

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING

DECEMBER 16, 2010

7:10 P.M.

in

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Timothy Hughes, Vice Chair

Brendan Sullivan, Member

Tad Heuer, Member

Slater Anderson, Member

Sean O'Grady, Zoning Specialist

REPORTERS, INC.

CAPTURING THE OFFICIAL RECORD

617.786.7783/617.639.0396 (Fax)

www.reportersinc.com

I N D E X

<u>CASE</u>		<u>PAGE</u>
9911	--	3
9980	--	6
9930	--	8
9932	--	10
10032	--	12
10033	--	58
10034	--	70
10035	--	162
10036	--	187
10037	--	207
10038	--	195

P R O C E E D I N G S

(7:10 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call this meeting of the Zoning Board of Appeals to order. And the first case as is our custom, we will start with our continued cases. And the first case is 9911, 10 Fawcett Street. Is there anyone here wishing to be heard on this matter?

ATTORNEY ANNE MALONE: Anne Malone of Prince, Lobel on behalf of Clearwire. And I would like to request that we continue the case to February 10th in order to allow Clearwire to figure out some structural issues that have come up in efforts to redesign.

CONSTANTINE ALEXANDER: Okay. They're obviously aware of the fact that we

would want them to minimize the visual impact on the structure that's proposed?

ATTORNEY ANNE MALONE: Right. And they've done a site walk. They've been up there, but there's just some tile on the side of the penthouse that they're trying to figure out how to work with it and make sure the structure is okay.

CONSTANTINE ALEXANDER: And so, since this is a case heard, the Chair will move that this case be continued until seven p.m. on February 10th. The Petitioner having signed a waiver of time for decision. And the motion to continue will be on the condition that you modify the sign and change the date from today to February 10th. And seven p.m. is a time on the sign right now. That doesn't have to be changed.

ATTORNEY ANNE MALONE: Okay.

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

say "Aye."

(Aye.)

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

(7:10 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9980, 535-545 Cambridge Street. 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. We have a letter in the file, Sean?

SEAN O'GRADY: Yes, we do. We have a newly arrived letter.

CONSTANTINE ALEXANDER: I don't have a file.

The Chair is in receipt of a letter from the Beantown Companies, Inc. addressed to Inspectional Services. "Please be advised that the Petitioner wishes to withdraw the above-reference case number for

consideration by the Board of Zoning Appeal." The question would be why -- well, it's been signed by Alissa Devlin, Esquire. I assume she's counsel or she works for the Beantown Company. I give up.

But in any event, the Chair moves that this case in accordance with the request of the Petitioner be withdrawn.

All those in favor say "Aye."

(Aye.)

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

(7:10 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9930, 678 Mass. Ave. Is there anyone here wishing to be heard of this matter?

(No Response.)

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

We are in receipt of a letter from T-Mobile signed by Justine Twofoot, T-w-o-f-o-o-t, project manager. "T-Mobile Northeast, LLC submitted an application for Special Permit for the property located at 678 Massachusetts Avenue, Cambridge, Mass. T-Mobile has decided to withdraw such application and not proceed with the installation."

The Chair moves that in accordance with the request of the Petitioner that this case be withdrawn.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(7:15 p.m.)

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

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. The Chair is in receipt of a letter signed by Justine Twofoot, T-w-o-f-o-o-t project manager at T-Mobile. The letter states "T-Mobile Northeast, LLC submitted an application for Special Permit for the property located at 10 Canal Park, Cambridge, Mass. T-Mobile has decided to withdraw such application and not proceed with the installation."

The Chair moves that we accept the request for withdrawal and vote to have this

case withdrawn.

All those in favor say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in
favor.

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

(7:30 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call this meeting to order. We're going to go to our regular agenda now. And the first case I'm going to call is case No. 10032, 202 Third Street. Is there anyone here wishing to be heard on this matter?

ATTORNEY KEVIN CRANE: Good evening, Mr. Chairman, members of the Board. My name is Attorney Kevin Crane. I represent the Petitioner 104 Mount Auburn Street, Cambridge. To my left is Evelyne, E-v-e-l-y-n-e Mallakis, M-a-l-l-a-k-i-s. And to her left is William Sterling, S-t-e-r-l-i-n-g who's the architect for the project. And to my right is Efstathios Mallakis, E-f-s-t-a-t-h-i-o-s.

CONSTANTINE ALEXANDER: Mr. Crane,

before we get into the merits of the case, I do want to raise a question as much to you as well as to my fellow Board members as to whether there was adequate posting of the signage. As you know, under our Zoning Bylaw you must have a sign posted for at least 14 days, I forget the number of days. And it's come to my attention by personal inspection that the sign is not posted on 202 Cambridge Street, on the front door where the entrance is. The only signage is down Charles Street on a door near the rear of the structure. It's a door that would be used in the apartment. I understand that. But it is not on 202 Cambridge Street. And I wonder --

TAD HEUER: Third Street.

CONSTANTINE ALEXANDER: I'm sorry?

TAD HEUER: Third Street.

CONSTANTINE ALEXANDER: I keep saying Cambridge. Thank you. 202 Third Street.

And I wonder whether we can consider the case given where the sign was posted or whether we need to continue the case and to allow your clients to post the sign at the front door on Third Street and not on Charles Street. That's my personal view. But I don't know if other members of the Board subscribe to that or if you want to address that first, I'll leave it up to you.

ATTORNEY KEVIN CRANE: I'll address it if I can. I observed where the sign was just yesterday, my client had posted it. And there was certainly no intent to try to --

CONSTANTINE ALEXANDER: No one is suggesting that either.

ATTORNEY KEVIN CRANE: Okay. But it seems -- it was probably to my client's most logical place to put the sign because that's the entranceway to the apartment that we're going to be talking about. The other thing is I would be at a disadvantage, if we

were going to use the address of Charles Street because there's no number associated with the location on Charles Street. So it's not like I could have filed a petition and given an address on Charles Street. So I think 202 Third Street is the only address I could have used. Otherwise I would have been making up numbers.

CONSTANTINE ALEXANDER: Isn't that the legal address of the building itself?

ATTORNEY KEVIN CRANE: It's 202 Third Street. I think it's a question of whether, I guess the sign should have been posted across the front of the restaurant.

CONSTANTINE ALEXANDER: That's a question.

ATTORNEY KEVIN CRANE: As far as notice goes, I think that notice to the public, it would have been broader having it on Charles Street, the actual site where the -- where the question's being raised.

TAD HEUER: There's nothing that forbids you from putting up two signs or ten signs or plastering the building with signs, thought, right? You could have put a sign where it is now, which is the location where you want it -- the locus that we're going to be talking about tonight, and also put one at the legal address and then you would have been covered. Is there a reason you didn't post at the legal address and at the location?

ATTORNEY KEVIN CRANE: We weren't -- my client went down and picked up the placards. I get notice from the secretary of the BZA that they're ready to get picked up. My client goes down and picks them up. There is a requirement under the Ordinance that there be more than placard depending on how big the building is I think. And we didn't qualify -- we didn't have to put a second sign up.

TAD HEUER: Right. But you could

if -- there's nothing forbidding you from putting a second sign up, right?

ATTORNEY KEVIN CRANE: You can put two, three, you can put as many as you want. We really go by what the staff at BZA gives us. And like I said, I wasn't involved in that process. You know, the question -- when I saw her yesterday, I had a little question in my mind about it, Mr. Chairman. So I don't think it's not -- I don't think it's trivial what you're saying, but....

CONSTANTINE ALEXANDER: Well, the question is whether we should hear the case tonight obviously or another night after you've move the sign.

Any fellow board members have any views on this?

BRENDAN SULLIVAN: I don't necessarily have that much of a problem with it. I mean, technically you're correct and I think procedurally you may be correct in

that it should be on the address of the Petition. The sign was posted. I think it was posted probably in good faith, and that the notice has gone out to the public, abutters to abutters within the 300 feet. So I think the ones most affected by it have been at least notified.

CONSTANTINE ALEXANDER: That's separate and apart. Even with no sign up, those people would have been notified.

BRENDAN SULLIVAN: That's right. I think there probably was an attempt to comply. That would be my --

CONSTANTINE ALEXANDER: I believe that. I don't believe -- I want to make it clear for the record, I don't believe there's any bad faith here. The question is whether we're legally able to go forward with the case.

Anyway, I guess you're the position to proceed with the case tonight.

BRENDAN SULLIVAN: And I would, yes.

CONSTANTINE ALEXANDER: Any other members have any views? Are we going to hear the case tonight?

TIMOTHY HUGHES: I think in absence of a second address on the property that anywhere on the property seems feasible to me.

SLATER ANDERSON: It was, yes. I would prefer to see it on 202 Third Street. But it was on a street frontage, it wasn't in an alley or anything like that.

CONSTANTINE ALEXANDER: Your view doesn't count yet because we have four votes. Do you want to weigh in?

TAD HEUER: No.

SLATER ANDERSON: It doesn't mean there will be other issues with the application.

CONSTANTINE ALEXANDER: Okay, we're going to proceed with the case.

ATTORNEY KEVIN CRANE: Okay.

Lesson learned.

Mr. Chairman, members of the Board, we're here before you tonight on a Petition to approve a conversion of a non-residential dwelling space to residential at 202 Third Street under 5.26, and we're asking for relief from the dimensional -- from the dimensional standards of 5.31 as it relates to the number of dwelling units per lot, and also the open space requirements of 5.31.

This space -- my clients own and operate the Desfina Restaurant and they've been there for 12 years. It's a well recognized family neighborhood restaurant. And the space upstairs I believe -- that we're considering -- well, let me just back up for a second. Upstairs there are presently -- there's presently one unit in the front of the building which is an entranceway on 202 Third Street. And

there's also a front unit on the third floor. So there's two very small units there. They're about 450 square feet each in round figures. And then this space is in the back of the second floor which has been storage space since my clients bought the property in 1998.

CONSTANTINE ALEXANDER:

Approximately how many square feet of space?

ATTORNEY KEVIN CRANE: This is about -- almost 1200 square feet. And they propose to build a three-bedroom, one-and-a-half-bath unit there with an entranceway from Charles Street. I believe that the space was initially, when constructed as residential space over the years, I believe the space was probably -- and I'll have to speak maybe euphemistically here, evolved into a private club. And the space upstairs was used as such. And I think it stopped being a private club once my

clients purchased the property. I think even the prior owner -- prior operator of the restaurant probably didn't have it as a private club. But the owner before that, the Mallet I think it was probably a private club at that time.

And as far as the structure of the building, it covers the entire lot. So there's no room for us to provide any additional open space at all. The dwelling unit, and it would provide the city with an extra rental unit, it would be compatible with the -- immediately abutting neighborhood which is residential. And you go half a block away, though, and there's industrial, commercial. And presently the unit per dwelling unit square footage per the lot is about 900 for the two units and 600 for the three units.

CONSTANTINE ALEXANDER: And you're supposed to have a minimum of 1500.

ATTORNEY KEVIN CRANE: 1500.

CONSTANTINE ALEXANDER: So you're talking about a substantial departure from what our Zoning requirements are.

ATTORNEY KEVIN CRANE: Presently it's a substantial departure. It's 900. But the space is just being used for -- it's just storage. And they --

CONSTANTINE ALEXANDER: I don't see any request for relief for parking. If we were to grant you relief, wouldn't you need parking?

ATTORNEY KEVIN CRANE: My clients own the property -- there's a parking lot on the next corner. On the corner of Charles and Third. My clients own that property and there are eight parking spaces there and they're licensed by the License Commission for that. And if the tenant wanted to use one of the spaces there, they'd provide that off-street parking.

CONSTANTINE ALEXANDER: Sean, is that sufficient for the parking requirements in our Zoning Bylaws?

SEAN O'GRADY: Well, it depends on a series of factors. I guess I would say that 5.26 would give you relief. So if the Board were inclined to give relief, I think he's sufficiently advertised for that. I just -- there's no way for me to know whether the other space fits the rules or not.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY KEVIN CRANE: And --

CONSTANTINE ALEXANDER: What's the hardship?

ATTORNEY KEVIN CRANE: The hardship is really that the -- on the open space part of it is that the structure covers the whole lot and there's no -- there's no possibility that we could possibly provide any sort of open space on the lot. The structure -- the shape of the structure is such that it covers

the entire 1852 square feet lot.

CONSTANTINE ALEXANDER: But you're supposed to -- okay. But you're supposed to have a minimum amount of lot size relative to dwelling units?

ATTORNEY KEVIN CRANE: Yes.

CONSTANTINE ALEXANDER: And you're looking to depart from that?

ATTORNEY KEVIN CRANE: Yes.

CONSTANTINE ALEXANDER: And the fact that you're on the whole -- one doesn't deal with the other.

ATTORNEY KEVIN CRANE: The hardship would be that financially they, you know, presently it's not generating any income at all and that the storage space could go over to the basement very easily.

CONSTANTINE ALEXANDER: But in any structure, residential structure in the city, you have storage space. You have an attic.

ATTORNEY KEVIN CRANE: Uh-huh.

CONSTANTINE ALEXANDER: Is the hardship that we need to be able to use storage space for a dwelling unit? It's one thing to say that the building can't be used at all and, therefore, I need to give some additional space you can use the building. You can use the building. You have a restaurant. You have two dwelling units. You want to increase the value of the property by adding a third dwelling unit. Understandable. I don't see why that entitles you to Zoning relief.

ATTORNEY KEVIN CRANE: Well, the underlying Zoning is C-1. So multi-family dwelling would be allowed.

CONSTANTINE ALEXANDER: It's not a question of multiple families. The question is about we have other requirements. We have a multiple number of units on a property, you've got to meet various requirements.

You don't meet them, and what's your hardship why we should vary that?

ATTORNEY KEVIN CRANE: And also, given the shape of the lot, that there's no other space that we could provide to satisfy the lot area that would be --

CONSTANTINE ALEXANDER: Then you can't put another dwelling unit in. I mean that doesn't justify granting you relief to put another dwelling unit. It just means you've got restrictions. You have to live with them. That's the structure, that's the lot. This is our Zoning Ordinance. You have a restaurant and two dwelling units, and you have other space you can't use for dwelling purposes unless you can prove a hardship to us. And you think you've identified the special circumstances. Well, the shape of the structure and the coverage of the lot. I don't see a hardship. The fact that you have space that you could

put to profitable use, in my mind is not a hardship. It's just the fact of life. It's a fact of that structure.

ATTORNEY KEVIN CRANE: Well, the space if it's not -- certainly would be underutilized and storage space. It just doesn't make sense to have just -- I mean, there's no other -- given that it's a C-1, you couldn't use it as office space. You can't expand the restaurant up there. And it would just be a place for a repository for trash bins.

CONSTANTINE ALEXANDER: Which it has been for eleven years or so, right?

ATTORNEY KEVIN CRANE: Right. And I mean, my client has purchased the property next-door because there's been -- always seems to be a history with the neighbors next-door. So we've eliminated that.

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

We'll take public testimony. I'll take --

ATTORNEY KEVIN CRANE:

Mr. Chairman, the other thing is just on the hardship part, too.

CONSTANTINE ALEXANDER: Sure.

ATTORNEY KEVIN CRANE: I mean, if it's not approved, I mean -- well, I'll back off on that.

CONSTANTINE ALEXANDER: Not approved, life goes on like the last eleven years.

ATTORNEY KEVIN CRANE: Yes, I mean, you have to look at maybe expanding the other unit. But that might be a question about relief there, too. That's why you couldn't expand the second -- the front unit because there would be a question of relief there as well. Same thing.

CONSTANTINE ALEXANDER: I don't want to argue with you or badger you.

Is there anyone here wishing to be heard

on this matter?

HEATHER HOFFMAN: My name is Heather Hoffman. I live at 213 Hurley Street which is about a block and a half from this property, and I'm quite familiar with it. I walk passed it a lot. And I think that the Chair has stated the lack of hardship better than I could myself.

CONSTANTINE ALEXANDER: I doubt that.

HEATHER HOFFMAN: And I completely agree with you. And I would also add that to my knowledge, there aren't any cases that uphold exceeding lot area per dwelling unit, especially when it is so egregious as here. You know, if we were talking about a couple hundred square feet to, you know, that you needed to get another dwelling unit maybe. But this is so far beyond what's permitted under the law. I'm with you.

CONSTANTINE ALEXANDER: Anyone else

wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one else wishes to be heard. We are in receipt of a letter.

