

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING
FEBRUARY 10, 2011 7:00 P.M.
in
Senior Center
806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair
Timothy Hughes, Vice Chair
Brendan Sullivan, Member
Tad Heuer, Member
Thomas Scott, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:00 p.m.)

CONSTANTINE ALEXANDER: The Chair will call this meeting to order. And as on our agenda, the first order of business before we get to our continued cases is to elect a new Chair and Vice Chair.

Nominations are open. I will nominate Brendan Sullivan to be Chair of the ZBA.

TIMOTHY HUGHES: Second it.

CONSTANTINE ALEXANDER: Second.

Any other nominations?

(No Response.)

CONSTANTINE ALEXANDER:
Nominations are closed.

All those in favor of electing Brendan, as Chair say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Unanimous.

BRENDAN SULLIVAN: I would nominate Gus Alexander to be Vice Chair.

THOMAS SCOTT: I second it.

CONSTANTINE ALEXANDER: Any other
nominations for Vice Chair?

(No Response.)

CONSTANTINE ALEXANDER: All those
in favor of electing me as Vice Chair?

(Aye.)

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

CONSTANTINE ALEXANDER: Okay. We
have new officers. But the changing of the
guard will not go that quickly. We're going
to start with our continued cases heard.
Since I was the Chair on those cases, I will
just continue as the Chair until the end of
those cases and then Mr. Sullivan will take
over.

* * * * *

(7:00 p.m.)

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

CONSTANTINE ALEXANDER: And the first case -- I'm going to get rid of some cases that are not going to go forward very quickly. Case No. 9911, 10 Fawcett Street. Is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. The Chair is in receipt of a letter from the law firm of Prince, Lobel, L-o-b-e-l. "This firm represents the above-captioned Applicant Clearwireless, LLC in connection with its application before the Board of Zoning Appeals for a proposed modification to its wireless telecommunications facility located at 10 Fawcett Street. As the Board

is aware, significant changes are necessary to improve the design of the facility.

However, due to temporary budgetary constraints, the Applicant is unable to undertake the necessary measures to adequately redesign the facility at this time. As such, the Applicant respectfully requests to withdraw this application. The Applicant hopes to reapply in the future with an improved design."

And, of course, Sean, I take it that since they are counsel they know they have to go repetitive petition issue? They've got three years otherwise.

SEAN O'GRADY: They were told, yes.

CONSTANTINE ALEXANDER: If they have a new design, I suspect they'll will be okay. Anyway, all those in favor of accepting this motion to withdraw, say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in

favor. Case withdrawn.

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

(7:05 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will next call case No. 10032, 202 Third Street. Is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. The Chair is in receipt of a letter from Kevin P. Crane, Esquire. "Relative to the above-captioned matter" -- and that's the matter we're talking about -- "request is hereby made that Petition relative to the Variance to convert existing storage space to a residential dwelling unit be withdrawn."

All those in favor of accepting this request to withdrawal say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: All in
favor. Case withdrawn.
(Alexander, Hughes, Sullivan,
Heuer, Scott.)

(7:10 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10019, 66 Oxford Street. Is there anyone here wishing to be heard on this matter?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one wishes to be heard. The Chair is in receipt of a letter from James J. Rafferty, Attorney. "Please accept this correspondence as a request to continue the above-captioned case currently scheduled for Thursday, February 10, 2011. This is a case not heard, so we don't have to have the same five members present."

SEAN O'GRADY: Give me just a second. We've scheduled the other 66 Oxford and I want to get it.

CONSTANTINE ALEXANDER: Another 66
Oxford?

SEAN O'GRADY: This is being
continued to a withdrawal proper, yes.

CONSTANTINE ALEXANDER: There's a
new petition coming? Okay.

(Short Recess Taken.)

CONSTANTINE ALEXANDER: For the
record.

ATTORNEY JAMES RAFFERTY: Good
evening, Mr. Chairman, members of the board.
James Rafferty on behalf of the Applicants.
As evidenced by the written request in the
file, the Petitioner is seeking a continuance
in this case. We did inform the abutter who
has expressed interest. The other day I
spoke with him today and I alerted him to that
fact that. Whatever date is most convenient
for the Board is perfectly acceptable with
us.

SEAN O'GRADY: We expect that the

next Oxford case to be heard on March 17th and even though it's closed, we can probably put this one on and do with them both.

CONSTANTINE ALEXANDER: March 17th you'll be here with a new petition or alternative petition?

ATTORNEY JAMES RAFFERTY: Yes, as a result of some conversation, an aspect of relief not in the current petition needs to be included which will necessitate a new filing. So, that's just about completed. I anticipate we'll be filing that tomorrow.

TAD HEUER: Can we get you on March 3rd for that or that won't work?

SEAN O'GRADY: No, March 3rd is closed.

TAD HEUER: How is that possible?

TIMOTHY HUGHES: It's possible.

SEAN O'GRADY: March 4th continued cases or for --

CONSTANTINE ALEXANDER: You have a

continued case, then they won't be on the same night.

SEAN O'GRADY: Regular cases we've closed simply because of the advertising we hit the wall.

TAD HEUER: That's my question.
Okay.

SEAN O'GRADY: Yes.

CONSTANTINE ALEXANDER: Okay?
March 17th. This is a case not heard anyway and that's the 17th, the day you want.

The Chair moves that this case be continued until March 17th at seven p.m. This being a case not heard, and a time for a waiver of a time for a decision being on file.

The motion to continue will be on the condition that the sign be modified -- and right now there's no sign posted. That sign had been taken down.

ATTORNEY JAMES RAFFERTY: I did

receive report that it was down, and I believe it went back up within the past week. I'm not sure how recent your observation --

CONSTANTINE ALEXANDER: Wednesday I drove by and I didn't notice the sign.

ATTORNEY JAMES RAFFERTY: As in yesterday?

CONSTANTINE ALEXANDER: As in yesterday.

ATTORNEY JAMES RAFFERTY: Well --

CONSTANTINE ALEXANDER: Well, anyway, it's not relevant for tonight, but it will be relevant for the 17th.

ATTORNEY JAMES RAFFERTY: Very much so, yes, thank. There probably will be two signs up by the 17th.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in

favor. Case continued.

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

(7:10 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will now call case No. 10040, 11 Linnaean Street. Now, this is a case that involves the Variance for the open space requirement, not the other one, the original.

ATTORNEY SEAN HOPE: Good evening, Mr. Chair, members of the board. For the record, Sean Hope, Hope Legal Offices, 130 Bishop Allen Drive in Cambridge. I'm here tonight with the Petitioner Mrs. Jie Lu. Last time we were here before the Board it was a case heard, and there was a question about the actual parking space in order to create a buffer, and also to define the space so that it could be for one car only. That was the subject of the Petition. We submitted in the file a revised landscaping plan. As you see

in the landscaping plan, that we actually have a rendering. Just to give the Board a physical idea, a landscape plan actually shows the species --

CONSTANTINE ALEXANDER: Mr. Hope, I'm going to interrupt you just for one second.

ATTORNEY SEAN HOPE: Sure.

CONSTANTINE ALEXANDER: In a rationale exuberance on my part at the last hearing, I said the revised plans had to be in by five p.m. on Monday, Monday before the hearing. And I should have said by the close of business since the office is open until eight.

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: You filed it on 5:26, 26 minutes after five.

ATTORNEY SEAN HOPE: Right.

CONSTANTINE ALEXANDER: I have no problem with the case going forward on the

basis of the fact that you were 26 minutes late.

Any other members of the Board feel differently?

TAD HEUER: I was actually in the office from five o'clock until that came in and saw no one came in to request it so I don't believe anyone has been disadvantaged by that filing.

CONSTANTINE ALEXANDER: Good.
That's good to put in the record.

Yes, sir.

SEAN O'GRADY: The Commissioner just instructed me to tell the Board that we've had several complaints about parking in the driveway. There's a fresh photograph in the file.

CONSTANTINE ALEXANDER: Hold that for a second, Sean. I just want to make sure -- let me just finish up the thought.

I take it and then we can go ahead with

the case even though the plans, by my instructions, were 26 minutes late.

Okay, now let Sean finish his presentation and then, please, chime in.

ATTORNEY SEAN HOPE: So, we did a revised site plan where we defined the space. We actually added a cobble edge curb to create a lip. And we also put several species of plants to really define that border area. There were some initial plans to I think make it 15 feet wide, and we wanted to make it very clear, so we actually narrowed it and expanded the landscaping to make it clear that there really be only space for one car. And if it was a handicapped accessible car, they would have sufficient room to park on both sides.

To recap the hardship, not going into it, but it's based on slope graded 10 percent on a significant portion of the lot. There would be parking on the Linnaean Street side.

There was a Certificate of Appropriateness that suggested that the parking be on the Humboldt Street side of the property. That 10 percent slope is greatest on the Linnaean Street side of the property, therefore, we chose to select to park on the Humboldt Street side.

CONSTANTINE ALEXANDER: How does this parking plan, particularly with the landscaping, square with your approval you got from the Avon Hill Conservation Commission which had some conditions about not moving planters and the like?

JIE LIU: The Historic Commission -- it's the same things. We submit a plan to you to one car with some like garden beds.

CONSTANTINE ALEXANDER: No, no, my question though, you already got a Certificate of Appropriateness?

JIE LU: Yes.

CONSTANTINE ALEXANDER: That imposed certain conditions when they gave it to you?

JIE LU: Also one car.

CONSTANTINE ALEXANDER: One car, yes. I can find it in a second. Will these plans contravene what you showed or contravene the conditions that are supported by the --

ATTORNEY SEAN HOPE: I did submit this plan for Historical for them to review. They would say that the conservation district will have to decide. Essentially what they didn't want was to remove -- there's a wood structure on that border --

CONSTANTINE ALEXANDER: Right.

ATTORNEY SEAN HOPE: That's to remain. What we've done is actually remove the landscaping on the paved area. So, what we've actually done is eliminated the paved area and put landscaping.

Technically it is changed so that they may want us to go and review that. That was a another --

CONSTANTINE ALEXANDER: Here's the Certificate of Appropriateness from the Avon Hill. (Reading) Approval was granted on the understanding that the existing paving and wood platform/deck would not be altered, but that potted plantings may be located between the parking bed.

There are other conditions. But I think -- I see this -- I think you are altering the wood platform/deck.

JIE LU: The wood platform is not altered.

ATTORNEY SEAN HOPE: The wood platform is actually still there. And you can see it's on the far right side.

JIE LU: Yes, it's the same.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY SEAN HOPE: All we did was

actually expand.

CONSTANTINE ALEXANDER: All right.

ATTORNEY SEAN HOPE: And we do think it's a sufficient buffer. There's obviously trees and there's a rendering. But I'll take any questions that the Board has.

CONSTANTINE ALEXANDER: If you have extra copies, why don't you put them over here.

At this point any further comment?

ATTORNEY SEAN HOPE: No.

CONSTANTINE ALEXANDER: As you pointed out, you have already addressed the hardship and other elements of the Variance as part of the record.

Sean, you wanted to say something?

SEAN O'GRADY: Yes. The Commissioner asked me to inform the Board that there's been several complaints that there's been parking happening at the property. And the inspector was sent out

today, and there's a photo from today of a car parked in the spot.

JIE LU: Could I explain? It's really because --

CONSTANTINE ALEXANDER: Yes, please.

JIE LU: Because the extreme -- the weather, there's so many snowstorms.

CONSTANTINE ALEXANDER: I'm sorry, that doesn't do it. We're very clear. We were very clear that you were not to park on there.

JIE LU: I understand. But it's really no parking space on the -- you know. We have one we save for our neighbor because just all the snow.

CONSTANTINE ALEXANDER: I'm sorry, I don't mean to be difficult, but a lot of people in Cambridge have a problem parking these days with the snow. I mean, there's no special dispensation here.

That doesn't put your client in a favorable light at least for this member of the Board, I tell you.

How are we going to be assured that you're going to comply with the law and our conditions in the future if you're just going to disregard them as you just did?

ATTORNEY SEAN HOPE: Last time we were before the Board, I did take exception to the fact that you actually required us to put that cobblestone edge, but to your credit because of the snow situation in which if I had known, I would have advised my client not to do that and to seek alternative means. This is actually the first time I've heard about it. But that being said, if you see the plans, the Board in its wisdom had us define the parking space that you can only fit one car there. You know, there was a snow emergency.

JIE LU: Yeah, sorry.

ATTORNEY SEAN HOPE: This is the reality of the situation. The only thing I can say is that there's only space for one car there. There's sufficient foliage. There's not a way to park two cars there. But I do think in light of the snow emergency, people were parking in areas that they weren't normally parking. I mean people were parking almost blocking the middle of the street on Brattle Street and other areas. This is not to exclude my client, but this is extreme circumstances. I don't think we've had the type of snowstorms, back to back to back that we did have. Again, if this happened before between now and recording the deed, I mean, you're well aware that you cannot do that. We did ask, you know, just for some understanding from the Board based on this, but this wasn't an idea to sneak in or not wait for the Variance. And if I had known, I would have instructed her -- even if

she had, to move the car and alerted
Inspectional Services.

CONSTANTINE ALEXANDER: At the very least. I know -- I accept the fact she didn't do it under your advice. I'm not beating up on you.

ATTORNEY SEAN HOPE: Sure.

CONSTANTINE ALEXANDER: You could have also called.

JIE LU: Yes, that was my mistake.

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

BRENDAN SULLIVAN: I would just as an added addition condition would be that cobblestone curb be a minimum of six inches above the proposed parking spot just to prevent the car from -- I suspect it will be, it looks like it will be, but I would like to put a specific dimension in there to eliminate any confusion --

CONSTANTINE ALEXANDER: Good

suggestion.

BRENDAN SULLIVAN: -- going forward.

CONSTANTINE ALEXANDER: Okay.

THOMAS SCOTT: I have a question about the hedges. You're saying they're 12 to 15 feet tall. Are you going to buy them mature? Are you going to buy little hedges and they're going to grow to 12 to 15?

JIE LU: We will buy -- I ask from starting from seven to eight and then grow to 12 feet.

THOMAS SCOTT: So what gets put in initially is not going to be 12 to 15 feet like it indicates on here? It's going to be seven feet tall?

JIE LU: That's what our landscape told us. But if it's required with starting with 15, we can buy. I'm not sure if we can buy, but-

THOMAS SCOTT: Well, I'm just

responding to what I'm seeing on the sketch,
that's all.

JIE LU: Yeah.

CONSTANTINE ALEXANDER: Did your
landscaper person tell you how long it would
take you --

JIE LU: She said she would buy the
fast grow ones. Did she list it on
the -- yeah, she list names. It will take one
year. So, it' the fast grow ones.

BRENDAN SULLIVAN: I would suggest,
we might suggest a minimal height initially.

JIE LU: Yeah, that's no problem.
Yeah.

CONSTANTINE ALEXANDER: Yes, I
think we have no choice but to be very
suspicious if we're going to grant relief
given the history we've seen.

JIE LU: I know.

CONSTANTINE ALEXANDER: Further
comments at this point from members of the

Board?

THOMAS SCOTT: Wasn't there a neighbor who was opposed?

CONSTANTINE ALEXANDER: We're going to get to that.

THOMAS SCOTT: Oh, okay.

CONSTANTINE ALEXANDER: I think we're going to get to that, I assume.

TIMOTHY HUGHES: Oh, we're going to get to that.

CONSTANTINE ALEXANDER: Okay. The Chair will now open this up to public testimony. Is there anyone here wishing to speak in favor of the relief being sought?

(No Response.)

CONSTANTINE ALEXANDER: No one wishes to speak in favor?

ATTORNEY SEAN HOPE: I just wanted to make the point, we actually instructed the neighbors who all came out last time, last hearing, since we told them it was already a

continued case, that they wouldn't have to come and reiterate the comments they made --

CONSTANTINE ALEXANDER: That's absolutely right. I should point out the -- we have a record with the number of -- we have testimony which is in the transcript, and also letters. We do have one new letter that came in which I'll get to at some point, but not right now. Anyway, there's no one who wishes to speak in favor of the petition.

Is there anyone who wishes to speak against it or have some questions about it? The floor is yours.

ATTORNEY TIMOTHY TWAROWSKI: For the record, my name is Timothy Twardowski, Robinson, Cole representing Ms. Virginia Burns who is the abutter who resides at 7 Humboldt Street and is the neighbor that's closest to this proposed parking space.

TAD HEUER: You can take a chair if

you want. You don't have to stand up.

ATTORNEY TIMOTHY TWAROWSKI: For the record, at the January 13th hearing I did address generally the criteria in terms of the Variance relief with regards to the hardship, etcetera. We continue to assert that there is no hardship in this particular case as evidenced by the fact that the Applicant can have parking on the Linnaean Street side of this property. More specifically with regard to what was submitted as -- the document that was submitted on Monday of this week, the proposed parking/driveway plan, my initial comment is to question again an issue that I raised at the last hearing with regard to parking provision, in particular 6.44.1 which I interpret to require a five-foot setback for on-grade parking spaces from one, two and three-family dwellings.

CONSTANTINE ALEXANDER: You did

raise that the last time. And I think the point we made to you the last time is that you may be right, and if you are right, that's another petition. I mean, in other words, the petitioner is not seeking relief from the requirement you say she has to meet. So that's not before us tonight. I don't think we need to get into that.

ATTORNEY TIMOTHY TWAROWSKI: I appreciate that, and I raise that to the extent that, you know, to ask whether the Board should really consider giving its blessing to a -- for all intents and purposes, a site plan that on its face is a contravenes provision of the Ordinance itself. And I do have copies of that particular provision that I'd be happy to distribute to the Board this evening if that's a subject of discussion.

More specifically with regards to the site plan itself, the reason why I asked -- I raise the five-foot setback issue is that

based on what they're showing here, we've got an 18-and-a-half foot parking space and a ten-foot driveway, to the extent that the Res B Zoning District front yard setback requirement is ten feet, if we're required to push back this parking space five feet from the facade of this building, they can't do that without requesting additional relief under the front yard setback or the parking setback requirement. It simply doesn't fit dimensionally. So, in that respect I would ask the Board to consider denying the request for this particular application.

CONSTANTINE ALEXANDER: Again, our response would be if we're going to vote on the petition before us tonight, the plan that's submitted and the relief sought for open space. If other relief is necessary and they haven't gotten it, that will be a case for another day. You can go to Inspectional Services and then thrash it out and come

before the Board. But I don't think, I don't think it's relevant to whether we will decide whether to grant relief on open space tonight. Those are maybe -- it may very well be legitimate issues that you're raising, but they're not before us tonight.

ATTORNEY TIMOTHY TWAROWSKI: Okay. So noted. I certainly appreciate that. I find it regrettable, however, that in cases like these, unfortunately, you know, the Board I guess is required to be -- you know, forced to be put in a position again, where my client and others in the neighborhood are forced to essentially become enforcement officers. And whether it comes to parking, which you know, not only is happening today and with all due respect to the recent testimony and recent weather conditions, you know, there has been testimony that this parking has gone on illegally in the past and it's not just a one-time occurrence here.

With regard to the proposal before us this evening, we do agree with a comment from the board member with respect to the cobble edge to the extent that this is going to be a functional barrier to preventing more than one car from being parked in this space.

With, you know, all due respect to the vegetative landscaping that they're proposing here, some type of a raised hard scape on this cobbled edge, and I think six inches is probably reasonable. We would request that that type of condition be added to be changed to this plan.

With regard to the proposal for the evergreen hedge, I haven't had an opportunity to see this. One immediate thought that I had with -- actually the drawing that was submitted this evening.

CONSTANTINE ALEXANDER: Oh, I'm sorry, here it is.

ATTORNEY TIMOTHY TWAROWSKI: One

consideration that my client had raised was, you know, the effectiveness of the actual change in species that they're proposing to install here. I don't know whether arborvitae or a different alternative might provide different screening not only in terms of height but in terms of fill that would more effectively screen headlights and other, you know, visual impacts to the neighboring property.

CONSTANTINE ALEXANDER: My personal view would be that whatever plantings they want to put in there, it has to have a fill as you pointed out, it approximates the fill on these plans. So you're not going to put up a couple of beanstalks up? You're not going to -- if we grant relief. You understand that?

JIE LU: Yes.

CONSTANTINE ALEXANDER: So, basically when I look at these plans, the fill

is such that they're almost touching, one plant to the next plant.

JIE LU: It has to be, yeah.

ATTORNEY TIMOTHY TWARDOWSKI: Okay, thank you. I have nothing further at this point. However, my client would like to make some additional comments. Thank you.

CONSTANTINE ALEXANDER: Thank you.

VIRGINIA MEE-BURNS: My first thought --

BRENDAN SULLIVAN: Just introduce yourself for the record.

VIRGINIA MEE-BURNS: Oh. I'm Virginia Mee-Burns. I'm the abutter that's going to be most affected by this parking space, and I live at Seven Humboldt Street.

