not to change his travel

plans.

CONSTANTINE ALEXANDER: If Mr. Myers can't be here and we turn down the Variance case --

ATTORNEY JAMES RAFFERTY: Let's not think about that.

CONSTANTINE ALEXANDER: -- we can continue the case further.

DOUGLAS MYERS: I'll do my best.

CONSTANTINE ALEXANDER: You're never going to be in the situation where you're stuck with only four.

BRENDAN SULLIVAN: Just a little word, just be cognizant of the setbacks. The sum total between the rear and the front, which is 25 feet from the rear and 10 from the front. So we have 35 feet of setback from an 80-foot lot. So it's 45 feet of house.

ATTORNEY JAMES RAFFERTY: Even if it means widening the house?

BRENDAN SULLIVAN: Just be

cognizant of 45 feet of house length-wise.

ATTORNEY JAMES RAFFERTY: Thank you. Thank you for your time.

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.

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

(8:45 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair calls case No. 10025, 18 Hawthorn Street. Is there anyone here wishing to be heard on this matter?

Please come forward. Give us your name and address to the stenographer, please.

JOHN POTTS: My name is John Potts. I'm a resident at 18 Hawthorn Street. My wife Susanne Potts, and my son Stephen Potts who is the architect.

STEPHEN POTTS: Architect. I live in Philadelphia.

JOHN POTTS: As you know, we have requested a Variance of a walkout bay and a small bay in the kitchen north and east side respectively. We wanted to tell you that we have very nice neighbors and we have spoken

with each of them and invited them in, particularly the abutting neighbors, and we have three letters for you from those to view the plans, and found them satisfactory. We were particularly concerned about those on the north side, and they've reviewed the plans with us. And that's --

CONSTANTINE ALEXANDER: I have one question, it's sort of technical, but sort of not. Your application suggests that the only issue you have is setbacks. Because of this addition you're going to extend in the setback. But you also are adding additional floor area.

STEPHEN POTTS: 29 square feet.

CONSTANTINE ALEXANDER: Yes. But if you look at your dimensional form, you show no increase in floor area.

STEPHEN POTTS: Dimensional form being?

CONSTANTINE ALEXANDER: And since

you show that you're right at the max with regard to FAR, does this 29 feet you're going to add make you non-conforming as to FAR as well as to setbacks?

STEPHEN POTTS: Are you saying that --

DOUGLAS MYERS: The gentleman is not familiar with the form.

CONSTANTINE ALEXANDER: Okay. Well, I don't know who filled the form out. But here's the form that we require.

STEPHEN POTTS: Right. It's not that, you know, it's not that we didn't fill out the form, it's been a little while since I filled it out.

CONSTANTINE ALEXANDER: No, I understand that.

STEPHEN POTTS: So didn't -- my understanding was that the only non-conforming addition was the setbacks, that we were still within them.

CONSTANTINE ALEXANDER: That's my question. But your form shows no increase in floor area. But you told us, and it's clear from your plans it's 29 feet. And if you add 29, since you're at 1.2 now, and the Zoning is 1.2, are you going to be thrown into non-conformance not only as to setbacks but as to FAR?

STEPHEN POTTS: But when it's a bay, it's not part of the footprint of the building. Does that count as the floor area calculation?

CONSTANTINE ALEXANDER: I believe so. Yes, sure.

STEPHEN POTTS: Then that's an error on our part. On the application. Is that something --

CONSTANTINE ALEXANDER: We can correct it now, because you -- the first question would be have you properly advertised the case?

STEPHEN POTTS: Well, that's --

CONSTANTINE ALEXANDER: But I think you have because you cite 5.31 which is broad enough to pick up FAR. But with your permission, I'm going to change or we're going to change that form.

JOHN POTTS: That's fine.

STEPHEN POTTS: I appreciate you being flexible.

CONSTANTINE ALEXANDER: How much is it, 29-

STEPHEN POTTS: 29 square feet.

CONSTANTINE ALEXANDER: It's 4946.

TAD HEUER: You're going to do the FAR calculation?

CONSTANTINE ALEXANDER: Well, no. Just floor area. Am I right, 4946?

TAD HEUER: Yes.

THOMAS SCOTT: 29's about right.

CONSTANTINE ALEXANDER: And then the question is are you over in FAR? I assume

so. Just look at the numbers. You must be by definition.

STEPHEN POTTS: I think we're already at 1.2.

CONSTANTINE ALEXANDER: Yes, the your form shows you're at it right now.

STEPHEN POTTS: It could be one square foot of additional --

CONSTANTINE ALEXANDER: Yes. I don't know what it is.

(Calculation discussion and correction of dimensional form held off the record).

CONSTANTINE ALEXANDER: 1.19. The calculation here is wrong. Before it was 1.97.

STEPHEN POTTS: It's a little suspicious that 1.2 in each of those fields -- I'm starting to suspect we neglected to actually fill that in properly.

CONSTANTINE ALEXANDER: Okay. The

form is incorrect. You're in non-conformance with regard to FAR.

TAD HEUER: Well, can I just ask a third question? Sean.

SEAN O'GRADY: I'm sorry, what?

TAD HEUER: Res 3.

SEAN O'GRADY: Three?

TAD HEUER: I'm sorry, A-2.

SEAN O'GRADY: A-2?

TAD HEUER: FAR?

SEAN O'GRADY: FAR, 50.5.

CONSTANTINE ALEXANDER: Who filled this form out?

STEPHEN POTTS: Well, it was someone in my office, but I reviewed it so I'm taking responsibility.

CONSTANTINE ALEXANDER: Okay. You do need FAR relief, and now you have a structure that is quite in non-conformance right now. It's 1.18 in a 0.5 district. And you're going to go to 1.19, a slight increase.

You're talking about relief in two respects:
Setback and FAR.

I have to say this is -- okay, I won't
say it.

STEPHEN POTTS: I've heard it
anyway.

CONSTANTINE ALEXANDER: No. We put
a -- obviously we're very sensitive to that.
That drives how we decide the case. Sorry.
Continue your presentation. Maybe you're
finished, I don't know.

JOHN POTTS: Well, I mean I would
like my son may take a few words here.

STEPHEN POTTS: I can say a few words
about it. The intent here with the kitchen,
the kitchen hasn't been renovated in a long
time and it's quite tight. I have a
photograph of the kitchen if you'd like to see
it, and also a rendering of the
proposed -- what it will look like from the
inside. It's a single loaded kitchen as it

stands now. It's fairly dark, and there's a table. They can -- it's an eat-in kitchen currently. The floor plans which I think you do have in the package, the idea was to make it a double loaded kitchen, but then there wasn't any space left to have an eat-in area. So the idea of this bay being a walkout bay is just big enough to have a table for the two of them to be able to sit at and still has a kitchen as a much more functional kitchen, which they -- the main reason driving that is that they do have a lot of family in town and a lot of guests and a lot of cooking going on there.

CONSTANTINE ALEXANDER: I'm sorry, is that what it's going to look like when you're --

STEPHEN POTTS: It's a computer rendering. And that's the bay -- the larger of the two bays which is still only two and a half feet is the one at the end of that

rendering. So that's the gist of it. And if there's some issues about circulation. There's an existing pantry there that we're trying to maintain that you pass through to get to the dining room, which is why they're -- otherwise could use that at the end of it to create an eat-in area. So that's the --

SUSANNE POTTS: We want to -- it's an old pantry, traditional pantry, that exists since the house was built and we wanted to preserve that.

CONSTANTINE ALEXANDER: Questions from members of the Board? No questions.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one is wishing to be heard. Can we have these?

JOHN POTTS: Yes.

CONSTANTINE ALEXANDER: I would further note there are letters of support from neighbors, including the abutters most directly affected by the proposed work. I will now close public testimony.

Questions, comments from members of the Board? Are we ready for a vote? 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 is that the kitchen space in the structure is not as functional as it could be and otherwise impairs the ability of the occupant of the structure to enjoy the structure.

The hardship is owing to circumstances relating to basically the shape of the house. It's a non-conforming house. And any

addition would require Zoning relief.

That relief maybe 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 relief being sought is rather minor in nature and technical.

That there is neighborhood support for this project. And that the overall impact of the relief being sought would be to improve the quality of the housing stock in the City of Cambridge which is a desirable goal.

On the basis of these findings, the Chair moves that a Variance be granted to the Petitioner on the condition that the work proceed -- and by the way, since you're not a member of this Board. We're going to approve this subject to these plans. You can't change these plans unless you come back to see us. These are the final plans.