The Chair will note for the record that we are in receipt of a letter from Timothy J. Toomey, Jr., City Councillor. He writes in support of the Petition of the relief being sought. I will read the entire letter unless someone wishes me to. But it is part of our record and will be incorporated into our files. Is that all right with everybody or do you want to hear me do a recitation? Okay.

Now.

ATTORNEY KEVIN CRANE:

Mr. Chairman, also on the hardship, too, I think that also where it was originally built as residential space, I mean, it's not like we're asking to convert space that was storage and built as storage space to

residential space. It was originally residential space. And, you know, if it stayed that way, then we wouldn't be here.

CONSTANTINE ALEXANDER: But even if it had been, it's been abandoned for eleven years, right? It's never been used as residential space. Eleven years --

ATTORNEY KEVIN CRANE: That's right.

Go ahead, Evelyne.

EVELYNE MALLAKIS: Hi. I'm sorry, I'm just saying something I don't understand exactly what you're talking about actually, but I chose to make the point now. You say for eleven years it was not used. And I understand (inaudible). But like he said I was already (inaudible). And now for eleven years we never did nothing because economically when we start the business, we didn't have the extra money to do it. We always thought it was (inaudible) in that

space. Then I had the kids when they were small and we live in bedroom. And now we thinking my son is getting married next year, maybe he would need that space to live on. So that space is empty and maybe we can turn it, and he be able to live upstairs when he works downstairs so many hours. Or maybe because I'm getting older and maybe we still work for somebody else, maybe we move up there, us, and live up and down and be easier for us to walk back then before the restaurant we had Cambridge Pizza and we walk downstair and we live upstairs and it was perfect. So it's not just for the money and now we want to increase the value. It's a lot of things. Maybe family wise because that's a family restaurant. We want to keep it for my son or us, whatever we can do with it and not let that empty space go in there. And if not to us, to pay the mortgage, that's maybe not a hardship, but that will help us pay whatever

we have to pay. So....

CONSTANTINE ALEXANDER: Thank you. I appreciate that. I just want you to understand, and I am only speaking for myself. There's four other members besides myself. Is that the issue is density. How many people should we have in this structure? How many dwelling units do we have in this structure? And our Zoning, the City Council, the Zoning Ordinance has said you can't do this. You can't have what you want to do. There is a mechanism, however, where we can grant relief to allow you to do what you want to do. That is the Variance that your counsel has put forth. But there is a legal standard that we have to apply. And one of them is a hardship, a special hardship to you. And we may find there's a hardship. But I just want you to understand what the process is. That's what we're doing. We have to meet the legal standard to allow us

to vary, grant you a Variance, to vary the Zoning Ordinance, change from what the City Council has said has got to be the rules.

EVELYNE MALLAKIS: I understand.

CONSTANTINE ALEXANDER: At this point I'll close public testimony. I'll give you an opportunity to -- any closing remarks beyond what you've said?

ATTORNEY KEVIN CRANE: I have nothing further to say.

CONSTANTINE ALEXANDER: Okay. Questions or comments from members of the Board?

SLATER ANDERSON: Tad, can I see the file for a second?

TIMOTHY HUGHES: I think considering it's in a row of semi-detached houses like townhouses, you would probably find the density and FAR and all of those townhouses in a similar percentage range. They're not big lots and they do cover

practically the whole lot. I think it probably was residential in the past. And I, you know, I could see it being residential again. I think it's charming to live over a restaurant for another thing. And I do think there's an economic hardship that has to be factored in because of the recession for the last couple of years. It's made it difficult for any restaurant to make a living. So, you know, I'm in favor of it.

CONSTANTINE ALEXANDER: Just for the record, on the FAR issue. The FAR will be 2.1 in a 0.75 district. So we're talking about roughly three times what is permitted.

TAD HEUER: The FAR currently is --

CONSTANTINE ALEXANDER: Yes, but it's not -- people occupy 2.1. That's the storage space, that's right. No increase in FAR. It's already overly FAR'd building, but that's just a fact.

BRENDAN SULLIVAN: If this were a

void in the building, the building stopped outside of the proposed and they wanted to add, I would think that I would have a different take on it because they're adding mass, they're adding space, what have you. I think that under the present layout, the building is really being underutilized. And I think that what they proposed is probably a fair and reasonable use of the space. I sort of concur with Tim's analysis, that there is an economic hardship in not fully utilizing, reasonably utilizing that space. It was probably built with the intent of having a residence there and so I would not have a problem granting a Variance. But I guess the one flag that I have was the second means of egress out of the building. Maybe the architect can address that.

WILLIAM STERLING: We have in these plans --

CONSTANTINE ALEXANDER: These are

the same ones in the file?

WILLIAM STERLING: The same ones you have in the file. We show the existing main staircase. The entrance is here (indicating). There's already an existing second egress that is legal out the back. So basically it already is provided.

BRENDAN SULLIVAN: Okay.

SLATER ANDERSON: The fire escape kind of --

WILLIAM STERLING: Yes. It's an exterior fire escape on the back.

SLATER ANDERSON: You said you acquired the property next-door. Is that the one that's on --

ATTORNEY KEVIN CRANE: On Third Street.

WILLIAM STERLING: This one.

SLATER ANDERSON: On Third Street. Got it.

WILLIAM STERLING: That's a shared

fire escape with this here.

SLATER ANDERSON: Got it, right.

BRENDAN SULLIVAN: So that's now considered a merged lot; is that correct, Sean?

SEAN O'GRADY: I'm sorry?

BRENDAN SULLIVAN: Would that be considered a merged?

SEAN O'GRADY: If they were bought of the same entity, they would be merged, yes.

TAD HEUER: Was it the same ownership?

ATTORNEY KEVIN CRANE: I believe that they did. I'm not positive. It could be a difference in trustees on it.

TAD HEUER: You should hope there is.

CONSTANTINE ALEXANDER: You only have merger of course if one of the lots is undersized. Is this lot undersized?

SEAN O'GRADY: They're all

undersized, yes.

CONSTANTINE ALEXANDER: They're all undersized.

Anyone else wish to comment or we can go for a vote? What's the pleasure of the Board?

TAD HEUER: I guess I'm kind of on the fence. I understand the argument that it was built for residential, it is a residential structure in a residential neighborhood. It's not a situation where Brendan pointed out, you're putting a new structure on top of the existing buildings. It's an existing structure. I guess I'm also kind of cognizant of the fact that when we have letter here per dwelling unit, units is not a defined quantum. You can have big units, you can have small units. And right now they've got two very small -- are these studio units you have now? I presume they are. 400-some odd square foot and a 600-some

odd square foot unit. And the unit they would like to build is 1100, 1200?

ATTORNEY KEVIN CRANE: Yes.

TAD HEUER: So really when we're talking about lot area per dwelling unit, we're talking about two very small units and adding a larger unit. I mean, I could probably, it's not before us, but if they said we'd like to get rid of the 400 square foot undersized one, swap it out for this one, we essentially have two units. This one's a bit more useful. It's bigger. It's a three-bedroom so it's more family sized. I would see that as the more reasonable compromise. And what's pushed me back is even though we're at, you know, it's built residential, the Ordinance says that quite frankly doesn't matter. After ten years you're out. No use, and the whole point of the Zoning Ordinance is to get rid of non-conformities. And 2.1 in a 0.75

district regardless of the wisdom of the making East Cambridge a 0.75 is intelligent at all, it's what the City Council has said it should be. It's not a fight that you have here. It's a fight you have across the street. And when you're merely three times over your FAR and you haven't used it for ten years, it seems that one of the Ordinances expressly not to allow that. And I guess that's what I'm struggling with, the sense of reasonable, the sense of unit not being a defined term. I guess I think I would find a more equitable compromise of getting rid of the small, the 460-some odd square foot unit, replacing it with this one and calling it a day saying your unit count hasn't increased and maybe have two more reasonable units. But I'm torn.

CONSTANTINE ALEXANDER: On that last point I would also -- although it's not before us, suggest that I would be in favor

of granting relief if it were just a matter of taking the two smaller units and taking some of that storage space and increasing it. So you don't have a third unit. That you have the two units that are now bigger than they are. Or at least one of the two are bigger than they are. I think in other words, I think what Tad was suggesting is something I would support, too. But I still have a problem with what you're seeking tonight which is adding a third unit. You don't have to speak.

SLATER ANDERSON: Oh, yes. No, I mean, the mass exists. It's underutilized. I don't see a significant negative public impact. Not that it's pervious open space, but it's relatively low density around this building. So, I'm inclined, I'm inclined to well to rule against it.

CONSTANTINE ALEXANDER: I think everybody has spoken. Should we go to a vote

or do people want to speak some more?

TAD HEUER: Can we get a resolution on the parking issue to some extent because I'm still not clear as to how that's going to work.

ATTORNEY KEVIN CRANE: There are eight parking spaces across the street.

TAD HEUER: Yes.

ATTORNEY KEVIN CRANE: Which if the tenant, whoever occupies the dwelling unit wants one of the spaces available, one of the spaces will be available to them. And that's how we would satisfy the parking requirements.

TAD HEUER: So there are two units that are operational, now?

ATTORNEY KEVIN CRANE: There are two, right.

TAD HEUER: And are there those or have they in the past used parking?

ATTORNEY KEVIN CRANE: They haven't

used it. But one would be available. There are eight there right now. And one would be available if the -- if the tenant wanted it.

CONSTANTINE ALEXANDER: What happens if your client decides to sell that property across the street? They have to sell it subject to the right of the tenants of this building to use the parking space?

ATTORNEY KEVIN CRANE: Well, if they're using that to satisfy the parking requirements for this building and they sold that off, then the occupancy of this building would be subject to enforcement action I would think.

CONSTANTINE ALEXANDER: One thing we could do if we were to grant relief, and I can make the motion as a condition that you do make available an off-street parking space in the property across the street or nearby property.

Yes, sir. Can't do that?

SEAN O'GRADY: That lot is almost certainly encumbered to some degree and you may not be able to get a space necessarily out of that without relief, parking relief on that lot.

SLATER ANDERSON: For the rent because the spaces are committed to something else?

SEAN O'GRADY: Now, I don't know that. But, yes, you don't actually have the ability to grab that spot because it might already be sold.

SLATER ANDERSON: The only other thought I had was the acquisition of the property next-door which does have some open space. And I don't know if we're overreaching, but is there tying this relief to some condition on that piece as far as the open space?

TAD HEUER: That's actually merged. Quite frankly the way this application should

be, if they are merged, and they're common trustees, is that we should have a new application with all the FAR and all of the -- I mean --

SLATER ANDERSON: Well, that's the --

TAD HEUER: Here's, and now it's just adding things on. I guess my concern is what I stated before. I prefer to see maybe partially larger units, more usable units back to having two. I'm still concerned about the parking issue for the reasons that the Zoning administrator has raised. I think at the very minimum I would want this Variance cross-recorded against that lot so that anyone buying that lot would recognize they would be encumbered with three parking spaces at least to this building.

And third, if these are indeed merged lots because you have common ownership, technically we'd be treating this property as

202 Third Street plus whatever the adjacent property is. And that means a recalculation of your form. It means you may actually get open space. If there's open space on that property, it means that is shorter. You may have the better FAR calculation. I don't know. But, I'm kind of weary about going forward and granting a Variance on what could legally be only a portion of the property if you see what I mean.

ATTORNEY KEVIN CRANE: I understand what you're saying, yes.

TAD HEUER: Right. I mean, there are enough small things here that I'm just --

CONSTANTINE ALEXANDER: So I take it you're suggesting that we continue this case to allow the Petitioner to re-file the dimensional form and to give us more information about the lot as it now is, an enlarged lot and then we can make a decision on that basis.

TIMOTHY HUGHES: Well, we don't know necessarily that it's merged. What we want to know is if it's merged or is it not. So I mean, in any case I think a continuance might be in order, but it's not necessarily the case that the two lots automatically merge. If it doesn't create a conforming lot in any regard anywhere, then it wouldn't necessarily merge, would it?

SEAN O'GRADY: I think that it would only not merge if the deeds were held by different entities. If they are, I can't see why it wouldn't merge.

TAD HEUER: Yes, I mean the point of merger is to get your lots bigger and bigger until they hit the minimum lot size. So, you know, I mean, you sliver lots all merge together to become a substandard.

TIMOTHY HUGHES: Sliver?

TAD HEUER: Yes, bigger.

ATTORNEY KEVIN CRANE: If they

merged, it might be a more positive application.

CONSTANTINE ALEXANDER: That's exactly what we're suggesting.

BRENDAN SULLIVAN: And a parking plan for the lot across the street is in order, too.

TAD HEUER: Yes.

BRENDAN SULLIVAN: Yes.

ATTORNEY KEVIN CRANE: I didn't represent them when they bought the house next-door. So I don't know for certain.

TAD HEUER: In doing this, you know, you may wish to take in mind at least, you don't have to take in mind my thoughts, but it seems to be somewhat shared at least by the Chairman. You have at least two votes. Think about number of units versus space that you're taking up. If you can get -- if your client would be -- would entertain the thought of some reconstruction of how those

units are configured so we're still left with two units, perhaps more usable units, that would go a bit further towards relaying my concerns vis-a-vis the Ordinance to the extent to which we're being asked to deviate them.

ATTORNEY KEVIN CRANE: I'm not sure whether we'll -- we'll talk about that.

CONSTANTINE ALEXANDER: We're not telling you you have to do that.

Okay, this is a case heard. If we're going to continue the case, I think that's the sentiment. I think it's in your interest as well.

ATTORNEY KEVIN CRANE: Uh-huh.

CONSTANTINE ALEXANDER: We have to find a date where all five of us can be here again. The earliest date is February 10th.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Do we have space on our calendar for February 10th?

SEAN O'GRADY: Yes.

TIMOTHY HUGHES: What happened to early January?

SEAN O'GRADY: Early January was overloaded already.

CONSTANTINE ALEXANDER: We were overloaded for January.

Are all five people available for February 10th?

TAD HEUER: We are now.

HEATHER HOFFMAN: Could a member of the public make a request? Given that you're contemplating having them do an entirely new application and advertisement and everything and possibly involving a bigger property, would you not close public comment since you would be essentially looking at a different situation?

CONSTANTINE ALEXANDER: If we continue the case to whatever date -- first of all, we're not going to be re-advertising.

It's not going to be re-advertised, but just a continued case. We would open the case up to public comment again.

HEATHER HOFFMAN: Okay. I just wondered because that is not always what you have done in the past. Entirely new applications have come in and the public never even had a chance to see them much less comment on them.

CONSTANTINE ALEXANDER: I don't agree with that whatsoever, but that's not relevant to what we're talking about right now.

HEATHER HOFFMAN: So, that is why I asked. I think that you are correct that that's the right way to do it, but I wanted to ask because it --

BRENDAN SULLIVAN: We will continue this. If it comes to a new application, then we will --

CONSTANTINE ALEXANDER: It will be a

new application, yes. If it's not a new application, then we'll not -- we'll still have public testimony but there will be no new advertisement.

BRENDAN SULLIVAN: Correct. We will continue this, but if a new application is in order, then that's a new case.

ATTORNEY KEVIN CRANE: It would be in order if there was a merger.

TIMOTHY HUGHES: I would say so.

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: Right.

CONSTANTINE ALEXANDER: Okay.

Wait a minute.

BRENDAN SULLIVAN: And I would like to make a suggestion that the posting sign be changed, but also moved.

TAD HEUER: I'll say additional signs. I say for the reasons that you gave before, leave it where it is, but maybe another sign on the nominal posting.

ATTORNEY KEVIN CRANE: At 202.

Okay. Do that now.

CONSTANTINE ALEXANDER: Before we get to the actual motion. The sign will be part of my motion to continue. But what we want you to come back with is:

One, whether there's a merger. Advise us whether there's been a merger. And I guess if there's a merger, we'll find out with a new application.

Two, the issue about parking. Can we -- what kind of encumbrances and the like on the neighboring lot. Can we tie the parking to this lot for the new lot. Or if you can tell us if it can't be done, I'd like to know that. That's a legal problem.

And No. 3, to give some further thought to what Tad has suggested and which I've endorsed is as an alternative, which requires a new application -- as an alternative to creating a third unit and leaving two very

small units in, but just have two units in the building, albeit larger because you can use the storage space. I think that will address everything.

Ready for a motion? Anybody else wants to make sure they address -- did I cover everything that people wanted to hear for the next hearing? I guess so.