To continue on, the arborvitae came up because my house is quite a bit above their space and I have now -- I did make copies this time for everybody. I think I did. Is that only four?

You can see that there's quite a -- there's about eight to ten feet there. So that a ten-foot taxus hedge isn't going to do anything about the lighting coming in through the windows.

CONSTANTINE ALEXANDER: I'm sorry. Give me that -- I'm not sure I followed your last comment.

VIRGINIA MEE-BURNS: Okay. Well, they show the house -- this is deceptive because they're -- they show it's as if they're on the same level, but there is not the same level. There is a good seven-foot rise there.

CONSTANTINE ALEXANDER: But the plans they're submitting and they're asking us to approve says that they're going to put plants that are going to be 12 to 15 feet high.

VIRGINIA MEE-BURNS: Yeah. Eventually, some day. I have a taxus hedge and it doesn't grow anything. It grows like

a foot a year, yeah.

But they -- this is misleading because they show the windows down here covered. And the windows being essentially on a level with these windows where there's, there's a big gap there. It's actually seven feet.

Anyway --

TAD HEUER: So I'm looking out this window here and I think that it's about the same height, it's a story up. I would imagine if a car pulls into this parking lot that's right behind us, if you're really 15 feet up off grade you're not really going to -- it's not like the headlights are looking in your window. They're 15 feet up, right?

VIRGINIA MEE-BURNS: Well, admittedly they were driving over the curb.

TAD HEUER: Right.

VIRGINIA MEE-BURNS: So when they drove over the curb, it did come up.

TAD HEUER: Right.

VIRGINIA MEE-BURNS: No, I'm not saying it's ten feet. I'm saying at least seven feet. But you see they make it look like it's parallel. There's hardly -- and there's only this one copy. But you can see it only looks like it's only -- that the -- my house is always the same.

Anyway, I again, I am totally opposed to the parking on the Humboldt Street side. I went down and spent money and helped them get the permit to park on Linnaean Street and I was told by my lawyer that my problems were over. However, 18 months later I found out differently. And now 10,000 trying to deal with this. I feel that it's very risky to put -- from my point of view, to put in a parking lot right there so near to my house because people can come in, park a truck, go over my back area and go in through my back door. And that, they -- there has been attempted break-ins. My back door was

pulled apart, but my late husband installed a system that prevented them from getting in the house. There have been two break-ins in the last say 15 years, and there was a terrible rape on one of them of a young woman. And there have been two other attempts that I know of. So it's a risky area. It's only five blocks, six blocks from Porter Square. And late Counselor Dehaney (phonetic) made a big deal saying this is one of the reasons he was against bringing up subway to Porter Square because it made it so easy for mobsters from Boston to come over and break in. So I really feel at risk. I feel endangered. And I think it's -- the way they have it, parking it's an open invitation. There's been enormous vandalism on the street. I know at least four cars that have been broken into, including one that was parked next to mine on --

CONSTANTINE ALEXANDER: You really

think that the fact that someone is going to park there increases the risk to you?

VIRGINIA MEE-BURNS: Yeah.

CONSTANTINE ALEXANDER: That someone is going to break in your house and there's no car parked in Humboldt Street, they're going to go through the yard --

VIRGINIA MEE-BURNS: Yeah, but where are they going to park?

CONSTANTINE ALEXANDER: I don't know. I don't think they're necessarily going to drive up.

VIRGINIA MEE-BURNS: There's nowhere to park. I mean, that's why they said the drug problem has been so good about -- in the area. There's no parking for drug dealers. I mean, this is -- I mean, they're now inviting someone into the neighborhood when the parking was so bad.

CONSTANTINE ALEXANDER: That assumes they're not parking there

themselves.

VIRGINIA MEE-BURNS: But, you know, assuming that they're away. I mean, if they're not --

CONSTANTINE ALEXANDER: When they're away and there's no car in the driveway, you're concerned that someone might park there anyway and then come around into your backyard?

VIRGINIA MEE-BURNS: Yeah. And it has happened. I mean, this is not some idol speculation.

Okay. And while my late husband was dying of cancer in 1993, the then owner drove a large diesel truck over the curb onto the walkway four a.m. several days a week, kept the truck running with lights on (inaudible) while he parked.

THE REPORTER: I'm sorry, I'm having some trouble hearing you.

VIRGINIA MEE-BURNS: Six to ten

friends where my husband was dying under the bedroom window. I cannot understand why these people want to park out on the street area when they had permission to have their car parked safely out of sight on Linnaean Street. For me this is -- and I am upset that the neighbors don't seem to be concerned how actions today affect the street for many years to come. While the present owners for the last four and a half years have been quietly, that wasn't the case for the other owners that have been there before. Wellkey (phonetic) had four to six friends living with him at all times, and they had three or four cars between them and people were complaining bitterly about them. There's seven bedrooms in that house. And so I did -- cannot help but to believe that once the Wangs move on, then there could well be another group of people that fit with the historic pattern. Because there was an

ashram (phonetic) before that where someone used to say was an unlicensed hotel. That there are going to be a number of people there and there are going to be a number of cars added to it.

The Linnaean Street parking area was supposed to be for three or four cars. So there would be a net -- they would be taking two or three cars off the street. Taking one car off the street in a place where there is seven bedrooms. I don't see that it's all that much. Last --

TAD HEUER: Do you prefer they take more cars off the street and we go back to allowing them two spaces?

VIRGINIA MEE-BURNS: No. I would prefer them to be down on Linnaean Street where they will have three or four cars out of sight. And that's what I helped them with and I spent money. So, yeah.

Lastly, the side yard of 11 Linnaean is

the last open bit on Humboldt Street. To replace the last remaining few yards with a car/truck parking lot is appalling to me since there was a much better solution offered to have the cars out of sight on the Linnaean Street.

I do not see the grade problem. I can show you -- I think they are exaggerating the grade. Here is the grade. It does not look to me like it was something insurmountable to them. Seven feet seem to be about it. Seven to eight feet over 70 feet.

I feel that if this unsightly used car lot is approved, future generations will wonder why since there was better options available.

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

(No Response.)

CONSTANTINE ALEXANDER: The Chair

notes -- I'm sorry, yes, Ma'am.

KAREN WELLER: Is this I'm for one parking so can I speak now or do I?

CONSTANTINE ALEXANDER: Well, I would have preferred you spoke before.

KAREN WELLER: I wasn't here. It said 7:45 on the notice.

CONSTANTINE ALEXANDER: I'm sorry.

KAREN WELLER: I just want to say a couple of things before I actually address them -- the landscaping. I want to say something.

CONSTANTINE ALEXANDER: I'm sorry, you have to --

KAREN WELLER: My name is Karen Weller. I live at 12 Humboldt Street. I just want to say a couple things from last meeting. From our last meeting I would like to express disagreement with one neighbor who said he wouldn't even mind if two cars were parked at 11 Linnaean Street, and there were

only three major factors here that he considered important: Economics, practicality and a third item I don't remember. It struck me that these factors were great for the individual, but not necessarily for the street or neighborhood.

The Chair --

CONSTANTINE ALEXANDER: Miss, the issue before us tonight is not two parking spaces.

KAREN WELLER: I know, I know it isn't.

CONSTANTINE ALEXANDER: So don't --

KAREN WELLER: I won't go there. The Chairman of the Planning Board from a while ago said that their goal was to maintain and improve the beauty of these neighborhoods. Ugly fences like the spiked fence installed between 4 and 10 Humboldt and oversized parking --

CONSTANTINE ALEXANDER: Miss, I'm

sorry.

KAREN WELLER: I'm getting to the oversized parking.

-- on green space scars the value of a whole neighborhood. Not to mention just individually impacting properties -- impacting the individual properties. I would like to see the landscaping plan for 11 Linnaean with the one car parking attached to the Variance should the Board decide to grant it with regard to the Wang-Liu landscaping plan.

Virginia Burns was saying something about the taxus not being tall enough and her taxus don't grow that way. That's because that's a different variety of taxus. Taxus that the Wang-Lius are proposing is a tall upright taxus and it grows and they're putting it in at a very good, substantial height to start with. I think that Eugene and Jie have done -- I guess Eugene isn't

here. I think you've done a terrific job, and I just want to personally thank you. Nothing has made me happier since the removal of the spiked fence, which was a hideously ugly thing. Nothing's made me happier about -- for the sake of the street than what you've done. I think it's a beautiful landscaping plan and I look forward to seeing it.

CONSTANTINE ALEXANDER: Thank you. I was going to point out that we did have one new letter in the file since the last hearing and that is from you. But I think you've covered --

KAREN WELLER: I covered it.

CONSTANTINE ALEXANDER: Okay. So the letter will be part of our file as well as your comments.

KAREN WELLER: Yes, okay.

CONSTANTINE ALEXANDER: Thank you.

Is there anyone else wishing to be

heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one else wishes to be heard. We'll end public testimony.

Mr. Hope, do you have any concluding comments?

ATTORNEY SEAN HOPE: No. The only comment I would like to make when the Board thinks about a condition about the height of the species to put in, obviously the older they are, the more expensive they are. And I think the minimum requirement that seemed to fit. I just want to point out before I came here I printed out a copy just from Google maps of what it looks like without the vegetation -- what the vegetation looks like without in terms of Mrs. -- the abutter's house.

TAD HEUER: It's a good thing we're restricting the parking, because this

picture shows parking on the right-hand side.

ATTORNEY SEAN HOPE: It was from probably from a year or two ago. But it just shows naturally what's growing in between the houses. It's not like there's nothing there now. So, just in terms of getting 12 to 15 feet, they're already sufficient. So we're obviously -- the landscaping plan is there, but I would just ask that we don't have to get taller than necessary to --

CONSTANTINE ALEXANDER: Well, we'll decide what's necessary -- how tall is necessary.

On that, with that cue, and then we've talked about putting -- and I agree, some condition as to what the height of the planting would be initially and what they should grow to. Since I'm landscaped challenged, anybody have any thoughts on that, members of the Board? Twelve feet initially at least?

BRENDAN SULLIVAN: Well, I think that you're probably going to get four to five and then it goes six to seven and possibly seven to eight when you go to buy these nursery stock. So I would think the minimal would be eight feet for me anyhow.

CONSTANTINE ALEXANDER: Other members feel differently or the same?

BRENDAN SULLIVAN: Once you get beyond that eight feet, it becomes very expensive, but it also becomes harder to obtain.

THOMAS SCOTT: I agree. I was going to say seven to eight feet.

CONSTANTINE ALEXANDER: Okay. Other comments from members of the Board at this point?

TIMOTHY HUGHES: I just had a question for Brendan about the six inches on the cobblestone. Do we know of -- and I'll defer to your experience that a cobblestone

laying on its side is about six inches. I wouldn't want them to have to build that up. I would think that the width of one cobblestone should be sufficient.

BRENDAN SULLIVAN: Yes. Is it cobblestone, Sean, or is it actual granite curbing?

ATTORNEY SEAN HOPE: The landscaper listed it as cobblestone.

JIE LU: Probably need granite.

TIMOTHY HUGHES: I think cobblestone is a little less than six, but it's probably sufficient to --

BRENDAN SULLIVAN: The height of a cobblestone would be fine. Yes. I mean, that was my intent anyhow. Not --

CONSTANTINE ALEXANDER: Flush.

BRENDAN SULLIVAN: It appeared it can't be flush anyhow because of the planting bed. But I would want to set at least a minimal standard.

CONSTANTINE ALEXANDER: Okay. The height of a cobblestone.

BRENDAN SULLIVAN: The height of a standard cobblestone would be sufficient. Minimal. It may be more than that when you get going with this planting bed and stuff. But anyhow, yes.

TAD HEUER: Sean, is the lot line measured from the -- setback measured from the center of the street or from the lot line?

ATTORNEY SEAN HOPE: So from the lot line. So for Res B it's from the lot line.

CONSTANTINE ALEXANDER: Ready for a vote? I guess we are.

Okay.

UNIDENTIFIED FEMALE: Excuse me, can I ask a question? I think I came in late and that's why I missed something here. On the plan it says that the height is 12 to 15 height.

CONSTANTINE ALEXANDER:

Eventually, but not initially.

UNIDENTIFIED FEMALE: Oh, okay.

Because you can buy them. The price doesn't go up that much.

JIE LU: He said seven or eight.

And they will agree.

CONSTANTINE ALEXANDER: Okay, ready? I'll try my best.

The Chair will move that this Board make the following findings:

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

Such hardship being that the Petitioner is unable to provide off-street parking in an area that has -- that's densely populated with a dearth of off-street parking spaces.

That the hardship is owing to circumstances relating to the topography of the lot. The lot is a steeply sloping lot, such that to have off-street parking on

Linnaean Street is not desirable in terms of just because of the grade. It's also not desirable because of the traffic that -- how busily trafficked Linnaean Street is.

And further to this point there was testimony at the last hearing by a number of affected people on Linnaean Street who supported the fact that Linnaean Street is not a suitable place to have off-street parking.

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

With regard to this, the Chair would note that there is support for the Petition from the Cambridge Historical Society and the Avon Hill Conservation District.

That there is not unanimous certainly, but substantial support from the neighbors. And that to the extent that we can relieve

on-street parking congestion. It's always been a goal of the city and -- and this is not front yard parking per se.

So on the basis of all of these findings, the Chair would move that we grant a Variance on the following conditions:

That the Variance would be for one parking space. The parking space would have to be in -- and the whole area would have to be in accordance with the plan submitted by the Petitioner, initialed by the Chair.

That with regard to the cobble edge shown on the plan, that this cobble edge must be not flush to the pavement, but vertical to the extent of a size of a standard cobblestone. The intent here being that to restrict the parking within the area shown on the plan.

That the landscaping as shown in this plan be in place and maintained. The plantings must be at least eight feet high at

time of initial planting and be of a species that should rapidly grow to a height of 12 to 15 feet. And that these plantings should be not only have the height that I've identified, but have a fullness upon maturity that approximates the fullness shown in this plan. So that the goal being is that there would be almost, almost a solid wall of green by virtue of the plantings.

And also on the further conditions that the Petitioner as required by the Avon Hill Conservation District, that not going to alter your existing paving and wood platform deck. And that the parking -- and that the no street trees will be removed for the curb cut that you'll eventually seek. We're not passing tonight on the curb cut. We're just passing on the Variance for the open space requirement. I want to make it very clear that the Variance we're granting is only with respect to the open space requirement. No

other -- if you need other relief, that is not subsumed in the Variance which is before us tonight. It's a different night and a different time.

Anything else on that? Is that it?

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(7:50 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 9956, 11 Linnaean Street. For those in the audience, this was the initial Petition that was continued pending this one. So, technically this is a different case.

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

ATTORNEY SEAN HOPE: Yes. For the record, Attorney Sean Hope, Hope Legal Offices, 130 Bishop Allen Drive, Cambridge. I'm here tonight with Jie Liu, and we wish to withdraw this case, the previous case having satisfied the requirements we need for

parking.

CONSTANTINE ALEXANDER: Okay.

And you realize that if that something happens to the other case, you've lost this case, too, for two years?

ATTORNEY SEAN HOPE: Yes.

CONSTANTINE ALEXANDER: All those in favor of granting the withdrawal say "Aye."

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Case withdrawn.

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

(7:50 p.m.)

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

CONSTANTINE ALEXANDER: The Chair will call case No. 10041, 77 Hurley Street. Is there anyone here wishing to be heard on this matter?

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

CONSTANTINE ALEXANDER: We're going to suspend the consideration of this case until that time.

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

CONSTANTINE ALEXANDER: We'll take a five minute recess.

(A short recess was taken.)

CONSTANTINE ALEXANDER: If I can ask everyone, if you want to continue your conversations, please do so in the hall. Okay, we're going to call -- again, we're going to call 77 Hurley Street, case No. 10041.

For the record.

ATTORNEY JAMES RAFFERTY: Thank you. Good evening, Mr. Chairman. For the record, James Rafferty on behalf of the Applicant Doctor Ahed Khalil seated to my right. And to my left, the project architect Mark Boyes-Watson. You'll recall the case from a prior appearance. This is a case of which a Variance is granted to allow for the conversion of an auto service station and welding company to a dental office with a single-family residence above. Since the case was heard and approved by the Board in the process of construction, there have been

some interior design modifications to the building driven in two different aspects.

The first, the layout of the actual ground floor dental office was further refined through the services of a dental architect, people who are experts in the placement of equipment and functioning of offices, and that led to the change in a few windows, doors and openings in the dental office. The majority of those are occurring on conforming walls, the walls that face the public street. We've had an opportunity to discuss the concerns that some of the abutters have, and we're proposing three changes to the plan.

We are no longer seeking an amendment or a modification to allow for the relocation of the main entry into the office of the dental office. That appears -- on the site plan, you'll see it's on the first page, 6R. On the revised first floor plan, 6R. That

area in yellow, it shows the door opening into an area where it says "Van accessible." And if you look at the original plan, that door opened onto the street.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: And the neighbor -- one of the abutters had a concern about the location of the door being close to her property. So, out of respect for that concern, we're not going to seek that modification. So we're proposing the door remain in the location as approved in the original Variance. So that aspect of the floor plan has changed.

TAD HEUER: Where does that show up on the elevations?

MARK BOYES-WATSON: The elevation sheet -- keep going, keep going. It's one more. It's on sheet -- here.

ATTORNEY JAMES RAFFERTY: In 10R.

MARK BOYES-WATSON: 10R.

ATTORNEY JAMES RAFFERTY: 10R. And if you look at -- I'm sorry, 10R. 10 is the approved set. And 10R has the highlighted door in yellow. We're no longer seeking to relocate the door.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: At that elevation at the ground floor will remain unchanged.

CONSTANTINE ALEXANDER: What about the window where the door -- in the original plan there was a window to the right of those three tiers.

MARK BOYES-WATSON: We'll put it in just as it was in the original.

CONSTANTINE ALEXANDER: So, the windows will go back to the original plan as well.

ATTORNEY JAMES RAFFERTY: Yes. At the ground floor location.

CONSTANTINE ALEXANDER: At the

ground floor. Okay.

BRENDAN SULLIVAN: Is there a clean set of these -- when you say there are three --

MARK BOYES-WATSON: Pretty simple.

ATTORNEY JAMES RAFFERTY: When I say they're clean, it's basically a stepping back of the relief requested. So, we're not requesting -- we're not requesting -- we're no longer requesting a modification to the entry at this level. So it is, it is clean in its original form.

BRENDAN SULLIVAN: Okay.

ATTORNEY JAMES RAFFERTY: So, we're saying we don't wish to modify what has previously been approved by the Board, and that is it in its approved form.

BRENDAN SULLIVAN: Okay.

ATTORNEY JAMES RAFFERTY: The other change, which I call two changes are simply one change. And that involves the -- in 8R

we're proposing in an area -- we can mark that plan. We're proposing to create either through the use of planters, fencing or some device, to limit access in this area. So, this is -- this is a --

CONSTANTINE ALEXANDER: I'm sorry. For the area being roughly here all the way over here?

ATTORNEY JAMES RAFFERTY: Yes. So from the edge of the trellis.

DR. AHED KHALIL: So remaining access to this back area here.

CONSTANTINE ALEXANDER: If I go along this and cross hatch this, that's the area that you'll not be occupying?

MARK BOYES-WATSON: (Inaudible.)

ATTORNEY JAMES RAFFERTY:
(Inaudible.)

CONSTANTINE ALEXANDER: Regular habitation?

ATTORNEY JAMES RAFFERTY: Right.

And the thinking is it would be either through a modification or landscape plan. It would be through planters or some type of fencing in the two areas there. So physically it couldn't happen without some effort.

CONSTANTINE ALEXANDER: Even if someone wanted to make the physical effort, you're not going to do it?

ATTORNEY JAMES RAFFERTY: Right. And it's going to be a condition in the Variance that they can't do it. Then Mr. O'Grady will go out there and arrest them.

CONSTANTINE ALEXANDER: And members of the East Cambridge Planning Team.

ATTORNEY JAMES RAFFERTY: Right, oh boy. The good and bad of this project is there are people very close nearby.

And then the third change involves the removal, or at least a discussion around the possibility of removing the planting in this

area right here where I've marked delete. And that, again, is in response from an abutter's concern that that may actually have an adverse impact on light into her property.

CONSTANTINE ALEXANDER: So if you remove the plantings, then what will be the visual impact from the street?

MARK BOYES-WATSON: You that's way back from the site. You can't see it from the street. You cannot see that area from the street at all. So it's really an abutter issue and not -- an appearance on either Hurley or --

ATTORNEY JAMES RAFFERTY: This is Hurley. This is Lopez. This is the back corner. There is a zero lot line with this abutter here. It's in respect for that abutter about the possibility that they could have the unattended effect of limiting her sunlight, and it's occurring right in this corner here.

MARK BOYES-WATSON: Right. What Jim's referring to is this corner of the lot which is internal for the block.