STEPHEN POTTS: Understood.

CONSTANTINE ALEXANDER: Okay.

On the condition that the work proceed in accordance with a certified plot plan initialed by the Chair. And proceed with respect to external dimensions. And that otherwise it complies with the plans or in accordance with the plans numbered CS1, A1 and A2 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: Five in favor. Variance granted.

JOHN POTTS: Thank you very much. Very interesting evening for us.

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

(8:55 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10026, 15 Raymond Street. Is there anyone here wishing to be heard on this matter?

PHILIP HRESKO: Yes. Good evening.

CONSTANTINE ALEXANDER: Good evening.

PHILIP HRESKO: Hello again.

CONSTANTINE ALEXANDER: That's right, we've seen you before.

For the record.

PHILIP HRESKO: Yes. I'm Philip Hresko, architect and landscape architect, 110 Broad Street, Boston.

JULIA BAGALAY: Julia Bagalay. I live at 15 Raymond Street. My husband's

unwell so he did not come.

CONSTANTINE ALEXANDER: Okay.

You said you've been here before. And you're seeking two forms of relief, a Variance and a Special Permit.

PHILIP HRESKO: Yes, sir.

CONSTANTINE ALEXANDER: We'll deal with the Variance first.

PHILIP HRESKO: The proposal is to restore a side entrance into what is presently a driveway on the side of the property. The driveway itself or the distance from the side of the house is under 10 feet by -- I think it's -- in one case 9.9 feet. The other end of the house is 9.86 feet. So it's a very slightly under with the side yard setback, 10 feet being the required distance.

So, what we're wanting to do is to put a porch with a roof out a side door that would make the kitchen more accessible for the

front as well as for the back. And it would restore -- this is Louis Lilly Hull reproduction of a blueprint. And the door was originally in this location, and for whatever reason it got moved to the rear. And the kitchen just functions better presently by restoring it to this location.

CONSTANTINE ALEXANDER: Your Variance issue is the setback?

PHILIP HRESKO: Yes, sir.

CONSTANTINE ALEXANDER: In fact, it's true in the side yard setback?

PHILIP HRESKO: Yes.

CONSTANTINE ALEXANDER: You're going to roughly four and a half feet. And you're having 10 feet setback. That's the issue.

PHILIP HRESKO: Yes, it is.

THOMAS SCOTT: Is that a covered porch in the original drawing?

PHILIP HRESKO: Yes, it was. It was

a porch that was actually longer. It continued as a flat roof. That continued from the side of the door to the rear of the property. And ours is merely centered over the door at this point.

TAD HEUER: And yours is pitched?

PHILIP HRESKO: And it's a slight pitch.

TAD HEUER: Slight pitch?

PHILIP HRESKO: Slight pitch. The other was a pitch, too, in reality.

JULIA BAGALAY: The other one doesn't have the steps going back down. Our steps were just on the side.

PHILIP HRESKO: Yes, yes. So in this one straight down the steps at that point whereas ours go front and back.

BRENDAN SULLIVAN: May I see that?

PHILIP HRESKO: Yes.

And in support of this motion there's a letter from one neighbor and another

abutter. I'd like to hand you those.

CONSTANTINE ALEXANDER: Sure.

PHILIP HRESKO: Here are photos, real life photos of the situation --

CONSTANTINE ALEXANDER: We have those in the file already? I think we have them.

PHILIP HRESKO: Yes. The letters I don't know if they arrived or not.

THOMAS SCOTT: Are either of these the abutter that's along this side of the house?

CONSTANTINE ALEXANDER: Yes, Mr. Mansfield, 27 Raymond?

PHILIP HRESKO: Yes, that is correct, sir.

JULIA BAGALAY: The other one is a director directly, behind on the east ends.

CONSTANTINE ALEXANDER: Questions from members of the Board?

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

(No Response.)

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

The Chair would note that we are in receipt of two letters from abutters in support of the Petition. I don't propose to read them verbatim into the file, but they'll be incorporated by reference into the file. Unless you have some concluding remarks, I'll cut off --

PHILIP HRESKO: No.

CONSTANTINE ALEXANDER: Okay.

Any further questions or ready for a motion? We'll talk about the Variance.

DOUGLAS MYERS: Has the public been invited to comment? Did I miss that?

CONSTANTINE ALEXANDER: What's that?

DOUGLAS MYERS: Has the public been

invited to comment?

CONSTANTINE ALEXANDER: Yes.

DOUGLAS MYERS: I failed to notice.
Sorry.

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. The hardship being is that with the entrance on the side of the house, off the driveway, that there is a need for a door and an entry porch above the door.

That the hardship is owing to basically the location of the house on the lot now. It is possible to put any sort of deck or a side addition to the side without intruding upon side yard setbacks.

And the 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 there is, and I should have mentioned before, but there is a Certificate of Appropriateness from the Cambridge Historical Commission, that there is neighborhood support.

That the project is modest in nature in terms of its addition. And in fact it is -- what the Petitioner's proposing to do is restore the house on this area of the house to what it was originally constructed and the house was first built.

So on the basis of these findings, the Chair moves that a Variance be granted to the Petitioner on the grounds that the work proceed in accordance with the plans submitted by the Petitioner. They are numbered A1.01, A2.01, A2.2. All of which have been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor. Variance granted.

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

CONSTANTINE ALEXANDER: Now, the
Special Permit relating to the door -- moving
the door from the back to the side, right?

PHILIP HRESKO: Yes, sir.

CONSTANTINE ALEXANDER: You've said
all you're going to say about it.

PHILIP HRESKO: Yes, I have. Any
questions from members of the Board?

CONSTANTINE ALEXANDER: None.

Is there anyone wishing to be heard on
this matter?

(No Response.)

CONSTANTINE ALEXANDER: The chair
notes no one wishes to be heard. Got that,

Doug?

DOUGLAS MYERS: Good thing you mentioned it.

CONSTANTINE ALEXANDER: I would take the letters that were in support of the Variance generally are in support of the Special Permit. We're ready for a vote? I think we're ready for a vote.

The Chair moves that a Special Permit be granted to the Petitioner to relocate, to cut a door on the side yard setback on the basis that this will not cause congestion, hazard or substantial change in established neighborhood character. Or adversely impact traffic or patterns of access or egress. That the continued operation of adjacent uses would not be adversely affected by the nature of the proposed use.

The proposed change, in this regard the Board would note that the neighbor most directly affected by this is has written a

letter in support.

That no nuisance or hazard would be created to the detriment of the health, safety and/or welfare of the occupant or the citizens of the city. We're just talking about moving a door from one location to another. And that the new door or the moving of the door 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 proceed in accordance with plans identified in connection with the granting of the Variance. There were three pages in nature.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Your Special Permit is granted.

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

(9:05 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10027, Five Willard Street. Is there anyone here wishing to be heard on this matter?

KEVIN MUSUMANO: I'm Kevin Musumano, M-u-s-u-m-a-n-o, designer.

ANURAJ SHAH: I'm Anuraj, A-n-u-r-a-j Shah, S-h-a-h. I'm the general contractor.

CONSTANTINE ALEXANDER: Go ahead.

KEVIN MUSUMANO: So the proposal is to extend an existing wood deck on Willard Street from approximately two feet.

CONSTANTINE ALEXANDER: These are

identical to the ones we have in our file?

KEVIN MUSUMANO: Yes. This is Willard Street, and the existing setback is 6.9, the existing for the front edge of the building. The deck right now is -- the setback is 8.9. So we're looking to [align] the front of the deck with the front of the building. The deck is not visible from the street. There's a six foot fence on the edge of Willard Street.

TAD HEUER: But the deck railing would be, right?

KEVIN MUSUMANO: No, it's actually not. There's a drawing. And there's actually several photographs from the sidewalk.

THOMAS SCOTT: There's a tall fence along the property line?

KEVIN MUSUMANO: Yes.

CONSTANTINE ALEXANDER: You say it's not visible. Of course that assumes the

fence continues to be where it is.

KEVIN MUSUMANO: Correct.

CONSTANTINE ALEXANDER: Today it's not, but that fence could come down and it would be visible.

KEVIN MUSUMANO: That's right.

CONSTANTINE ALEXANDER: So I was puzzled why Historical took the view it did when it said we're not going to vote on it because it's not visible from the street. Well, that's true, but you can take it down the next day and it would be visible.

TAD HEUER: And in many cities that's actually not proficient. Fences or temporary, other temporary -- potentially temporary objects are deemed not to obstruct the view of the property.

CONSTANTINE ALEXANDER: Right. Be that as it may. Okay.