The Chair moves that this case be continued as a case heard until seven p.m. on February 10th on the condition that the Petitioner sign a waiver of time for decision.

And on the further condition that there be two signs on this building: One at the Charles Street entrance where a sign now exists. And another at 202 Third Street. Both signs should state the new hearing date and the new time, seven p.m. So on the sign that's on Charles Street, get a magic marker and just change the time, seven p.m. The

date to February 10th. And the other new sign will be -- I mean, you get it from the clerk's office. It will be February 10th, seven p.m.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case is continued.

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

(8:10 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10033, 281 Albany Street. Is there anyone here wishing to be heard on this matter? For the record, we have a stenographer. Give your name and address, please.

MELISSA NUGENT: Melissa Nugent, Signs On Site, 20 Tremont Street, Duxbury, Massachusetts.

CONSTANTINE ALEXANDER: You're the sign manufacturer?

MELISSA NUGENT: Yes, yes.

CONSTANTINE ALEXANDER: Okay. The floor is yours.

MELISSA NUGENT: The Variances -- we

are requesting a Variance just to move up the height of the sign. This is a photo coming down Albany Street from the Mass. Ave. direction. And, you know, within code we would be on the first --

CONSTANTINE ALEXANDER: Excuse me, just one second. If you could just leave the room and not disrupt us.

Go ahead, I'm sorry.

TAD HEUER: The stenographer should note that was not being directed to the Petitioner but others in the room.

MELISSA NUGENT: The customer just isn't satisfied with the visibility. If we were to keep it at the first floor level, you can see that there are trees that are blocking the view. And this is standing right on top it. So their desire is that you're drawing traffic coming down as far as, you know, Mass. Ave. because this section here is visible as far as Mass. Ave. And the sign at Seventies

(phonetic) across the street is up at least three or four --

CONSTANTINE ALEXANDER: We gave them relieve to do that.

MELISSA NUGENT: Yes. So I think that -- you know, they're seeing -- they want to same visibility. They're trying to make their mark in this area. The building owner has approved the location and the dimensions.

CONSTANTINE ALEXANDER: You're going to be 30 feet above the street level. The Zoning requires no more than 20 feet. So you're looking to go up 10 feet more.

MELISSA NUGENT: Just move it up, yes.

CONSTANTINE ALEXANDER: I'm looking for a copy of that plan in our files. There was one before.

MELISSA NUGENT: You know what, I can't remember the gentleman here. When I met with him, he just suggested bringing

photos. That that's something that was not in the --

CONSTANTINE ALEXANDER: Okay. When we give relief, we tie it to this. If we are to grant you relief, this is what you want. It's got to be this way. You understand that's the way it's got to be?

MELISSA NUGENT: Sure.

TAD HEUER: Except that, as I understand that you won't have the backing done; is that correct?

MELISSA NUGENT: No, that's just a banner we had put up for them. That's just showing the placement. That's a temporary banner to show the customers the actual dimensions. But it will not have a backer. It will be dimensional letters applied directly to the face of the building.

CONSTANTINE ALEXANDER:
Illumination?

MELISSA NUGENT: At this point they

wanted to put in for the Variance without illumination. They may apply for a separate permit after the fact for that. They want to do halo illumination --

CONSTANTINE ALEXANDER: They probably would have to get a second Variance to come back before us.

MELISSA NUGENT: Les didn't mention that the lighting was not, you know, did not -- was according to the Zoning By-Laws. There wasn't anything in the lighting that would require a Variance. Just the height of the sign.

CONSTANTINE ALEXANDER: That's true right now. But depending if they do want to illuminate, depending how they illuminate it, they might have to -- your client might have to come back before us.

MELISSA NUGENT: Okay.

CONSTANTINE ALEXANDER: Questions from members of the Board?

TIMOTHY HUGHES: It's conforming in terms of size?

MELISSA NUGENT: Yes. This gives a little bit more --

CONSTANTINE ALEXANDER: The only issue is height.

MELISSA NUGENT: Yes.

CONSTANTINE ALEXANDER: Area, according to Les Barber's calculation, you are within the requirements.

MELISSA NUGENT: Yes.

TIMOTHY HUGHES: Okay, I'm good with it.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. I'm going to close public testimony. I'll give members of the Board a few moments to look

over the plans.

Did you do the signs for Sophia?

MELISSA NUGENT: Not the exterior one.

TAD HEUER: Are they planning on painting that wall to give you a better --

MELISSA NUGENT: Yes.

TAD HEUER: -- contrast?

MELISSA NUGENT: That was done during construction. This picture was taken during construction. This is the new, like a new exterior rendering. I think it's like a light tan color now.

TAD HEUER: Okay.

And is the word -- I presume Aileron Therapeutics is their corporate name?

MELISSA NUGENT: Yes.

TAD HEUER: Can therapeutics be seen from a distance?

MELISSA NUGENT: The therapeutics is 5.75 inches, so I want to say, yeah. I

mean, even a two-inch letter can be -- is visible for at least 100 feet. There are technical -- I don't know those off the top of my head.

TIMOTHY HUGHES: Can you walk back about another 95 feet?

CONSTANTINE ALEXANDER: And this, by the way, this view is going down Albany Street from Mass. Ave?

MELISSA NUGENT: Yes.

BRENDAN SULLIVAN: It's really the only place it can go because of the amount of mechanical equipment on that roof.

CONSTANTINE ALEXANDER: Yes. Well, plus the one that makes it most visible. And it's not -- and I would also observe it. We did allow a Sophia across the street. It's a higher sign on a higher building, but I don't see any impact on the landscape at all.

TAD HEUER: Where is the parking for

this building in particular?

MELISSA NUGENT: It's around the other side, so they do have a secondary sign going on the entrance side of the building, but that is within the Zoning By-laws and there's no need for a Variance on that sign.

SLATER ANDERSON: This view is coming from Mass. Ave?

MELISSA NUGENT: Yes.

SLATER ANDERSON: And this is typically how people would approach the building?

MELISSA NUGENT: Exactly.

BRENDAN SULLIVAN: So the people from 240 Albany Street coming back from Mass. Avenue?

CONSTANTINE ALEXANDER: Further comments or are we ready for a vote?

TIMOTHY HUGHES: I'm ready for a vote.

CONSTANTINE ALEXANDER: The Chair

moves that this Board make the following findings:

That a literal enforcement of the provisions of our Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that the Petitioner, given the nature of the architecture of the building and its location of the lot would not be able to properly identify the fact that this building is occupied by the Petitioner.

That the hardship is owing to circumstances relating to the -- really the shape of the structure and the location on the lot. And the nature of the architecture, which prohibits -- diminishes the ability to have a sign no higher than 20 feet as required by our Zoning By-Law.

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.

This sign is departure from our Zoning By-Law. It is modest in nature. It furthers the identification of a building in a life science area in an area that has a number of life science companies. And that it is necessary in order to identify the occupant of the building.

On the basis of these findings the Chair moves that a Variance be granted the Petitioner on the condition that the sign be located on the building at approximately -- well, at a spot identified on the plan initialed by the Chair. This plan doesn't have -- all nature of the sign because it's based on a banner.

TAD HEUER: Do you have it?

MELISSA NUGENT: We should. I mean, we did.

TAD HEUER: You were just showing us something, right?

MELISSA NUGENT: I did have this.

But we did submit, you know --

TAD HEUER: Is that where it's going to go?

MELISSA NUGENT: That's where it's going to go, yes.

CONSTANTINE ALEXANDER: Okay.

A plan prepared by Signs On Site. One page initialed by the Chair. I guess that's it. On the basis of this, the Chair moves that a Variance be granted.

All those in favor, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

MELISSA NUGENT: Thank you.

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

(8:20 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10034, 277-283 Western Avenue. Is there anyone here wishing to be heard on this matter?

PAUL CAMMARATTA: Hi, I have Sean. I'm Paul Cammaratta.

ATTORNEY SEAN HOPE: Good evening, Mr. Chairman, members of the Board, Attorney Sean Hope, 130 Bishop Allen Drive, Cambridge, Mass. I'm here tonight with Mr. Paul Cammaratta. Mr. Cammaratta is a former Cambridge resident. Mr. Cammaratta has overseen several residential projects in

Cambridge. We also have the project architect, Mr. Peter Quinn. He is going to walk through some of the floor plans and elevations in a minute after my opening comments.

So this is an application, this application is a proposal to convert a one-story brick building, commercial building into a mixed-use building with ground floor retail and two units of residential on top. This project or others like it would not likely be proposed five or ten years ago. Part of Mr. Cammaratta's investment in this property is a reflection of the evolution and the growth of the neighborhood. The neighborhood has already proven through use of Basta Pasta and Sly's Barber Shop that there is a demand and demand can be met for ground floor retail.

CONSTANTINE ALEXANDER: Basta Pasta's no longer there, right?

ATTORNEY SEAN HOPE: No, it is there. It's actually a block up and it's doing very well.

PETER QUINN: It's about a block up.

ATTORNEY SEAN HOPE: Yes, it's about a block up. And actually Basta Pasta may be looking for more space.

But the concept really is that Mr. Cammaratta when looking at this property, really felt that there was a need from the community that would actually support ground floor retail.

And also there's been a significant investment by the City. The City is conducting the Western Ave. reconstruction. So the City has met with neighbors and created a plan to redo the infrastructure on Western Ave. for plumbing and sewer and water. So it's going to be a significant investment. Also street side and streetscape tree plantings planned. And there are some

neighbors here who can speak better than I can about that. But there's significant effort by the City.

So this building sits on approximately 3,000 square foot lot as a commercial -- containing a commercial building in Residence C-1. And so, we don't have the -- in the right-hand corner you can see the existing building. So this building has all the elements of a commercial building. It has the large ground floor street windows. There's very little space for air and light in the middle and the rear of the building. And as you can tell, there's no front yard setback. And it's on a corner lot, so there's two sides. But I think there's four -- there's actually no side yard setback on one half and about 12 feet at its widest point on the rear facing the Dodge Street side. So this building has had a commercial history. There were three,

most recently three commercial uses. One was Phil's Variety Store. The second was a laundry mat. And at the corner of Western Avenue and Dodge Street was Ebony Club. And this was a men's social club dating back to possibly before the 1930's where local, mostly African-American men would come and meet and gather. As late as 2009 there was still a lease and it was back and forth between the previous owner. And whether or not the club was active, I think it declined in membership. Part of that issue was also a negotiation between the tenants and the landlord about the upkeep of the building. And so as you see right now, the building actually is in disrepair. And so initially going into it Mr. Cammaratta knew that there was going to be significant financial investment in restoring the building.

I'd like to go to the elements of the hardship itself.

CONSTANTINE ALEXANDER: Before we get there I just want to get on the record. The nature of the relief you're seeking, you're seeking both a Use Variance and a Dimensional Variance for the residential structure and various kinds, including parking; is that right?

ATTORNEY SEAN HOPE: No. Well, for the Variance is to actually to reintroduce the ground floor retail. So this is a commercial building that had commercial uses in it. So we want to reintroduce those. And then the additional residential uses on top are the as-of-right uses in the district. So we're not trying to change -- so we have three Variances. One is to reintroduce ground floor retail. So I guess that would be a Use Variance. Although it wasn't formerly residential, now it's converted to a --

CONSTANTINE ALEXANDER: No, I know that. But as I understand the City's

practice, when you have a commercial non-conforming use in a residential district, if the nature of what that commercial use was changes to a different kind, you need a Use Variance.

ATTORNEY SEAN HOPE: Exactly.

CONSTANTINE ALEXANDER: So you're looking to expand the universe of potential commercial tenants, you're looking for a Use Variance.

ATTORNEY SEAN HOPE: Well, yes, and actually we actually kept it within the use that were there. So on Article 4.35 we have general retail, cafeteria, restaurant. These are all uses over this period of time that have been used there. But some of them have lapsed depending on -- Phil's Variety Store hasn't been active that long. But the Ebony Club. So we're not actually trying to bring that back. So, yes to your point, but we are keeping with the general retail range

of uses that preexisted. Because of the length of time, it was cleaner to go for a full use Variance to make sure that we could bring back those uses and not have to rely on the fact that we're -- actually when they fell in and out of use.

CONSTANTINE ALEXANDER: I've got some thoughts and some comments. But I don't wanted to interrupt your presentation. I'll bring them up later so keep going.

BRENDAN SULLIVAN: So you don't have any proposed tenant for the space?

ATTORNEY SEAN HOPE: No.

BRENDAN SULLIVAN: But you want to reserve the rights the existing tenants to go back in there?

ATTORNEY SEAN HOPE: So the building is vacant. It has been vacant since 2009.

BRENDAN SULLIVAN: Right. Well, I mean, I know there are no tenants there. The use, the prior uses should be able to start

up again.

ATTORNEY SEAN HOPE: Yes. And one of the prior uses I believe involved alcohol. I don't know if that was legal or not. So we're not going for that. We're just really general retail uses, cafeteria, restaurant, barber shop.

BRENDAN SULLIVAN: So the classifications of what you're looking for relief for to allow the possibility --

ATTORNEY SEAN HOPE: And we tried to be very specific about that to make sure the certain uses that may or may not have neighborhood support.

So, we're going for a Variance for the ground floor uses. We also need a Variance to construct the two units of residential. And we also need a Special Permit relief for parking.

CONSTANTINE ALEXANDER: And on the Variance for the structure, are you going to

go -- one of the reasons you need is have to from FAR from 0.78 which is slightly non-conforming to a 0.75 district to 1.58. So you're going to roughly double the permitted FAR.

ATTORNEY SEAN HOPE: Right.

I'm going to skip around, but to answer your question, when we looked at the site, because the building itself is not suitable and not built for residential. So, when we looked at and we realized the massing existed on Western Ave, we actually took the whole strip and we saw two and three-story elements all the way through. When we wanted to decide how many residential units to build, we looked at the site and said if the site was empty, what is the lot area per dwelling unit on that site? And so the lot is about 3,000 square feet. And in C-1 the lot area per dwelling unit is 1500 square feet. So really what we did is we said, okay, so two units in

terms of the density is what would be allowed on this site. I think we would need relief for 100 square feet.

And to that point when we looked at the proposal on what to build, you know, we first started off with a block. And we actually recessed it back from the street about ten feet to try to create a transition from busy Western Ave. to the neighborhood. And as Mr. Quinn will talk about, the rear of the building, instead of doing a box that fit there, we actually did a hipped roof with shed dormers. So that if you're coming down Dodge Street, you would actually think this is the back of a residential building which we think is actually an improvement of what was currently there. Just because it was a flat commercial building.

CONSTANTINE ALEXANDER: Let me ask you a question, Sean. Usually when we have a petition for a non-conforming use -- you

bought one of these, and you have a commercial structure, it's not suitable for residential purposes, and so short of having to tear the building down and build up a residence, you ask for relief and we've granted, not you personally, but Petitioners have asked for relief and we've granted it. Here you're proposing to do substantial construction on the project. Why not build just pure residences on there and have a conforming -- subject to the dimensional relief you may need, a conforming use? Why are you asking us to continue a non-conforming use when the whole scope of Zoning, the whole thrust of Zoning is to try to phase out non-conforming uses?

ATTORNEY SEAN HOPE: Well, one, we did feel that there was successful at one point, successful ground floor retail. So we could make this site based on the square footage, we could build up 35 feet, but we

actually felt that was the highest and best use of that property. There is a long tradition of ground floor retail uses. We feel that there is a trend now to actually promote that ground floor use. So, we felt that if we could actually have community realty that worked, that people frequented and was supported by the neighborhood, as well as the appropriate size residential use on top, that would be more in line instead of just creating three, four or how many units. Also, there is the issue of parking. So if we did, and what's existing there, which is about 2500 square feet on the -- 2200 square feet on the first floor, we still would have the same issue of parking.

CONSTANTINE ALEXANDER:

Absolutely, yes, you're right.

ATTORNEY SEAN HOPE: So, we felt that all residential would actually probably be more than what was needed. And we felt if

we did the mixed use concept, we would get better buy-in from the neighborhood. And there are some letters of support on that. And there's a financial component where, you know, if it's all residential that would cut either way depending on the market. So this really did allow, especially in this economic climate two streams of revenue; we have one long term and also residential units. And we actually are focusing on apartment housing although we can't control that.