ATTORNEY JAMES RAFFERTY: And right now there was some concern that maybe there is some windows here. Maybe if that was -- if that was too dense, if that got too tall, it actually would impact sky and light. So we're happy to do that.

It then -- the third issue then is generally with regard to the landscape. The landscape is intended to provide a privacy screen between the new residence and the existing abutting residences. And there was -- in the current language of the Variance there's little allowance for deviation from it. But just as has been -- just as this issue has arisen with an abutter, an abutter in this location has said well, maybe as we get to the final phases here and there's some thinking about how much and how -- should this

be uninterrupted? Should this have something? It would be good to have some opportunity to collaborate with the abutter on that issue without needing further Board approval. So our request would ask for some type of flexibility if there's abutter consent around some modification to the landscape screen.

CONSTANTINE ALEXANDER: Well, of course if the abutter would be at the mercy of your client in terms of reaching an agreement on that. There's nothing in our relief. That it's got to be about a good faith negotiation and reach an agreement. Failing which your client would be able to do what he wishes to do.

ATTORNEY JAMES RAFFERTY: Well, I don't think we would expect it to be that blank a check. I think we could live with the existing language, but there could be a modification if evidence was provided to the

Building Department that the abutter supported the modification.

BRENDAN SULLIVAN: It would be a subtraction from the amount of what's proposed there, if anything.

ATTORNEY JAMES RAFFERTY: Right.

MARK BOYES-WATSON: I think it's more like the height and density, evergreen.

BRENDAN SULLIVAN: Right. If anything, it's a subtraction.

CONSTANTINE ALEXANDER: And I think the way to handle the subtraction is to leave the plans -- not try to address this at all. Tie into the original plans. If you make peace with the abutter, no one's going to complain. And if you do less, no one's going to come back and complain. But if you don't do something that the abutter doesn't like, then you've got to come back to the plan that we approved.

We can't -- as a matter of Zoning, we

can't allow the abutter --

ATTORNEY JAMES RAFFERTY: No, I'm just impressed by the practicality of this Board, and I think that's exactly right. And that's the notion. And we didn't want to be -- so if by agreement that if a few things went up and they would think, you know what, that's enough or I want more. But obviously the abutter would want -- I agree with you, the abutter would always want to preserve the ability to say wait a minute, you haven't abided by the plan in which case, fine. So I guess we could remove that.

So the proposed changes would involve the elimination of the request or the concern to relocate the entry to the office at the ground floor, and the introduction of an area along the roof plan that will not allow for human use by the residents of the dwelling.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: That's

it.

CONSTANTINE ALEXANDER: That's it.

Questions at this point from members of the Board?

TIMOTHY HUGHES: Should we have Mr. Rafferty reiterate what he wants to vary on the original plan?

CONSTANTINE ALEXANDER: I think it's marked. Look at these plans, Jim. I think they're all marked.

ATTORNEY JAMES RAFFERTY: Right. It involves I think -- I numbered them out. They're depicted in yellow. It basically involves six different locations where doors and windows are being added. There also a significant number of places where windows are not being added. And then you'll recall the monitor that was proposed, which we learned what a monitor was at the last hearing. So that's also a modification that the Applicant is not proposing to build a

monitor. So, the -- there are some -- there are some in the dwelling and there are a few at the ground floor, the dental office. And at the dental office level I believe they're only involving doors and not windows. And in the dwelling it involves a combination of the two.

MARK BOYES-WATSON: So, I think in response to that question, also, I think this is not a change in the relief in which you requested. It's really modifications to the facades to accommodate those plan changes that Jim referred to. That's the nature of it. So basically the relief requested originally is the same, and now it's just those -- it's for those modifications that, you know, that are requested.

ATTORNEY JAMES RAFFERTY: No dimensional changes, no setback changes, no GFA changes. Just facade changes, elevation changes.

TAD HEUER: On the south elevation there's a -- on the old plan looks like there's something marked 77 Hurley Street. Is that a window? Is that a garage? What is that? It now turns into three windows.

MARK BOYES-WATSON: 77, yes. That will go back to being -- that will be the front door to the dental office.

TAD HEUER: Right.

MARK BOYES-WATSON: And if you look at the plan, there was a -- we'll remove the door to that opening.

TAD HEUER: Right.

ATTORNEY JAMES RAFFERTY: So, another way of saying that, then the only change at the ground floor elevation involves the Lopez Avenue door depicted in 9R. All the other ground, the ground floor otherwise remains unchanged. And I'm sorry, and also I think there's a little change in the fenestration path of the garage doors on 9R.

So the only changes, the only changes at the ground floor are on Lopez, there's a door and the (indicating).

CONSTANTINE ALEXANDER: Sean, I got a question for you. When we get to the point of making a motion, I want to make sure you're going to be in a position to enforce or interpret is a better word what we've done here tonight.

So, we're going to be doing these plans, except in three instances, which I'll try to spell out, we're going to go back to the original plans. And will that sufficient for you in terms of working with this project going forward?

SEAN O'GRADY: Okay. So we have these plans.

CONSTANTINE ALEXANDER: This is the new plans. This is what came before us. Except that the door, the door that's -- changes to a parking area, it's

going to go back to the original plan.

SEAN O'GRADY: And are the original plans as shown on the face of the page?

THOMAS SCOTT: They're going to do that.

CONSTANTINE ALEXANDER: Not that. And with regard to this, they're going to basically not be able to use what I crossed hatched as -- only for maintenance purposes. People cannot go on there.

SEAN O'GRADY: Okay. So, just give me a note to that effect.

CONSTANTINE ALEXANDER: And this landscaping here would not be required. The three bushes over here.

SEAN O'GRADY: Okay. So, yes, however you want to notate it as long as I can follow it when we get there.

CONSTANTINE ALEXANDER: I just want to make sure you have plans you can work with here when we're all done.

SEAN O'GRADY: Yes. As long as there's note because I won't remember the drawing.

CONSTANTINE ALEXANDER: Okay?

SEAN O'GRADY: Yes. And those are just crossed out there?

CONSTANTINE ALEXANDER: Yes. Those are going to be eliminated, those three, yeah.

ATTORNEY JAMES RAFFERTY: You know, one of the ways I might suggest is the proposed relocated entry on 10R on the west elevation of the ground floor, we're no longer seeking to relocate that entry.

CONSTANTINE ALEXANDER: Right here. That's why I put an X on it.

ATTORNEY JAMES RAFFERTY: Right. We're withdrawing that element --

CONSTANTINE ALEXANDER: As it is on this page.

ATTORNEY JAMES RAFFERTY: Right.

TAD HEUER: And the same with 9R on the Hurley Street elevation, right?

THOMAS SCOTT: Not this. This.

SEAN O'GRADY: Do you want to make notations, Mark?

MARK BOYES-WATSON: I would be happy to.

ATTORNEY JAMES RAFFERTY: We're not withdrawing anything on 9R.

MARK BOYES-WATSON: I have one thing.

ATTORNEY JAMES RAFFERTY: That's correct.

CONSTANTINE ALEXANDER: One at a time, because Mr. Rafferty did not make any changes to 9R.

MARK BOYES-WATSON: Okay. 9R there's no change.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY JAMES RAFFERTY: Well, 9R the requested change also goes away, thank

you, which would have been what, what was appearing as a door was going to be a window. It's going to remain as a door. The only difference is that I think that the door as depicted in 9 is --

MARK BOYES-WATSON: Yes.

What -- we want to put that door on the street so as to create the draft lobby so that the cold air doesn't come into the dental waiting area. So that the door will end up in that opening that's shown on the elevation.

CONSTANTINE ALEXANDER: And isn't that on 9?

MARK BOYES-WATSON: It will be on the street.

ATTORNEY JAMES RAFFERTY: And if you look -- if you look at page six of the plan the door.

SEAN O'GRADY: Perhaps Mark can just make the changes and the Board can review his things and then there would be no question as

what was amended and said.

CONSTANTINE ALEXANDER: That's a good idea.

MARK BOYES-WATSON: I'll just mark it up.

CONSTANTINE ALEXANDER: Can you do it quick?

MARK BOYES-WATSON: 30 seconds.

CONSTANTINE ALEXANDER: Start doing it. You want a clean one?

MARK BOYES-WATSON: That would be good.

ATTORNEY JAMES RAFFERTY: So you can probably do the motion, right?

CONSTANTINE ALEXANDER: I want to see the -- I'll start the motion.

ATTORNEY JAMES RAFFERTY: There's public comment.

CONSTANTINE ALEXANDER: We'll get there. But I think the public may want to see.

BRENDAN SULLIVAN: Now he wants public comments.

ATTORNEY JAMES RAFFERTY: I'm trying to find time for him.

CONSTANTINE ALEXANDER: At this point I'm going to open the matter up for public comment.

Is there anyone wishing to be heard on 77 Hurley Street?

(No Response.)

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

Really? No one wishes to be heard after all the controversy the last time?

BARBARA BROUSSARD: Would you like us to say something?

ATTORNEY JAMES RAFFERTY: No, no.

MELISSA FAMIGLIETTI: After he makes the changes I would like to see them.

BARBARA BROUSSARD: And we won't get a chance to see the vegetation plans before

it's implemented. We've never seen what's going up there.

CONSTANTINE ALEXANDER: We can't -- the Zoning Board can't get into that. Although we did on Linnaean Street.

BARBARA BROUSSARD: Yeah, you did.

CONSTANTINE ALEXANDER: That's a little different kind of situation.

The vegetation will have to be in the planning -- as in the original plans.

BARBARA BROUSSARD: We never saw the original vegetation plans.

CONSTANTINE ALEXANDER: Well, they are -- they exist.

BARBARA BROUSSARD: Okay.

CONSTANTINE ALEXANDER: And to the extent that they want to do something other than that, particularly less planting, and you have no objection, no one's going to care.

BARBARA BROUSSARD: Okay.

CONSTANTINE ALEXANDER: That's the

point I was trying to make before. But you can hold them to the original plans. That will be your leverage.

Is there anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes no one else wishes to be heard. We'll end public testimony.

I don't believe we're in receipt -- the Chair is not in receipt of any letters that we didn't have last time around. So there's no new public commentary. I notice the letters we had before are part of the public file. While Mr. Boyes-Watson is busy scribbling, does anyone wish to make comments at this point?

I guess I would just make the comment that I'm glad to see we had a very rancorous session the last time. I'm glad to see it's not as rancorous this time. It speaks well

for your efforts and for the neighborhood.

ATTORNEY JAMES RAFFERTY: Very much so. Which is always the case. And we operate -- everyone's eager to see this project come to a conclusion.

CONSTANTINE ALEXANDER: Probably no more so than your client.

ATTORNEY JAMES RAFFERTY: He's right up there, I'm sure.

CONSTANTINE ALEXANDER: Sean, why don't you come over and take a look at these.

(Looking over plans.)

TIMOTHY HUGHES: Your concern is the doorway?

MELISSA FAMIGLIETTI: Yes.

MARK BOYES-WATSON: Do you want to see that?

MELISSA FAMIGLIETTI: Yes.

DR. AHED KHALIL: And the door is going to be --

MARK BOYES-WATSON: No, we should

markup just the proposed, right.

CONSTANTINE ALEXANDER: As on page nine.

MARK BOYES-WATSON: Yes, same plan, page nine. Melissa just wants to see it.

(Looking over plans.)

CONSTANTINE ALEXANDER:
Ms. Broussard, do you want to come up and take a look at this as well or no?

BARBARA BROUSSARD: No, I've seen it. Thank you.

CONSTANTINE ALEXANDER: Are you okay? Do you feel you had enough time to --

MELISSA FAMIGLIETTI: Yes, thank you.

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

Noting that this case has been heard before by this Board and a Variance was granted to allow the project to go forward

with respect to the re-findings regarding a literal enforcement of the provision involving a substantial hardship and the special circumstances, I move that we incorporate our earlier findings verbatim into this hearing, so the findings made then are the findings we make now. And similarly with regard to relief being granted without substantial detriment to the public good.

In this regard the Chair would note that the plans that we are looking at tonight are -- I'm going to say a slight variations to what was approved the last time. This case being before us, because the last time we granted relief on the condition that the work proceed in absolute conformance with plans that were submitted. And as the project has proceeded, it has become necessary in the Petitioner's view to make some modifications.

Such modifications as found by this

Board not to be substantial and, therefore, the findings that we made the last time can be incorporated by reference here.

On the basis of that, the Chair moves that a Variance be granted to the Petitioner on the condition that the work proceed in accordance with the plans submitted by the Petitioner. They're prepared by Boyes-Watson Architects. They're dated of 1/10/11. They're numbered 1, 6, 6R, 7, 7R, 8, 8R, 9, 9R, 10, 10R, the first page of which has been initialed by the Chair. And these plans as modified with written changes that have been marked on these plans. So these plans as modified tonight in writing but overall the plans as initialed by the Chair.

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

(Aye.)

CONSTANTINE ALEXANDER: Five in favor. Variance granted.

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

(8:25 p.m.)

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

CONSTANTINE ALEXANDER: The Chair
will call the last continued case of the
evening, case No. 10042, 24 Highland Street.
Is there anyone here wishing to be heard on
this matter?

CONSTANTINE ALEXANDER: The floor
is yours.

MAGGIE BOOZ: Good evening. I'm
Maggie Booz, B-o-o-z. And I'm just
presenting 24 Highland. To my left is
Jim Rafferty. And to my right is my client
Chuck Pieper. And we're here to request a
Variance for both FAR and front yard setback,
Variance for a covered porch.

CONSTANTINE ALEXANDER: And height,
right?

MAGGIE BOOZ: And height, yes.

We have -- when do you want me to speak
into this?

CONSTANTINE ALEXANDER: It's more
for the benefit of the audience and for the
stenographer than ours.

MAGGIE BOOZ: Okay.

My clients recently purchased 24
Highland Street and we -- when we went through
the house with one of the initial
walk-throughs, we found rolled up in a closet
on the third floor, drawings of the original
building from 1888 by Cummings and Sears
Architects. We then also in the same
roll -- we have a tremendous number of
drawings, actually, we found drawings of a
renovation that was done in 1930 by an
architect Lois Lilley Howe in Cambridge.
So, what we brought here tonight was first of

all, some of the original drawings, copies of them. And these are the elevation drawings, the front and rear elevation drawings of the building from 1888. And the next drawings are of the -- let's see this.

CHUCK PIEPER: This is the '30s.

MAGGIE BOOZ: This is the front and rear elevation drawing of the 1930 building.

UNIDENTIFIED MALE: Could those be held up?

CONSTANTINE ALEXANDER: I'm sorry?

TAD HEUER: You're not going to see much if I hold them up, but I would be happy to do so.

UNIDENTIFIED MALE: Perfect.

CHUCK PIEPER: This is the east elevation.

MAGGIE BOOZ: They're copies from actually blueprints.

CONSTANTINE ALEXANDER: Keep going.

MAGGIE BOOZ: Our original Variance

proposal, our original request to the Board was involving exactly the same Variance we're asking for tonight. We also requested a Variance at that time for the enclosure of a rear -- there's a deck at ground level in the front and one story above ground in the rear. And we were requesting to enclose the bottom of that to make it a garage. We were requesting to build an addition on top of that to make a breakfast room. And we were also requesting an addition to the third floor on the rear of the second floor in the front, but on the rear of the building, an addition to the master bedroom. We withdrew those requests because we sensed neighborhood opposition to those requests and decided that what we really -- what my clients care the most about was the remaking of this Queen Anne Victorian house which seemed to most importantly contain this covered front porch and the tower. So that's what we've come

here tonight with, and those are the drawings that you have as part of the submission.

Our floor area from the original application that I submitted our existing floor area was recalculated. When I originally did the calculations for the floor area, I included everything. I included all mechanical areas, all walls on all -- on basements, first, second and third floors. I then spoke with Zoning and Jim who pointed out that there are a lot of things that don't -- that can actually could be excluded when calculating floor area. When I recalculated, I submitted the dimensional form again and it has a new existing floor area.

CONSTANTINE ALEXANDER: What you're showing on FAR is you have a house that is now in compliance.

MAGGIE BOOZ: That's correct.

CONSTANTINE ALEXANDER: And you're

going to go out of compliance.

MAGGIE BOOZ: That's correct.

CONSTANTINE ALEXANDER: You're going to go from 0.48 to 0.54 in a 0.5 district.

MAGGIE BOOZ: That's right. That's correct.

And it's an increase in floor area of 700 -- approximately 760 square feet. 765, something like that. 41 of it is in the tower and about 715 of it is in the covered front porch.

So we have a floor area right now that I think is 60 -- well, 63 -- 6329. Allowable is 6551. And we're requesting 7086. So the amount I guess we would be allowed to go over according to the FAR is about 220 square feet. And so there are, there are different ways of looking at the front porch. I mean what we're trying to do is just go by these old drawings. I mean, we took the 1888 drawings

and said this is what we want to do. We think this would be inventive and whimsical and fun just the way the building was originally designed.

CONSTANTINE ALEXANDER: Talk to me about the height which has always been a big issue with this Board for people wanting Variances to go for height, to go up.

MAGGIE BOOZ: Yep.

CONSTANTINE ALEXANDER: Did the house shrink over the years in terms of height and now going back up? Why do you have to add to the height of the building? You're right now at 43 feet when you're only supposed to be at 35.

MAGGIE BOOZ: That's correct.

CONSTANTINE ALEXANDER: That's what Zoning requires. And you're going to 44.5. So you're adding almost what, another foot and a half. How did that come about?

MAGGIE BOOZ: The original tower as

designed was three feet taller than the tower that's there now. So the peak of the original tower is three feet taller, and that's what we're looking for. I always get confused when filling out the dimensional form, because it's asking for the height of the building. Well, it's the -- the highest point of the building right now is the ridge, not the peak of the tower. When we push the tower roof up, it's a foot and a half taller than the existing ridge. So that's what -- that's the height.

ATTORNEY JAMES RAFFERTY: It returns the tower to its original proportion and symmetry. In a 1930 renovation --

MAGGIE BOOZ: Correct.

ATTORNEY JAMES RAFFERTY: -- the tower was removed and reconstructed.

CONSTANTINE ALEXANDER: It was removed.

ATTORNEY JAMES RAFFERTY: Well, it

was redesigned.

CONSTANTINE ALEXANDER: It was altered.

ATTORNEY JAMES RAFFERTY: Better word. In the application here. So the tower requires height relief. There is about 200 square feet of GFA available. So the tower doesn't require GFA rule. It very much requires height relief, but it's just for a singular element. And there are height exceptions for unoccupied towers. But in this case, you can stand up in here so it is a space that qualifies as an occupied.

It's largely an ornamental feature. It's design represents an increase of about a foot and a half from the current condition when it gets -- if it were to be reorganized the way it originally had been installed.

CONSTANTINE ALEXANDER: Okay.

TAD HEUER: Can you just clarify quickly what's happening with the back? So

you have a deck there. Is that deck staying?
Is that deck going?

MAGGIE BOOZ: No. We're actually taking that deck off.

TAD HEUER: Right. And does that do anything on your net FAR?

MAGGIE BOOZ: That affected our GFA in the first place, yeah.

TAD HEUER: Okay. So, when you're talking about needing 720 -- you're asking for 750 some odd feet?

MAGGIE BOOZ: We're asking for 500 some square feet. That's over the mass.

TAD HEUER: Right. But if I -- you said there was 715 in the porch and 41 in the tower. Presumably you gained some by taking off the back porch.

MAGGIE BOOZ: That's already taking that into consideration.

ATTORNEY JAMES RAFFERTY: I think the existing presumed that the deck wasn't

there which is perhaps less than precise at the moment.

MAGGIE BOOZ: True.

ATTORNEY JAMES RAFFERTY: The deck is an interesting issue from a GFA question because it's not the area on the surface of the deck. It's a question of area below the deck. And there was some thinking if it were a carport, it would be excluded. There's been some suggestion --

MAGGIE BOOZ: Although I did originally include it.

ATTORNEY JAMES RAFFERTY: So, you know, when is the area below a deck included in GFA? The interpretation has varied over the years. But the original number included in any rate, the deck as a feature of the house is being removed now, so it doesn't have any impact. So I think it's probably less than precise to say that the existing GFA is at the number that Ms. Booz cited. It's actually a

number that includes the deck, but the deck is going away.

MAGGIE BOOZ: Right.

TAD HEUER: I guess part of the reason I'm asking is because if we're talking about a house that's in compliance going out of compliance, are we talking about a house that's out of compliance staying out of compliance?

ATTORNEY JAMES RAFFERTY: Well, let me suggest this: If you pull the car under that porch, I think it becomes compliant because I think it's a carport and you could park there. And you could park there. So, I've heard varying theories as to whether cars ever parked there. I'm not sure why a car couldn't park there. And if you pulled a car in there today, it's no longer GFA because you're allowed to have a single car.

MAGGIE BOOZ: And it's adjacent to the driveway.