Anything else?

KEVIN MUSUMANO: Well, they plan on

retiring in the house, so I don't sense the fence is going to come down.

CONSTANTINE ALEXANDER: I don't think it would either. In fact, their privacy, I point out that it's not forever more, that's all.

KEVIN MUSUMANO: Right.

CONSTANTINE ALEXANDER: Questions from members of the Board?

TAD HEUER: You mentioned, so if we're looking at a hardship here --

KEVIN MUSUMANO: Yes.

TAD HEUER: -- is the issue as I was able to glean from your application, that the current position of the door in the house is such that you essentially run up against the handrail of the existing deck as you try to open it?

KEVIN MUSUMANO: Yes.

TAD HEUER: And you would prefer to extend the deck then move your door?

KEVIN MUSUMANO: Yes. There's actually built-ins here so the door swing makes sense the way it is.

CONSTANTINE ALEXANDER: If we grant you relief, which is the chosen plan?

KEVIN MUSUMANO: This is it.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. And we don't have any letters in the file, not that we need them.

Did you bring any with you that you want to give us?

KEVIN MUSUMANO: No.

ANURAJ SHAH: No.

CONSTANTINE ALEXANDER: I'll end public testimony.

Any further comments or questions from members of the Board or we ready for a vote?

THOMAS SCOTT: The six foot, nine you said was a measurement to the house or was that a required setback?

ANURAJ SHAH: To the house.

THOMAS SCOTT: To the house, okay.

CONSTANTINE ALEXANDER: Ready for a vote?

DOUGLAS MYERS: And because the deck will only be extended to the present sideline of the house, that's why there's actually no change --

KEVIN MUSUMANO: Yes.

DOUGLAS MYERS: -- in the setback as listed on your application?

ANURAJ SHAH: Right.

KEVIN MUSUMANO: And there's no change to the building width or length in this extension.

DOUGLAS MYERS: Only the deck.

KEVIN MUSUMANO: Yeah.

THOMAS SCOTT: Just one thing.

What would be the dimension of the width of the deck? Is it more than 10 feet?

KEVIN MUSUMANO: Yes, it's about 12. 15 by 12, 13 by 13, in that vicinity.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being is that the front porch as presently constructed is not entirely desirable in terms of access and egress to the structure. And requires a modification of the front deck or porch.

That the hardship is owing to circumstances relating to the fact that the current location of the structure on the lot, it is non-conforming in this regard. And, therefore, there is no way of changing the front porch or deck area without seeking

relief, needing 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 this Ordinance.

In this regard the Chair would note that the relief being sought is very modest in nature. It's such that it is not visible to the street as pointed out by the Cambridge Historical Commission at least so long as the front yard fence remains.

And on the basis of these findings the Chair moves that a Variance be granted to the Petitioner on the condition that the work proceed in accordance with the plans submitted by the Petitioner, prepared by C&J Katz, K-a-t-z Studio and initialed by the Chair. This means that this is it, you can't change it.

KEVIN MUSUMANO: Right.

CONSTANTINE ALEXANDER: All those

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(9:10 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10028, 18 Middlesex Street. Is there anyone here wishing to be heard on this matter? You're seeking both a Variance and a Special Permit.

EDRICK VANBEUZEKOM: That's correct.

CONSTANTINE ALEXANDER: We'll start with the Variance case.

EDRICK VANBEUZEKOM: My name is Edrick VanBeuzekom spelled E-d-r-i-c-k. Last name is V-a-n-B-e-u-z-e-k-o-m. I'm the architect for the project. Basically I'll start with some photos here and then show you

some --

DOUGLAS MYERS: And the person next to you is?

DAVID CLEMENS: Oh, I'm sorry. I'm David Clemens, C-l-e-m-e-n-s and I'm the owner.

TAD HEUER: Are you planning on keeping the house pink?

DAVID CLEMENS: No, no. Thankfully no.

CONSTANTINE ALEXANDER: That may be a condition of our relief, you know.

DAVID CLEMENS: Tearing down the sides completely and putting some --

EDRICK VANBEUZEKOM: I'll start with site plan. Basically we're doing a -- basically a gut renovation of the house. But making very little change to the footprint. The only things we would like to add, and this is what we're requesting a Variance for, there is an existing front

stoop which has no roof over it. And you can see it in these photos. This is the house. This is the front entry. This is looking at the house from the left side and looking down the street. And what you can say is the adjacent houses are basically in line with this and they have porches that project out toward the street. So, which gives them in this case it's a sun porch. And the second house down from there there's -- it's a -- it's the same house, but at the same time, and they have exactly what we're looking to do which is a covered roof porch which you can see in this picture here.

So, the issue is the house. It's an odd shaped lot so the house is non-conforming to the front yard setback and the side yard setback. It is conforming to FAR, and basically all the other requirements of the Variance. So it's pretty straight forward.

CONSTANTINE ALEXANDER: And you're

supposed to have a 15 foot front yard setback and yet you're not at 10 and you're going to five?

EDRICK VANBEUZEKOM: That's right.

CONSTANTINE ALEXANDER: And that's the nature of the relief?

EDRICK VANBEUZEKOM: Exactly.

And there's an existing stoop there now. We're going to rebuild it, but in the same dimensions as to what it is now.

TAD HEUER: And you're removing a stoop or your removing a roof over a side yard door; is that right?

EDRICK VANBEUZEKOM: No, no. Nope. All we're doing is, you can see the elevations here. This is the -- oh, I see what you're saying.

TAD HEUER: Yes, so on it's X20, existing entry porch to be removed?

EDRICK VANBEUZEKOM: Yes, that's being removed. Yeah, I forgot about that.

It's already gone.

DAVID CLEMENS: Right.

TAD HEUER: The only reason I ask is it doesn't really matter because you're not looking for FAR relief. But has that been calculated in and out of your FAR calculations?

EDRICK VANBEUZEKOM: Yes. Here you see basically the entry roof. This is it from the front. Here it is from the other side of the house. And while we're looking at this view, I'll just mention the Special Permit has to do with the two existing windows here and we're relocating them based on --

CONSTANTINE ALEXANDER: We'll take that up next.

EDRICK VANBEUZEKOM: Right. We can show you the floor plan.

This is the front of the house here. This is the stoop. And, again, keeping the same dimensions as proposed.

I do have a letter of support from one of the neighbors. This is from the immediate neighbor here.

CONSTANTINE ALEXANDER: Okay.

EDRICK VANBEUZEKOM: No. 20 Middlesex.

DAVID CLEMENS: The only immediate neighbor.

EDRICK VANBEUZEKOM: That's right.

CONSTANTINE ALEXANDER: Questions from members of the Board? No questions.

DOUGLAS MYERS: Any other comments from abutters?

EDRICK VANBEUZEKOM: I don't know if you've spoken to any of the other abutters.

DAVID CLEMENS: Informally we did talk to them and they were all very supportive of all the work we're doing.

DOUGLAS MYERS: Nothing negative?

DAVID CLEMENS: Nothing negative, yeah.

EDRICK VANBEUZEKOM: Because basically on the other side of the house is a parking lot and a commercial building on the corner there.

DAVID CLEMENS: And across the street is a church.

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

(No Response.)

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

The Chair notes that we are in possession of a letter from an abutter submitted by the Petitioner which I will not read, but will become part of the record of this hearing.

Unless you have further comments, I'll end public testimony. Public testimony has ended. Questions, comments from members of the Board? Ready for a vote?

TAD HEUER: I just have one comment.

I don't have any problems. But because this is under FAR house, I would suggest that we might, as we have in previous situations, that this Board has not tended to support the enclosure of front porches. Here where the enclosure of this front porch could be done I believe in some extent in terms of FAR by right, because they're under FAR now, and by having the extension of the setback they wouldn't be violating anything else. That we condition the relief in that the porch not be further closed.

CONSTANTINE ALEXANDER: Well, if we tie it to the plans, we get there anyway? Because they can't do anything more besides what's on the plans?

TAD HEUER: True.

CONSTANTINE ALEXANDER: I think we're okay. It's a good point. I don't think we need to make anything special.

THOMAS SCOTT: You're saying they

could do it by right if we give them relief?

TAD HEUER: We're giving them setback relief.

CONSTANTINE ALEXANDER: But we're giving setback relief on the condition that the work proceed in accordance with these plans. If they do more and they're not proceeding in accordance with the plans, then they don't have the setback relief. That's why I don't think we need to do anything more.

SEAN O'GRADY: That would be the position that we would take.

TAD HEUER: Yes.