Another aspect of the Special Permit is about parking. And, you know, this area and there's a parking study there that was conducted by the City as part of the Western Ave. reconstruction plan. It shows that we consider this the middle of Western Ave. There's a lower part that's closer to Mass. Ave., and an upper part that's closer to Memorial Drive. So, when they did the parking count, and I think it's from Howard

Street to Putnam Ave, they counted that there was 53 available parking spaces. And so compared to the lower and the upper half, this has the greatest amount of available parking. The peak time for parking, the most congested time is from eight p.m. to four in the morning. That's when people come home from work. And the studies showed that there's about 25 percent available parking. Now, in talking to the neighbors and also talking to Jeff Rosenblum from the City, there's a proposal for a bike lane. This bike lane unfortunately is going to I think take up in this particular section about eight parking spaces. So there's not as many parking spaces, and I think this is proposed. But I would say one, that out of the whole stretch of Western Ave., this is probably the stretch that would absorb it the greatest. And also when you're looking at the Special Permit criteria, one of the criteria is access to

public transportation. This is directly on a bus line, and is also -- so in front there's actually a bus stop. It's not in front, very close to this location as well as a short walk to the Red Line and Mass. Ave. So that's kind of why we said a mixed use as opposed to fully residential because that would make the parking if we went for a greater amount of units even more challenging.

So I think at this point now I'd like to turn it over to project architect Peter Quinn and see if you can walk through some more of the thinking.

PETER QUINN: For the record, my name is Peter Quinn, Peter Quinn Architects.

CONSTANTINE ALEXANDER: Just speak up a little bit.

PETER QUINN: So, the basic idea from an architect's point of view is, you know, Western Ave. and many of the other avenues in the city have this idea where you,

have this history where a single or a double house was built, and then somebody built a storefront in front of it, skirted the building. This is what is goes on right here, and created a commercial space. And in effect we're doing it in the opposite direction is what we're proposing which is to, you know, commercial basically there and we want to use that type, but not inventing if it's already there. It's throughout the city is that type of having two houses, two units on -- above a commercial space. In order to achieve that, we first are making an effort to preserve this lovely cast stone front which needs a lot of work. So beautiful brickwork on the side. It would all have to be restored keeping the original columns. The pressure treating surface in order to -- pressure washing the surface in order to preserve it. And then in-filling with kind of a modern glass facade. Having

done that, basically everything behind it will be removed. It is in very poor condition. I mean, there are areas where I haven't been able to go in this building because of floors caving in. But, the whole idea would be to remove that. And then essentially build a steel platform that holds up the houses. I mean the residential units. So they float above the building on their own structure. And then following that it's in-filled around the perimeter in order to create deck space up to this level facing Western Ave. You can imagine the expense of doing this, both parts of this need to work in order to make it happen because putting a steel structure in something like this is very expensive.

Once inside the units themselves, they're basically bi-level with two bedrooms, a lower level with living, dining, kitchen and an upper level with two bedrooms,

a master and a smaller bedroom.

And as Sean said, as we go to the back of the building, it's actually a gable style roof, shed dormer, which is similar to the kinds of houses, house types that you see on Dodge Street.

We did a shadow study which I think you have in the record, that really shows a very minimal impact. Certainly during the winter you have impact. It's inevitable. But during the equinox and so forth, it's very minimal. There's a little bit in the morning on some of the adjoining structures. But because of the way we cut it back in the rear and because of the way it's positioned relative to the sun it has a minimal impact.

Anything else? I'd be happy to take questions.

CONSTANTINE ALEXANDER: I'll open it to public testimony. The Chair will now open up public testimony. Is there anyone

here wishing to be heard on this matter?
Come forward and give your name and address to the stenographer because we're keeping a record of this case. Of all cases, not just this one.

LAWRENCE ATKINS: My name is Lawrence Atkins. I live at 45 Hayes Street, Cambridge. I am the president of the Riverside Neighborhood Association. I have on a few occasions met Sean. And the other gentleman I've never seen. I've seen renditions, not of this caliper, but of other. And I also have had inquiry within the neighborhood itself on some type of activity happening for the building being stagnant and seeing the city inspectors inquiring specifically about the facade. It's been decaying and becoming dangerous for sometime, and I think as a matter of fact, there was a lien placed on the building because the prior owner didn't even respond.

I have encouraged the representative to talk to mainly the abutters of it. And once that's done, to be more than willing to meet with us and have a broader conversation.

The current Ordinance in the area that goes from Howard Street to Western Ave, Putnam Ave. was put in place specifically due to the fact that the area was losing its commercial activity. There are only this, the Western Front and the property of a prior member of the city police department and there aren't -- and the pizza shop. So as we look at it, the area becoming totally residential would be an impact. The area -- that spot itself had a good heartbeat. It can still. It's -- it is a magical space to coordinate. The idea right now with the second and third story I have already entered into conversation. It's going to be a tough road. The Ordinance alone makes it tough by itself. The general public -- I mean, you

got a church all the way to the right. Last I was in there, their stain glass is on that side of the building. And I know they don't want any shadow of any kind coming. I'm hoping that the developer of the space goes to great extent with this.

I've been before the Board many times and heard -- we expressed many things of concern. And I think as a person who interacts wholeheartedly in the neighborhood, not for any one person, because it's ridiculous to think that change can't come at a reasonable fashion, but I think we should go to the extent of the presentation. We can't have words because the neighborhood has already had others come with what can't hurt and what won't shine. And science has led us to the day now we can give a real good presentation to satisfy people's concerns. So I hope we go beyond just paper presentation, that there's actually a model

of some sort, and along with individuals who's verified the shadows and this steel. The content of how it's going to be done, and disturbance in the area.

I mean steel alone to me means a lot of drilling. And we've already had the impact on pylons on how they go down, where they go down. So, I think there's a lot of work to be done. I'm not here to say no. I am here as part of the Riverside Neighborhood Group who has spent a long time and encouraged this developer to reach out strong. The worst thing to do is move forward without the strong reach out, particularly with the neighbors. We are a group who back the neighbors, because we don't live there everyday, they do. And having conversation with them and the person who had that Ordinance, they are looking for a lot of reach out. So, please, I'm hearing the Board tonight, maybe you all should encourage it. I'm willing to play a part of

it as long as I'm in the neighborhood to get those mutants out, to get the owner of this site to get a face or a name so people can get to see him or her, whomever it may. And I'm looking for the best means that this is going to move forward. And even with it if it doesn't, the more transparency you place here, the probability of whatever that's going to happen to that space is needy, but you definitely don't want your abutters to be your greatest force against, because sometimes that becomes anything you do and then whoever is in there is going to help that particular project move forward. It's a commercial space, not a lot of parking. Definitely need the neighborhood to be in there and out of there. So more or less I'm reaching out all across the board here. Just don't ambulate this and let it go forward. This is the first I heard about this tonight. Okay? I know I'm an active person. But I

had got wind of this through another individual. And I know there are other people who I called to try to get here. They didn't know anything about it. Okay? So whatever mechanism, I'm willing to be a component of getting the word out to make interaction of this. But this meeting tonight, I know you got probably things that are on paper, but it wasn't known. Okay? In my circle it wasn't known.

And the last I want to do is strike a match to ignite the Riverside Neighborhood Association because that's what does it. You all know when panic hits, they show up. And then you've got everything under the sun probably the lengthiness to be here. And I've really been back home, and that's where I really spent my time. So please, call me. You know my number. Let's get this material out. We're gonna work it. And I ask whoever the owner is, bring him in. If that's the

owner, you know, I'd be more than glad to trade some business stuff. People ask who is it? Who are they? We're in the area where we had enough university activity and there's always that worry. So the work is done, the paper's on the table. I'm nobody that hides. So whatever it's worth, let's pump it up. Let's make the next visit a big visit. And maybe you'll hear some things. There are people who are looking for a very active spot here. So am I. And as far as whatever you're rising above, you know, I've explained wholeheartedly the hurt and you might as well get it here now and not lacks.

CONSTANTINE ALEXANDER: Can I ask you a question?

LAWRENCE ATKINS: Yes, sir.

CONSTANTINE ALEXANDER: If the proposal before us was not a mixed use but just to refurbish the commercial space, would you feel more in favor of something like that

than the proposed mixed use or on the same token suppose the proposal before us is to demolish this, put up a residential structure and we would have to grant relief. Which would be your preference speaking on your --

LAWRENCE ATKINS: Four years ago we took that on face, face value, because of the park that was going down the end of the street and the expected change of having pedestrians walk up and down the street. We don't want to become a dead zone. A zone that offers nobody nothing.

CONSTANTINE ALEXANDER: We understand that.

LAWRENCE ATKINS: That's why we said one story. If you look at the Joan Harris petition, it says one story.

CONSTANTINE ALEXANDER: So your preference would be rebuild that commercial space to be a one-story commercial space only?

LAWRENCE ATKINS: On the first floor level and the second floor be occupied, so be it. That was actually how it was written. We weren't trying to isolate out anybody. But maintain the activity that should be in the space. And historically there's been a lot more commercial activity on the first floor of Western Ave. and it has been diminished. And we feel as though if you need me, I'll be happy come in here to testify to it. But it's down to the minimum. And the farther it goes, the further we become a dead zone of just people who live in the area and offer residents of it mixed use, nothing.

CONSTANTINE ALEXANDER: Thank you.

BRENDAN SULLIVAN: But, Lawrence, as I go up and down -- well, you go up one way Western Avenue, there is a lot of what I would consider tired commercial space that obviously needs to be revitalized to make it attractive for the neighborhood. And I

guess my question is, you know, how do you get to that? And I may be asking the same question a different way, but is commercial space welcomed and needed? There is some there now, but --

LAWRENCE ATKINS: The area historically has always had some type of activities right there. We're in a glitch right now. We have a lot of ideas. People with ideas out there. But when they actually -- when we come down and try to purchase property as it stands, you know, half a million. You know, three quarters of a million. I mean, these minds are good minds. So you already looking, you know, what can you put in the space to generate them funds? We're not talking about people who are just recently purchased property. We're talking about people who have been down there for years. Maybe you need to talk to them. Maybe they're the ones who need -- if the

buildings aren't in order which has always been our question, how come? And to generate movement.

BRENDAN SULLIVAN: So the question, you know, once again we could have this whole which we're not going to have tonight discussion, is the basically it comes down to economics. So you've got some tired commercial space which could service, and I think should service the neighborhood, the community. So they don't have to walk down to the square for whatever.

LAWRENCE ATKINS: Yes.

BRENDAN SULLIVAN: And then it becomes neighborhood oriented, but then it comes down to dollars and cents to revitalize this commercial building is going to be prohibitive in order to get the rents to make it worthwhile and then how is that going to support a business? Because no business is going to be able to support, you know, pay the

rent that is required. So I guess another question is does the second floor help support the first floor? And does the first floor help support the second floor? Or is it all one unit? You know.

PETER QUINN: All connected.

LAWRENCE ATKINS: That was our give when we had it written. We knew that the commercial activity on the first floor may not be able to sustain the purchase of it. But to give in on the second floor to be a problem made into it, would assist in it maintaining the first floor as commercial. And the bonus would be the second floor activity. We're talking about a building who never had a second floor. Never.

BRENDAN SULLIVAN: Right.

LAWRENCE ATKINS: So whoever purchased it, would have a second floor activity. And to work -- right now that's exactly that's how it stands. That's

exactly the conversation. So was it put in there? Yes. To make sure that it was a viable piece for someone to come along and purchase it by some means. Yes, there was some building refurbished, needed. Under whatever regulatory that was here and that's why it was written two floors, not just commercial space on the first floor.

BRENDAN SULLIVAN: Okay.

LAWRENCE ATKINS: Okay? Thank you.

CONSTANTINE ALEXANDER: Thank you.

MARTIN BETTS: My name is Martin Betts. I'm the owner of Seven Dodge Street and 13. Seven Dodge Street is right on the back of that building. All right.

I have a couple of concerns. My concern is parking with Western Ave. being done over, we're going to lose, as he said, eight parking spaces. So, that means more people go on to these side streets. Also, on Dodge Street, they are doing condos. Six

condo units are going in. So, you can average a car and a half for those. And now, they want to put more apartments here. It's just -- there's a parking issue. Really, you know. There got to be some kind of relief for the parking issue.

CONSTANTINE ALEXANDER: We understand that.

MARTIN BETTS: And second of all, you're going to put on a second floor, third floor on the topography, I'm concerned about the water, underground water that forces more water into that area. We had the concern back when at Harvard? Harvard putting their building down on the corner of Memorial Drive and Western Ave. And we were concerned about them putting down the steel units and pushing the water table further back into the neighborhood.

Under my -- I think under Dodge Street there is a couple ponds under there. So

water comes up from the basements. So now with these pylons going in, I'm getting concerned with how the water structure table will be down underneath the ground.

My other concern is, you know, it's nice, but the entrance and the exit of that building is in the back.

CONSTANTINE ALEXANDER: For the two residential units.

TIMOTHY HUGHES: The residential units you mean?

MARTIN BETTS: Yeah. So, how do they get out? There's a little walkway between the church and the building. So that's what is going to be the exit and entrance to Western Ave?

CONSTANTINE ALEXANDER: Why don't you on the rendering show where that is.

PETER QUINN: In the back here between the end of this building there's about a four foot wide.

MARTIN BETTS: It's only about four feet.

PETER QUINN: Eight. That would be put in to allow to exit to the rear.

SLATER ANDERSON: And not the other way?

PETER QUINN: There's parking around there.

MARTIN BETTS: There's four feet by six -- there's some of that footage belongs to me. That fence went inside. So I don't know what the footage is between the building and the boundary on that side.

CONSTANTINE ALEXANDER: Okay.

MARTIN BETTS: Okay?

CONSTANTINE ALEXANDER: Thank you. We appreciate you taking the time to come down and express your thoughts.

Anyone else wishing to be heard?

JAMES LANE: Hi. My name is James Lane. I own the property just right next to

that building. The white, right next to the white, 275 Western across the street from the Dodge.

My major concern is still the same as the parking. Because right now I have a two-car garage, and my tenant car garage is over right there. Even right now we new building right there. Sometimes people just park in there and my tenant just cannot get out of the garage. It's always been argue, they call me and say hey, somebody parking there. We have so much problem with that. I have concern about the parking.

Thank you.

CONSTANTINE ALEXANDER: Thank you for coming down.

Anyone else wishing to be heard?

BHUPESH PATEL: My name is Bhupesh Patel. I'm an architect that does a lot of retail in Cambridge for the last 15 years. And I worked with a lot of building owners in

Harvard Square which is right in between. And basically I run into the same problem with the single-story retail buildings. And we can never get the numbers to work because they're called a triple net lease. Which means the person that occupies the space has to maintain everything in the building. So a lot of times we try to encourage the owner to put the risk out there and develop a couple stories on the building. It's quite a lot of risk as well as Variances, and that defrays the cost between two and three condo owners as far as meetings goes and deal with property tax and basically anything for the monthly cost on the management building. So we know from a retail standpoint it can be very sustainable to have three to four stories on what used to be a single-story retail to make retail viable. And I know it sounds -- it can sound extreme, but we had done a study for Assembly Square 15 years ago that I was part

of to determine how much retail was sustainable in Assembly Square and how much residential development you'd need. And we looked at Somerville Ave. and Mass. Ave. and Central Square and Porter Square as benchmarks, and we figured out that basically if you make \$100,000 and you live in that neighborhood, 30 percent of your income was going to be expendable. So that's \$30,000. But only 15 percent of that would be spent on local retail generally which ends up being \$4500. So we can compare that money and how many people live in Central Square compared to what the rents are for retail. And it turns out that basically less than 30 percent of the income that people make as a retail owner comes from the residents that are local, and the rest of it comes from things like they happen to own the building and don't have much of a mortgage or they're finding some other way to make money by having a website or something of that

nature. So it's very, very, rare to have a building pay for itself when it comes to retail even with a few stories of development on it. But single story is just not sustainable.

CONSTANTINE ALEXANDER: Another approach could be for the owner of the property is just this is a residentially zoned district. Retail is non-conforming which troubles me. I'm going to get back to that. Suppose the owner of the property just tore down that retail space and put up a residential structure with underground parking? Is that, I'm not putting you on the spot, but is that feasible thing? Is the cost of that substantially higher than what they're thinking of doing right now?

BHUPESH PATEL: It's an option that other people have used, but if you look at most main street zonings, whether it's Mass. Ave. or Western Ave., planning departments

try to discourage existing retail to be eliminated. They try to preserve it as much as they can. For example, the Mass. Ave. Overlay District between Harvard and Porter you have try to keep the retail you have.