ATTORNEY JAMES RAFFERTY: And this house, a good portion of the GFA is in the basement. So we know the Board deals with issues all the time about the impact of the ceiling heights in the basement. All of the GFA requested here in this FAR is contained in the covered porch. So in theory the porch could go on without a covering and not trip over a GFA issue. So what Ms. Booz has done today is actually looked at how it might look if only a portion of the porch was covered. And frankly it looks a little absurd. But GF -- the Board doesn't -- the Ordinance doesn't draw a distinction between types of GFA, but the Board certainly recognizes in cases covered open porches that have a roof over them, while they constitute GFA, don't have the bulk and mass associated with additions. So this is from a -- from a GFA perspective this has the same impact as if a front addition was being put on this house.

But the Board I know has had concerns in the past well, if these porches are covered, could they later be filled in? And my suggestion to Mr. Pieper and Ms. Booz was you might want to suggest to the Board if they were willing to entertain this relief, that you propose a condition that this will never be enclosed. It has to remain as an open porch. It really comes to the effect of the covering over the porch. That's the dimensional relief. That's really the thrust of the dimensional relief is whether this porch -- the porch does extend slightly into the front setback. It could be scaled back as well and not have that setback problem, but it's designed to meet the original proportions. But it really is very much all about this porch and the reconstructed foot and a half for the original tower element.

TAD HEUER: If they wanted to build

a porch, they would need to come back for the Special Permit anyway?

MAGGIE BOOZ: Of course.

TAD HEUER: I mean, I see people nodding and not nodding. I mean, I guess I'm a bit more inclined to be favorable toward additional -- strangely, towards additional FAR where the house is already out of compliance, which is our usual practice than if it's going from out from in compliant to out of compliant with the request. I'm not saying it's dispositive for me in either situation, but --

ATTORNEY JAMES RAFFERTY: That would be a contrary interpretation of the clean hands doctrine that the non-conforming house is given greater latitude than the conforming house. Interesting approach.

TAD HEUER: You're going to the same number regardless.

ATTORNEY JAMES RAFFERTY: True.

MAGGIE BOOZ: The end is the same.

ATTORNEY JAMES RAFFERTY: Right.

MAGGIE BOOZ: Well, actually, the building would still be compliant if I included that area under the porch, because that area under the porch right now is 10 by 18. It's 108 square feet.

TAD HEUER: You could just --

MAGGIE BOOZ: Yeah. It would still be below even if I included it.

TAD HEUER: All right.

CONSTANTINE ALEXANDER: Anything further?

MAGGIE BOOZ: No.

CONSTANTINE ALEXANDER: You'll have another opportunity.

MAGGIE BOOZ: I'm sure there will be more speaking to do.

TAD HEUER: You're keeping the front wall where it is now? That solid concrete wall on the lot line?

MAGGIE BOOZ: We haven't addressed that, that wall.

CHUCK PIEPER: We haven't addressed that.

TAD HEUER: I'm asking only because if you're moving into a front setback, where you have a, what is it? Six foot? Eight foot? Very tall wall, taller than me, there may be -- there may not be as much of an issue where you're intruding into a front setback where there's a solid eight foot wall as when you are. I don't know which way the Board would want to go with that, but I wanted to ask.

TIMOTHY HUGHES: How much is the intrusion into the front setback?

MAGGIE BOOZ: Two feet.

CHUCK PIEPER: Two feet. And only at the level of the bevel of the porch.

MAGGIE BOOZ: Only in one area.

ATTORNEY JAMES RAFFERTY: Only one

small segment of the porch.

CONSTANTINE ALEXANDER: Right now they're at 33 feet. And they'll go to 23 feet. And it's supposed to be minimum 25. So, again, from compliance to non-compliance.

TIMOTHY HUGHES: But how much of the porch is going?

ATTORNEY JAMES RAFFERTY: What's the expanse on that?

CHUCK PIEPER: It's a ten-foot porch so it would be the marginal two feet of that bow goes out straight. The straight part of the porch is well in compliance of the 25. So whatever that radius is times two feet, I'm not sure what the six feet? Perhaps that's with the bowing.

ATTORNEY JAMES RAFFERTY: That shows the issue right there.

MAGGIE BOOZ: I'd estimate maybe six feet wide area, something like that.

ATTORNEY JAMES RAFFERTY: Less than ten percent of the porch of the estimate would be in the setback area.

TIMOTHY HUGHES: Okay.

TAD HEUER: And then you're coming into the compliance on your rear setback; is that right? You're going from non-conforming into conforming?

MAGGIE BOOZ: Correct.

CONSTANTINE ALEXANDER: They're not doing anything with the rear. It's the front.

MAGGIE BOOZ: Well, that depends if you consider the deck there or not.

CHUCK PIEPER: We're moving it 10 by 18 feet.

TAD HEUER: Right, that's something we should look at.

CONSTANTINE ALEXANDER: Oh, no, it's positive.

TAD HEUER: If you look at the

overall context.

CONSTANTINE ALEXANDER: Well, yes.

TAD HEUER: Yes.

CONSTANTINE ALEXANDER: Well, I'm not sure why reducing -- improving your rear yard setback has a bearing on what you do with your front yard setback. They're two different things.

TAD HEUER: Because you're reducing the number of non-conformities that you have.

CONSTANTINE ALEXANDER: Okay, yes. To me it's not as meaningful, but I'll accept that.

TAD HEUER: Could you explain what you're doing to the left, though? I don't understand that. So that goes from 8.5 to a 19.6? What's coming off that gives you ten feet?

MAGGIE BOOZ: We have already taken down a set of stairs and a large masonry front area that --

TAD HEUER: That's this?

MAGGIE BOOZ: Yeah -- no -- yeah,
it's right here.

CONSTANTINE ALEXANDER: I know
there are neighbors here by the way
interested in this. Are you able to follow
this? If you want to come up and look at the
plans, any time, feel free.

MAGGIE BOOZ: (Inaudible.) So I
counted it.

There was an -- apparently the
situation with the adjacent neighbor in which
the driveway was very difficult to use and it
seemed logical to take that -- it was a
massive stone terrace you could call it that
we removed.

CHUCK PIEPER: The house is 20 feet
from the lot line and its massive porch made
it just eight feet from the lot line. So it
was very difficult for the neighbors as well
as the occupants of that house to use any

portion of that driveway and open the doors safely. It was very hard. And let alone getting in and backing out. So that was something facilitated not only our occupancy but the neighbors as well.

CONSTANTINE ALEXANDER: Along the lines that the points that Tad has been making, we are in receipt of a letter, and maybe I'm not sure you've seen it. It's a letter actually addressed to Charles Sullivan because the Historical Commission -- and I'll later read a letter supporting the project. But this letter was given us a copy to us. It's from Martha Bedell, B-e-d-e-l-l Architects, signed by Martha Bedell. And one of the points she makes is -- I'll read it. "Finally much of what the new owners at 24 Highland want to achieve, restoring the shingle style, reconfiguring the windows, changing the sash designs and even adding the porch, although

reducing its width from ten feet to eight feet -- from ten inches to eight inches, can be achieved without a Variance."

Is that true? I mean, do you agree on how --

MAGGIE BOOZ: I'm sorry, could you read that again?

CONSTANTINE ALEXANDER: I'm sorry. Rather than --

CHUCK PIEPER: I have a copy here. We just received it tonight.

CONSTANTINE ALEXANDER: So did we.

CHUCK PIEPER: And I have Charlie's response, too.

TAD HEUER: Do you have that?

CHUCK PIEPER: No, you don't.

ATTORNEY JAMES RAFFERTY: The sequencing here we're now reading a criticism of a letter of support.

CONSTANTINE ALEXANDER: It's relevant to how much relief you need to have.

That's what I want to --

ATTORNEY JAMES RAFFERTY: The relief, the relief -- the forms of relief involve that portion of the porch that's in the front setback.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: That portion of the porch that's covered that exceeds the 0.5 FAR which is somewhere beyond about 500 square feet, and the height necessary to extend the tower.

CONSTANTINE ALEXANDER: Right. I understand that.

ATTORNEY JAMES RAFFERTY: So those are the three things. So as to the assertion that this could be done. Certainly parts of the this could be done, but I don't see -- you can't -- the covered roof is the significant portion and the height. So, you can't, you can't extend and restore the tower to its former configuration nor put a roof over more

than 200 square feet of this porch. So, I'm not sure -- I'm always -- I suppose she might be suggesting that we fill in -- the Petitioner can fill in the basement.

CHUCK PIEPER: No. It's entirely off that. It's a question of if the argument -- one of the basics of the argument we're making is we'd like to restore the house to its original -- the Queen Victorian. There is a question of was the house in fact built as the plans -- as the original plans indicated? And there's speculation that maybe it wasn't. And part of the argument is well, the evidence of windows on the eastside. Well, if you look at the outside, it is in fact speculation. Because if you look at the inside, and all that interior wall has been taken out as we tried -- we're redoing all the inside. It wasn't insulated, poor electricals, poor plumbing and the like. So all that's taken out. And

you can see absolutely clearly the bones of the structure and the framing of those windows that have been filled in with new windows put in in the thirties, and subsequently in the sixties as well.

Including windows around the original tower. The original drawing show five. Today's there's three. And in fact, when you peel away the inside wall, there's the five windows in the tower as well.

In fact, Charlie Sullivan wrote a letter back to Mrs. Bedell and said that there's no evidence to the contrary that it wasn't built as such. And if you look physically inside the drawing, there's clear evidence the fact what the original floor plans were, not only the elevations, but interior floor plans that that in fact those windows did exist.

MAGGIE BOOZ: Would -- speaking of the just sequence of how we're presenting

information tonight, do you -- would you care to introduce into the record the letter that Charlie wrote in the first place?

CONSTANTINE ALEXANDER: I will. I'm sorry, I probably shouldn't have -- I thought we were on this general subject, so I wanted to get it on the table now, but I will get that into the record.

MAGGIE BOOZ: Well, if we're on that general subject, should I delve into it?

ATTORNEY JAMES RAFFERTY: Maybe you can show the Board --

CONSTANTINE ALEXANDER: Before you're finished with your presentation, by the way, you should address the hardship and special circumstances since that's the legal basis of the relief if we're going to grant relief. I haven't heard anything on that yet. So, in due course don't forget to deal with those issues.

MAGGIE BOOZ: Okay. So are we on

right now --

ATTORNEY JAMES RAFFERTY: You're on whatever you want to be on.

CONSTANTINE ALEXANDER: You're on whatever you want to be on.

MAGGIE BOOZ: Here is -- this is a drawing that was published in a newspaper in 1889 of 24 Highland Street. There's an article that accompanies it. The article that accompanies it goes into great detail about the description of the house. First there's an article of it under construction. Then there's an article that describes it after it's construction. Obviously everybody was watching this house go up. And it's quite clear.

TAD HEUER: Past times in Cambridge?

MAGGIE BOOZ: Oh, I tell you. And there was not a photograph of this house. There was a drawing made. What would you like to see?

ATTORNEY JAMES RAFFERTY: These are the records from the Historical Commission, right?

MAGGIE BOOZ: They are.

ATTORNEY JAMES RAFFERTY: This depicts the original proportion turret and the covered porch that they're seeking to restore.

MAGGIE BOOZ: It also in the article describes all those things in great detail, and the wonderful view of the Charles River that was available from up there. And it's interesting historical knowledge. So the letter that was submitted, I mean one can only conjecture was it actually built? Well, all evidence suggests that it was.

CONSTANTINE ALEXANDER: We're not going to decide tonight whether it was or it wasn't. I just want -- I do want to move away from the -- I think architecturally I mean this seriously, it's an interesting

discussion about restoring this building to its original grandeur to the legal issue before us. And I mean all well and good to want to restore it to its original appearance, but if you don't meet the requirements for a Variance, you can't do it.

CHUCK PIEPER: Let me speak to the hardship issue with regard to the height which I know is a significant issue.

CONSTANTINE ALEXANDER: Please.

CHUCK PIEPER: The -- if I'm understanding the by-laws correctly and the Zoning Laws right, all but three feet of that third floor tower can be built without requesting approvals. It's within the rights to go do that.

CONSTANTINE ALEXANDER: Anything that's not going to be inhabited just becomes an ornament if you will --

CHUCK PIEPER: Correct.

CONSTANTINE ALEXANDER: -- you can go

above the 35 feet.

CHUCK PIEPER: Correct. We can do that and hit the height without requiring the Zoning. That would then mean the room itself, inside that tower would be five and a half feet.

CONSTANTINE ALEXANDER: Right.

CHUCK PIEPER: Which makes it unusable for an adult and the corner of the room. To make it a usable space for a normal ceiling, eight feet, that's the three foot extension that we're asking for on that.

CONSTANTINE ALEXANDER: If, if we were to deny the relief on the height and you would not be able to use that room because it's only five and a half foot ceiling, how many feet of living space would you have in the house after? Probably five, six thousand feet? I mean, it's not like this house will be -- it's not inhabitable.

CHUCK PIEPER: That's correct.

There's not an argument on the total square footage of the house. The hardship is specifically associated with the liveability and the functional-ability of an adult to use that room. And that would not be the case with the five and a half foot ceilings.

So there's architectural significance or issues or preferences aside, that's a fact we could get to within three feet of that, but that's on an element on that.

The porch element frankly is the hardship issue on the coverage, we can cover part of it, not all of it. And it's not covered, then it doesn't count against the FAR as you know. That's, I don't think that is a particular legal issue or hardship issue. It's an architecturally significant issue I would think. That may or may not --

TAD HEUER: Does counsel have anything to say to the contrary?

ATTORNEY JAMES RAFFERTY: You can

tell we haven't met before. There's definitely a hardship. There's a very big hardship.

TAD HEUER: Do you care to elaborate?

ATTORNEY JAMES RAFFERTY: No, I don't want to interrupt Mr. Pieper. I think he's being candid in saying the house -- it wouldn't render the house unusable. It has aesthetic function. But hardship is a very loaded term, and I just wanted to caution Mr. Pieper that it makes it difficult in cases of this nature for the applicant to make such an assertion and then puts the Board in a position of -- I'll --

BRENDAN SULLIVAN: Mr. Pieper, when you bought the house, somewhat recently, when you first saw the house, obviously you liked the neighborhood. You wanted to live in that area. You liked the size of the house. In other words, it was workable for your needs?

However, that it really needed some major fine tuning. Not only the interior comfort that you would need; maybe kitchens and baths, so on and so forth. And also while we're going through this entire exercise, it would be nice to tweak this, tweak that, so on and so forth. The addition in the past were probably on the scales of justice were tilting it a lot as far as the amount of relief that was being requested, what was going to be allowed and that it was going to impact your neighbors.

CHUCK PIEPER: That's correct.

BRENDAN SULLIVAN: Then you backed from that. And you said okay, we can do without that. So on and so forth. Then at some point these plans, drawings were discovered and said, you know, that's really what the house should look like. And so that's sort of the road that you went down to; is that correct?

CHUCK PIEPER: Yes.

BRENDAN SULLIVAN: And then once the -- say, yeah, this is really what we would like to do, what we would like to spend our resources doing, and then we have attained a comfort level for us for going through this whole exercise. And then that triggered obviously well, we can't do it all because you're bumming up against current Zoning Regulations.

CHUCK PIEPER: Correct.

BRENDAN SULLIVAN: And that's where we are tonight.

CHUCK PIEPER: Correct. And in fact, the drawings and the for the front and the tower were not after the three issues in the back and the addition of the living space were withdrawn. They were part of the original idea.

BRENDAN SULLIVAN: Right.

CHUCK PIEPER: But when we heard the

responses, it was clear that the scope of adding more living space and developing the size of the structure in the back was clearly not favorable to the neighbors. We hear that, we withdraw it. And we look at what are we asking in the margin today? It is, it's three feet of elevation in the front, to make a room up there liveable. And people can say no, you can say no. You'll hear from the neighbors. I think you'll hear -- we sent a letter to everybody a little more than a week ago before the drawings, the new submissions went out. The three neighbors to the east, to the west, directly across the street, we sat down with them and we reviewed the plans. You'll hear from them later I'm sure. It is, it is a three-foot request. I think their view would, you will hear from -- I'll let them speak for themselves. Our view is that's a reasonable request. That's not out of bounds and it's something -- that's why

commissions are here to adjudicate at the margin. And we've tried to explain that. And the porch, we can cover part of it but not all of it. We think it looks better if covered, all it. The house lends itself better to the original activity of that. I'll let my colleagues speak of the hardship and legal issues associated with that. But at the core, correct, that is it. What is fundamentally inside that house today is fine. And when redo the inside and redo the outside which is close to being derelict, some parts of it are structurally unsound because of the lack of upkeep. The roof leaking, et cetera. And when we get all that -- done that's the bones of the house. No one will see the difference there, it will be a proper property. And so it's -- at the margin that's what we're asking for. And people will have different opinions of acceptability. Our neighbors have lived

there 40 years. It's -- at its core it's different. I understand that, and I appreciated people's ability to have a different expression of interest for that. But at the margin, I think removal of the three requests in the back is a preference. A preference that I can back away from hearing the neighbor's displeasure. This is the margin I'm willing to have a conversation with them and you to try to get that approval.

TAD HEUER: How much GFA do you have in the basement? What's your basement height?

MAGGIE BOOZ: Basement height is over seven feet.

TAD HEUER: Significantly?

CHUCK PIEPER: Yes.

MAGGIE BOOZ: In one area significantly, yeah. Although -- well, yeah, in one area. In the front towards the street it's probably nine and a half feet

high.

TAD HEUER: Okay.

MAGGIE BOOZ: And much of the mechanicals are in there. There are a lot of mechanicals in this house. And in some areas that you can't walk through because there are, you know, numerous multiple ducts coming through the space. I mean I have to duck. They're definitely less than five and a half feet. But I did count those areas even though ducts are running through them, because I had spoke to Sean and he said you can't count areas where you have, you know, obstructions because of duct work. I counted them as floor area. But you can't walk through them or inhabit them.

TAD HEUER: But how much?

ATTORNEY JAMES RAFFERTY: So, what is the rough -- what's the GFA number in the basement?

MAGGIE BOOZ: Well, I gave you all

the -- sorry, hold on one second. Your drawings that were just submitted have all the GFA calculations.

TAD HEUER: I was hoping you might have it.

MAGGIE BOOZ: If you unfold your --

TAD HEUER: I can.

CONSTANTINE ALEXANDER: Here are the plans.

TAD HEUER: 1364, is that right?

MAGGIE BOOZ: Yep.

ATTORNEY JAMES RAFFERTY: There's 1300 square feet in the basement?

MAGGIE BOOZ: Uh-huh.

ATTORNEY JAMES RAFFERTY: Therein moves us in the direction of the hardship, Mr. Heuer, in that it does exist, the ability here. The condition of the basement is such that given the definition of GFA, spaces that are in no way usable in the conventional sense because of the ductwork, nonetheless and

being counted because the height is measured from the floor to the joists above. So there's 1300 square feet in the basement. And members of this board have been around long enough to know that that space can be easily manipulated and permitted to do so. So the 500 square feet necessary to cover the roof, to cover the porch with this roof, could be achieved by an adjustment to the basement floor. That's why I noted when the architect suggested there's a way to do it as of right, perhaps that's what she was suggesting. My point is I'm not certain how any neighbor could assert that their property interest was better served if Mr. Pieper were required to modify his basement height in order to put a roof on this porch. That would be an expensive, disruptive exercise which would yield no benefit to the lot, to the structure, or to the neighborhood. And it's for that reason, and given the nature of the relief,

if we were talking again about those additions in the back which were admittedly ambitious and were rather quickly withdrawn, I think that that's, that's a different story.

But, in this case, the GFA exists within the house. It just so happens that that house, 1300 square feet is a large basement and that is being counted against the living space of this house. And the effort here is an attempt to not have to make modifications to the basement floor or ceiling. We can only do the floor because the joists are established to allow this to proceed by way of Variance given the nature of this GFA.

CONSTANTINE ALEXANDER: Given the nature of the way the house is constructed it's also special circumstances.

ATTORNEY JAMES RAFFERTY: Exactly. The age and construction. And so that's the hardship and that's the relief.

CONSTANTINE ALEXANDER: Questions?

BRENDAN SULLIVAN: Usable, much needed liveable space is being sacrificed by unusable space.

ATTORNEY JAMES RAFFERTY: Correct.

MAGGIE BOOZ: Correct.

TAD HEUER: Maggie, where are the ducts just generally, is it in the front half or in this portion?

CHUCK PIEPER: Where you had your hand.

MAGGIE BOOZ: There's some through here. There's some through this area right in here. Yeah. They're -- and this room right here has other mechanicals sort of overhead. There's -- I mean, it's -- yeah.

TAD HEUER: Okay. So the shape -- the hatched area is the floor area in the white area.

MAGGIE BOOZ: I counted that.