SEAN O'GRADY: And consistently have taken, yes.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: Okay?

TAD HEUER: Yes.

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

That a literal enforcement of the provisions of this Ordinance would involve a substantial hardship to this the Petitioner. Hardship being that the front entranceway is not protected without a roof, and there's a need of prepare in any event.

The hardship is owing to the fact that it's an odd shaped lot in a non-conforming structure as a result, and such that any change to the front of the house, including enclosing or putting a roof over the front entrance requires 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.

In that regard the Chair would note the relief being sought would improve the inhabitability of the house by providing better shelter to the front entrance.

That the relief otherwise is minor in

nature. There is no neighborhood opposition. In fact one letter in support.

On the basis of the foregoing the Chair moves that a Variance be granted on the condition that the work proceed in accordance with the plans submitted by the Petitioner. They are prepared by architect EVB Design. And they consist of a cover sheet which has been initialed by the Chair. And the plans go from C1.0 through A.3.1 and X1.0 through X2.1.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

CONSTANTINE ALEXANDER: Special Permit.

EDRICK VANBEUZEKOM: Okay.

Special Permit involves the left side of the -- I'm sorry, the right side of the house here where it's kind of hard to get a good shot of it because it's close to the other house. But this is the wall. There's two existing windows.

CONSTANTINE ALEXANDER: And one of the plans you have it shows on the plans, on the elevation show it better than the photographs will show it, right?

EDRICK VANBEUZEKOM: Yeah. This is it right here.

So, this is that side of the house. So these are the two existing windows, and this is showing where the new windows are going to be located. And again, it has to do with how we're rearranging the space inside the house.

CONSTANTINE ALEXANDER: Does that side of the house face the commercial structure?

EDRICK VANBEUZEKOM: No. Faces the

neighbor.

CONSTANTINE ALEXANDER: And that's the neighbor who wrote the letter in support?

EDRICK VANBEUZEKOM: Yes.

TAD HEUER: And then where you indicate -- I'm just saying this because of the windows, you indicate on X2.1 a location of proposed dormer and you indicate an actual dormer.

EDRICK VANBEUZEKOM: Yes.

TAD HEUER: Is that in your setback or no? It's not.

EDRICK VANBEUZEKOM: It is, but that's as of right because it meets the requirements in the, what is it, in Article 11 I think, for a non-conforming structures where you can add --

CONSTANTINE ALEXANDER: My assumption was that you must believe or --

EDRICK VANBEUZEKOM: We went through review with this with John and Ranjit

and --

CONSTANTINE ALEXANDER: It's as of right, that dormer.

EDRICK VANBEUZEKOM: It's because we made all -- because we're not in violation of any other Zoning requirements. So that's already been permitted actually.

TAD HEUER: All right.

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

(No Response.)

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

With regard to the Variance we have that same letter in our file by the abutter most directly affected by the relief being sought.

Questions comments from members of the Board? Ready for a vote.

The Chair moves that a Special Permit be granted to the Petitioner to relocate several windows on the right side of the house

on the basis that the relocation will not cause congestion, hazard or substantial change in established neighborhood character or impact traffic, generation or patterns of access or egress.

That the continued operation of adjacent uses will not be adversely affected by what is proposed. In this regard the Chair would note that the person who would be most adversely affected supports the Petition.

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

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

This Special Permit would be granted on

the condition that the work proceed in accordance with plans identified in the vote where we approved the Variance.

All those in favor of say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Good luck.

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

(9:25 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10029, 41 Magnolia Avenue. Is there anyone here wishing to be heard on this matter? Good evening.

DOUGLAS MYERS: Mr. Chairman, before we start, before you call the case to order I would like to make a brief statement.

CONSTANTINE ALEXANDER: Go right ahead. I did call the case.

DOUGLAS MYERS: Douglas Myers, associate member of the Board. When I reviewed the case file this morning, I noticed that with regard to the approval of the mid-Cambridge Neighborhood Conservation

District which you received, my wife Sue Ellen Myers sat on that Board and gave the approval.

I have never discussed the case with her. And I was completely unaware of her participation until I reviewed the file this morning. And I don't think it affects my objectivity or the comments that I have in any respect. However, if for any reason based on what anything that went on at that hearing which would be unknown to me, you feel that you would rather not have me sit on this case, I will willing to withdraw from the case and disqualify myself.

KJERSTI ROSEN: Thank you. I see no reason for that myself at all.

CONSTANTINE ALEXANDER: Let me just ask is there anyone here in the audience have a problem with Mr. Myers sitting on the case?

(No Response.)

CONSTANTINE ALEXANDER: The Chair

would note that no one who is in the audience expresses any problems with Mr. Myers sitting on the case. I think we can go forward on the basis of Mr. Myers continuing to sit on the case.

KJERSTI ROSEN: My name is Kjersti Rosen, K-j-e-r-s-t-i. Last name R-o-s-e-n.

JASON ROSEN: My name is Jason Rosen, J-a-s-o-n R-o-s-e-n.

PATRICK HAYDON: Patrick Haydon, H-a-y-d-o-n. I'm the architect and the builder.

CONSTANTINE ALEXANDER: Okay. You're seeking a Variance to put on a second floor deck?

KJERSTI ROSEN: That is correct. And we're seeking a Variance for the FAR. Currently we're already in violation of the FAR being 1.02 and it's supposed to be 0.75.

CONSTANTINE ALEXANDER: And you'll go to 1.14 if we grant you the relief.

KJERSTI ROSEN: 1.14.

CONSTANTINE ALEXANDER: So it's about a 10 percent increase.

KJERSTI ROSEN: That's correct. And that is counting the area both underneath the deck and on the deck. Because even though we're not covering the deck, we once had a trellis on top where the joists are closer than three feet in the center, and so from my understanding, we need to -- however, both beyond the deck and underneath will be all covered and will affect that side of space.

And just for a little bit of history. We right now live at 39 Magnolia Avenue on the first floor, and we've lived there ten years. We love the neighborhood. We love the city, and we wanted to stay. And we wanted a bigger house. We have two children. Public schools. We wanted a bigger yard. Unfortunately, most bigger yards in

Cambridge come with a \$2 million house and we cannot afford it. So we were looking elsewhere when tragically our neighbor's house had a fire. No one was hurt. The house sat as an empty burned out shell for a few months. And the owners who were elderly elected to sell. And they sold it directly to us because we've known them, we're friendly with them. And so we're currently gutting this house completely and we're turning it from a three-family to two-family. We will rent the first floor and we'll live on the second and third floor.

The hardship with this for us is that living on the second and third floor, we have no direct access to the outside. We're currently chose to live on the first floor because we were in and out of the garden so much. We've developed a garden and we built it out, and spent a lot of time out there. And we really need it for our wellbeing and

especially for the children.

Being on the second floor, will just remove us from the garden and we'll spend less time outside.

CONSTANTINE ALEXANDER: Right now or before the house had the fire someone lived on the second floor apartment or third floor wanted to use the yard, they have to go out the front door and walk around the to the back of the house, is that how it works?

KJERSTI ROSEN: They would use the staircase in the rear.

CONSTANTINE ALEXANDER: There's a staircase in the rear? Oh, interior.

KJERSTI ROSEN: Internal. Internal. So it was the means of egress for the second and third and first floor. So you have to go down a flight of stairs, one and a half stories essentially, and out the door.

CONSTANTINE ALEXANDER: Now you'll have to, if we grant you relief, you will go

down one and a half stories, but you won't have to go through inside the house.

KJERSTI ROSEN: Right. What we'd like to do is have stairs that go straight from the deck down to the garden. For two reasons: One is for safety for the children if they're playing in the yard. We would have an opening from the kitchen to a deck. So if we eat out there, sit there, we can look out the door and hear them if they need us. And the second is just because it would be very nice to have the flow from the kitchen to the deck and out and straight down to the yard, so it would just make it a lot more accessible.

DOUGLAS MYERS: If you were not to have those stairs down from the deck to the yard, what would be your most convenient alternative access from your house to the yard?

KJERSTI ROSEN: Then we would use

the internal stairs and go out the back door.

DOUGLAS MYERS: Back.

KJERSTI ROSEN: So we live in a very similar house now actually. It has a very, very similar footprint. We're on the first floor. And now we find that we have to go out a door and down half a flight and out a door again. And before the kids that was pretty easy, but now juggling a three-year-old and a tray for dinner and going in and out is a little harder, and it would be so much easier if this just a straight door outside especially since it's now off the kitchen.