CONSTANTINE ALEXANDER: One of the issues we have here on Western Avenue, the city has zoned this as residential.

BHUPESH PATEL: Exactly.

CONSTANTINE ALEXANDER: I mean, so the city's intent has got to be to phase out the commercial on Western Avenue. And one of my troubles with the Petitioner is they don't want to phase out.

BHUPESH PATEL: Yeah.

CONSTANTINE ALEXANDER: The analogy to Mass Ave. or other places is appropriate.

BHUPESH PATEL: Sure, yeah. I don't think it's appropriate to think of Western Ave. of this retail strip that can exist. The point is that there are pockets

that have retail or that involve retail only because of the way they cross paths for a lot of the community, and that is one of the locations that I know very well. That's why I feel like that retail, if retail's ever gonna work and Western Ave., there's a few spots where criss-cross with certain activity and certain sort of ecosystems of things going on where it's worked in the past. The neighborhood probably is aware of that would love to preserve that spot. It animates it, creates some lighting at night, makes it safe. That's one of those spots that has evolved. So for that retail to go, it's just going to make more of a dead spot between the other retails if they're relying on it. It will never be a retail strip. We just don't have the density there. But any way to get the retail there to survive would be great and it's very common knowledge in the development industry from an architect's

standpoint and a planning standpoint, that one-story retail is unsustainable. We have the problem on Mass. Ave. and Harvard Square with building owners. For it to work on Western Ave., you know --

CONSTANTINE ALEXANDER: So, you have to allow them to put some residential structures on top. If we want to preserve the retail space that's the only way we can do it.

BHUPESH PATEL: Correct.

CONSTANTINE ALEXANDER: Okay.

Thank you.

Anyone else wishing to be heard?

(No Response.)

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

The Chair would state for the record that there are a number of letters of support in the file. I'm not going to read them. Based on my perusal of the file there are no

letters of opposition. So only the letters of support. And people writing the letters of support are largely -- not largely, but a number of them are business owners in the general vicinity of this project.

Further comments, Mr. Hope?

ATTORNEY SEAN HOPE: Yes. I want to start with -- so to the Chairman's point about phasing out ground floor retail. When we approached this project, and I did talk to Mr. Atkins I said -- long before we even applied for this project. And part of the conversation was if we heard from the neighborhood or community that you know what, we don't care about the retail here, why don't you go ahead and tear down and put up residential, I think that would have been a very different conversation with Mr. Cammaratta and we probably would have brought a different project before you. One of our goals in creating this mixed use, one

we thought that it would work. But two, we also felt that this was a buy-in for the neighborhood. I mean, you're next -- you're in close proximity to an existing church. And as Mr. Betts said, we're in close proximity to his neighborhood. So part of this idea was, okay, how do we get by and on any project? This is an expensive project no matter which way you did it. You need substantially amount of Zoning relief no matter which way you went. Whether it was full residential or just mixed use concept. So we came here not because it was our idea but it was also feedback and we thought we could get support. I think one of the important letters in the file is actually from a direct abutter which is the church itself. And, you know, he's dealing with the issue, I mean he, Pastor -- Reverend Wilkins is also realizing there's a parking issue. I mean, you know, there on Sunday mornings not

only because of what's there but just the fact. And I would like you read that letter in the file because I think it's important, he clearly states that although there's going to be a parking issue and he has -- he's against the bike lane which is part of the reason you're going to lose eight spots. He feels the renovation of this building outweighs the potential parking issue. Obviously part of that is because of the public transportation nearby. And, you know, I did make that argument to him. Also, too, he's aware of the six condo units that are being built.

I'd like to add about the condo units, these were existing rental housing. This is not a vacant lot where they're adding six new houses. Now, if it's going to be condos, there's probably an average 1.4 whatever the number was thrown out for the number of cars. But I think my point is there were people in

residents living there before. They may have had cars, they may not have had cars. I would also say with the proximity of public transportation, you may get people who already recognize this is a dense neighborhood, and as many people who choose to move to Cambridge at the price when they do move in, they actually moved there because maybe they're over the bridge at Harvard University or Allston/Brighton or they live on the Red Line. So, I don't think you can automatically say yes, when you have condos, you're going to be a certain amount of cars. It is an issue in every area in Cambridge. But I do think part of what why believe that this would absorb this type of unit is because of the proximity.

The other issue I'd like to bring up, and I fully respect Mr. Atkins. And when we met several months ago, I showed him the full plans. These are the same plans. They're

not as large and grandiose, but they haven't changed whatsoever. Mr. Atkins brought up this petition, and he told me that from Howard Street to Putnam Ave. that there was almost like an overlay with a restriction on height. So I went to Community Development, I poured over the Zoning Code, and I haven't seen this restriction on height. Now it sounds like he said that there's a give by the community, meaning there was the first floor and there was almost like a limit to a second floor. I asked Community Development. I've looked in my -- I've, you know, I went to Inspectional Services. I don't see that height restriction. If there was, I think our project -- we could have conformed to that, you know. But what I don't hear from the neighborhood is saying that we don't want residential or we don't want commercial units on the first floor. I actually hear the exact opposite. That Mr. Atkins said that

this was a hot corner. You know, and this was something that they'd want to see back there again. It does sound like they would want some buy-in.

I also want to say in terms of outreach, you know, long before -- I attempted to reach out to Mr. Betts. I met several times with the church, and I have also met with Mr. Atkins. Now, he did say that there was a Riverside Community Group. He did tell me to meet with the local abutters first and then come back to the group. When we met, and not blaming either side, but there was no intention to hide the ball but to be transparent. This is the same plans that we've had from the beginning. I think we've actually narrowed the actual square footage because of what we've tried to do in the back of the building instead of building the a square box. So, if there are people that wanted input -- I mean, the reason why we have

such a broad use category of uses is we don't want to say what's going to work here. I've asked everyone here, excuse me, except for this gentleman what do they think would work. We could permit a restaurant and a restaurant dies. So I think we recognize the retail use is going to have to be market driven. But I also think there are financial realities to doing this type of upgrade that we're planning on doing here that we do need the balance. And the architect was very articulate when he explained this, but the simple reality, this property could have been purchased, you know, several years ago. And, you know, I do also know different developers who went in there and couldn't really figure out a way of how the numbers work. And so part of Mr. Cammaratta's approach was okay, you know what, the community wants the ground floor retail. And, you know, I really asked him to scale it

back. I said, look, we need to, if we're going to do residential housing, we're going to have to do housing that works. Let's look at the base Zoning District. Let's look at how we can create a softer residential edge. So that's the second point.

And, you know, back to the, back to the parking issue. I would really -- and I know the Board is looking at this. When you talk about the Special Permit relief for parking, either way you go, you would need relief for parking. But if you look at the criteria, I don't think that two additional units on a bus route is going to be a hazard or a congestion. I'm not saying it won't affect it, but I also think too, that we're lucky there's residential -- there's transportation right there. I know the Board has seen other cases where you've had a gym or different uses that were in the Porter Square area so that there was this assumption that people don't have to

drive, that they may want to come and take advantage of that. I still think we should be afforded that same, that option. We can't control -- and I don't want to say that there won't be six cars there, but I do think we meet that criteria in that sense.

And then lastly about this idea that, you know, there was some lack of transparency. I went to Mr. Atkins not knowing he was the head of the Riverside Community. But just, I knew he was an influential person in that neighborhood. And I showed him the plans, and, you know, we had some of the same conversation. And he said, you know, look this is a holiday time. Community groups aren't meeting. I felt there wasn't a lot to focus their attention. And not to say anything to Mr. Betts, but I dropped off a letter to both houses. I have an aunt who lives up the street. I was attempting to get his number. I actually

talked to him. I said, look, I want to show you the plans ahead of time. We talked on the phone. He asked for my office address. I said, look, any time you want to come by, I'll show the plans. It just didn't happen. I understand people are busy. And even right before the hearing, I said I recognized him. I said do you want to come back and look at these plans? There was no idea to -- I mean, we need community support. And I think you'll see there's a letter by Mr. Marvin Gilmore who has the exact -- not exact in terms of size, but the mixed use development. He has a nightclub downstairs on the first floor. He has residential units above. You have a letter from A.J. Spears who lives on Western Ave. and has run a successful funeral service. They have the first floor retail or, you know, commercial and they live above. So I don't think what we're proposing here is non-existent. I think it's actually in

line. And to Mr. Sullivan's point to do quality retail, not just to be able to get a space, slap some paint on it, but to be able to do the investment that we're doing and really doing this compatible use.

And I'm open to more questions, but I did feel I needed to address some of those comments.

CONSTANTINE ALEXANDER: Did you want me to read the letter from the church and to the Board?

ATTORNEY SEAN HOPE: Please.

SLATER ANDERSON: In regard to that letter, can you be clear that the pastor saw these plans and the shadow study prior to writing this letter?

ATTORNEY SEAN HOPE: Yes. And specifically the shadow study.

SLATER ANDERSON: Because he's a little vague about the residential. He says appropriately sized residential. You can

read the letter, but it seems, it's not quite clear to me that he was seeing what was the final representation of the residential.

CONSTANTINE ALEXANDER: Let me just read the letter. Then we can continue this discussion.

SLATER ANDERSON: Okay.

CONSTANTINE ALEXANDER: It's a letter from the Senior Pastor of the Western Avenue Baptist Church. It's addressed to this Board. "I am writing to lend my full support for the Variance application seeking to revitalize the lot located at the corner of Dodge and Western Ave. I am the pastor of Western Ave. Baptist Church and direct abutter to this project. As pastor and Western resident, I have witnessed firsthand the devastating effects this deteriorating building has had on this particular community, and would very much like to see this building transformed. I have reviewed

the plans to reestablish much needed neighborhood retail on the ground floor and appropriately sized residential housing above and believe the project will be an asset to the community. I'm also aware that this project seeks a waiver of a parking requirement as part of the requested relief. As a direct abutter, I believe the benefit of revitalizing this building and ending the neighborhood blight outweighs the potential concern for parking. I hope the City of Cambridge will rethink its proposed bicycle lane." That's not relative to us. I won't read the last part of it. That's what the letter says.

Anything further? I'll give you one opportunity, Mr. Atkins. Let him speak and then you can have concluding remarks. Just one more time because we've got to move on.

LAWRENCE ATKINS: It's going to be very short. I'm not saying it just looks

different. Plain, okay. Not having seen it all in this depth. I have heard you read the minister's letter and, again, we're talking about a man who is the minister of the church. But he has a congregation that I also have spoken with who have greater history than he. Jonathan is a wonderful person and minister, but he's only been there five. There are other people who have been there a whole lot longer who aren't aware of this. Understand me, I am not -- he, at any given point to say no to anything. I'm just saying get the word out, okay? And even Jonathan's letter doesn't talk about the second story, let alone the third. And as far as the Joan Hart Harris Petition, I will see Joan and I will make a point to go across the street tomorrow. It does exist because it had everything to do on the park on the corner of M Drive and Western Avenue and everything to do with the low income development of Howard Street and

Western Ave. That's how come I know it precisely because that was the concern. That used to be a drugstore. And it is now a residential spot for the same purpose as bringing up tonight. It couldn't have anybody else come down, come in because of parking not available. No meters, no stop in, no nothing. So he had to turn it in something at least respectful to having the low income in the area. This, whatever happens is not in defiance of it. Just get it out. I don't want to find behind doors anymore.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

Final comments.

ATTORNEY SEAN HOPE: Yes. I would just -- I think it's kind of, you know, we have a Zoning Code in front of us. We have Mr. O'Grady here. You know, I think we need to have some kind of clarity of whether or not

there is some kind of overlay or some kind of restriction, because Mr. Atkins and this was part of a Petition, I don't know if this was a Council order, but if it's part of the Zoning, it would be in the Zoning book. I talked to Community Development.

CONSTANTINE ALEXANDER: Let me put it very, very bluntly. If there is a Zoning requirement, you have to cover it in your notice and your advertisement. Otherwise if we granted you relief on what you're seeking, you'll have to come back before and get the requirement. So the burden is on you to find out what it is you need to get relief from not us to tell you what it is.

ATTORNEY SEAN HOPE: I'm trying to say this delicately. There is -- you know, I heard Mr. Atkins. I took him at his word. I went to Community Development. I went to Inspectional Services. I did the due diligence to find, you know, they're very

clear --

TAD HEUER: You're saying that you're asking for what you need to ask for, and if that's what we grant and if there's something else out there, then you'll come back.

ATTORNEY SEAN HOPE: Right.

TAD HEUER: But if that's all that's there, then you'll proceed on this basis, right?

ATTORNEY SEAN HOPE: Right. But I'm also saying, too, I don't want the Board members persuaded by, you know, a concept of an overlay district or restriction that's not in the Zoning Code, that's all.

CONSTANTINE ALEXANDER: Mr. Hope, you know better than that. We are not going to be persuaded.

Is there anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: I'm going to close public testimony.

Discussion by members of the Board?

TAD HEUER: Sean, can you talk to me about your open space? So, if I'm looking correctly at the form, you say that you're at nine and you're looking to go to 35. How is that? I don't see how that's possible on that lot.

PETER QUINN: Is it 35?

SLATER ANDERSON: You're including the second floor deck spaces as open space?

PETER QUINN: You can count some of that.

ATTORNEY SEAN HOPE: But it can't exceed 25 percent of the overall open space.

TAD HEUER: Yes, the other reason I'm asking is because when I look at your usable open space calculation form, it's page four of something. I don't have pages one and two, but page four. You show 425 useful

open space grade. And then 553 for a second floor deck. Are there 15 by 15 plots in there that get you to count any of that as usable open space?

PETER QUINN: It's not -- let me just look at the diagram first.

ATTORNEY SEAN HOPE: I have to defer to the architect.

PETER QUINN: So usable open space, we have none of it that meets the 15 foot rule.

TAD HEUER: So that should be really a zero.

PETER QUINN: The existing building doesn't either.

TAD HEUER: All right, so why does it say nine is existing?

PETER QUINN: There is landscape area -- there is a landscape area in the back of the building existing. In other words, there's this --

TAD HEUER: So is it usable open

space as defined by the Ordinance? I'm just reading your form.

PETER QUINN: Usable open space has two definitions. It has the 15 foot rule and 50 percent of it has to meet at least 15 feet in two directions. And the remainder in this district can be permeable open space.

TAD HEUER: Is permeable open space usable open space?

PETER QUINN: It's allowed under the usable open space requirement so, it may be a matter of semantics.

TAD HEUER: Mr. O'Grady, is permeable open space usable open space?

SEAN O'GRADY: There's about eight different types of open space.

TAD HEUER: I know. In terms of what has to be -- all I'm trying to do is make sure this form says --

SEAN O'GRADY: Yes, the form, I think for brevity, lumped it all together.

It's hard to -- it's hard in this situation where you have no 15 by 15 to know what the answer is. Whether it's zero or whether it's up to 50 percent of the open space.

TAD HEUER: Where there's a footnote three on the dimensional form, it says open space shall not include parking areas, walkways or driveways and shall have a minimal dimension of 15 feet.

What does that suggest to you?

SEAN O'GRADY: It does. But then there's a clause in Article 5.00 that puts another rule on top of that and says an A, B and C-1, C-1 I think, usable open space has to be 50 percent. 15 by 15, and the remainder can be permeable, so....

TAD HEUER: Right.

SEAN O'GRADY: I think --

TAD HEUER: But doesn't that suggest I need to at least have the 15 by 15? What I mean, if its 50 percent of one and 50 percent

of the other, I get to count 15 percent of my Ordinance requirement as 30 percent of 15 by 15 and then I can count up to 15 percent as something else? I mean, I'm just asking --

SEAN O'GRADY: No, the Ordinance I don't think, you know, obviously as I'm thinking about the form, and the form isn't completely recognized in the Ordinance. My rule of thumb has always been -- and then this is strictly coming off my plate, is in a situation where you have no 15 by 15 and you just have trim permeable, that even if you had 75 percent of your lot trim permeable, you could never claim an open space number greater than 50 percent of the required open space. So if 30 percent were required and you had 60 percent permeable, I think the correct answer to that question would be you have 15 percent.

TAD HEUER: Right.

SEAN O'GRADY: Now that's -- I get

that from nowhere other than I've struggled with what should go in there myself.

PETER QUINN: So what we're saying is on the basis of permeable open space, we have a total of 35 percent. Now, some of that is balcony space which can count as your usable open space that you quoted in the definition. So we actually do improve the -- come closer to compliance. We don't completely comply, but we come closer to compliance on the total usable open space.