ATTORNEY JAMES RAFFERTY: We

typically have to be --

MAGGIE BOOZ: The white areas.

(Discussion.)

DOUGLAS MYERS: Is it conceivable to reduce the tower in such a way so that it doesn't exceed 43 feet by including the excess height you need, or the additional height you need, the additional height you need for habitable space but reducing the excess height that arises from the amount of non-habitable space?

MAGGIE BOOZ: Well, the non-habitable space, no.

ATTORNEY JAMES RAFFERTY: But similar --

DOUGLAS MYERS: Why?

ATTORNEY JAMES RAFFERTY: Because it's already counted.

MAGGIE BOOZ: Well, first of all, it is already counted because you actually can walk into that area now. So the additional

area in that tower is 41 square feet. It's about a foot and a half as Mr. Rafferty said around the perimeter of that tower that's additional. But the relief that we asked for on the tower is in the three feet that makes it a standupable area. In other words, it -- you could build a tower to comply with the 35 foot upper limit of height in the neighborhood, but the room inside would only be five and a half feet tall.

CONSTANTINE ALEXANDER: You're not including the five and a half foot room in your GFA now, are you?

MAGGIE BOOZ: Yes, I am.

ATTORNEY JAMES RAFFERTY: Yes.
Five and a half.

(All talking at once.)

THE STENOGRAPHER: One at a time,
please.

CHUCK PIEPER: The witch's peak that goes up, it is not framed as a ceiling. It

goes all the way up to the peak. So in fact there's a circle in the middle where you -- once you get inside, you can stand and you have to count that.

ATTORNEY JAMES RAFFERTY: The relief on the tower is somewhat analogous to the relief of the porch in that there are tower exceptions. So that form in its height could be constructed, but as long as it was all volume and not floor. Similar, no difference in its impact upon an abutter if the room could be occupied. And certainly as one of the criteria is whether it's contrary to the intent of the Ordinance, I would suggest just the opposite, the Ordinance does make allowance. This is not a third floor addition that's exceeding the height or a dormer that's exceeding the height. This is an architectural feature that if it were not occupied, would be a permitted height exception. So the relief is really related

to the occupied nature of the space as opposed to the simple height itself.

TIMOTHY HUGHES: Can you clarify something for me? The extra three feet is to make it occupiable or is it to make it restored architecturally to the original turret?

MAGGIE BOOZ: Both.

ATTORNEY JAMES RAFFERTY: Both.
Initially it's the design --

TIMOTHY HUGHES: Which is wagging which?

MAGGIE BOOZ: Oh, well, wagging it is the --

CHUCK PIEPER: Five and a half of the eight-foot ceiling.

MAGGIE BOOZ: Yeah, is the hardship.
ATTORNEY JAMES RAFFERTY: But I mean to Mr. Hughes' point, it's the desire to reconstruct the tower in its original proportion. And then --

TIMOTHY HUGHES: Does that give you occupiable space or were you going for occupiable space and then that happens to reconstruct it into its original proportion?

MAGGIE BOOZ: There's occupiable space up there. You can walk inside that tower and stand up in it.

CHUCK PIEPER: Today.

MAGGIE BOOZ: And we've measured the area --

TIMOTHY HUGHES: I got that. I got all of that, all right?

MAGGIE BOOZ: So, it's occupiable space.

TIMOTHY HUGHES: I got all of that. The extra three feet is to restore to an architectural -- original architectural --

ATTORNEY JAMES RAFFERTY: Yes.

TIMOTHY HUGHES: -- aspect of this house when it was originally built or according to the plans that you found?

MAGGIE BOOZ: Yes, that's correct.

ATTORNEY JAMES RAFFERTY: And if it
were --

TIMOTHY HUGHES: And as a byproduct
of that you've got more usable space than is
there now? Within the interior cylinder.
It widens the cylinder in the turret?

ATTORNEY JAMES RAFFERTY: That's
exactly what happens.

And so if the floor didn't get expanded
or the floor came out entirely, it could
qualify as a height exception. But as part
of the reconstruction of the cylinder,
expansion of the cylinder, they'd like to be
able to have a floor in that space.

MAGGIE BOOZ: The roof -- may I just
say that the roof over that tower is not five
feet from --

TIMOTHY HUGHES: No, no, I
understand that.

MAGGIE BOOZ: Okay. I just want you

to understand that there is not an attic space.

TIMOTHY HUGHES: No, I understand that. He just told me that it does -- you, know, I understand what's going on here.

MAGGIE BOOZ: No, in our proposal.

TIMOTHY HUGHES: Right, okay?

MAGGIE BOOZ: Okay.

TIMOTHY HUGHES: Yes.

CONSTANTINE ALEXANDER: Okay?

Questions at this point from members of the Board? I'll open it up to public testimony.

Anyone wishing -- let me do it by -- anyone in support of the Petition? I'll hear those comments first.

(No Response.)

CONSTANTINE ALEXANDER: The Chair notes that no one is wishing to speak in support of the Petition.

People who are opposed or have questions about the relief, I'll take those.

Sir, you first.

WILLIAM EDGERLY: If we may the
three of us will speak.

CONSTANTINE ALEXANDER: Okay. You
have to, each of you will have to give your
name and address for the stenographer.

WILLIAM EDGERLY: I am William
Edgerly, 32 Highland Street, E-d-g-e-r-l-y.
I'll begin.

The fact is that my wife who is here,
and I have lived at 32 Highland Street for 40
years, and for 40 years our neighbors were the
Landises and we always used to pride
ourselves in saying well, that you are the
best neighbors. That was a very happy time.
And I know we're going to have happy times
with the Piepers. We've met them. And the
only issue is to try to accommodate the
building and this new home to the legal
requirements. We believe that a very fine
job has been done here, because the original

application was for 18 or 1900 square feet of Variance cut down to 500, and I think largely to the response to the abutters on the east and south. We are abutters to the west. That's where the porch is. And what appear to us is that we're really looking at a fundamental idea that these requirements were put in place for a reason by the city, and that it was a fine idea, and it was aimed at conserving the openness and the attractiveness of the neighborhoods, not just ours, but others. The other houses, our house, the two on either side, are within the requirements. This house could be within the requirements because if they did bring it down to the 500 square feet, it focuses attention on the porch. That has become more of a topic here than I expected so I did not make copies of this. But we have a photoshopped picture which is what it will look like. Which I and my wife found

extremely helpful. It helped us to understand, for example, how the tower fit into the whole architectural concept. But also what it really emphasized and brings out clearly is the porch. The porch is a very powerful element of the building, particularly to the abutters to the west.

What happens if the numbers work because the porch adds 700 square feet, and if we're not there, the porch should be well below the requirement. All with conversation about that so far has been eliminating the roof. But the porch is large, ten foot. It goes all the way around that tower at the base. And the other possibility, although obviously we are not trying to be architects, would be to really address and focus on that question of whether there is some redesign of that porch that could be done that would put this proposal within the square foot requirement.

We -- my wife and I do object to this proposal because it exceeds the requirement, and in a way it seems too bad because it doesn't need to exceed the requirement. And so our position is that the 500 square foot Variance should not be granted, but we are hoping that will be found to bring it back into compliance.

CONSTANTINE ALEXANDER: Thank you.

TAD HEUER: Just a quick question. Would you support -- you mentioned the porch being a large porch of ten feet. Would you support a porch that was smaller, like eight? One of the letters we have is eight feet suggesting. Is that more amenable or is that still not acceptable?

WILLIAM EDGERLY: No, it's -- anything that brings us within the requirement, but there's more than one way to do that. Make it narrower, have less roof or not have it sweep all the way around the

tower, because it is a very large porch. It comes around to the front, around the tower, over to the side. There's lots of room there, we think, to find those 500 square feet.

Does that answer your question?

TAD HEUER: Yes.

DOUGLAS MYERS: Have you discussed this very point with the Applicant before tonight?

WILLIAM EDGERLY: Yes, we have at length and it's been good discussion particularly with the architect. I think we have really a meeting of the minds as to how this issue about the porch fits into the total picture. And there's no disagreement that it could be brought within compliance by changing the size of the porch. Or the existence of the porch. Yes, we have been through it very thoroughly. It was very helpful to us. That's how we have this

Photoshop picture from the applicants.

CONSTANTINE ALEXANDER: Okay.

ROY GORDON: My name is Roy Gordon. And my wife and I live at 22 Highland Street which is east to the subject 24 Highland Street. First of all, I'd like to acknowledge that the Petitioners have made useful constructive changes to their plans since the first submission. In particular, we were very pleased that they're not going to add to the building on the south side of the house. So we were all agreed on that point.

Now, when we bought our house on Highland Street, we assumed that the Zoning Laws would be enforced and, therefore, that the neighborhood would continue to have its lovely and open character. We pay high prices and high taxes with the privilege of living in this area. And if our requirement is currently met by 24 Highland Street, as

well as by abutters and other nearby houses -- in fact, I was curious about this so I prepared a table which I'll distribute.

CONSTANTINE ALEXANDER: We have that.

ROY GORDON: Okay. So what this shows is that these abutters and abutters of abutters have FAR ratios which currently fall below the 0.5 maximum existing. 24 Highland Street is 0.48 and the proposal takes it up, as you noted earlier, to 0.54.

So we think that the neighborhood is in compliance. And this is not true everywhere in Cambridge of course as you well know. But this is a neighborhood that does comply. And the Piepers bought this house and they were aware of its size and also the Zoning requirements. They've been Cambridge residents for sometime. If they wanted to live in a larger house, they could have chosen to buy a larger house on a larger lot.

There's really no hardship that I can see for them to remodel this house that's within the Zoning requirements. A smaller porch would be sufficient to fit it within the FAR requirements and the setback requirements.

The existing tower does exceed already the height requirements, but it does not seem a hardship for it to remain at its current height.

Now, Highland Street is not part of a historical district. Nevertheless, we have a letter on the record from the Historical Commission. In that letter they complain that the current 24 Highland Street, which is in a French-style, is out of place on Highland Street. Whereas the proposed Queen Anne English style is more appropriate. I beg to disagree with this. I live next-door in a colonial style house, so I feel more comfortable next to a French house since the French supported us in the Revolution.

And I'll just make one final point. I have considerable doubt that the porch was ever built according to the plans. The plans that the Petitioners have shown are indeed the plans. They are not records of what was actually built. And I'll pass for your perusal today a portion of a map that I just obtained this afternoon from the internet which shows the -- the map that shows this area of Cambridge. The No. 24 was -- this map was made in 1916. And the current owner then was Ruth Read (phonetic). You can see No. 24. Next-door is -- below it is 22, that's my house. And Mr. Edgerly's house is above it, No. 32. And what's quite clear from this map is that there is no porch around the Read's house. There is a porch shown on our house, the red -- I don't know why it was pink in this map, but that's --

TAD HEUER: It's brick that's why.

ROY GORDON: Oh, okay. Because of

bricks. Yes, indeed it is a brick porch.
Thank you.

So the -- as far as I can understand,
in 1916 there was no wraparound porch.

Now, the original construction of No.
24 began in 1888 and continued on to mid-1889.
The newspaper article that was put into
evidence for this proceeding was published
prior to the completion of the house. In
fact, it was in -- there were two articles
written, both in many months before the
completion of the house. So the newspaper
article is not a record of what was built, but
what plans were. And we have, apparently the
original plans, so that's interesting
evidence. But I don't think it's conclusive
that the porch of was ever built. If I were
to look out from the living room windows at
that house, as I've done many times over the
last 40 years, and try to imagine what it
would be like to have a roof hanging down

below the level of the top of the window, I would imagine a very dark living room.

Because there's three either windows on three sides, they would all be shadowed. So I think that -- my speculation is that the owners decided they really didn't want such a large porch overhanging their living room. Or they may have decided that they ran out of money and let's not make that last feature of the house.

So, I'm not convinced that the proposal is to actually recreate something that existed. It would be to recreate someone's plans which may have been good plans. In the meantime, after 19 -- or the renovation that apparently put on the stucco was done in the late 1920's by Ms. Howe who was a most eminent woman architect, in fact, the first woman architect in Cambridge, and she produced quite a -- I think a very acceptable outcome.

We've lived next to it. We've been in

the house many times, and I just think that the proposal to restore something does not carry any weight with my thinking about the situation. I don't see any hardship in this situation, and I would feel comfortable with the -- to work their renovations within the constraints of the current Zoning. And we hope to be happy neighbors with them for many years. So I really don't -- I feel really uneasy coming here to complain about this because I would like to just assume that the city would, you know, say well, the Zoning Laws are the Zoning Laws. And, you know, leave it in your hands. And rather than having neighbor, you know, making statements against the interest of another neighbor. So I'm sorry that I have to be here, but I felt that I should explain my position.

CONSTANTINE ALEXANDER: Thank you.

TAD HEUER: I have one question and this is obviously a letter -- we have a letter

from January 7th from you. And this, I think may have been after the decision to remove the rear portion of the structure, the proposed addition; is that right?

ROY GORDON: No, this letter predates that.

TAD HEUER: Predates that. Right. Because you note that you -- and I quote, "I distinguish between the different parts of the Variance request where adding the wraparound porch and adding to the towers may restore the original condition of the house, the addition to the rear of the house that would deprive the Gordons of view of open space is not a restoration but an addition that overburdens the already deficient FAR and deficient rear yard setback of the property."

So, and I think we've heard from you and from the Petitioner tonight that they decided not to go forward with the rear addition

because everyone kind of conceded that was a bit much.

ROY GORDON: That's right. It also was not a restoration. I don't think that was ever quite correctly stated in the original petition. There was no such back addition that was written in the plans. The house --

TAD HEUER: At least as to the third story? I mean, I was looking at the plans. They seemed to have a second story. It's neither here nor there.

My real question is -- my sense when I read this letter was that you were saying the porch and the tower are maybe six, one half dozen of the other. It's the rear addition that is really concerning to us. And it seems like that's been addressed. Are you now coming for a second bite of the apple? That's my question.

ROY GORDON: I began by saying we

were really pleased that they made the adjustment to plans on the south side of the rear.

CONSTANTINE ALEXANDER: I'm not sure you're addressing Mr. Heuer's point. Mr. Heuer's point was when there wasn't a rear addition, your letter says I'm okay with everything except the rear addition. Now there's no rear addition and you're still saying well, wait a minute, maybe I'm not okay.

ROY GORDON: Well, I didn't -- in writing that letter, I wasn't really calculating the square feet of the porch. I really hadn't looked at that issue. And I assumed that when they took off this addition to the rear, that they would be in compliance. But now I've learned with the filing last week that even taking off that large addition on the back, they're still not in compliance. So that's why I'm coming here tonight. If

they were in compliance, I feel, you know, there wouldn't be discussion --

CONSTANTINE ALEXANDER: We wouldn't be here either. Thank you.

ROY GORDON: Exactly. So, if you can find a way to adjust the porch. The tower has a very small effect on the FAR. And I think we've all agreed to that now. But the porch area, maybe there are ways that it could be adjusted, and I think in the end Piepers will be happy not to have a very dark living room.

CONSTANTINE ALEXANDER: Thank you.
Your turn.

ROGER STACEY: My name is Roger Stacey and I'm the abutter on the south. I come with some disadvantage here tonight because I haven't seen the latest iteration of the plan.

ATTORNEY JAMES RAFFERTY: Can we get an address?

ROGER STACEY: 59 Brewster Street.

I want to say that your previous work as a committee has addressed all of my major concerns because that large addition in the back was coming towards me. It's no longer doing that. And I'm here largely to support my neighbors, the Edgerlys and Roy and Myra Gordon. I don't think there's anything -- also -- I'm also at a disadvantage. I don't think there's anything much left for me to say.

I will point out that when I bought my house on Brewster Street, I discovered all kinds of architectural drawings that have nothing to do with the house I live in, but had something to do with the house that might have been built there and wasn't. So, I'm not sure that in fact that the house that we're talking about was ever built, and that a restoration is therefore what's going to take place. For instance, in the article

that accompanies those plans, there's a description of being able to view the Charles River from the house. They couldn't possible see the Charles River from the house with my house in the back. So I don't know quite what happened. But anyway, that's really not a major issue for you perhaps to address. But thank you very much.

CONSTANTINE ALEXANDER: Thank you. Anyone else wishing to be heard? Okay, sir.

JOSEPH ANTEBI: Very briefly. My name is Joseph Antebi, A-n-t-e-b-i. I live at Five Dunstable Road which is in the same neighborhood. And I've lived in this neighborhood for nearly 40 years. In the past three years we've noticed that when houses have changed owners, they've become larger and move closer to the boundaries, inconsistent with setbacks in the Zoning Rules. It happened several times. We hope

that the enforcement of the Zoning Rules will preserve the character of the neighborhood. And I feel very strongly about that. And I see these numbers, the chart, and I think that that's your job to enforce the Zoning Laws. And I've heard all the arguments and I oppose violating the Zoning Rules. It's a creeping, crawling thing.

Thank you.

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

ATTORNEY VINCENT PANICO: My name is Vincent Panico and I am an attorney accompanying the Gordons and I think everything has already been covered and I'll be very, very brief.

I believe there is in the file a letter from the former owners of No. 24. And briefly, "We lived at No. 24 for more than 40 years. We are writing to let you know that we built the deck supporting on lolly columns

outside of our breakfast area as additional space for us. The space was never intended and never used as a carport."

Okay, there was an earlier discussion. I think you may find that letter.

CONSTANTINE ALEXANDER: I think it's in the file, yes.

ATTORNEY VINCENT PANICO: And I think the hardship here is that this is a neighborhood, it's a well settled neighborhood, many of the families have been there 30 or 40 years, and you have a newcomer coming in who -- they really want to welcome, and I think it's a little painful for them to be going through this exercise. And my experience with the Board is that you try to get -- to reach a balance in all of these cases and trying to do something for the petitioners if it's at all within the Zoning Ordinance or even a generous interpretation. But I think the balance here should really be

in favor of the settled neighborhood. These are single-family houses, and I know some of you look at there's 7,000 square feet of living space and I'm living in 900 square feet. That's a lot of living space. And asking for more might be a little bit more than the Board usually gives. And as one of the previous speakers said, they really want to welcome these new people to the neighborhood. And I hope that the Board will recognize that any hardship that the Board creates is going to be a little bit generous on the interpretation.

Thank you.

CONSTANTINE ALEXANDER: Thank you.
Is there anyone else wishing to be heard?

ELLEN SARKISIAN: My name is Ellen Sarkisian, S-a-r-k-i-s-i-a-n. I live at 8 Dunstable Road. And I've lived in the neighborhood for about 25 years. And I haven't looked at all the numbers, but my

general observation is that people buy houses and the houses are never big enough and so they add more, they ask for more space and they push the Zoning Regulations. And I like living in a neighborhood that maintains the open space and maintains the scale it already has.

CONSTANTINE ALEXANDER: Thank you.

ELLEN SARKISIAN: Thank you.

JOANNA ANTEBI: Joanna Antebi,
A-n-t-e-b-i. Five Dunstable Road.

CONSTANTINE ALEXANDER: You're going to need to speak up.

JOANNA ANTEBI: Okay. I would like to add in addition to my husband's words that I spent -- again, I've lived here for 40 years, and I spent my life walking in Cambridge. My recent life. My retired life. And so I see houses that are being built and being changed. Change is good. Renovation is good. But little by little, I

see them creeping closer to the left side. Closer to the right side. Coming forward. And I've noticed this over the last ten years it's become quite evident. So we hope that as the Zoning Rules to protect the neighborhoods that they will be enforced.

Thank you.

CONSTANTINE ALEXANDER: Thank you. Thank you very much.

Is there anyone else wishing to be heard?

(No Response.)

CONSTANTINE ALEXANDER: I'm going to end public testimony. You'll have a chance to speak again, Mr. Rafferty.

There are numerous letters in our file all of which will be part of the public record. Many of them were addressing the original petition which had a rear addition which is now gone. And so they're not necessarily relevant. There is a letter, as

I've indicated before of support -- not support, but a letter from the Historical Commission. I'm going to just summarize the important parts of it.

Mr. Sullivan states -- Charles Sullivan the Chairman -- the Executive Director of the Commission, states that the house as designed in its Queen Anne style in 1889, as originally built the house features a tall corner turret with a cornicle roof and a 270 degree wraparound covered front porch. Etcetera, etcetera.

The house is then in '29 remolded in the French style. The porch was removed, the tower was cut down, the body of the house was covered with a stucco and a high wall was constructed along the sidewalk. This work bastardized a once significant building and introduced a discord element to the street. The current owners possess the original plans and wish to restore the house to its earlier

appearance. This is a generous gesture to the city and I urge the Board to grant the necessary relief.

And I acknowledge there's dispute tonight as to whether what's being done is to restore the house to its original appearance per the plans.

UNIDENTIFIED FEMALE: That's your comment.

CONSTANTINE ALEXANDER: I'm sorry?

UNIDENTIFIED FEMALE: What you just said was your comment?