TAD HEUER: So knowing that you started out with a burned out shell, so essentially you're gut rehabbing it, so you can do whatever you want with this space, why not put yourself on the first and second floor and rent out your third floor.

JASON ROSEN: That's exactly where we started.

KJERSTI ROSEN: We tried that very hard. If you look at the floor plans, because you need two means of egress. When we started drawing up the plans --

PATRICK HAYDON: There was a lot of (inaudible). They have two stairwells going through essentially the living space. So you would think they would lose a lot of area.

TAD HEUER: How much is the lot?

KJERSTI ROSEN: At least 200 square feet.

TAD HEUER: Out of how much?

KJERSTI ROSEN: Well, the front --

TAD HEUER: You're already over FAR, right?

KJERSTI ROSEN: We're already over.

TAD HEUER: Right.

You're at a 0.75. You're at 1.02. Let's say so you lose 200 feet out of 3654. Is that a huge deal? I mean, it's a huge deal because you'd like 200 feet.

KJERSTI ROSEN: But it wouldn't be out of -- it would be out of two-thirds of that. Because one of the floors is --

PATRICK HAYDON: I think it's somewhat of an inconvenience to have tenants trampling up and down the stairs, potentially living above you --

CONSTANTINE ALEXANDER: That's what I was going to point out, too, is that the issue is you just flipped it around. Now your tenant on the third floor has no way of getting to the yard easily except for trampling through down the stairs.

KJERSTI ROSEN: Also, if we were -- we have two children that are three and five. So, if we were to live on the first and second floor, you would need to maintain two staircases for the tenants on the third floor to leave. We would not want our children to go in and out and have to lock doors. So we would have to add an internal

staircase. That means that on a thousand square foot first floor you have three stairs which would have taken up, just looking at the map roughly, it would take up almost a third of the first floor area. When you start looking at that space in Cambridge, we felt it was better to go up. But we're very nearly did not do it and we very nearly decided to have the tenants on the first floor so we could go straight out to the yard. But when you look at (inaudible) in Cambridge came down from the prices, it's a little hard to see that much.

PATRICK HAYDON: Both units are direct -- the unit -- their unit is directly entered from the ground level, and the rental unit is direct level. So there's no shared common space.

KJERSTI ROSEN: So we're able to open up what was previously shared common space, and we added a lot of space. I haven't

done the math. When I did it very quickly,
I --

TAD HEUER: What's the square
footage of each of the units proposed?

PATRICK HAYDON: 1100?

KJERSTI ROSEN: The first floor is
just under 1,000 square feet.

PATRICK HAYDON: 1100 gross floor
plan.

TAD HEUER: So 1100 in the first
floor unit. How much for that --

PATRICK HAYDON: Well, it's 1100
minus the entry in the stairwell. So it's
probably -- was it nine? 1,000 for the first
unit, and then 22.

TAD HEUER: How big is the deck
proposed to be?

KJERSTI ROSEN: It is 18 feet, 18
inches broad by -- wide. By 12 feet deep.

If you switch to the plans -- and that's
another thing, we went back and forth because

we'd like to have as big a garden as possible. But we felt that having this extension right off the deck would be a safety issue and a convenience issue for the children.

TAD HEUER: How big are the decks on the abutting properties? Are they that large or are they small, the abutting three deckers?

JASON ROSEN: The one to the left has one larger and larger. The one that we currently live in is slightly smaller. And that's part of the reason, because as we've used it over the last ten years, we're finding that if we have more than four people trying to eat, you -- we can't get around the table. So we tried to learn from the mistake -- not the mistake, but the problems that we had with the existing.

TAD HEUER: Yes, but 12 by 18 deck you can't fit four people around the table?

KJERSTI ROSEN: No, we don't have

that currently. No, no, no. The current one is I believe it's nine feet deep and the width I don't recall. But it's narrower. But we live on the first floor, so we eat in the garden and the patio is there.

TAD HEUER: Right.

CONSTANTINE ALEXANDER: Any further questions from members of the Board? Are you all set?

TAD HEUER: Yes. I'd only point out that historically this is a large deck for us to be approving. We have rejected smaller decks in the past.

CONSTANTINE ALEXANDER: But I think in the past while the deck issues were setback as well as FAR. This deck doesn't intrude into any setbacks which is unusual for decks.

TAD HEUER: I beg to differ.

THOMAS SCOTT: Wouldn't it be included in the FAR if you didn't have the trellis element of it?

TAD HEUER: No, it would because you would be covering the first floor. It acts as a floor and a ceiling.

DOUGLAS MYERS: I would just voice concern that the deck is very large, it's a second floor deck. How far is it -- so I just want to pursue some questions about it.

KJERSTI ROSEN: Sure.

DOUGLAS MYERS: How far is it going to be from your neighbors? What are the site distances going to be from this deck to your neighbor's property? To which part of your neighbor's property? So if you could paint us a picture, that would be appreciated.

KJERSTI ROSEN: Absolutely. 41 Magnolia has one half. 39 where we currently live, those house are very close. They are nine feet apart. The deck -- current deck in 39 is set back a few more feet this way. We would set back this way a little bit. It is relatively close. Our current neighbors are

in support of this. They have no objections to us adding it. And we actually have them here. They will speak later.

On the other side there is more space between the two houses, and there's also bushes and trees between. So that will be more sheltered. We've also spoken with all of those neighbors and they have no objections whatsoever.

CONSTANTINE ALEXANDER: We'll get to that.

KJERSTI ROSEN: In fact, most of our neighbors are appreciative that we've elected to stay and we have rehabilitated this house instead of having a developer sell it. And so we have no objections there.

TAD HEUER: Aren't you renting one of the units?

KJERSTI ROSEN: Pardon me?

TAD HEUER: Aren't you renting one of the units? There will be a renter?

KJERSTI ROSEN: There will be one renter. We can't afford to do this on our own, that's just the reality of it. We are renting one of the units.

JASON ROSEN: And behind the house is a hospital.

KJERSTI ROSEN: It's the hospital. So that's a huge parking lot which is currently under utilized. It never seems to be full. I haven't seen any concerns in the privacy in the rear.

BRENDAN SULLIVAN: The deck does appear to be quite large when you're sort of looking at it in the plan. However, what takes up a third of it is the stairway. So, if you take that stairway away, it's a necessary part for the exit, and you wind up with a nine foot deck, nine foot wide. Seven foot is really quite minimal to put a table and chairs around. So the extra two feet does give you a little bit more elbow room.

And then of course you've got the stairway. So it's -- it appears quite generous. If it were a deck by itself, with interior stairways, it would probably be over the limit. It's the stairway which I think makes it a lot wider than --

TAD HEUER: So without the stairway it's -- which dimension are you talking?

THOMAS SCOTT: It would be nine by 18.

BRENDAN SULLIVAN: It would still be nine feet wide from the house up to the stairway by the back width of the house.

THOMAS SCOTT: Back section of the deck is unusable because it's the stairway and the access to the stairway.

TAD HEUER: What's the long side? What's that side going along the length of the house, 18, right?

KJERSTI ROSEN: Yes. It goes along the house. So as the --

TAD HEUER: The stairway runs the length of the --

BRENDAN SULLIVAN: Yes. It's almost like a scissors type.

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

SIMON WATTS: Thank you.

CONSTANTINE ALEXANDER: Name and address for the stenographer.

SIMON WATTS: Simon Watts which is W-a-t-t-s. And I live at 39 Magnolia Avenue in the second floor condo. So I want to say I'm in favor of the proposal. So we -- my wife's family has owned the second floor condo for the last ten years both at the same time the Rosens bought the first floor. My wife and I purchased it just recently, but have lived in the condo for the last two years and got to know Kjersti and Jason. And we were very happy when they purchased the property next-door because they are

excellent neighbors and great to live with. And we are looking forward to being able to still see their two young children. And in the three warmer months -- the three warmer seasons have enjoyed eating in the garden with them in the shared common space. And I feel like it would be -- we would be very happy if they were able to build a deck. We have obviously no objections to it for all the reasons that have already been stated.

As regard to the size, we likewise have no objections. I've seen all the plans. And I understand that it's -- I think it's like nine and a half feet because I recently actually coated our deck and I remember measuring the area. So it's only like two and a half feet larger. And because our deck is set back from the side of 39 and their deck is going to be slightly set back, it's not even as if it's very close to the -- it's a nine feet gap between the buildings, but

there will be a greater gap between the decks. I don't think we'll have any particular site line disadvantage by being two and a half feet further out. We've already mentioned there's nothing to the rear of the building apart from a parking lot.