TAD HEUER: That's not what your form says. Your form says you're over. Your form says you're 35 percent.

PETER QUINN: This is the city's form. We submitted a form --

TAD HEUER: This is the form we go by. You can submit whatever you want. This is the form we're going to read.

PETER QUINN: And that's why this booklet describes this stuff is not compliant

with the 15 by 15 patches over here.

TAD HEUER: Right.

PETER QUINN: I understand it's confusing. I'm just saying we did actually differentiate in our graphics between the two.

TAD HEUER: Right.

PETER QUINN: Are you suggesting that should have been cited as another Variance requirement? I mean, it's an existing non-conformity is what we're saying.

TAD HEUER: I mean essentially, I can't see with no 15 by 15 percent how you can then say you're at 35 percent usable open space. That just seems to me to go against the way the Ordinance as Mr. O'Grady has said he construes it. And I'm willing yield to Inspectional as they interpret. It seems to be a reasonable interpretation that you have no 15 by 15, you can't claim that you're over

30 percent. That seems to me to be a stretch beyond a reasonable reading of the Ordinance.

ATTORNEY SEAN HOPE: Not to belittle and obviously the form needs to be as accurate as possible. I think with the application, we're not taking away any open space. And it sounds as though depending on the interpretation, we may not have created as much as the form. But it's not like we are taking away open space.

CONSTANTINE ALEXANDER: And your advertisement is sufficiently broad to cover the open space. Besides the 5.31. I'm not dismissing the point at all.

ATTORNEY SEAN HOPE: Exactly, but in terms of -- we're not expanding the footprint and I'm saying we're not taking away as much as we are.

TAD HEUER: Understand.

So, about an hour and a half ago we had a case in front of us where we had a C-1

residential district with a commercial first floor and they had a couple of residential units above, and the discussion that we had was well, the residential units are already there. It's pre-existing residential. So we're not thrilled by it, but there was a sentiment of the Board because it was existing, it wasn't adding any massing and there was another concern, so we could see our way through possibly with a couple other issues and they're being continued because of other some related, not related issues. Here we have essentially the same case except we are adding massing. And, you know, there they were at 0.2 -- they were at 2.0 in a 0.75. So, we're not adding anything. We're just reallocating to Zoning purposes space. Some of that unused 2.0. Here you're at 0.78 and you're adding more than 0.78. You're adding 0.8. Are you creating exactly the problem that a lot of us said an hour and a half ago

we had a higher threshold for, that you're actually adding massing to the building?

ATTORNEY SEAN HOPE: And I would just make the distinction that the existing GFA that's there is commercial space that's not suitable for residential. So it's one thing if we had a residential structure and we tried to add more. But there's a way in which -- unless you're going to destroy the building, which no one was in favor of. If you're going to make it conforming, what we tried to do is construct a conforming addition. If we were going to stick residential housing and put it on that lot without taking away the commercial space which is non-conforming, then we would have to -- we would have to add that mass. So the only way to actually do a conforming structure, and if your point is right that they want to phase out commercial and if you're going to add anything, it should be

what the Zoning allows which is residential. I think that's what we tried to accomplish. Now, if there was any sentiment from the neighbors and abutters that we would love for you to clean the slate off, and take up commercial, we would have done that.

CONSTANTINE ALEXANDER: Yes, but you did hear from Mr. Atkins is that the neighborhood would be pleased if you refurbished the commercial space, kept it as one-story commercial space but a much more attractive space that would attract other types of businesses.

ATTORNEY SEAN HOPE: And in a perfect world where, you know, there weren't the economic realities and also the realities of retail space, that probably would have happened years ago and if that was a viable option. We looked at this in terms of how can we actually do the type of upgrade that everyone wants to see as well as have a

building that's not going to be in bankruptcy. So there is that economic hardship. But I don't know if it's necessarily bankruptcy, but there are some realities to what it takes to actually pull this building off for the purchase price that is Cambridge real estate to be able to do this. We didn't lead off with economic hardship. I mean, Mr. Cammaratta is a savvy developer and, you know, we understand the financial realities, but this type of mixed use concept is the type of concept that I think can work not just now but going forward. So we are adding massing to your point. But we think we're adding conforming massing to what the Zoning District allows.

CONSTANTINE ALEXANDER: You keep referring to this mixed use, and I'm personally in favor of mixed use. That's not what the Ordinance says. The Ordinance does not contemplate, in this area at least, mixed

use. It contemplates residential use. And what you're asking us basically to do is to allow you to continue, and perhaps expand the non-conforming use. And the leverage to do that, economic leverage is to allow you to build residential structures which in turn don't comply with our Zoning By-Law. Not used problems, but structural dimensional problems. So you're asking for an awful lot of relief. That's my issue.

TAD HEUER: So I guess one point I ask, you're asking for FAR for your buildings that exceeds the FAR that's allowed on that site even if the commercial building wasn't there. Right? You're asking for 0.8 FAR for a two residential structures in a 0.75 district. You would be here regardless because you're saying you're over FAR, right?

TIMOTHY HUGHES: He said that earlier. He said that he would be here anyway for about 100.

TAD HEUER: Well, parking and other stuff, right.

ATTORNEY SEAN HOPE: But also to create a practical building, with the setbacks that are there, we would be there for relief. But to your point, I don't think we're not expanding the non-commercial use. In other words, commercial, that footprint was all commercial. It was all non-conforming. We're not asking to expand that. We're asking for a broader range of uses.

CONSTANTINE ALEXANDER: That's the expansion. That is the expansion.

ATTORNEY SEAN HOPE: The expansion is --

TIMOTHY HUGHES: Extension of it.

ATTORNEY SEAN HOPE: I'm just talking about the types of uses that can be in there. I'm not talking about making it a larger space.

CONSTANTINE ALEXANDER: I know that, but you are expanding.

ATTORNEY SEAN HOPE: Right now the space that no one wants back is that it was a social club with alcohol. So when we actually -- I think we kind of constrained it. I don't see us expanded the non-commercial use. I really think we want to do uses that will work and that will thrive. We looked at the example down the street: A restaurant, cafeteria and cafe. I do think if the Board -- if we wanted to make a smaller residential unit that actually complied with the 1.75, that may have been a little tighter, we were likely to do that. We actually thought what was a quality unit that would fit with the residential. I think the difference of 0.5, 0.05 that would make the difference to the Board, we would gladly create residential units that weren't 0.5 over the base Zoning. I mean, that's how we

looked at it. We said, okay, if this site was blank, what would you be able to build in terms of residential? And I think we achieved that. But if the two together are too much for the Board, and you would prefer a total all residential structure and we may appease the Board and maybe have the neighborhood back, and we were really trying to marry the two and that's what's in front of you.

CONSTANTINE ALEXANDER: Well spoken. Other comments? Go ahead.

TAD HEUER: Is there a reason you've gone all the way to 35 feet? Because one thing if I'm looking at this neighborhood, you've got a lot of pitched roof stuff that even though it may get up to that height you're not massing 35 feet straight across the board. Particularly if you're talking about a one-story retail, it makes it even more dramatic might be one word. And you're

stepped back, and I understand what you've done on the rear of the building. So if you're approaching from the housing projects down Dodge Street, but Western Ave. is, I don't want to bring up this site at the top of Mass. Ave. but Porter, but, you know, this kind of fits in my mind, funeral home in a certain way, it's way taller. But in terms of the visual impact on this neighborhood, if you look at the building directly across the street, you do have what the architect mentioned, the very traditional -- you started out with your two and a half gable, you know, single-family, two-family home, and then you pushed out to the lot line, you added on an awning and that became permanent and all of a sudden you've got a storefront.

Here I understand you're coming out in the other direction. You've got your storefront and you need to have the residential and just -- it doesn't seem to

fit into the neighborhood as well as I'd like or hoped that second story or third story residential would do.

BRENDAN SULLIVAN: Sort of thinking that the other side of Western Avenue are all three deckers.

PETER QUINN: They're mostly 40 feet high. Right across the street. Most of the buildings on this side are in the range of 30 to 40 feet. The church is higher.

SLATER ANDERSON: But in the immediate vicinity you do have gable roofs. And you've done a gable with sheds on the back. It's not clear to me why you went for the contemporary box, the volume showing you reference to having a softer residential edge. To me, you have stepped back which I respect on the second floor, but you've come up the third floor I think on the street side of the building with, in my opinion excessive mass. Because I've looked at the floor plan

and there's no reason the front of the building, and maybe it's an interior aesthetic that's again plays to the marketability of those units to make the viability of the whole project, but I'm, I'm not convinced -- because I am concerned about the volume and the shadow impact, and I appreciate the shadow studies and what you've done. But it's not clear to me from what I've heard from people who are in attendance today and the vagueness of the letter frankly in my opinion from the church that we aren't going to have a similar situation I think we had on Foster Street, where all of a sudden when it got built, people went crazy because that's not what they thought was going to be built. And so, I'm not totally comfortable that with the neighborhood knowing that this is, you know, the building. I mean, the neighbor, the abutter on Dodge Street, and I understand you've tried to approach him, this is the

first he's seen of it. I see volume on -- that's what I see on the third floor there. That doesn't necessarily need to be -- it isn't necessarily necessary based on what you've laid out on the back of the building.

ATTORNEY SEAN HOPE: And in terms of design, I mean, if this, you know, the feeling of the Board that, you know, something more residential on top would fit, you know --

PETER QUINN: Yeah.

ATTORNEY SEAN HOPE: -- we have an architect. We would be more than willing to do that. I don't think there was any -- I don't think that's the rub. I mean, if it -- if I felt it would be useful, we would go back and even try to move -- 35 feet is the height limit for the Zoning district. So we said okay, we're already started at 15 feet. If we want to push back, the building shrinks. So we were never going to go over the 35 feet

height limit, but we also said you know what, let's move back from the straight edge. So there was a little plug and play. But if really the feeling of the Board is, you know, some type of hipped roof with shed dormers would really change how this fits, I think that's something we would definitely want to consider.

CONSTANTINE ALEXANDER: Well, speaking for myself, I continue to be, as you can tell from my questions, troubled by the preservation of this non-conforming use which I think runs counter to Zoning generally both in Cambridge and outside of Cambridge. Non-conforming use is supposed to be phased out and only in extreme circumstances do you keep them. But I can understand the economics of what you want to do. I also, having spoken before, I am very much troubled by the design of that building. It is just too massive. I don't think it's

really consistent with the rest of the neighborhood in terms of you have these other buildings. It's just going to stand out to me as a sore thumb. So I could be persuaded to be in favor of the project but only with a different design otherwise I'm going to against it.

BRENDAN SULLIVAN: So it's less than traditional?

CONSTANTINE ALEXANDER: Yes.

TAD HEUER: I think I would second that. I would also ask you to come back at no more than 1.5.

CONSTANTINE ALEXANDER: Yes.

TAD HEUER: Because I don't understand -- there's no way I can possibly give you more than what you were asking for when you already have a commercial site on the property that's already over -- so....

ATTORNEY SEAN HOPE: So in terms of the additional FAR, you would want to comply

with the base Zoning is that --

TAD HEUER: I would want your residential element to comply with the base Zoning District at least FAR ad as far out as you can. I understand you have a weird shaped lot.

ATTORNEY SEAN HOPE: Right, the setbacks.

TAD HEUER: I understand that.

CONSTANTINE ALEXANDER: While we're on our wish list here, is underground parking out of the question?

PETER QUINN: I think given the size of the lot -- I'm working on a lot right now, it's 4,000 square feet which is a whole 25 percent bigger. It's virtually impossible to get a ramp down in that dimension.

CONSTANTINE ALEXANDER: Obviously you could figure out a way that would nullify some of the opposition.

BRENDAN SULLIVAN: The soil.

TIMOTHY HUGHES: I think you're also talking about a water table problem that's close to the river.

CONSTANTINE ALEXANDER: Yes, probably.

BRENDAN SULLIVAN: Maybe a duck boat.

CONSTANTINE ALEXANDER: Oh, I think you can see which way the wind's blowing. So I think this case should be continued. That's all we ever do, as a case heard and go back to the drawing board. And part of it, you know, Sean, part of going back to the drawing board is to reach out even more to the neighbors so we don't have the issue we had tonight. I think you should get a lot of neighborhood input before you come back to us.

BRENDAN SULLIVAN: And if I could send it to Mr. Atkins and to the community, what Gus is saying is that is it the intent

of the neighborhood regardless of what's in this book, to diminish, to downplay the commercial aspect and just to have all residential? That is sort of a question, I haven't got the answer to yet.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: And I would ask that you come back with that. Even regardless that it's being zoned out, but is it really the wish of the neighborhood to zone it out.

LAWRENCE ATKINS: Right. You have ignited me. I will be on the hunt and find out.

BRENDAN SULLIVAN: Okay.

TAD HEUER: I mean, I would also point out that just up the street, you know, Kinnaird Street and Western Avenue we had a case five months ago, six months ago which was a similar residential, and there was a commercial first floor and there was a very

strong desire on at least part of the community to have that commercial use sustained in that portion of Western Ave. I think the immediate abutter wasn't pleased with it, but, you know, we have seen these kinds of continued commercial use and clearly commercial space on Western Ave.

TIMOTHY HUGHES: And I would like to say that, I know that, Gus, you're right that the intent of the Ordinance is to phase out non-conformities, but the Ordinance isn't always correct.

CONSTANTINE ALEXANDER: That's why we have Variances. That's right. You're absolutely right.

TIMOTHY HUGHES: That's why we have a Variance system. The Ordinance is trying to do a one size fits all along a streetscape that isn't one size. You know, it changes from block to block. I mean Western Avenue has its own character, and part of the

character of Western Avenue has been commercial space. Now if the Ordinance is really suggesting that there should be no commercial space on Western Avenue, then I think the Ordinance is wrong. Much the same way that it's not very clear about open space, you know. That has to get left open to some kind of interpretations.

And especially if the neighborhood is opposed to the group of people who came up with the Ordinance, the City Council, then who do you defer to? You know, that's what we have to do. We have to decide who do we defer to?

CONSTANTINE ALEXANDER: If we can decide that the Ordinance is wrong as it applies to a specific property, but to do that we've got to meet the legal standard of hardship and all that. And I'm not sure we got that established tonight.

TIMOTHY HUGHES: I don't think we

got to the hardship, did we?

CONSTANTINE ALEXANDER: I think it's time to decide how much time you think you'll need and we'll see if it fits in our schedule. You have to rethink the plans, talk to the neighborhood, rethink them again probably.

ATTORNEY SEAN HOPE: Yes. Well, I do think that the key people are here. You know, we didn't get a chance to meet with the group but I do trust that Mr. Atkins will be able to mobilize the people who -- as well as the abutters. I know Mr. Quinn and Mr. Cammaratta, everyone here is motivated to find a project that could be supported. You know, there's no --

CONSTANTINE ALEXANDER: What date you want?

BRENDAN SULLIVAN: We're into February.

CONSTANTINE ALEXANDER: We're into

March.

SEAN O'GRADY: We're into March.

March 3rd is the first available.

CONSTANTINE ALEXANDER: March 3rd?

TIMOTHY HUGHES: What's the next one in March?

SEAN O'GRADY: St. Patrick's Day.

CONSTANTINE ALEXANDER: I may have a prior commitment.

SEAN O'GRADY: I'm not sure what the April dates are?

TIMOTHY HUGHES: I'm joking about St. Patrick's Day.

CONSTANTINE ALEXANDER: March 17th, that I know will work for me.

Go ahead.

ATTORNEY SEAN HOPE: Just to make sure that we leave here now that we have the architect, just is there any way of a consensus of really what type of project at least from the Board's frame of mind -- and

I heard you as a Chair, but for the other members so that when we go back to the community we can say, you know, this is what the Board suggested, what are your suggestions and bring the two together. So I'm just wondering if the Board, each member could speak to the kind of --

BRENDAN SULLIVAN: We're suggesting go back to the community.

CONSTANTINE ALEXANDER: Right. Go back to the community.

BRENDAN SULLIVAN: And have them tell us.

CONSTANTINE ALEXANDER: Have them tell us. Plus we think we need a different -- I think the community would support it, we need a different design which is more consistent with the neighborhood, which is closer to conforming with the residential Zoning requirements as to dimensions. Beyond that in terms of

commercial versus residential, how many units, parking that's something to talk to the community about.