CONSTANTINE ALEXANDER: Yes, my comment, not Mr. Sullivan. Mr. Sullivan has unqualified support because he believes, as he states, restoring the house to what it was originally. None of us here tonight are going to be able to solve whether that's true or not. But there was a letter of support. And there was a letter I alluded to earlier from Martha Bedell Architects trying to

persuade Mr. Sullivan to the contrary. And there are other letters.

TAD HEUER: There's also a letter from Mr. Sullivan in response --

CONSTANTINE ALEXANDER: In response to that, I know. A letter in response -- I tried to make a point that he had not changed his view even though there was a letter from Martha Bedell Architects trying to persuade him otherwise.

And the other letter from the Edgerlys who have spoken tonight. And I think they've covered the points that they -- the points that are in the letter are covered at their oral presentation.

So with that, let me ask you a question, Mr. Rafferty or Ms. Booz. Put the turret aside, I think the issue that I'm hearing a lot of concern about is the front porch.

ATTORNEY JAMES RAFFERTY: Agreed.

CONSTANTINE ALEXANDER: Is there

any way of redesigning this porch so that you can bring -- as to that part of the property not seek setback relief? In other words, bring it within the setback requirements. I guess it's the protrusion of the porch if I'm hearing it right is a real problem. It's too close to the lot line.

MAGGIE BOOZ: Well, the first thing I'll say that the porch by itself as, you know, I think is completely buildable without a Variance even though it violates the setback, because it is no more than ten feet off the foundation and it's no more than four feet high. It's one of the provisions of the Variance.

ATTORNEY JAMES RAFFERTY: Qualifies as a setback exception is an unroofed porch. So the roof that's on the porch creates both the GFA implication --

CONSTANTINE ALEXANDER: I understand that. And also the roof on the

porch increases the visual impact of that porch.

MAGGIE BOOZ: Absolutely.

ATTORNEY JAMES RAFFERTY: Correct. But I think it's a very good question because I asked it when we were sitting over there.

CONSTANTINE ALEXANDER: That's why it's a good question because you've asked it already.

ATTORNEY JAMES RAFFERTY: But to the extent could the Petition not seek that portion of relief and somehow be less ambitious? And we were just chatting about that --

CONSTANTINE ALEXANDER: And the answer is?

MAGGIE BOOZ: There is a -- the way for the porch to be compliant with the front yard setback is a fairly simple one. Reducing the porch by two feet or reducing the porch by two feet in this area that it is in

violation.

CONSTANTINE ALEXANDER: Or taking the roof off?

MAGGIE BOOZ: I'm getting to that.

CONSTANTINE ALEXANDER: Oh, all right.

MAGGIE BOOZ: I'm saying that in order to keep the roof, we would -- and reduce the amount of Variance that we were asking for, we could simply pull it back to eight feet and not have it be a ten-foot porch. And then we would have one Variance to seek. Well, two, the height and the GFA.

ATTORNEY JAMES RAFFERTY: But with regard to the porch, it would then be only a GFA question and not a setback and a GFA question. If the footprint of the porch --

CONSTANTINE ALEXANDER: You still need GFA relief even if you cut the porch back eight feet.

ATTORNEY JAMES RAFFERTY: If we

continued to -- but the 500 --

CONSTANTINE ALEXANDER: With the roof on it.

ATTORNEY JAMES RAFFERTY: Right. And the -- because we have about 200 feet to play with.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: So if it's fully roofed, we're still -- but if it's pulled back two feet and made conforming, than the 500 number is decreased by whatever reduction footprint of the porch is achieved.

CONSTANTINE ALEXANDER: Yes.

MAGGIE BOOZ: Obviously if we were able to do this by right, we would do it by right and we wouldn't be sitting here asking for a Variance. I mean, if we were to -- so in order to alter the proposal so that it fits the -- so that we are at compliance, we would not be asking for the things we're asking for.

CONSTANTINE ALEXANDER: Let me

rephrase my point, and don't take offense. But architects sometimes fall in love with design of a project and they think this is the best way to go from an architectural point of view, and I'll accept it. But sometimes you bump up against reality from the Zoning Board. So, what I'm asking you can you suppress your architectural urges and come up with a design that is Zoning -- that is compliant as a matter of right? Then the neighbors cannot complain. You complied with a front yard setback -- you have other issues, but I'm focusing on this. And it may not be as pretty or as nice as what you would like, but it would be a compromise. It satisfies the neighbors --

MAGGIE BOOZ: Yes, I've attempted today to pull back from my frivolous architectural --

CONSTANTINE ALEXANDER: Not frivolous. I didn't say frivolous.

MAGGIE BOOZ: -- desires and look at things in the light of trying to make them compliant. And that is remove the porch roof and examine what that would mean. And I have drawings to show that I've actually attempted to do that. I have a couple of drawings.

CONSTANTINE ALEXANDER: We don't need to see them. Are you interested in doing that?

MAGGIE BOOZ: Am I interested in doing that?

CONSTANTINE ALEXANDER: You and your client. In other words --

ATTORNEY JAMES RAFFERTY: It depends how the vote goes.

CONSTANTINE ALEXANDER: Well, I guess that's right. The vote is going to be up or down on all issues. So if we turn you down, you're going to lose on the height. You're going to lose on the --

TAD HEUER: Not necessarily.

ATTORNEY JAMES RAFFERTY: Well, not necessarily. That sounds like a rather rash prediction. I mean the discrete elements of the project, one has little --

CONSTANTINE ALEXANDER: You want us to take three votes?

ATTORNEY JAMES RAFFERTY: Well, I mean it's obviously up to -- the motion can be framed any way the majority of the Board seems appropriate. But I've heard little, if any, opposition to the height related to the turret. So the notion that this has to be bundled as a single form of relief, I would hope --

DOUGLAS MYERS: I reserve the right eventually to return to subject of the turret without saying that I'm opposed.

CONSTANTINE ALEXANDER: Good point. Well taken.

MYRA GORDON: Excuse me, I think we used rather than height --

CONSTANTINE ALEXANDER: I'm sorry,
I can't hear you.

MYRA GORDON: Instead of perhaps
saying the word height, people were talking
about the scale of the whole structure, and
I think height was certainly implied by the
speakers.

CONSTANTINE ALEXANDER: No, I think
your point -- we have to deal with height.
The Zoning Law doesn't deal with scale. So
we talk about height. But considering --

MYRA GORDON: We maybe didn't
realize that.

CONSTANTINE ALEXANDER: Okay. But
considering whether we would grant relief on
height, we will take into account the scale
of what goes up above the permitted. So,
scale would be subsumed in whatever decision
we make on the height. But our motion, our
decision legally is only about height not
about scale.

TIMOTHY HUGHES: Gus, can you ask the woman that you're in dialogue with to identify herself for the record?

CONSTANTINE ALEXANDER: Sure.

MYRA GORDON: Me?

CONSTANTINE ALEXANDER: Yes.

MYRA GORDON: Myra Gordon, 22
Highland Street the immediate --

ATTORNEY JAMES RAFFERTY: I wanted to just if I may be permitted a moment.

Ms. Booz, actually did an FAR analysis and there was a document submitted earlier that proposes to contain the GFA of the surrounding structures. It's blatantly inaccurate. It appears to use the living area number from the Assessor's.

And the reason I think it's relevant is two properties from across the street from this house; the property of Ms. Cabulian (phonetic), you know, and the Mooneys which are shown as compliant were clients of mine

that got Zoning relief from this very Board in which the Gordons participated at least in one of those cases, yet in the information being submitted here, the Gordons are complaining that they have a compliant FAR. They do not. We know the definition of gross floor area is contained in the Zoning Ordinance. To use living area numbers off the Assessor's data, it's suggesting here that the Mooneys have a 0.3 FAR. They got relief. I represented them a year and a half ago at this Board to get FAR relief. So it's -- to the extent it's deemed as relevant in the context, and I've heard a lot of discussion about a philosophical commitment to the requirements of the Ordinance and that's relevant, but I think the density context and the information provided by Mr. Gordon is not accurate and is inconsistent with the Board's own record on two cases that I have personal knowledge of

and I suspect some members of the Board may even recall.

TIMOTHY HUGHES: I'd be curious, too, as to whether or not all these houses are compliant in terms of setback and height in this neighborhood also.

MAGGIE BOOZ: I didn't look at any of that.

TAD HEUER: I think a cursory review of the Assessor's plot in the case that they could not possibly all be compliant as to setback.

BRENDAN SULLIVAN: Well, that was my question. And if you, again, look at next-door, it's right on the lot line on their left side. Right up to the line. So, most of these houses predate the existing Ordinance.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: Hence the consequences thereof.

TIMOTHY HUGHES: Indeed. Which is why we're here.

ATTORNEY JAMES RAFFERTY: And the earlier comment about well, if it complied then we would be fine. As noted earlier, there is a mechanism for compliance which involves an alteration in the basement. And I've yet to hear from an abutter why pursuing that mechanism would be a better outcome for anyone on the street?

ROY GORDON: I'd be happy to comment on that. There's not 500 feet in the basement that can be reclaimed. There's lots of mechanical, furnaces and so forth. I don't believe that you can -- most of the basement is liveable area. Most of it is --

TIMOTHY HUGHES: But that could be made unlivable by just raising the floor.

ROY GORDON: Well, that's your option.

TIMOTHY HUGHES: And 1300 square

feet calculated in the basement. If you only needed to get 500 back, it would not be an impossible thing to do.

TAD HEUER: It would be an awful lot of concrete.

ROY GORDON: I'm not asking that.

CONSTANTINE ALEXANDER: It would be an awful lot of concrete, though. As a practical matter, you can't raise --

TIMOTHY HUGHES: You could always put a ceiling under the ductwork, too.

CONSTANTINE ALEXANDER: I'm sorry, I interrupted you.

ATTORNEY JAMES RAFFERTY: No, no. I guess the question was -- so the issue around -- I do think there was some relevance. Again, at the end of the day, the neighbors who lived up on Dunstable Road raised a very also philosophical issue about people wanting bigger houses, bigger houses. A covered front porch isn't really, I think

we have to acknowledge -- I think all that criticism was appropriate for the original application, the space in the back. But I don't see a covered front porch fitting the description of someone coming in and looking to merely have more than what they've bargained for when they bought the house. This is largely an aesthetic feature. Sure, it's a nice amenity in the warmer weather to enjoy. It's not the kind of 24/7 living that accompanies other types of GFA.

CONSTANTINE ALEXANDER: I ended public testimony. We want to finish sometime this evening. If it's something you feel strongly you want to say, I'll recognize you. But if it's just to debate with Mr. Rafferty or us, let's move on. You still want to say something? Go ahead, sir.

WILLIAM EDGERLY: We are talking about an amenity of that building which confronts us on the west. And so we are

looking at something here which is in effect a massive part of that structure. It just doesn't have to do with question of liveable area. It's really -- it injures the appearance of the building, particularly on the west elevation.

CONSTANTINE ALEXANDER: Thank you.

Mr. Rafferty, the floor is yours again.

ATTORNEY JAMES RAFFERTY: I appreciate the time. And I think the issue -- I guess my question to Ms. Booz was was it -- was there a --

CHUCK PIEPER: You have to go back to the original question, Mr. Chairman. Is there a way to accommodate the FAR and not violate 0.5? And the answer is sure, just remove that much of the roof on the porch as to get to the 0.5 number. But that doesn't alleviate the concerns that I'm hearing from my neighbors because that means I can still do 200 plus coverage of the porch. Where I

put it is within my rights. It could be around the surround of the neighbor which is that's not what they want. But it would avoid, avoid the difficulty of the conversation but not avoid the issue. And frankly, if you start patching it around with patchwork, it would look terrible. And I think it's a preference issue that -- even if you remove the two feet diameter from ten to eight and brought it around, it still doesn't give us enough square footage to sneak under the 0.5 issue to eliminate the conversation we're having tonight.

TAD HEUER: But it does take you out of your front yard setback.

CHUCK PIEPER: It takes it out of the setback issue, but that's -- the setback isn't the two feet. That's not the trigger point for the concerns that I'm hearing from my neighbors. It's part of it, but not all of it. So I do think there's -- I do think

the issue is --

CONSTANTINE ALEXANDER: The concerns you're hearing from your neighbors, if I may, my two cents, is they are distressed that you're looking for relief at all. In other words, what you want -- everybody should live within the Zoning Ordinance and you can do what you want to do and it's good or bad, but if you don't seek relief.

CHUCK PIEPER: Right.

CONSTANTINE ALEXANDER: What they don't want to hear is someone coming in buying a property and wanting to do something that the Zoning Ordinance, quote, unquote, doesn't allow.

Now in rebuttal to that, under Massachusetts Law, we have a Zoning Ordinance, and we've Variance procedure. And the Zoning Ordinance is citywide. And what happens with Zoning Ordinances is they sometimes create individual injustices on

people's property and that's why people come to seek a Variance from us. And then we don't have discretion, pure discretion to grant a Variance. We have to meet a legal standard; the hardship and special circumstances that we talked about and what we're talking to. So that's the way -- that's the ying and the yang. That's how it works in the Zoning. Someone seeks relief, they're not trying to violate the Zoning Ordinance. They're acting within their legal rights, but they have to meet a tough standard. And that's what we're wrestling with tonight. So, but there could be what we'll call an as-of-right solution, a solution that does comply with all respects to the Zoning Ordinance that you may hate, but a person can do that as a matter of right. We have no jurisdiction and you have nothing to complain about as a matter of Zoning Laws. So, that's what we're trying to wrestle with tonight. I

just wanted to get that on the record. I think there may be some misconceptions about what this whole process is about. Okay?

BRENDAN SULLIVAN: And right on your initial comment that this neighborhood, as it in an awful lot of our neighborhoods, have been sieged in the last few years with pickup trucks and vans and work vans and this is Stop.

CONSTANTINE ALEXANDER: Stop, right.

BRENDAN SULLIVAN: Stop. You know, if you can do it as of right, but we're tired, I think, of fighting with discourteous workmen or people just doing their business. And unfortunately you're the next guy up. And I think this is a pushback.

CHUCK PIEPER: I appreciate that. People have lived there 20, 30 years, 40 years I understand.

CONSTANTINE ALEXANDER: Okay.

MAGGIE BOOZ: In terms of responding to Mr. Edgerly's requests, we looked at different ways of roofing the porch, and that's what this diagram is. It shows the shaded areas are areas that could be roofed and bring the porch into compliance.

CONSTANTINE ALEXANDER: Did you share this with Mr. Edgerly and the neighbors?

MAGGIE BOOZ: Well, no, because we only did it today. And we only got a call from, you know, about this this morning. So we're --

CONSTANTINE ALEXANDER: You might want to just to -- I'm not sure --

MAGGIE BOOZ: Yeah, I'd love to show that to them. Would you like to look at it first?

CONSTANTINE ALEXANDER: I'm fine. I don't need to.

Unless you've got something really you

have to say, let's move on.

Mr. Rafferty, are you all set?

ATTORNEY JAMES RAFFERTY: Yes,
thank you.

CONSTANTINE ALEXANDER: I'm going
to close all public testimony and comments by
the Petitioner. And now I think we'll go to
the deliberation stage.

Comments from members of the Board and
views they want to express. Do you want to
go to a vote. And I will, by the way when we
get to the vote, I was properly chastised,
we'll vote on this I guess item by item in
terms of the Variance.

TAD HEUER: There's no need to.

CONSTANTINE ALEXANDER: Well, it
might be easier. We don't know how the
vote's going to come out.

TAD HEUER: True.

CONSTANTINE ALEXANDER: Anyway,
people want to speak as to pro or con?

DOUGLAS MYERS: Well, I'd like to ask my question about the turret.

CONSTANTINE ALEXANDER: Go ahead.

DOUGLAS MYERS: I realize that my question may reveal nothing more than my objectiveness.

CONSTANTINE ALEXANDER: I do that all the time, Doug.

DOUGLAS MYERS: You do know that I was born in Missouri.

I'm referring now to the plan that's A7.0. And you've referred to an additional three feet six inches here necessary to make the inhabited part of the turret a sufficient height; is that correct?

MAGGIE BOOZ: Correct, yes.

DOUGLAS MYERS: I guess my question -- I'm trying to put my question in simple words. From that point on is there any way to complete the turret aesthetically in the space above the additional three feet

six inches so as to stay -- as not to exceed the existing height of 43 feet?

MAGGIE BOOZ: You mean lower the pitch of the cone of the roof?

DOUGLAS MYERS: If that's what's required.

ATTORNEY JAMES RAFFERTY: I understand. Where did --

TAD HEUER: Do you need the full amount of height to make it habitable?

MAGGIE BOOZ: No, that's the point. This roof, right here, is not habitable space.

TAD HEUER: Right. But you have five and a half feet by right essentially, right? You want to add three and a half feet. That gives you nine feet?

MAGGIE BOOZ: We have five and a half feet. We have five feet and three and a half feet.

TAD HEUER: Right. Do you need

eight and a half feet?

MAGGIE BOOZ: Well, to the top of a roof. That is -- well, no, we don't need eight and a half feet. We need seven feet to make it habitable space.

TAD HEUER: Right.

MAGGIE BOOZ: We simply mimicked exactly the original drawings.

TAD HEUER: I understand that part. But if the question is, you know, making your height less height worthy both Mr. Myers' question of can you reduce the pitch without making it look ridiculous?

MAGGIE BOOZ: Well, yeah --

TAD HEUER: And can you reduce your height in order to perhaps not have your full height of that room still a habitable space, but saves you maybe a foot here, foot here, are you talking about much less --

CHUCK PIEPER: Cheat a little bit on it on both sides.

MAGGIE BOOZ: Indeed, yes, it can be done.

ATTORNEY JAMES RAFFERTY: There's no deck change in height of existing tower to this tower?

TAD HEUER: No. Existing tower is going to be well above. But existing ridge is what your top height is, right?

ATTORNEY JAMES RAFFERTY: Right.

MAGGIE BOOZ: Yes, it's doable.

ATTORNEY JAMES RAFFERTY: Nothing obtuse about that question.

MAGGIE BOOZ: No, that was quite clear.

TAD HEUER: If you pulled your porch back in to eight feet around, you get out of the front setback, correct?

ATTORNEY JAMES RAFFERTY: Correct.

TAD HEUER: So you would go from three variances down to two, right? Because you would no longer have any -- there's

nothing else in the front yard setback that would cause a Variance, right?

MAGGIE BOOZ: Correct, yes.

TAD HEUER: It's just that intrusion on the porch on whatever radial angle that is?

ATTORNEY JAMES RAFFERTY: That's correct.

TAD HEUER: Do you have any idea roughly if you did pull that back and did so what would you gain in terms of or --

ATTORNEY JAMES RAFFERTY: What would be the reduction of square footage?

TAD HEUER: What would be the reduction in square footage?

MAGGIE BOOZ: Give me a minute.

TAD HEUER: I'm sure it involves pi.

DOUGLAS MYERS: Make it, do it right.

TIMOTHY HUGHES: Do you know how many running feet it is?

BRENDAN SULLIVAN: Does it make

sense to go in the other room for a half an hour, and then maybe a bottom line come back.

(Discussion.)

CONSTANTINE ALEXANDER:

Mr. Sullivan's made a suggestion that we recess this case, give you a little bit more time to give us a precise answer to this and to the neighbors as well, we'll take another case and we'll come back.

MAGGIE BOOZ: Okay, fine.

CONSTANTINE ALEXANDER: Take the plans.

BRENDAN SULLIVAN: If you think that's helpful.

ATTORNEY JAMES RAFFERTY: Yes, I think it's helpful. I do, thank you.

(Case recessed.)

(9:55 p.m.)

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

CONSTANTINE ALEXANDER: We're going to go on to our regular agenda. If you're interested, please stick around. I know the hour is late, but I don't want you to think we're trying to push you out. We're on the regular agenda and I'll turn the reigns over to Mr. Sullivan.

BRENDAN SULLIVAN: The Board will hear case 10057, 87 Chilton Street. State your name for the record.

BHUPESH PATEL: My name is Bhupesh Patel and I'm the architect for 87 Chilton Street. My client is not able to be present

tonight.

BRENDAN SULLIVAN: Just briefly tell us what you would like to do.

BHUPESH PATEL: Basically this is the existing house, which these images are included in your packet, and it's a trellised front porch. And we are requesting that the trellis be removed and we improve the trellis with a covered porch to protect the existing porch from rain. This is also included in your packet, but it doesn't have the shadow rendering on it. It just shows you what's there present and what we're proposing.

BRENDAN SULLIVAN: And the violation is the front yard setback?

BHUPESH PATEL: That is correct.

TIMOTHY HUGHES: No FAR problems?

BHUPESH PATEL: Because the porch is sheltering from the rain, it does increase the FAR. So the FAR is done.

CONSTANTINE ALEXANDER: And just to

be very precise, the front yard setback in this district is 15 feet and your porch is 11.3 feet which you got to cover?