And I know how much time they like to spend in the garden and in the backyard and they've always kept up the backyard extremely well. I would be very happy if they were able to enjoy especially the staircase down from the deck as well to be able to sort of watch over the children as much as enjoy the garden.

CONSTANTINE ALEXANDER: Thank you. Thank you for taking the time to come down.

Is there anyone else wishing to be heard?

(No Response.)

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

The Chair would also note there are

several letters in the file all in support of the Petition. They will not be read but they will be incorporated by reference into the record of our proceedings.

Unless you have more to add, I'll end public testimony. You've said what you're going to say?

Questions or comments from members of the Board at this point? We want to go to a vote. We're all set ready for a vote? 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. Such hardship being that there would be no desirable means of access and egress from the second and third floor unit of the house to the backyard. Particularly if you have young children, children maybe of any age living in the second or third floor unit.

That the hardship is owing to the fact that this is a non-conforming structure, and that therefore any addition requires 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.

In this regard the Chair would note that there is a Certificate of Appropriateness from the Cambridge Historical Commission approving this project from the perspective of the Historical Commission.

That there is neighborhood support, unanimous apparently neighborhood support for the project.

On the basis of this, the Chair moves that a Variance be granted to the Petitioner on the grounds that work proceed in accordance with plans A00.1. They're prepared by Haydon, H-a-y-d-o-n Design, LLC.

They're numbered A00.1, A4.01, D1.00, A4.02, A4.00. These are the final plans.

PATRICK HAYDON: That's correct.

CONSTANTINE ALEXANDER: If you modify them, you're going to have to come back before us, you understand that?

PATRICK HAYDON: Understand.

CONSTANTINE ALEXANDER: The first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Sullivan, Scott, Myers.)

CONSTANTINE ALEXANDER: Opposed?

TAD HEUER: Opposed.

CONSTANTINE ALEXANDER: One opposed. Variance has been granted. Thank you.

(9:45 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10030, 535-545 Cambridge Street. Is there anyone here wishing to be heard in this matter?

MARC RESNICK: Yes, sir. My name is Marc Resnick, R-e-s-n-i-c-k. I'm the owner of 535 Cambridge Street. And what I'm proposing is to legalize the existing curb cut that's already there. So, I was here before. We did not properly advertise it properly and notate all the things that I needed, and also you had recommended that I make sure that the new design fits the code requirements. So I've changed the plan.

CONSTANTINE ALEXANDER: The relief

you still need, just so we're clear for the record, you need two types of relief from us, a Variance in two respects.

One is you want tandem parking, which is not permitted.

And the other is by virtue of the fact that you're on a corner lot. You have two front yards and, therefore, you need a relief from the requirement or the prohibition against parking in front yard setbacks.

MARC RESNICK: So it's really --

CONSTANTINE ALEXANDER: But you haven't changed the nature of that parking area?

MARC RESNICK: No. It's still going to be -- that's what it will be, driving right into that driveway between the two existing buildings just as it is now. All we did was -- because this is an egress door at the end of there, we put a landing pad that had to be 44 inches. So that you can come out

of the building without having a car in your way, as well as increase the bike path to 36 inches which is what is required as well. So that now you will be able to fit two cars in with the normal length. And, you know, it's already a driveway and a curb cut. It's been used -- all we can get from Historical is that it was previously used for delivery, and never was an official parking space.

TAD HEUER: That kind of seems to make sense, doesn't it? Because I'm not so much worried about you getting cars in, I'm more worried about you getting them out.

CONSTANTINE ALEXANDER: Exactly.

TAD HEUER: Because that street that you're pulling out into, if I'm just largely going through my mind how do I -- and I understand why you want parking there. I understand the reasons you're trying to do this, and you've been told to get as much parking as you can. You've made valiant

efforts to do so, but I just -- my sense in looking at that space and then standing there and turning around and see how I'd get my car out.... So I back out into the corner of a very busy main street, and then if I'm the inner tandem car, I've got to get somebody to back out, park their car somewhere on that street without getting hit, and then myself get out again.

CONSTANTINE ALEXANDER: And that's a very narrow -- I have to endorse everything Mr. Heuer is saying. Plus the fact it's a very narrow street you're backing out into. And if there's care parked on the other side, you probably almost can't even use that driveway. The concept of a parking, having provided parking for the new four residential units creating, it's obviously on its face is desirable. This, to me is not a very desirable place to have parking. It's just not functional. Plus I'm also troubled by

the fact that you would be parking -- your abutter on the other side is virtually on the lot line. And your cars are going to be almost next to their wall. I don't know if they have a window --

MARC RESNICK: No. We put the three-foot bike path on the side of the --

CONSTANTINE ALEXANDER: Three foot. Okay. So you're not against the wall. You've got three feet. That's not a lot. I mean, Zoning compliance --

MARC RESNICK: I mean, they have no door and no window on that side of the house.

CONSTANTINE ALEXANDER: I know, I know.

MARC RESNICK: And if you remember the last time we were here, the neighbors came by and said they would rather have parking than no parking, even though they did have some concern about the turning radiuses. We're currently driving dump trucks in there

during the construction. There's no -- I either had to put a dumpster in there or we're using a dump truck. And they're not having any problem to drive in and out to load off this deck area here that they're loading in now. And they're taking dump trucks in and out for like the last four or five months.

TAD HEUER: Yes, but those are professional drivers. And people get out the way of the dump trucks if they see them coming, don't they?

MARC RESNICK: If you turn down the side street, there's nobody there. In other words, there's the hole right there, and this is just the end of the road. There's nothing there. The side of the -- all you have to do would be to back out into the street along the side of our building.

TAD HEUER: Isn't that kind of the concern, that someone who is driving on that main street says that's a really small side

street?

MARC RESNICK: It's Seventh Street.

CONSTANTINE ALEXANDER: It's very narrow, small --

MARC RESNICK: It's three cars wide. They park on both sides. But the thing is when you pull out, there's no parking on the far side. So that it's two cars wide to pull back into the street, two cars wide. So there's -- I don't know if you drive a tractor trailer in there, but a big oversized dump truck doesn't have any -- because there's no parking on that -- let me see which one shows it best on these. See, here's the street. And there's a side of our building. It goes all the way back. And it doesn't, you know, there's nowhere to hit on Seventh Street. If you, I guess you could turn in and then you would just -- so you pull out this driveway and just back up. On this side of the street there's no parking. And on this side there

is. So it's double -- it's three cars wide. And they allow parking like further up on both sides. So up here you don't -- you have to pull out between the two vehicles if they're parking. But back here there's no one on this side. It's a no parking zone, and you just sort of swing right out. It's actually a pretty wide driveway because it's wide enough to have a driveway and a three-foot bicycle path. So in other words, if you had to swing in the driveway, if there wasn't somebody walking up the driveway right when you were coming out, you would have three additional feet to swing your car and get a good angle to get in and out. I've been in and out of it a hundred times. I just have a regular car.

THOMAS SCOTT: How wide is it? How wide is that space from building to building?

MARC RESNICK: It's three -- it's 12 feet wide.

CONSTANTINE ALEXANDER: Twelve feet.

MARC RESNICK: Twelve foot wide driveway.

CONSTANTINE ALEXANDER: From wall to wall?

THOMAS SCOTT: Three of it is --

MARC RESNICK: Three is the open bike path. In other words, we've marked it on the drawing as non-parking area. But still there's nine feet for the car. And, you know, the door could open with the bike path. It's not like a busy road where you're going to like smack the bike rider. It's just one guy who lives up -- in other words the four people are all going to be neighbors.

CONSTANTINE ALEXANDER: Why don't you just simply use that area for a bicycle rack and for people can park their bicycles?

MARC RESNICK: We put a bicycle rack inside and the bike path. In other words,

the idea is that four people are going to live in these apartments, and if we provide them with no car parking, there's going to be likely four cars on the street. And so --

CONSTANTINE ALEXANDER: Well, my concern is that you're going to have four cars on the street even if we grant you relief. This parking in my judgment, it ain't going to work. Tandem parking on this narrow street as Mr. Heuer very eloquently pointed out, is -- one car has got to pull out, the other one, they've got to pull in. People coming around the corner from Cambridge Street.

MARC RESNICK: They've been doing that for probably 75 years.

THOMAS SCOTT: You can park one car there. I mean create it as just a residential driveway like any other residential driveway in Cambridge. It's the tandem issue that you have --

CONSTANTINE ALEXANDER: That's why he needs relief.