SLATER ANDERSON: I'll say this for myself. I'm not opposed to the ground floor commercial. I agree that, you know, the Zoning is not perfect and the mixed use, I'm in favor of. I'm not convinced that that's the right residential.

TAD HEUER: Me, too.

CONSTANTINE ALEXANDER: Same here. I'm more bearish on the commercial mixed use. But a better designed structure with neighborhood support over my objections.

SLATER ANDERSON: I'd like better clarity that the neighborhood has seen what is presented to us.

CONSTANTINE ALEXANDER: Okay. The Chair will move that this case be continued as a case heard until seven p.m. on March 17th on the condition that the Petitioner sign a

waiver of time for decision.

Further condition that the sign on the property be changed to change the date, do it with a magic marker, to March 17th and to change the time to seven p.m. To the extent, and the Chair would request, it's not part of the motion, that you reach out to the community with respect to any revised plans. But whatever revised plans you come up with after talking to the neighborhood, you know this, Sean, must be in our files by no later than five p.m. on the Monday before March 17th.

So those of you in the public if somebody can't get to whatever hearings are being held, you can always go two or three days before March 17th, you can go to the Zoning office and see the plans. We have a fail safe if you will. Okay?

BRENDAN SULLIVAN: Monday night the office is open.

CONSTANTINE ALEXANDER: Yes, they're open till eight o'clock on Monday. So you would have sometime on Monday as well.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case continued.

(Alexander, Hughes, Heuer, Anderson.)

(9:35 p.m.)

(Sitting Members: Constantine Alexander,

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10035, Three Amory Place. Is there anyone here wishing to be heard in this matter? Give your name and address for the record.

JEAN MAKALOU: Hi. I'm Jean Makalou, M-a-k-a-l-o-u and I live at Three Amory Place.

BHUPESH PATEL: My name is Bhupesh Patel. I'm the architect for Three Amory Place.

CONSTANTINE ALEXANDER: Mr. Patel, before we get into the merits of the case I have to comment on the dimensional form. In one respect it's incorrectly completed. But more importantly based on form I don't understand what relief you're seeking. You don't show any need for a Variance if these numbers as you presented are correct.

BHUPESH PATEL: The percentage increase required a Variance that we were asking for which is 612.

CONSTANTINE ALEXANDER: Even if you're tripling the percentage, if you still come within the FAR requirement, you don't need relief.

BHUPESH PATEL: Actually Ranjit said that we needed to get a Variance because of the increase in FAR even though it is below what is allowed. It is more than --

CONSTANTINE ALEXANDER: You have 15 percent written down in your file, but I never heard of that.

BHUPESH PATEL: I think it's 10 or 15 percent. But I've had to do it for the two properties across the street, too. They were also -- One Amory Place and Two Amory Place the same thing, I came in for a Variance, because of the increase in square footage exceeded the --

CONSTANTINE ALEXANDER: No, no, no. You had a non-conforming structure and you wanted to put in --

BHUPESH PATEL: Well, this is also non-conforming in the setback.

CONSTANTINE ALEXANDER: Yes, but you're not excavating under the setback, are you?

BHUPESH PATEL: No.

CONSTANTINE ALEXANDER: I mean, you came before us because you had a house that was non-conforming. You wanted to put an addition on. That addition would increase the volume of the house by more than 25 percent. So you were, that under our Zoning Ordinance you have to get a Variance.

BHUPESH PATEL: Right.

CONSTANTINE ALEXANDER: Here, as I read the form, I don't know the numbers before me. There's no increase in a non-conformity. You're still going to have

a conforming structure. And what you're seeking to excavate the basement, it doesn't have anything to do with anything.

BHUPESH PATEL: Yeah, as far as I know, it's two things. But one thing was the most distinct thing, which was percentage increase. The second thing was obviously that the basement, if you take the setbacks, is not in the base of the basement itself. It's where they change. It's in the side yard setbacks. But that wasn't what Ranjit was focusing on. He was just focusing on the fact that the percentage increase was enough to kick in requiring the Variance.

TIMOTHY HUGHES: It's otherwise a conforming structure?

BHUPESH PATEL: Yes. The setbacks --

SLATER ANDERSON: It's non-conforming.

BHUPESH PATEL: Yeah, it's

non-conforming because it's basically -- you don't have ten feet setbacks and this is the lot.

CONSTANTINE ALEXANDER: But the relief you're seeking tonight will not change --

BHUPESH PATEL: The massing.

CONSTANTINE ALEXANDER: -- the massing at all.

BRENDAN SULLIVAN: Sean probably needs to chime in on this.

CONSTANTINE ALEXANDER: I talked to him about it before, but let's try again. We're trying to figure out, Sean, why relief is being sought here. And Mr. Patel is saying that in after speaking to Ranjit, because it's more than 15 -- I think it's probably 25 percent. But more than 15 percent increase in FAR you need to get relief even own though after the 50 percent increase occurs you still be conforming as to FAR.

SEAN O'GRADY: You know, I wouldn't have jumped that way, but it doesn't sound wrong and obviously we would defer to Ranjit on that. Yes, I would say yes.

BHUPESH PATEL: Yeah.

TAD HEUER: Did he look to any section of the Ordinance that supports?

SEAN O'GRADY: I think what he would be saying was that he would be saying that he's got a non-conforming building that he's increasing in area. And area is floor area. So by dropping the floor to below seven to above seven, he's increasing the area of the building even though to our common sense he isn't, but to the Ordinance he would be increasing the area. And if it's --

CONSTANTINE ALEXANDER: But he's not increasing the non-conformity. There is non-conformity in this building.

SEAN O'GRADY: Yes. Remember Article 8 just simply says -- and now I'm

arguing Ranjit's point or at least what I think it is. But I think the argument would simply say we've got a non-conforming building within Article 8. You've got to hit one of the -- you got to ring one of the bells. You got to be under a 10 percent increase for a Building Permit. Under a 25 percent increase, and that's the thing that's raised in my mind for a Special Permit. And then over 25 percent you hit a Variance.

SLATER ANDERSON: So it's because we're expanding usable living space into the side yard setback underground?

SEAN O'GRADY: No. It's actually that we are increasing the floor area of the building by more than 25 percent.

CONSTANTINE ALEXANDER: But with regard to FAR it's still a conforming structure.

SEAN O'GRADY: Even though they're still conforming, yes.

SLATER ANDERSON: But it's non-conforming structure. That doesn't have anything to do with it?

TIMOTHY HUGHES: That has a lot to do with it.

SEAN O'GRADY: That's what gets you into Article 8 in the first place.

CONSTANTINE ALEXANDER: It makes no sense to me that if you what you're doing, you have a non-conforming structure, okay. But if you want to do something that doesn't increase the non-conformity, why should you have to get relief?

SEAN O'GRADY: Because that's what Article 8's all about. It says, not only, hey, you non-conforming building, not only do you have to worry about Article 5, but guess what, we have another treat for you. It's Article 8 and you've got extra rules to follow.

BRENDAN SULLIVAN: (Inaudible.)

SEAN O'GRADY: It doesn't necessarily get you up to. It will cap you in some senses so you don't even get up to Article 5.

CONSTANTINE ALEXANDER: Well, next question is there more than 25 percent increase here?

SEAN O'GRADY: That's your man right there. I couldn't tell you that.

CONSTANTINE ALEXANDER: The dimensional form doesn't show that.

BHUPESH PATEL: Well, it's 1300 square feet basically. And it's 1384. It's 612 --

CONSTANTINE ALEXANDER: I guess so. Yes, I guess so. I don't understand why your ratio of floor area currently is 64 percent. If you look at eyeball, it's got to be 50 percent. Give or take a few percentage.

SLATER ANDERSON: Yes.

BHUPESH PATEL: Oh, I see, right.

CONSTANTINE ALEXANDER: That doesn't make any sense to me.

BHUPESH PATEL: That's going to 64 then.

CONSTANTINE ALEXANDER: What's the current? I'll change it on the form, what's the current FAR? Divide 1384 by 2668 and just so if we have it right.

BRENDAN SULLIVAN: Is that 1384 correct?

BHUPESH PATEL: Yes.

SLATER ANDERSON: Did you calculate that 1384?

BHUPESH PATEL: Yes, I calculated the survey also, and there's two people that calculated that number lot area.

(Calculating.)

BRENDAN SULLIVAN: You don't have a worksheet there on 1384, do you? Did you come up with that?

BHUPESH PATEL: Especially this,

the overall of the building, there's two boxes, a rectangle and a square.

BRENDAN SULLIVAN: So you got the first floor, second floor.

BHUPESH PATEL: First floor, second floor.

SLATER ANDERSON: And the third floor is unfinished?

BHUPESH PATEL: The third floor is not even five feet in the middle.

BRENDAN SULLIVAN: Throw that out. So, we have the first floor, second floor and nothing in the basement existing.

BHUPESH PATEL: Correct.

BRENDAN SULLIVAN: And then we're taking the area of the basement less the mechanical space.

BHUPESH PATEL: It's a little more than mechanical space, yes. It's taking the mechanical space and the front space here because we're building --

BRENDAN SULLIVAN: Okay. So you're adding 600 and --

BHUPESH PATEL: 612.

BRENDAN SULLIVAN: 612?

BHUPESH PATEL: Yeah.

BRENDAN SULLIVAN: So you've got 13 something and the 612. So you're going up to 19 something.

CONSTANTINE ALEXANDER: Just about 2,000.

SLATER ANDERSON: The 1300 and change, whatever that is, differs from what the city had. But the city I'm not saying is correct.

BHUPESH PATEL: Right.

SLATER ANDERSON: But you measured the building.

BHUPESH PATEL: We actually measured it because we were trying to put it up for sale as well. So put the square footage as well.

SLATER ANDERSON: Is the building for sale now?

BHUPESH PATEL: Yes.

CONSTANTINE ALEXANDER: And therefore what's the hardship?

BHUPESH PATEL: The hardship basically is that, that whole entire area has a lot of sand. And upon renovating the two houses across the street, we took basically five truck loads of sand from both properties. We had re-engineer the footings for both buildings. In the process -- she lives across the street, and the house next to her was also renovated. And that person did the same thing. Basically they created a fish tank out of their basement. So reciprocity of the area increases each time. So she's the last property on this cul-de-sac that hasn't done it. So it's caused her basement to obviously get worse. So she can rectify it without changing the level of the

floor. She could just take out all the sand and put back --

CONSTANTINE ALEXANDER: That's my question to you. Yes, why can't you do that?

BHUPESH PATEL: Right, but it's somewhat cost prohibitive to do all that work obviously. So, the quest is to try to get additional square footage by dropping it so that it's the space you could actually stand in really to where it is now. Because we're going to dig that out and put in all new footings and put in a concrete slab. And because it falls under what is allowable --

CONSTANTINE ALEXANDER: So your hardship is that unless we -- you can't finance the project unless we allow you to create additional living space just by the way it increases the value of the property and the purchase price you're going to be seeking.

BHUPESH PATEL: Increases the value

of the property, correct. But the hardship more so if you want to dig it out, we would want to underpin all these footings. And if we did all that, we'd have to go to that depth anyway. Then we could raise the floor back up to six foot eight if we wanted to. We're paying all that money and then filling it back in, doesn't make financial sense. So, it's the same premise we did for the other two properties.

The first property we started, we actually were not going to drop the floor. It was upon realizing how much sand was down there that we came in for a Variance. Because the additional square footage in the basement took us over --

SLATER ANDERSON: Explain to me what's the sand doing again?

BHUPESH PATEL: The sand just basically is like a big sponge and just holds the water. And anything up against it just

soaks the water from it. So all the brick and the mortar joints just soak the water continually and fall apart. So you can keep re-pointing it, but it's still going to keep collecting like a sponge. So you have to take the sand out of there and replace it with a stable grade. And so, you can't take all the sand. But what you can also do underneath the building is just do a footing that's twice as large as what you're supposed to have. So if you have 12 inch wall, you usually have a two foot footing. But now we're going to do a three foot six footing. So it's sitting on the sand which it's still going to be full of water underneath the building. The building can actually slide around a little bit. But less to have to do that, because much more of a friction foot for the building. It's like silk.

SLATER ANDERSON: So it's a high water table, because sand actually drains

very well, but you're saying the water table's high?

BHUPESH PATEL: The water table's high. So, I'm sorry, yeah, the water table's high. It's a premise. So we know that's the case. And that's why when the water sits in the sand, it's very unstable because it's got nowhere to go. It's pretty much that it's a silky surface that it can slide around.

BRENDAN SULLIVAN: And a perimeter drain doesn't do it?

BHUPESH PATEL: Not when you're this low because you pretty much have to grade a fish tank if you're building, so that the water will still be out there and it will be stable right around you, but it won't be sponging up against that.

SLATER ANDERSON: So that's what you're hoping -- because you're actually going deeper which seems to me to be a little risky with a high water table.

BHUPESH PATEL: Yeah. But we have to take out at least two feet of grade and replace it with stable grade so that the sand is below the footing now.

SLATER ANDERSON: Are you addressing the outside of the building or just the interior?

BHUPESH PATEL: The outside of the building we address from the inside in four foot sections. We will not dig out the outside or remedy that. We just address it at the bottom so that the water will go straight down underneath the footing, and then becomes very silty underneath that footing. That's why we have that. We make it worse underneath the footing basically. That's why the footing has to be so large.

BRENDAN SULLIVAN: So, Jean, you own the property now?

JEAN MAKALOU: Yes.

BRENDAN SULLIVAN: And you're

developing it. You're going to develop it as per this plan and then sell it? Are you selling it as is?

BHUPESH PATEL: Basically I worked on the two properties across the street, and I'm doing this pro bono for Jean because as the process went on, her mother and her were living in the property. Her mother just passed away. She's been going through cancer treatment. So the contractor and I recommended that we'd help her out. Because she's in a reverse mortgage situation on her property. So, we just thought we could try to get her help to help her sell this property and get her out of the situation she's in. Because the property has this water problem, it's obviously hard to sell.

BRENDAN SULLIVAN: But how does this come into play?

BHUPESH PATEL: This comes into play because somebody's considering to purchase

the property, knows that they can actually fix the basement.

BRENDAN SULLIVAN: So somebody who's considering buying it is buying this plan, this house here, proposed house?

BHUPESH PATEL: Is buying this house on the premise that this Variance is approved.

BRENDAN SULLIVAN: Or that plan?

BHUPESH PATEL: That they can drop the floor, correct.

They might come in and edit the Variance and say they want to put the closet here. But the reason why it's laid out this way is because how thick the footing is. So it's very limited the options on what they can do.

CONSTANTINE ALEXANDER: Let me just for the record, is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair

notes no one wishes to be heard. Last I saw there were no letters in the file in support or opposition from the neighborhood. I'll close public testimony.

Further questions, comments from members of the Board?

SLATER ANDERSON: Just a quick question. There are sort of these ghost lines for some, it looks like potential expansions.

BHUPESH PATEL: Yes.

SLATER ANDERSON: Can you just say what -- that's not intended to be Variance No. 2?

BHUPESH PATEL: No, no. That's there because I wanted to make sure it was transparent with Ranjit that there used to be a full porch there that we took off. And we went to the Historic Commission and to the City to get a permit for that. So I wanted to make it clear that has been done already.

That work's already been done prior to this Variance. So it was just a full porch that has been taken away. And we restored the historic canopy and the steps that were in front of it. It was a 10 by 10 box that was enclosed.

SLATER ANDERSON: Was there a remnant of it in this picture here?

BHUPESH PATEL: Yes. You can see the white kind of box to the right of the bay window.

SLATER ANDERSON: Yes.

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

TIMOTHY HUGHES: I'm ready.

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 that there is basement space that needs to be approved upon because of a water problem. And that the only way it can do that is through the relief being sought.

That the hardship is owing to circumstances related to the soil conditions that affect the property.

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

In that regard the Chair would note that even with the relief being granted, the structure will be conforming as to FAR. So we're increasing the FAR, but not beyond what is permissible in the district in the first place.

And that the impact of this, there's no impact on surrounding structures. It's not

going to change the footprint of the structure. It won't necessarily -- it will still be a single-family residence after the work is done if we grant the relief. And so generally it improves the housing stock in the City of Cambridge.

On the basis of these findings the Chair would move that a Variance be granted the Petitioner to lower the basement floor by removing dirt floor and replacing with new concrete slab.

And that the work, further conditions, the work proceed in accordance with the plans submitted by the Petitioner prepared by the Design Tank, Inc., dated 10/31/10 and initialed by the Chair.