BHUPESH PATEL: That's correct.

CONSTANTINE ALEXANDER: So that's your intrusion, about roughly four feet into the front yard setback?

BHUPESH PATEL: That's correct. Which is basically what the font porch is already.

CONSTANTINE ALEXANDER: Yes.

BHUPESH PATEL: But the porch will now have a roof that will also be the same footprint as that porch.

TAD HEUER: You're saying the hardship is due to the fact that the shape of the lot is a pre-zoning shape, but the placement of the buildings on the lot is clearly post-zoning, right?

BHUPESH PATEL: The placement of the building is post-zoning, but the placement of

the building as shown here is showing you that it was actually respectfully placed to be a similar setback as the other buildings. In other words, the existing setback that's there, the 11 plus is equivalent to what is basically up and down the street.

TAD HEUER: So you're saying in their equanimity they elected to generously provide the city with something that was too far into the front yard setback in order that we can be aligned with the rest of the street?

BHUPESH PATEL: I'm sorry, say it again.

TAD HEUER: Basically what you're saying instead of putting building where it should have been placed post-zoning unequivocally which is 15 feet back, they in their generosity to the city streetscape, put it much closer than it should be so it would [align] with the other buildings on the street. And now we're looking to approve

that rather than say you put the buildings in the wrong place on the lot, right? Which is not your fault but that's essentially what we're being asked to do.

BHUPESH PATEL: Right, but to clarify not the entire building was put up front. Basically just the front porch without a roof was put up. The building itself was pulled back so that it would actually conforming with the setback.

TAD HEUER: That would be true if the entry weren't seven feet up in the building. If I could get into the -- that would make sense if the entry were at level. But if you're going to say my entryway is seven feet up, I clearly need a stairway.

BHUPESH PATEL: No. Let me finish my point. The point being is that obviously this was approved the first time around because this condition was the way it was. That's all I'm saying. In the sense that the

mass of the major of the building was respective to setback, and anything that wasn't respective to setback was merely the stairs. By saying merely, I'm pointing out that's basically how it was approved the first time. Not that I was there. That's all I'm saying.

BRENDAN SULLIVAN: The proper design would have had a roof over the front door. That would have been required that the building be pushed back.

BHUPESH PATEL: That's correct.
That's correct.

BRENDAN SULLIVAN: And so not to trigger any relief from this Board, it was pushed all the ways up, right up to the line.

BHUPESH PATEL: Yes.

BRENDAN SULLIVAN: And to prevent having to come down before the Board the roof was not put over the porch?

BHUPESH PATEL: That is correct.

BRENDAN SULLIVAN: Except for that.

BHUPESH PATEL: That's what --

BRENDAN SULLIVAN: It was a bad situation waiting to happen at another --

BHUPESH PATEL: That is correct. That is correct. I don't deny that.

TAD HEUER: Now, we are being asked to put a roof over a porch and grant what is nominally minor relief, whereas we never would have allowed these buildings to be placed on the lot where they are if they come in asking for the porch at the same time.

BHUPESH PATEL: Well, you're saying it never would have been allowed if they come in with that roof requirement the first time around.

TAD HEUER: I'm saying they wouldn't have been allowed to be placed where it's placed on that lot with this additional roof requirement. I'm just guessing.

TIMOTHY HUGHES: Well, that's

suggesting that this Board wouldn't have granted the Variance in the first place.

TAD HEUER: Yes.

TIMOTHY HUGHES: That's what you're saying?

TAD HEUER: Yes.

TIMOTHY HUGHES: You wouldn't have. It necessarily mean this Board wouldn't have. Because the streetscape makes a big difference.

BHUPESH PATEL: You can't state that --

BRENDAN SULLIVAN: Well, no, no, they just put on too much building.

TAD HEUER: Yes.

BHUPESH PATEL: Right, right. But the plans you're suggesting --

TAD HEUER: I'm suggesting I have a majority that if we actually sat on that case --

BHUPESH PATEL: That's a subjective

fact.

TAD HEUER: I could ask around and it might become objective real quickly.

BRENDAN SULLIVAN: All right. So now we have a new owner who has a problem because they need some shelter from the elements.

BHUPESH PATEL: Correct. And this is a lot that has two houses that are connected. It's essentially two condos just to clarify. You know, there's actually two units side by side just to make sure you understand. So both of them have this condition, and one of them is requesting it, and obviously the other one is obviously thinking about requesting as well. Just to --

BRENDAN SULLIVAN: I'm sure the neighbor is very much in favor of this.

BHUPESH PATEL: Yes. Just to, you know, put all the facts on the table,

obviously this is where this is going. And I advise the clients the same thing you stated, stated to me, that the developer built it this way purposely to gain the relief he did. But I also clarified to the clients that there's no assumption there that it wouldn't have been granted if they just gone through the thing and been transparent about the whole thing in the process.

TAD HEUER: Isn't the transparency part that gets us, though, because you're supposed to be transparent if you know, aren't you?

BHUPESH PATEL: But you're assuming that the person wasn't transparent. I don't know. I don't know. I've been brought with this problem and I'm coming to you asking for relief. What that developer did, and what you would have done if he'd come with that roof on there, I cannot say and neither can you. I know you're saying as of right now you

can give me an opinion about it. But I'm just saying at that point in time I don't know what the situation was, what the negotiation was. And that's why I think it's not fair for you to suggest that. I know you can make a vote now, but it's not that exact situation where the entire development was under review. Now we're looking at just this little thing. So....

TAD HEUER: It's just that little things that are troubling.

BHUPESH PATEL: I know serial approval of things are the way people use to get around dealing with --

TAD HEUER: Where they should be in front of this Board and they are not.

BHUPESH PATEL: Correct.

TAD HEUER: And that is unacceptable in my view.

BHUPESH PATEL: I understand that. I understand that.

CONSTANTINE ALEXANDER: I guess I have maybe a somewhat different point of view. I would -- I think it doesn't serve us well to try to figure out what we would have done had this project come before us as it is now. The fact of the matter is it was done, it was built legally in compliance. It does create for the current owners a hardship. And that, you can't, you have no front shelter as you walk in the front door. It's quite a bit different than the front porch of the house on Highland where it's all now aesthetics and architectural finesse. It's very practical. They need to cover the front porch so they're protected from the elements. It's a modest form of relief. And I don't have a problem with it personally.

BRENDAN SULLIVAN: Yes. I mean, I think you're correct. But why penalize this current owner because she's been saddled with the very bad conditions which is only going

to get worse over the years. It's not inconsistent with what's along on that side of the street or on both sides of the street actually. We can beat up on the other gentleman -- so, that's your presentation?

BHUPESH PATEL: That's my presentation.

BRENDAN SULLIVAN: Anybody here who would like to -- any other questions from the members of the Board at all?

Is there anybody here who would like to speak on the matter 87 Chilton Street?

(No Response.)

BRENDAN SULLIVAN: I see none. And there are no letters in the file that I know of.

Mr. Patel, do you have any letters from the neighbor?

BHUPESH PATEL: I have just the condo association person that's connected with the building.

BRENDAN SULLIVAN: Do you know who has expressed their approval?

BHUPESH PATEL: Basically part of their condo agreement is to make sure that they do meet with each other and make any changes. So he's agreed to -- he's not submitted a document or a signed letter to say that.

BRENDAN SULLIVAN: Okay.

BHUPESH PATEL: But I was witness to the fact that I did show it to him. And he was okay with it.

BRENDAN SULLIVAN: Okay. Any other questions?

TIMOTHY HUGHES: I have no questions. I do want to applaud Mr. Patel's transparency in this case.

TAD HEUER: He's done nothing wrong tonight. And I applaud him for vigorously defending his client this evening.

BHUPESH PATEL: Thank you.

TAD HEUER: It's more of a bracatory (phonetic) warning to those who are planning on doing this in the future.

DOUGLAS MYERS: Such people are present in the room.

TAD HEUER: Don't do it.

DOUGLAS MYERS: You've been warned.

BRENDAN SULLIVAN: I'm going to make a motion to grant the relief requested to enclose -- not to enclose, but to build a roof structure over the existing porch.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner as it would preclude them, the Petitioner, the homeowner, from having necessary protection from the elements. Which is obviously No. 1, a safety issue with ice and snow. Also, an energy conservation measure which will afford better protection from the elements.

The hardship is owing to the fact that the house is situated on the lot forward as an existing addition. And that any relief of this nature would require some relief from this Board.

The Board feels that the relief is a fair and reasonable request.

Desirable relief may be granted without substantial detriment to the public good.

And relief may be granted without nullifying or substantially derogating from the intent or purpose of the Ordinance.

On the condition that the work be done in compliance with the plans as submitted and entitled, "Two proposed front elevation." Sheet 1, sheet -- well, there's only one sheet.

BHUPESH PATEL: One is existing and one is proposed.

BRENDAN SULLIVAN: Yes, okay. And initialed by the Chair.

All those in favor of granting the relief requested.

(Aye.)

BRENDAN SULLIVAN: Four in favor.

(Sullivan, Alexander, Hughes, Myers.)

BRENDAN SULLIVAN: One opposed?
Comments at all?

TAD HEUER: I believe that we can be counted saying a placement of the buildings of the lot post-zoning, they should have complied, they should have included it not be entered not at the street level. It should have included an appropriate entryway at that time within the existing setbacks as required by the Zoning Ordinance.

BRENDAN SULLIVAN: All right.
Okay. Relief granted.

BHUPESH PATEL: Thank you.

(10:10 p.m.)

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

BRENDAN SULLIVAN: The Board will
hear case No. 10058, 1531 Cambridge Street.

Mr. Bram, if you would introduce
yourself for the record.

ATTORNEY ANDREW BRAM: Members of
the Board, my name is Andrew Bram, B-r-a-m.
I'm an attorney with offices here in
Cambridge. To my left is Diana Eck, E-c-k
and Dorothy Austin, A-u-s-t-i-n, the
Petitioner. They are the -- the officers of
a corporation of the Cambridge Center which
owns the Erickson Center which has been the
present use of the this property at 1531
Cambridge Street since 1990.

BRENDAN SULLIVAN: Before we get into the merits of the case I just want to raise an issue. You're asking for relief under 4.31 Table of Use classifications.

ATTORNEY ANDREW BRAM: Yes.

BRENDAN SULLIVAN: 5.31 the Table of Dimensional Requirements and 5.26 Conversion. And I guess the issue that is somewhat paramount with me is the parking, existing and proposed. And I'm wondering if you have addressed that issue, No. 1, or if you plan to address the issue? And with a caveat that it may be an issue if it hasn't been addressed it probably needs to. If we were to open up this case, discuss it, then you're going to have to assemble the same five member board which may push this thing out a number of weeks. If you're not -- if you feel as if there is no issue with the parking, then we could go forward.

CONSTANTINE ALEXANDER: Mr. Bram,

if I could just also comment, too, because it's the same only, same way. To me, parking is an issue here in this case. It's got to be an issue. And I don't know how we can decide the case without a parking plan. So that we can know exactly what the impact of the parking and where the parking is going to be. There is no parking plan in the files.

ATTORNEY ANDREW BRAM: I believe that since this was brought to my attention by Mr. O'Grady a week or so ago, a plan has been filed. I believe that there is something in the file?

BRENDAN SULLIVAN: No. A plan was brought in to Mr. O'Grady by I think the proposed buyer.

ATTORNEY ANDREW BRAM: Correct.

BRENDAN SULLIVAN: But it was not stamped in or entered into the file. It was sort of submitted and then, I believe, and Mr. O'Grady can correct me, that it was

submitted, but it was said well, don't put it in just yet.

ATTORNEY ANDREW BRAM: That I'm not aware of. I mean, it was my intention that that plan be put in.

The petition that --

BRENDAN SULLIVAN: But I guess where I'm going is we really don't want to get into too much of the merits of the case without us opening it, is that I feel as if the petition is deficient because of a lack of a parking plan as Mr. Alexander says, and may be fatal to us going forward discussing the proposal before us.

CONSTANTINE ALEXANDER: I feel the same way. And so if we get into this and you find out that you look like you're not going to get the votes because of the lack of a parking plan, you're going to have a case heard. And who knows when we're going to hear the case. We have to get the five of us.

Would it not be more cautious or more prudent is a better word, prudent to go continue the case for a couple weeks, get a parking plan in and then we can continue the case with all the information that we need?

ATTORNEY ANDREW BRAM: Yes. I guess that's what I'm hearing.

DOROTHY AUSTIN: It sounds like it.

BRENDAN SULLIVAN: We're going to run into a dead end.

DOUGLAS MYERS: You got it right. At this point I think if no one else moves for a continuance I might, because I haven't seen the plan. And I consider that far from whether it was held or under a misunderstanding or not, I haven't seen it. And I find that a very unfortunate way to do business if the plan were neither presented to this Board without a chance without in fact my having had an opportunity to take a look at before the hearing.

BRENDAN SULLIVAN: And the plan that was submitted, dropped off, is quite deficient.

DIANA ECK: Could I know -- I'm sorry, I'm Diana Eck. And I'd just like to know what a parking plan here consists of? There have been three cars parking there for as long as I remember we have always had cars.

BRENDAN SULLIVAN: May not be properly parked there is all.

DIANA ECK: I mean, it's off the street parking.

DOROTHY AUSTIN: It's off the -- it's not on the street.

BRENDAN SULLIVAN: Right. And that's where it is. Because there's a whole number of regulations. I think that Mr. O'Grady, you may want to huddle with him with Mr. Bram and he can run through that whole scenario of events and the regulation for parking, but this proposal, anyway really

requires a parking plan.

DOROTHY AUSTIN: It doesn't sound prudent not to -- listening to what you're telling us. It doesn't seem to me.

DIANA ECK: Oh, dear.

CONSTANTINE ALEXANDER: You don't need a weatherman to know which way the wind blows.

BRENDAN SULLIVAN: So hearing a request for a continuance so that you might have --

DOROTHY AUSTIN: This is a terrible disappointment.

DIANA ECK: So they will tell us.

BRENDAN SULLIVAN: Well, I think you're going to need to do is sit down with Mr. O'Grady.

DIANA ECK: And this is Mr. O'Grady?

BRENDAN SULLIVAN: Yes. He's the Zoning specialist. And, you know, Mr. Bram and Sean can enlighten you as to what we're

going to need. And whether or not that then needs to be in a separate file. But, again, once you determine what a plan is and then Mr. O'Grady can advise you more so than that.

So, hearing a requesting for a continuance on the condition that the Petitioner sign a waiver of the requirement for a hearing.

SEAN O'GRADY: April 28th.

BRENDAN SULLIVAN: April 28th.

TAD HEUER: Not March 3rd?

CONSTANTINE ALEXANDER: Why can't we continue it to --

DOROTHY AUSTIN: This is a hardship for us.

CONSTANTINE ALEXANDER: One second, please. Why can't we do it next session?

SEAN O'GRADY: That's up to the Board of course. We will have a revolt given the number of people that have been pushed out for them to be lead front. So as a matter of

fairness, I would just put that forth. It's to the discretion of the Board.

BRENDAN SULLIVAN: Sean, you're saying what, April?

SEAN O'GRADY: April 28th.

BRENDAN SULLIVAN: 28th. And that's the only available?

SEAN O'GRADY: That's the only open slot that we have right now that we're scheduling for.

CONSTANTINE ALEXANDER: I'm sorry, Sean, I didn't catch something you said. Why can't we continue it to March 3rd? We have six cases and no continued cases on March 3rd.

SEAN O'GRADY: Because you've scheduled roughly eight other people out farther.

CONSTANTINE ALEXANDER: Yes, but we did that because we didn't think we were going to have a March 3rd hearing. The world has changed since then. It's up to the Chair.

SEAN O'GRADY: No, it's certainly up to the Board. I'm just saying we have a significantly unhappy group of people through no fault of the Board, it's their own fault that have been continued out. So we had made the determination that the Department, that we weren't -- that when we rescheduled this night, we were going with the newly scheduled people because we still had the opportunity there to move the whole block down and not see people out of order.

BRENDAN SULLIVAN: Now, if somebody were to file a new petition, what would be date of the hearing?

SEAN O'GRADY: Perhaps as early as March 17th.

BRENDAN SULLIVAN: Okay.

SEAN O'GRADY: We've been asked to stop recommending that.

BRENDAN SULLIVAN: Right. But a new petition may be heard before this

continuance?

SEAN O'GRADY: Indeed. And a new Petition may also be desirable for the Petitioner.

TIMOTHY HUGHES: Because it's going to need to include, blah, blah, blah.

SEAN O'GRADY: Right.

DOUGLAS MYERS: Mr. Chairman, this is not particular to this case. I am kind of just thrashing old straw, but I have said before and I would like to say again, that rescinding from all cases and all personalities that I think when we have a situation like this, where, unless there's a clear overriding interest to really instruct staff about the scheduling of the case in the interest of justice, I think the Board should defer to staff in terms of the scheduling in the case.

BRENDAN SULLIVAN: Well, I think they have a better hold on it than we do to

be honest with you. They have a total picture. We sort of do it piece meal so I think you're correct.

All right. So April 28th for this case. Again on the condition you sign the waiver, at seven o'clock, for this continued case.

ATTORNEY ANDREW BRAM: Well, it's not a continued case, right, we're not opening it?

TIMOTHY HUGHES: It's continued.

BRENDAN SULLIVAN: Not heard.

ATTORNEY ANDREW BRAM: Not heard?

BRENDAN SULLIVAN: That's right, not heard.

ATTORNEY ANDREW BRAM: But we're free to file --

BRENDAN SULLIVAN: Correct. That's right. And that's where I'm sort of --

CONSTANTINE ALEXANDER: And if you

do file --

BRENDAN SULLIVAN: -- pushing you toward.

CONSTANTINE ALEXANDER: If you do go that route, echoing what Mr. Sullivan said, I think the advertisement for this case is somewhat -- I don't want to say misleading, but it's not as precise as it should be. I read -- I must tell you I read the public advertisement and then I thought in my mind what the case was going to be about. When I got to the file, it was a completely different case. It's not the -- the sections that you've cited here are not really relevant. This is a parking case and conversion case. There's no mention of parking being an issue in your advertisement. Say if you're going to re-advertise, I would suggest my personal suggestion that you rephrase how the relief you're seeking and make it clear that one of the things that you have to get relief will

be on parking.

BRENDAN SULLIVAN: If you can prove that there is no relief required, then this case will continue on April -- if it is determined that parking relief is required, then you're going to have to request that will be a new case.

ATTORNEY ANDREW BRAM: I guess I'm -- my puzzlement is that the parking that exists there now has existed probably since automobiles were invented.

BRENDAN SULLIVAN: There wasn't room enough there. You don't have a curb cut for it and it's within a front yard setback. And it goes on and on. And, again, I don't want to -- I'm starting to hear the case, and I don't want to. So I think you need to have a conversation with Sean.

On the motion to continue until April 28th, all in favor?

CONSTANTINE ALEXANDER: Make sure

the time and --

BRENDAN SULLIVAN: Well, it's not heard.

CONSTANTINE ALEXANDER: Time and changing the sign.

BRENDAN SULLIVAN: Yes. And also on the further condition that the sign be changed to reflect the new date and time.

CONSTANTINE ALEXANDER: And a waiver time for decision.

BRENDAN SULLIVAN: Okay. Do we have five votes for a continuance?

TAD HEUER: Not me.

BRENDAN SULLIVAN: Four to continue.

(Sullivan, Alexander, Hughes, Myers.)

TAD HEUER: I would continue to March 3rd as the next available space. And I believe that our cases should be heard expeditiously regardless of the order in

which they come as long as there's a space in which they can be heard. If this case could actually be heard on March 3rd given the posture we just discussed is a separate matter, but in the event it could be heard, I think it should be heard.

CONSTANTINE ALEXANDER: Actually, if -- may, I'm going to change my vote with Tad. You only need three on this to continue. I think the case should be heard on March 3rd, too. I don't know why we're waiting until April 28th. Three to two you still have a vote in favor for April 28th.

DOROTHY AUSTIN: Anybody else for March? Anybody else for March? Anybody else for March. This is a hardship for us.

TIMOTHY HUGHES: I think there's probably a sale pending here.

DIANA ECK: There is. There is.

DOROTHY AUSTIN: We're in a position where we're going broke over this at this

point.

SEAN O'GRADY: I think they'll need to re-advertise in any event.

TIMOTHY HUGHES: They're going to have to re-advertise the case and include the parking relief in it.

DIANA ECK: Re-advertise means what? The thing you sent out --

BRENDAN SULLIVAN: Has to be all re-filed.

DOROTHY AUSTIN: So you didn't understand this, is that the case?

ATTORNEY ANDREW BRAM: No. Our position is that these spaces have always existed. That these are three grandfathered spaces that have always been there.

DOROTHY AUSTIN: Yeah, they have been there forever.

BRENDAN SULLIVAN: Anyhow.