THOMAS SCOTT: So now you've got to get a car out and have that second car --

CONSTANTINE ALEXANDER: If he only wanted one parking space, he could do it as a matter of right. He wouldn't be in the front yard setback, and of course no tandem parking. It's the tandem nature which pushes him in the front yard setback and the fact you're not supposed to have tandem parking.

BRENDAN SULLIVAN: It's not unusual in this case.

CONSTANTINE ALEXANDER: I know. But should we perpetuate it or expand it or not?

BRENDAN SULLIVAN: Well, I mean, somehow it works itself out. It would not be my choice. It would not be my want of a parking spot, but it's somehow it

proliferates and it works somehow.

TAD HEUER: So really, the existing conditions is really one parking space, right?

CONSTANTINE ALEXANDER: It has been designated. He could have one. I don't think he's designated it.

MARC RESNICK: One by right.

TAD HEUER: One by right.

MARC RESNICK: We're just saying we're just trying to -- they told me to, you know, when I went for the Variances and the Special Permits, they said get as many parking as you can. So we're trying to get at least two cars off the street rather than one. And if I could have gotten three, I would have tried to get three or four in there. You know, we looked at trying to get the cars into the building, but the turning radius is, you know, like one car for like every 700 square feet. You can never get

inside.

BRENDAN SULLIVAN: Right. The good news is we have a condo with a parking space. The bad news is there's your parking space.

CONSTANTINE ALEXANDER: Exactly.

Your goal is desirable. We acknowledge that. The idea of getting off street parking is a good idea particularly in East Cambridge. The question is should we allow this type of off street parking?

MARC RESNICK: Well, in any other driveway wouldn't you be able to pull as many cars into your driveway as you sort of wanted?

TAD HEUER: No.

MARC RESNICK: I'm not sure, I'm just asking.

THOMAS SCOTT: That's true.

But across the street from where I live there's a triple decker. It's full of students, and there's consistently three to four cars in the driveway.

TAD HEUER: Call ISD.

THOMAS SCOTT: I'm not blowing the whistle on anybody. I'm just saying it's a common -- it's not that uncommon in Cambridge.

CONSTANTINE ALEXANDER: No, no, you're absolutely right.

THOMAS SCOTT: And when they start backing their cars out so the guy on the very end can get out, everybody is honking the horn and it's a pain -- you know, it's not ideal, but --

TAD HEUER: Nor is it legal.

THOMAS SCOTT: -- it gets four cars off the street. I mean parking is horrendous in that area of Cambridge anyway.

MARC RESNICK: I think that two cars are going to park there no matter what. So I'm trying to legal -- if you rented the one space, and your husband came home, your girlfriend came over or your buddy, you're

going to pull your car up and put that car in there anyway, just because what you're saying, it's a reality that parking is tight, they're going to get \$50 parking tickets, they're not going to do that. So we'd rather set it up so people have the right to do that rather than what's, you know -- if you don't have the right, you just do it. In other words, it's not a parking spot right now, and people have been parking there for 75 years. So I'm the first guy whoever came in --

THOMAS SCOTT: I'm not condoning it, I'm just saying --

TAD HEUER: For someone who voted against 169 Windsor earlier this evening, because legalizing something that was already there that people are doing anyway, I find your position suspicious even though I'm going to reverse it.

MARC RESNICK: This is really a great idea. It really, really makes sense.

There's nobody that would be harmed. It isn't ideal, but there's nowhere to put a better driveway and so --

CONSTANTINE ALEXANDER: That we can all agree with.

MARC RESNICK: It is a driveway. And the people are going to park cars there. And as we've pulling dump trucks -- so, when we work in there, we pull two cars into the driveway, a dump truck and a car. And we don't have any problem getting in and out. It's relatively quiet over there. I was there again today twice. And, you know, Seventh Street is not a very busy street.

Mostly what the neighbors said was that overnight parking was the -- it's not even hard to park it during the day. The meters are, you know, I have seven trucks out there, you know, in and out all day long doing different trades and there's always a parking space right in front. But, overnight, you

need to put, you know.

BRENDAN SULLIVAN: Snow emergency or street cleaning day.

MARC RESNICK: Since we'd like to get the two off and not have the people parking there dishonestly. We'd rather have them parking there honestly. We're volunteering to be honest.

BRENDAN SULLIVAN: You could fit four or five mini Coopers in there.

TAD HEUER: Smart cars?

MARC RESNICK: Three or four at least.

CONSTANTINE ALEXANDER: 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 no letters in our file. There is a letter from the Planning Board. I think I'll read it in its entirety with regard

to this case. "The Planning Board reviewed and granted a Special Permit to convert the existing non-residential building to residential use on the second and third floors. Copy of the Special Permit is attached. When the Planning Board reviewed the conversion proposal, it was anticipated that the existing driveway could be used for parking and access to the indoor bicycle parking by requesting relief from the Board of Zoning Appeal."

I read this as sort of a neutral letter, not to support or opposed.

TAD HEUER: I think it's a confused letter.

CONSTANTINE ALEXANDER: Well, you're being -- I'm trying to be more generous.

DOUGLAS MYERS: As a practical matter, what happens if this Board says no to you tonight? Where do you go from there? If

you're willing to answer that question.

MARC RESNICK: Well, let's see, we don't fight with anybody. So if you say no, you're basically saying that I have one legal parking space. Which then if I was going to convert to condos, which is probably high likelihood, if not right away, if no one would buy them, then in the near future because I build them, they're beautiful units. Then I would sell the driveway to somebody who would have access to it, and they'd probably park two cars there no matter what you said. So, you know, it's -- I'm going to designate a driveway. So there's only one driveway. I can't -- unless you let me call it two, then it's one. So I can only designate the one area to one unit which would then be --

CONSTANTINE ALEXANDER: When you put them up for sale or for rental, you'll have to advertise it unit X, you have a parking space.

MARC RESNICK: Basically I would try to market them that there would probably be one unit that would have two cars and that they would be very desperate for that driveway. The unit would be most interested. In other words, I don't think all -- I've sold condo conversion before in Cambridge. Like I did one last year on Rindge Ave. No driveway. All four units. They all sold. In other words, people live in Cambridge because you don't have to have a car. You know, maybe there's somebody that really has two, or they have a girlfriend or a grandmother that visits or someone like that who when grandma comes over, you know, she can't park four, you know, houses over and walk. Or because, in other words, you know, I can't rent it out to like two different people and like, give them keys. The only way they can be shared --

BRENDAN SULLIVAN: Pull into the

space and don't let her back out of it.

MARC RESNICK: You need one of those like riser cars where the wheels lift up and drive right under the other one. It's a driveway. It's always been a drive. We're just trying to make it conform legally, you know, according to --

CONSTANTINE ALEXANDER: No one is questioning that. The goal is desirable. The question is whether we'll decide in a few seconds whether the property warrants what you want to do.

MARC RESNICK: All right.

CONSTANTINE ALEXANDER: I think we're ready for a vote. I don't think anybody is going to add anything. I don't want to cut off the discussion. Ready?

BRENDAN SULLIVAN: Yes.

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

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship would be that the amount of off street parking that can be offered with respect to the four residential units would not be as much as the Petitioner and the occupants of the structure might need.

That the hardship is owing to the shape of the structure. There is just no area for underground parking or on-site parking other than this driveway in question.

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.

On the basis of what's being proposed will reduce the amount of possible on street parking by allowing some off street parking on the property in question.

That the parking, if we were to grant

relief, would be as set forth on a plan of land presented by Petitioner initialed by the Chair, prepared by Bradford Engineering Co.

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

(Aye.)

(Sullivan, Scott.)

CONSTANTINE ALEXANDER: Two in favor.

All opposed?

(Alexander, Heuer, Myers.)

CONSTANTINE ALEXANDER: Three opposed. The Variance is not granted.

MARC RESNICK: All right.

CONSTANTINE ALEXANDER: Thank you.

(10:00 p.m.)

(Sitting Members: Constantine Alexander, Brendan Sullivan, Tad Heuer, Thomas Scott, Douglas Myers.)

CONSTANTINE ALEXANDER: The Chair will call case No. 10031, 23 Lambert Street. I assume you people are here for this matter.

For the record.

TIMOTHY BURKE: My name is Timothy Burke. I'm the architect for the project. With me is.

GEORGE E. DELANEY: I'm George E. Delaney, owner.

GEORGE M. DELANEY: And George M. Delaney, Vice President.

CONSTANTINE ALEXANDER: Can I ask a question, were you here to speak on another matter the last hearing we had? You look familiar but you're not the person.

GEORGE E. DELANEY: No, not guilty.