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

(Aye.)

(Alexander, Hughes, Sullivan,
Heuer.)

CONSTANTINE ALEXANDER: Opposed?

(No Response.)

CONSTANTINE ALEXANDER:

Abstention?

TAD HEUER: I just want to say I'm abstaining because I don't this actually requires any relief whatsoever. And I don't believe we should be granting where there is no legal basis for the relief. So I don't oppose the project. It's more of a statement to Inspectional Services.

CONSTANTINE ALEXANDER: To Ranjit.

TAD HEUER: To Ranjit.

CONSTANTINE ALEXANDER: I agree with that conclusion at all. I don't know why we have this case in the first place.

(9:50 p.m.)

(Sitting Members: Constantine Alexander,

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10036, 99-2 Brattle 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 in Cambridge. I'm here tonight -- this is Mr. George Smith, Lesley University.

GEORGE SMITH: I'm George Smith Lesley University director of operations and campus planning.

ATTORNEY SEAN HOPE: So we're here tonight on a Variance. It's a height Variance. This is a wayfinding sign, and the location is Phillips Place. There's an address that's 99-2 Brattle Street, but it's actually Phillips Place, the corner of Phillips and Hastings Avenue. So this is a

sign that demarches Lesley University as part of the campus. This sign has met the sign criteria. The only issue is height. The height limit is four feet. This is a Residence C-1 so that the height limit is four feet. We're asking for an increase to nine feet. The main issue is visibility at four feet. This is one of the main entrances for pedestrian access. There are cars --

CONSTANTINE ALEXANDER: There's no illumination of the sign?

ATTORNEY SEAN HOPE: No illumination.

It's a dual side sign. This is an area where many people may think it's Harvard University. Lesley bought this building and it needs to identify the location of this on its campus. The sign itself meets all the criteria.

CONSTANTINE ALEXANDER: Thank you. Questions from members of the Board at this

point?

Is there anyone wishing to be heard in this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. I don't think there's any letters in the file one way or another the last I looked. I think that we do have -- Historical, yes. Thank you. You do have support of Historical?

ATTORNEY SEAN HOPE: Yes, we do.

CONSTANTINE ALEXANDER: That should be noted for the record.

BRENDAN SULLIVAN: With conditions.

CONSTANTINE ALEXANDER: With conditions. So they would have to -- well, we'll get to the motion.

ATTORNEY SEAN HOPE: Sure.

CONSTANTINE ALEXANDER: Comments or ready for a vote?

TIMOTHY HUGHES: Ready for a vote.

CONSTANTINE ALEXANDER: Sure.

TAD HEUER: Is there a reason why the sign is -- at least it appears to be behind a tree partly? Is there a reason why you picked that side of the walkway rather than the other side which put it back or forward? It may just be how I'm viewing the depth on this, and I might be wrong.

GEORGE SMITH: Yeah, it's --

TAD HEUER: Is that actually next to the tree?

GEORGE SMITH: It's actually next to the tree. It was Photoshopped in. So it's right there. There's a space to put it right there next to the tree.

TAD HEUER: And am I right in thinking that that doesn't protrude onto the walkway?

GEORGE SMITH: No.

TAD HEUER: Right.

CONSTANTINE ALEXANDER: We're

talking about three signs, aren't we, for this petition? All the same. They're all the same.

ATTORNEY SEAN HOPE: Right. There was some advice to separate the two. This is the one and two others.

CONSTANTINE ALEXANDER: Further questions, Tad, or are you ready for a vote?

TAD HEUER: The only question, so on this sheet it lists three tavern-style signs?

ATTORNEY SEAN HOPE: Right.

TAD HEUER: Is one of them not --

TIM HUGHES: Two of them are on the other case.

TAD HEUER: But the other one is a granite pillar sign?

CONSTANTINE ALEXANDER:

(Inaudible.)

TAD HEUER: Fine.

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 the need to have sufficient signs identifying Petitioner's property from that of the neighboring Divinity School.

The hardship is owing to basically the shape of the lot. It's sort of sprawls in many areas and is not conducive to a sign identification.

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.

That relief being sought is modest. To have a sign nine foot high rather than four foot high. And a nine foot high sign is necessary for identification purposes given this area.

That this project has a support of the Historical Commission. And that in fact I think you haven't mentioned this, it was in the file, this sign actually replaces a very similar sign as before. So it's not a dramatic change to the neighborhood.

So on the basis of these findings the Chair moves that a Variance be granted the Petitioner on the condition that the work proceed in accordance with the plans submitted to this Board under date of a letter December 2, 2010 initialed by the Chair. And on the further condition that the work proceed in accordance with the conditions imposed by the Cambridge Historical Commission.

The all those in favor of granting the variance say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(9:55 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10038, 99 Brattle Street. Is there anyone wishing to be heard on this matter?

ATTORNEY SEAN HOPE: Attorney Sean Hope, 130 Bishop Allen Drive, Cambridge, Massachusetts.

GEORGE SMITH: George Smith, director of operations and campus planning Lesley University.

ATTORNEY SEAN HOPE: This is a very similar Petition for a Variance. The location is two signs on the 99 Brattle Street. One is on Brattle and actually one is at the corner of Brattle and Mason Street. These are both wayfinding signs very similar to the previous one. This is about

identification for -- this is one of the main avenues for pedestrian traffic and is part of the Variance so the new lot can be identified for passersby. It's also, too, these signs have a certificate of appropriateness except they are four foot high and we're seeking the nine feet high for the same issues. There are cars parked all along Mason Street and Brattle Street. A four foot sign height would not be visible if you were across the street. A nine foot sign would be visible by passersby.

TAD HEUER: Where are the other signs on -- there are a lot of signs as part of this re-signage package, right?

ATTORNEY SEAN HOPE: There are. On this particular stretch Brattle Street, as you can from Mason Street leading up to Cambridge Common, there really is only this one sign so if you're coming down Mason Street and you were going to go on the property, if

you don't take Phillips Place, this is the main sign to let you know that Lesley University has its campus here. And then this is the other sign on Brattle Street. This is actually a park -- it's a sign, but it's not a sign identifying the campus. It's a sign identifying the parking lot. So in terms of wayfinding signs, if you were coming down from Brattle Street from either direction, you wouldn't know until you saw one of these two signs that where the campus was.

TAD HEUER: The position of the one on Mason Street is to get me if I'm coming -- essentially if I'm coming from the Common down Mason?

GEORGE SMITH: Yeah.

TAD HEUER: So it's facing me. And then if I'm coming down Brattle out toward West Cambridge, I would see not the Mason Street one but the Brattle Street one that's

the first one I would see?

ATTORNEY SEAN HOPE: Right. Or if you're also coming down Brattle towards Harvard Square, then this is the first sign one you would see.

TAD HEUER: And what is the parking sign that leads you into the Hodge's lot say on it? Is that --

GEORGE SMITH: It just says Lesley University parking on it. It's a, it's a standard parking sign. It was exempt because it's replacing a sign that was there before.

TAD HEUER: Is there a reason that you didn't seek to make that sign a "This is Lesley University plus as well there's parking here"?

GEORGE SMITH: Well, it's --

ATTORNEY SEAN HOPE: Seems a bit crowded.

GEORGE SMITH: Yeah.

TAD HEUER: If someone sees a sign for Lesley University parking, don't they naturally presume that Lesley University is somewhere in the immediate vicinity?

GEORGE SMITH: I guess they could assume that, yeah. I think the -- these two signs right here are on pedestrian walkways. They're the main entrances to the campus. This over here is kind of -- you've passed the main entrance to the campus by the time you get to this parking sign right here. So it's not a --

TAD HEUER: Or you're about to get there.

TIMOTHY HUGHES: Nobody comes from the other direction.

GEORGE SMITH: So at any rate I think in terms of appropriateness is where you're going to sign the campus for both the Episcopal Divinity School and Lesley University. These two signs are the most

appropriate places because the main entrance is the to the campus.

TIMOTHY HUGHES: Maybe I can break it down for you, Tad. We don't want some future early childhood ed teacher to stumble onto this campus and come out an Episcopal priest.

TAD HEUER: How far are those signs from each other?

GEORGE SMITH: Oh, gosh this is --

TAD HEUER: 80 feet?

GEORGE SMITH: Easy, yeah.

TAD HEUER: I'm just saying.

That's not a big space and there are a lot of signs you guys are putting up there, they're all nine feet high. That's my only issue.

ATTORNEY SEAN HOPE: I do think the point is, though, if you're coming from Brattle Street down towards Harvard Square, you would not know -- I don't think the parking sign is sufficient to actually say

where the main campus is. If you're coming down Brattle Street, you could wait and maybe miss one main entrance into the campus. But there are certain entrances that you want pedestrians to use coming off Brattle Street and Mason Street. So I do think in terms of the certificate of appropriateness and the location was really about the direct traffic --

CONSTANTINE ALEXANDER: And there's no Zoning issue as to location, only to height.

TAD HEUER: I know. I guess part of my question, are you looking for drivers or are you looking for walkers?

GEORGE SMITH: Actually both. But, you know, we don't have that many parking spaces on the site. So a lot of the activity comes via the T or the bus or walking. And if you're walking, these are the most appropriate places to have -- these three

places right here are the most appropriate places to have signs.

TAD HEUER: Right.

I guess I'm thinking what are you going to do next. On Mass. Ave. you've got a presumably compliant four foot sign there, right? And don't you have something in the front yard?

CONSTANTINE ALEXANDER: I suggest we wait, leave the Mass. Ave. until --

TAD HEUER: We can, but I'm suggesting that is there a reason that that kind of sign doesn't work here? You have an existing kind of wooden sign there?

ATTORNEY SEAN HOPE: I guess that would be for -- we received a certificate of appropriateness for this sign. I can't speak to, you know, if they wanted a different type of sign or a brand new sign. But also just speaking to the Mass. Ave, that is was an existing granite pillar.

TAD HEUER: And I'm not talking about the granite pillar. I'm sorry. There's another sign -- there's a sign that says Lesley. It's a wooden sign that's in your front yard that is I believe it's conforming because is less than four feet which what we're trying to get to on this issue. These are two tall nine foot beanpole signs that are being stuck fairly close to each other. My question is only if you're looking to identify this as a campus, is there a reason you can't have a nice four foot sign just like the one you have at Mass. Ave. at the admissions building planted right next to the church that would give you what you need? And if you're saying --

GEORGE SMITH: It wouldn't be visible from -- if you're driving by.

TAD HEUER: Okay.

GEORGE SMITH: It just isn't --

TAD HEUER: Okay. I don't like the

population of signs running down the street, but I'm not sure what I'm going to do about that. That's it.

CONSTANTINE ALEXANDER: Okay?

Ready for a vote? The Chair moves that this Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. Such hardship being that there would be deprived the means of adequately informing visitors as to this campus, particularly since it almost shares a campus with the Episcopal Divinity School nearby.

That the hardship is owing to circumstances related to the shape of the lot. It's a sort of a sprawling lot that needs some sign visible identification signs to tell people that Lesley is located here.

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

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

The Chair would note that the relief being sought is relative modest. Only increases the height of the signage from four feet to nine feet.

That the sign would not be illuminated.

And that the sign has received the approval of the Cambridge Historical Commission.

On the basis of these findings the Chair moves that a Variance be granted the Petitioner on the condition that the signs comply with the signs attached to a letter dated December 2nd addressed to this Board and initialed by the Chair.

And on the further condition that the work proceed in accordance with the conditions imposed of the Cambridge Historical Commission.

All those in favor of granting the

Variance, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Anderson.)

CONSTANTINE ALEXANDER: Opposed?

TAD HEUER: Me.

CONSTANTINE ALEXANDER: One opposed. Variance granted.

(10:05 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10037, 1627 Mass. Ave. Is there anyone here wishing to be heard on this matter?

ATTORNEY SEAN HOPE: Attorney Sean Hope, 130 Bishop Allen Drive, Cambridge, Massachusetts.

GEORGE SMITH: George Smith director of operations and campus planning Lesley University.

ATTORNEY SEAN HOPE: This is an existing sign and this is a move to change from Lesley College, the lettering to Doble Campus.

CONSTANTINE ALEXANDER: Not Doble. We were having a debate about this.

ATTORNEY SEAN HOPE: Doble Campus.
There's no change.

CONSTANTINE ALEXANDER: And the reason you need relief, this is going to be a third sign, you're only going to have two signs on the property?

GEORGE SMITH: Yes.

CONSTANTINE ALEXANDER: It's not a question of height?

GEORGE SMITH: No. And it's existing -- it's existing lettering that said Lesley College, and we haven't been Lesley College for a lot of years. And the sign's actually been in place for some 15 or 20 years, and it's all we're doing is we're replacing it with like letters directly over, directly in the same place where Lesley College was.

CONSTANTINE ALEXANDER: And the sign would be less than one square foot in area?

GEORGE SMITH: Yes.

CONSTANTINE ALEXANDER: And it's not illuminated?

GEORGE SMITH: No.

CONSTANTINE ALEXANDER: Now, you didn't bring this before Historical?

GEORGE SMITH: No, it doesn't require that.

CONSTANTINE ALEXANDER: I didn't think so.

Is there anyone wishing to be heard in this matter?

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to be heard. I'll close public testimony. There appear to be no letters in the file one way or another on this matter.

Comments from members of the Board.

TAD HEUER: What do the other signs say?

GEORGE SMITH: The other two

signs -- one of them is a plaque that is on the front of the building, and it's the address 1627 Mass Ave. And it also has the ADA insignia on it for handicap.

And then the other sign is the large Lesley University sign that's been on front lawn there for years.

CONSTANTINE ALEXANDER: I wouldn't have thought that first sign counted as a sign for the purposes of our Zoning By-Law. The first one you said. This is the address?

GEORGE SMITH: It's got the address on it. The address and the ADA designation I think combined that one sign that's on the front of the building now.

CONSTANTINE ALEXANDER: And Les Barber of Community Development said it's a sign that counts?

GEORGE SMITH: Yes. Les reviewed every single one of the signs --

CONSTANTINE ALEXANDER: I know. We

have his letter.

Questions or comments from members of the Board?

TAD HEUER: Why does it need to be identified as this Doble Campus? What's the --

GEORGE SMITH: Frank Doble was the benefactor that gave us \$132 million for our endowment.

CONSTANTINE ALEXANDER: He should have more than a one foot square sign.

TIMOTHY HUGHES: That's what he gets?

GEORGE SMITH: He's got a building named after him, too, and we've got some other things.

TAD HEUER: Did you think about moving the Lesley University to the column and using the sign as Doble Campus?

ATTORNEY SEAN HOPE: We would have to come before you.

SLATER ANDERSON: That's the most expensive square foot sign in Cambridge.

GEORGE SMITH: So, this is the one place on Mass. Avenue, you know, the entrance to what used to be or it still is kind of our main campus where we are can say Doble Campus. So that's --

CONSTANTINE ALEXANDER: No banners say Doble Campus?

GEORGE SMITH: No. They'd be too big.

TAD HEUER: And they'd be over height.

GEORGE SMITH: That's true.

TIMOTHY HUGHES: I hope I get better value for my money.

CONSTANTINE ALEXANDER: Any further comments or ready for a motion? Ready for a motion.

The Chair moves that the Board make the following findings:

That a literal enforcement of the provisions of the Ordinance would involve a substantial hardship. The substantial hardship being the Petitioner needs to identify this part of the Lesley University as being the Doble Campus.

That the hardship is owing to circumstances relating to the soil conditions, shape or topography or such land or structure. I guess the shape of the structures.

TAD HEUER: Shape of the structures makes it impossible to locate this type of the sign in a place that could easily identified by a passerby.

CONSTANTINE ALEXANDER: Thank you.

TAD HEUER: The structure is setback far enough from the street.

CONSTANTINE ALEXANDER: 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 the size of the signage is quite small, One square foot in area.

That is replacing an existing sign of the same size so it's not dramatic change to the neighborhood.

That the sign would not be illuminated. And that it fills a need for Lesley University.

On the basis of these findings the Chair moves that a Variance be granted on the condition that the sign be consistent with that attest to a letter dated November 2nd submitted by the Petitioner and initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

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

(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 3rd day of January 2011.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 23, 2015

**THE FOREGOING CERTIFICATION OF THIS
TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION
OF THE SAME BY ANY MEANS UNLESS UNDER THE
DIRECT CONTROL AND/OR DIRECTION OF THE**

CERTIFYING REPORTER.