CONSTANTINE ALEXANDER: No? Not the person.

GEORGE E. BURKE: I make as few appearances before this Board as possible.

CONSTANTINE ALEXANDER: Okay. Never mind. Go ahead.

TIMOTHY BURKE: This is a map of the subject property. It's on Lambert Street. It's a one block long street that runs up to Cambridge Street. And the house in question looks like this today. It's a three-family house. There's a lower level unit and a unit here and a unit here.

TAD HEUER: What happened to it?

TIMOTHY BURKE: Well, it was renovated a while ago, and with the idea of energy conservation and the smaller windows. What we're proposing --

CONSTANTINE ALEXANDER: Keep that.

TIMOTHY BURKE: Yes.

What we're proposing to do is we need

a Variance and a Special Permit. I'll start with the Variance.

CONSTANTINE ALEXANDER: Yes.

TIMOTHY BURKE: And that is in regards to the existing egress. You come out on this latticed balcony and then you've got to climb down a ladder and then you jump.

THOMAS SCOTT: And then you jump?

TIMOTHY BURKE: There used to be a gymnast there. She had no trouble with this. We'd like to make it work for anyone.

CONSTANTINE ALEXANDER: So those are going, those decks?

TIMOTHY BURKE: We would like to do that, and I'll show you how I was proposing to do that is to put a spiral stair back here in the corner of the lot, and that's what's close to this property line. And then create a small deck off of each unit that would go to this spiral stair and then down to the ground.

CONSTANTINE ALEXANDER: And that is also the net increase of floor area?

TIMOTHY BURKE: Well, we're fine on floor area. It's setback.

CONSTANTINE ALEXANDER: I thought that you were -- according to your form you're going to increase your FAR from --

TIMOTHY BURKE: Well, we're in a --

CONSTANTINE ALEXANDER: -- 0.72 to a 0.73 in a 0.3 district.

TIMOTHY BURKE: Oh, it's a 3.0 district.

CONSTANTINE ALEXANDER: Oh, I'm sorry.

TIMOTHY BURKE: There's a giant high rise right next to us. This is one of those few projects that's not over FAR.

CONSTANTINE ALEXANDER: Thank you.

TIMOTHY BURKE: But this would be the new back elevation. I would cut in a door, and so that instead of climbing through a

window, they could have a door to open. And they could get out here to this deck and then down to the ground. And that's what the Variance is about.

TAD HEUER: And how close are you to the lot line?

TIMOTHY BURKE: It's about 11 inches.

CONSTANTINE ALEXANDER: How big is that deck? What are the dimensions of the deck?

TIMOTHY BURKE: The deck is 14.9 long by three and a half feet wide.

TAD HEUER: Three and a half feet wide?

THOMAS SCOTT: It's a fire escape.

TIMOTHY BURKE: And that's all it is. So it's minimal. We try to keep it as small as possible. There's no problem with the rear setback, but it's the side yard here.

The neighbor's house is quite a ways

away from this, the corner back here that we would be talking about. And that's where the stair would go, right there. So there is quite a separation between the two properties, and there's also a fence there. George has met with the neighbor, explained the project to him. He didn't voice any objections. We have one letter in support from a neighbor across the street.

TAD HEUER: And you're not encroaching any further, your existing setback is 11 inches?

GEORGE E. DELANEY: That's correct.

TIMOTHY BURKE: That's correct, yeah. We're not changing that.

TAD HEUER: You have ample parking?

TIMOTHY BURKE: Yes, we do.

TAD HEUER: I propose nothing from the previous cases.

GEORGE E. DELANEY: Maybe we can sell him one.

TAD HEUER: He'll take as many as you want to sell.

GEORGE E. DELANEY: He's actually right around the corner from me. Just a couple blocks.

CONSTANTINE ALEXANDER: Right.

TIMOTHY BURKE: So that's the Variance issue.

CONSTANTINE ALEXANDER: Questions from members of the Board?

Anyone wishing to be heard in this matter?

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard. I have to get that on the record.

And we have a letter in support that's been submitted by the Petitioner that will be part of the file. I will not read it. Although it's an interesting letter actually. Your tenant across the street.

GEORGE E. DELANEY: She actually lived in this building.

CONSTANTINE ALEXANDER: For 20 years she said.

GEORGE E. DELANEY: For 30 years.

CONSTANTINE ALEXANDER: 30 years?

GEORGE E. DELANEY: 30 years. My father owned the building before me and he signed the original lease with her. And I finally persuaded her that I wanted her to live in a more fire safe environment. So I moved her across the street into a project that we did four years ago with all the bells and whistles, and she's loving life.

TAD HEUER: She wasn't so good with the out the window and down the ladder thing?

GEORGE E. DELANEY: That's my main concern, you know. I want to sleep at night and I don't want to think that if there were a fire, that someone would have trouble getting out. So that's really what it's all

about.

CONSTANTINE ALEXANDER: Questions from members of the Board or 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. Hardship being is that the means of egress from the decks that are now there are not -- create safety hazards and are not desirable.

That in fact the deck, the modification of the deck wouldn't -- well, it's the hardship being is that current deck structure acts as a means of access and egress are insufficient.

That the hardship is owing to the fact that this is a non-conforming structure. And any modification to the decks requires relief.

And that the 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 fact, the relief would increase the safety of the occupants of the building.

That the relief being sought is modest in nature. It's just triggered by the fact of the exterior spiral staircase. That there is no neighborhood opposition or other opposition to this Petition.

On the basis of the foregoing, the Chair moves that a Variance be granted to the Petitioner on the grounds that the work proceed in accordance with the plans prepared by Timothy Burke Architecture. They're numbered X-1, X-2, A-1, A-2. The first page of which has been initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

CONSTANTINE ALEXANDER: All right. Move on to the Special Permit.

TIMOTHY BURKE: In terms of the Special Permit, the issue again is the non-conforming nature of this lot in terms of how the -- how close we are to the street. And this -- these two drawings show the existing front facade. This is our proposed facade. We had -- we found some old photos of the house. So these are the almost I think exactly the same size of the windows that were originally on the house. This one was somehow just covered over before in the middle. And I'm also proposing to rebuild the front porch which is ready for a redo.

CONSTANTINE ALEXANDER: Rather

grand for this house.

TIMOTHY BURKE: Well, you know, it's the same size. It just has a pitched roof rather than a flat roof.

TAD HEUER: He's easily impressed.

TIMOTHY BURKE: The other issue is we'd like to add one skylight here that would fall into the side yard setback that serves as a bathroom on the second floor unit.

DOUGLAS MYERS: Skylight that opens?

TIMOTHY BURKE: No, it's a fixed skylight.

TAD HEUER: And you're looking for a Special Permit for -- you're not looking for windows in the front yard, right?

TIMOTHY BURKE: Well, the fact that the front facade is within the front yard setback, we want to make a change to it.

SEAN O'GRADY: That's actually three front facing windows.

TAD HEUER: If you're facing the street, you're good to go.

TIMOTHY BURKE: Oh, okay. Well, then just the skylight is the issue.

CONSTANTINE ALEXANDER: It's very modest in nature.

TIMOTHY BURKE: Yes.

CONSTANTINE ALEXANDER: Special Permit for a skylight from a Zoning point of view.

Anyone wishing to be heard in this matter?

(No Response.)

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

Questions from members of the Board?

We have a letter generally in support of the project already referenced, and it's in the file. I think we're ready for a vote.

The Chair moves that a Special Permit be granted the Petitioner to place a skylight

in a setback, prescribed setback on the basis of the following findings:

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

That the continued operation of or development of adjacent properties will not be adversely affected. The skylight in fact does not create privacy issues from abutters because it's essentially in the roof of the structure.

That 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.

And the proposed skylight 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 basis that the work proceed in accordance with plans previously identified with respect to the Variance.

TAD HEUER: Can I ask a quick question?

CONSTANTINE ALEXANDER: Go ahead.

TAD HEUER: Usually we never ask this, because skylights are never seen, but you're in the shadow of a very tall building. Is there any concern that that skylight will actually viewed into by people 12 stories up?

TIMOTHY BURKE: They're pretty far away. And they're at an oblique angle to us and it's not a concern to us.

TAD HEUER: It's unusual, but it's an unusual, you know, to the lighthouse by the great great bridge.

TIMOTHY BURKE: Right.

CONSTANTINE ALEXANDER: All those

in favor of the granting Special Permit on the basis so moved say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Special Permit granted. Good luck.

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

(Whereupon, at 10:10 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 13th day of December 2010.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 23, 2015

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