DIANA ECK: The petition we filed to the city --

DOROTHY AUSTIN: There was never a problem.

DIANA ECK: -- in 1990.

BRENDAN SULLIVAN: March 3rd is going to create a problem.

SEAN O'GRADY: To continue it?

TIMOTHY HUGHES: I'm not opposed to hearing it.

BRENDAN SULLIVAN: Continue it to March 3rd.

SEAN O'GRADY: You're within your rights to do it. Just remember all the fighting that's gone on on all the previous nights and amplify that to coming to the counter. This is certainly -- you can do it. I'm just saying that there are people out there who are --

BRENDAN SULLIVAN: And I think Maria had a conversation we're saying that we really need to push this because there was a whole backlog of cases.

DIANA ECK: So, it's this piece of paper that's sent out that needs to be redone?

BRENDAN SULLIVAN: It's the application.

DOROTHY AUSTIN: We want to make sure we're understand.

DOUGLAS MYERS: Your lawyer and staff --

BRENDAN SULLIVAN: It would be more expeditious for you to file a new case, but you can talk to Sean about that.

So on the motion we have four votes?

CONSTANTINE ALEXANDER: April 28th?
Three votes.

BRENDAN SULLIVAN: Three votes.
That's all we need is two. All right.

SEAN O'GRADY: Yes.

BRENDAN SULLIVAN: On the motion we have three votes.

DIANA ECK: When is it?

BRENDAN SULLIVAN: April 28th.

Sign that waiver.

ATTORNEY ANDREW BRAM: I did.

(In favor of continuing case:

Sullivan, Hughes Myers.

Opposed: Alexander and Heuer.)

(10:25 p.m.)

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

BRENDAN SULLIVAN: We're going to hear 2419 Mass and 7 Cameron Ave. Do you have a business card? Introduce yourself and tell us what you'd like to do.

PHILIP TERZIS: I'm Phil Terzis. I'm with Oaktree Development. We have also from Oaktree, Paul Ognibeme and Jeff Hirsch.

PAUL OGNIBEME: So, as Phil mentioned, we're with the developers. This is a 37-unit residential project. We were previously issued a Special Permit in the summer of 2010. When we were applying for the Building Permit, there was discovered a conflict between the Special Permit and the Building Permit. And that conflict was identified and we're here tonight to ask for

relief, specifically regarding the setback requirements along the abutting Linear Park. We have a presentation --

CONSTANTINE ALEXANDER: Let me ask you a quick question. You said 37 units. If we were to grant you relief tonight, you will build 37 units?

PAUL OGNIBEME: Yes. In summary, the only thing we're really asking for relief for is an adjustment in the setback. It would really not affect unit count. There would be a small adjustment in square footage back to the kind of Planning Board level which we can show you. But really it's more an aesthetic change in our mind the value of this modification. But if you like, we can walk you through --

CONSTANTINE ALEXANDER: Just to remind you, you have to demonstrate to us a hardship. And the hardship is it's not going to be as aesthetically pleasing as you would

like?

PAUL OGNIBEME: Well, we have actually outlined the hardship.

PHILIP TERZIS: It's probably best to go through the whole. To --

CONSTANTINE ALEXANDER: Go ahead.

PHILIP TERZIS: Can everyone see this fairly clearly?

(Board Members: Yes.)

PHILIP TERZIS: This is the existing building or the existing plans that we had approved by the Planning Board through our Special Permit process last summer, and also is what was present for the neighborhood groups during several meetings.

BRENDAN SULLIVAN: Mr. Terzis, the reason why you went to the Planning Board is that that's another step along the way. You came to us first of all, and you got a subdivision on the property.

PHILIP TERZIS: Yes.

BRENDAN SULLIVAN: Okay. That's step one. And then you do your plans and you take that to the Planning Board to get a Special Permit under their jurisdiction to approve, it's a large project review or something like that. And then they -- what specific Special Permit relief did they grant you?

PHILIP TERZIS: Specific relief?

BRENDAN SULLIVAN: Yes. In other words, they gave you a Special Permit?

PHILIP TERZIS: Yes.

BRENDAN SULLIVAN: So that you had to get some relief under the Special Permit guidelines.

CONSTANTINE ALEXANDER: Approval may be a better word, approval. Why did you go to the Planning Board to get a Special Permit?

PHILIP TERZIS: Because the building was over 25,000 square feet.

BRENDAN SULLIVAN: There you go.
Okay, fine. Okay.

PHILIP TERZIS: So this is the design as we presented the Special Permit here. This is the existing, pre-existing Rounder Records warehouse building and Linear Park. As you can see --

CONSTANTINE ALEXANDER: Where is Linear Park? Is that right in front?

PHILIP TERZIS: That's right in front of the --

DOUGLAS MYERS: Can you point to the setback issue on that drawing? Could you point to the locus of what the setback area is we're talking about?

PHILIP TERZIS: I'm just going to orient you to -- the setback issue is along Linear Park, okay? These are the three streets which surround the site. Mass. Ave, Cameron Ave. and Fair Oaks Street. The setback area we're talking about is this area

right along the park. This is the pre-existing building again showing -- the pre-existing building has a four foot seven inch setback. This here is the property line. And this landscape buffer area is actually part of Linear Park. So that's city property. So the buffer I would say from the pedestrian walkway to the face of existing building is this -- all of this area here.

This is the site plan survey showing -- the red outline is -- the property line of our property. And this is the Linear Park here. And this area is the planted buffer zone between our property and Linear Park walkway. And Mass. Ave. is here.

DOUGLAS MYERS: And that's city land?

PHILIP TERZIS: That's city land. Here, again, is showing the four foot seven inch setback in green. One important point to note about this property is it's in

the Business A-2 Zone, but it's also in the Mass. Ave. Overlay District. But we only have less than two feet of actual frontage on Mass. Ave. Most of our frontage is actually on the Linear Park, Cameron Ave. and Fair Oaks Street.

The articles which relate to this request are this Article 5.24.3 which says that when you have property that abuts streets on more than one side, then those streets can be treated as front yards within that district. And the Mass. Ave. Overlay District says that our principal interest should face Mass. Ave. where it abuts the avenue. And as you recall, we have less than two feet of frontage on Mass. Ave. so it makes it a little impractical for us to put the front entrance on Mass. Ave.

So in that sense we felt the next best thing to satisfy the Zoning, the spirit of the Zoning would be to put the front door facing

the park. And the Planning Board liked that idea. And this is Article 20.10.8 which says that the Planning Board can allow little variations from the Zoning, in our case, to put the front door not on Mass. Ave. if it serves the spirit of the Zoning.

So here's the plan we came up with and presented to the Planning Board. Which shows an entry court here within our property. This is the property line here, on the back side of this buffer zone here which is the park. And a five-foot setback where we were treating this park here as a public right of way and as almost like a pedestrian street. So we treated that as the front of the building with the five-foot setback. We also have a five-foot setback on the other two streets here. That's showing the five-foot setback. This shows the actual open space being provided by our site plan adjacent to the park. So the actual average setback is,

if you think of it that way, is actually beyond ten feet which is the required side yard setback. And then if you think of the overall green space and the buffer between our building and the walkway of Linear Park, it's pretty extensive green landscape. And once planted, if I go back to the planting plan, you can see this green planted buffer will melve (phonetic) pretty much into our green buffer. And the actual property line will be very much very difficult to determine from the passersby.

So, and now this is the effect of the change. When we went to Inspectional Services, we were told that the five-foot setback that was approved by the Planning Board was perhaps not a correct interpretation of the Zoning and we should actually have a ten-foot side yard setback because this is not technically a public street. So, that would in a sense nip off the

corners of the building here and to make up the area lost we have to actually in-fill some of these indents here and basically come up with this plan which is the plan we came up with based on the interpretations of ISD.

So the next slide shows the actual floor plan of the building where we have nipped off these corners and now we have this sort of odd angular shaped spaces that market research and focus groups have told us that people are not very interested in buying. So, we felt that this is somewhat creating a hardship also. The visual aspect of the building I think is going to be a lot less appealing on Mass. Ave. As it fronts Mass. Ave., it's become a lumped off corner, the 45 degree angles.

CONSTANTINE ALEXANDER: Do you have any drawings of what it would look like? The very first slide you showed us is what you showed the Planning Board. Do you have one

to show us what it would look like if you have to comply with the Zoning?

PHILIP TERZIS: We have elevations, but they don't show a 3-D aspect of it. We don't have them here actually.

So what we're requesting is an interpretation -- we've got the frontage along Linear Park to be determined to be a building front within a five-foot setback in lieu of the ten foot side yard setback. And the reasons for the request, the height has inadequate frontage on Mass. Ave. so we can't satisfy the front door on Mass. Ave. aspect. Our landscaped courtyard will enhance and enlarge the existing buffer of the park, increase the green space of the park. No abutters will be adversely affected by this change to the setback requirement. The City of Cambridge is the owner of the park is the only abutter affected. The original approved design was allotted by the Planning

Board in response to the unique context of the site and the way it enhanced the Linear Park.

Revised design lacks the architectural presence of the original design. And the design was vetted by the public process and was unanimously approved by the Planning Board with a five-foot setback in the park. And we think that the original design is a better facade for Mass. Ave. So....

PAUL OGNIBEME: When considering another hardship element, and, you know, because of the timing of this, learning between Planning Board approval and Building Permit approval, we of course, you know, went through the process of building the -- getting the plans done. We had constructibility issues now as well as, you know, the steel that's been kind of engineered. So there's a number I guess you put them in design and constructibility elements, too. I don't know if you will take

those into consideration as well.

TAD HEUER: But those are self-imposed, right?

PAUL OGNIBEME: Yes, in a sense because we thought the approval that we had at the Planning Board level would stick. And then when it changed, in that interim period we did make decisions.

CONSTANTINE ALEXANDER: I'm sorry, could you elaborate a little bit more on the steel issue?

PAUL OGNIBEME: Sure. If we could show the drawing where the corners are nipped off. Basically --

CONSTANTINE ALEXANDER: I follow that. Keep going. I don't need to see that.

PAUL OGNIBEME: Okay. When we're building -- designing and engineering the foundation and the steel, we anticipated that we would be using squared-off corners. Now that we're no longer doing that, we're -- you

know, we're -- according to the building permits, we did not get relief tonight, we'd have to go with the diagonals and that changes essentially all the structural design of the building. We have to modify the steel drawings, and --

CONSTANTINE ALEXANDER: You haven't bought the steel or made other financial commitments that you would not be able to fulfill?

PAUL OGNIBEME: Well, our contractor's putting a change order for us toward us for I think it's \$80,000 or something because of the change. So in -- they bought the steel.

Jeff, could you describe what they did?

JEFF HIRSCH: Yes. They've gone through the engineering process and the steel shop drawings which is a very extensive process detailing every piece of steel to purchase the material needed for this and

have it on their site through the process of fabricating it --

BRENDAN SULLIVAN: But why would you do that before you obtained the Building Permit?

CONSTANTINE ALEXANDER: Yes, exactly.

BRENDAN SULLIVAN: I mean, that doesn't say --

JEFF HIRSCH: To secure steel prices.

BRENDAN SULLIVAN: You don't -- but you're placing yourself at risk.

PAUL OGNIBEME: You're right -- I guess it's -- you're right.

BRENDAN SULLIVAN: You rolled the dice.

CONSTANTINE ALEXANDER: You took a risk, you lost maybe, and now you're asking us to bail you out.

PAUL OGNIBEME: And I guess we

thought that under the Special Permit could grant this sort of relief that we didn't realize --

CONSTANTINE ALEXANDER: How could you think that?

DOUGLAS MYERS: I have a basic question and maybe this is not entirely founded, but in the -- you received an approval from this Board in 2007 which was one of your basic go-ahead approvals, correct?

PAUL OGNIBEME: No.

DOUGLAS MYERS: No?

PAUL OGNIBEME: That was a previous owner.

DOUGLAS MYERS: Previous owner?

PAUL OGNIBEME: Yes.

DOUGLAS MYERS: And that were you bound by that in any respect?

PAUL OGNIBEME: I'm -- I'm unfamiliar with the specifics of what you're referring to.

DOUGLAS MYERS: Well, I don't want to be coy -- yes.

SEAN O'GRADY: After you left and I meant to mention this to you before, the file that we were looking at was not the predecessor file then. It was the owner prior to them on a use variance. And so it wasn't this architect and it wasn't this owner.

DOUGLAS MYERS: Okay. Then no point barking up the wrong tree.

SEAN O'GRADY: Sorry to put you out there like that.

BRENDAN SULLIVAN: Let me bark up another tree.

The scenario of events is you come down to us, we've got a subdivision. Then you put your plans together and obviously somebody in the office did a Zoning review as to now you're starting off with a blank piece of paper. An odd-shaped lot, but a blank piece

of paper. Okay. So let's look at the Zoning and how much building can we put up in here? I mean, is that correct so far?

PAUL OGNIBEME: Uh-huh.

BRENDAN SULLIVAN: Yes, okay.

And then because it's over 25,000 square feet, you can go to the Planning Board and get a Special Permit to put up the building. But that's only one -- that's another step along the way, because then even if the Planning Board gives you the Special Permit, then Zoning, you then have to cross that hurdle. And that's where you sort of ran into a road block. Because after the Planning Board approved your plan and issued the Special Permit, that wasn't the only facet that was a problem. That I guess there was some issue about the existing grade as to where it was, and that also that the parking area on the plan again, that was approved by the Planning Board was actually on a

neighbor's property. So that had to be pulled back. The proposed building -- again, was issued a Special Permit, exceeded the height limit. So that had to be pulled down. The bicycle parking dimension, which again was part of the plan that was approved, that was deemed to be too small and that had to be enlarged. And that the setback dimension which is vis-a-vis the transitional zone from the business to the Mass. Ave -- I mean to the residential, that was not correct. And so that had to be changed. And of course the setback dimension on the side yard was not compliant. So there was a whole number of things that had to be changed after you received the Special Permit. And this is, again, the final facet of that which the others were easy to change. This one is not so easy to change or not so desirable to change. Is that --

PAUL OGNIBEME: That's fair.

BRENDAN SULLIVAN: That's correct, okay. And, you know, as far as the Planning Board approval, well, they can approve the Special Permit, but only those things relating to a Special Permit criteria but not Variances.

PAUL OGNIBEME: Yes.

BRENDAN SULLIVAN: So, again, whatever they did was always subject to further review. But the Building Permit was issued with a compliant building. So that they have a Building Permit now with the ten-foot setback and I guess you're in the ground on that.

PAUL OGNIBEME: Yes.

BRENDAN SULLIVAN: Any other questions? Anybody?

TIMOTHY HUGHES: Seems pretty clear.

TAD HEUER: How much of a setback do you actually need on that lot line? So if you

were to go to the points of those blue corners
that would be clipped if you went to ten feet.
You don't -- I mean, what's the distance
between your lot line and that your closest
corner on an angle?

PHILIP TERZIS: Those are all behind
the five-foot setback.

TAD HEUER: Right.

PHILIP TERZIS: It was originally
designed for the five-foot setback.

TAD HEUER: But they weren't on the
five-foot setback, were they?

PHILIP TERZIS: That's the
five-foot setback over there. So they
almost touch the five-foot setback.

TAD HEUER: Okay. So the corner is
touching the five-foot setback in from your
lot?

PHILIP TERZIS: Yes.

DOUGLAS MYERS: Is your question
whether a six or seven-foot setback would

obviate the substance of their problem?

TAD HEUER: Yes.

PAUL OGNIBEME: In those three -- basically I think even the template setback works in all but those three blue highlighted locations. It's not that we need the entire setback adjustment, it's just those three areas. And I think we need to go all the way to the five-foot setback to make those three blue triangles work; is that correct, Phil?

TAD HEUER: You'd need to go to the five-foot setback to make those three blue triangles disappear. But my question I have is could you get less setback relief? Let's say we're in a world where we say maybe you do need setback relief, and I'm not sure if I'm going to go there yet, but what if we said instead of asking for five feet, what can you make work now that you put yourself in this situation, can you do it with one foot? You

know, would a nine-foot setback work? Would an eight-foot setback work? You've gone from, we need to be a ten and we wish we were at five so we'd like to go to five. I'm asking, you've kind of paid the piper on this one already. What can -- can you show us what is your absolute requirement? I know your ideal is there. If you don't want to go to your ideal, what can you work with?

PAUL OGNIBEME: If I'm understanding it correctly, I believe that in order to square off the building as is our desire, that we would need to increase the setback or reduce the setback, if you will, from ten feet to five all the way to five feet because in our ideal setting, those three blue corners do touch all the way at the five-foot line. So to restore the squared off nature of the building in those three sections, we need to go all the way to five. But on average of course it's much less.

TAD HEUER: Right. So get away from your ideal and tell me what you would have to do if you want to pull those in and want to do less than five feet. I mean, tell me -- I mean, you may say I can't put anything there because I can't fit anything there or I can't put a window there or whatever it is.

PAUL OGNIBEME: I don't think you can square it off without going all the way up.

TAD HEUER: You obviously can't square it off. I understand that. Squaring off means by definition you need to right angle it. You clearly can't do that unless you touch the five-foot line.

My question is if you don't square off, so you are going to have a strange real college course styles type non-right angle situation, what can you deal with when someone says oh, I can deal with having a sliced off corner in this unit? I mean,

you're telling us basically if you have that unit -- it's value plummets because people say I can't put a desk in here or my bed won't fit into this room. It's standard, you know, double bed, full bed, queen bed sizes. I'm asking if you knocked it in, weren't asking for the full five feet, could someone still fit a bed in that room, and say, yeah, it's not so great, but we'd be a bit happier if you asked for your full amount and you wouldn't still be left with a marketable if not optimum unit.

TIMOTHY HUGHES: How many units are affected?

PHILIP TERZIS: Eight units I believe.

PAUL OGNIBEME: Because it's three stories.

PHILIP TERZIS: Four here, four here and four there.

PAUL OGNIBEME: And all the way up

the steps.

TAD HEUER: 12?

PHILIP TERZIS: 12 units.

PAUL OGNIBEME: You said eight.

PHILIP TERZIS: Actually, no, it's just this one. That's a two-bedroom unit. So it's one stack of four and another stack of four there.

PAUL OGNIBEME: Eight units.

PHILIP TERZIS: Eight units.

BRENDAN SULLIVAN: Is this the set?

TIMOTHY HUGHES: That's what's up there on the PowerPoint?

BRENDAN SULLIVAN: This is what's been approved. So this is what they received the permit on now. So this shows the ten-foot setback.

PHILIP TERZIS: Yeah.

PAUL OGNIBEME: Yes.

BRENDAN SULLIVAN: And that's what it does to the units?

TAD HEUER: So, if I'm looking at the lowest unit, the one further to the south --

PHILIP TERZIS: That's a living dining area, kitchen.

TAD HEUER: Where are your bedrooms on the southern most unit?

PHILIP TERZIS: That's a bedroom and that's a bedroom. And this is living, dining.

DOUGLAS MYERS: May I just float an idea, I'm not sure of the powers of this Board, but can the Board extend the -- and I hate to use the legal expression, but can the Board extend the setback pro tanto to the extent that the building actually occupies the space, the physical area within the setback but no further so that the setback is not affected in any other respect except where a building is standing? In other words, the setback relief only concerns if I'm making myself clear.

CONSTANTINE ALEXANDER: Not to me.
But maybe other members of the Board.

TIMOTHY HUGHES: Yes, you have to explain the legal terms to me. I don't know if I mentioned this to you before, but I'm not a lawyer. I might have mentioned it once or twice.

DOUGLAS MYERS: That's why I tried to --

TIMOTHY HUGHES: I think I understand what you're saying. But I don't understand what the -- what that would mean as a practical overall --

DOUGLAS MYERS: As a practical matter, it would mean that any open space within the five-foot setback area that is not actually occupied by a building, would remain subject to the setback.

TIMOTHY HUGHES: Right. Yes, it could be built in or --

DOUGLAS MYERS: Maybe that's a

distinction without a difference. Maybe it's not worth it.

TIMOTHY HUGHES: Yes, I don't see where they would do anything in that area anyway.

DOUGLAS MYERS: Then I apologize.

BRENDAN SULLIVAN: Any other questions?

TIMOTHY HUGHES: I don't have any questions.

BRENDAN SULLIVAN: You all set for now?

TAD HEUER: Yes.

BRENDAN SULLIVAN: Let me open it to public comment. Is there anybody here who would like to speak on the matter? Please come forward, identify yourself, name and address for the record.

MICHAEL ROME: So my name is Michael Rome, R-o-m-e, 20 Gold Star Road, Cambridge, Massachusetts, and I abut the back of this

project.

TAD HEUER: Back meaning where,
because this as a number of streets?

MICHAEL ROME: Goldstar Road it
backs -- the project backs onto Gold Star
Road.

So anyway, I use that path all the time,
either bicycling or walking, and I feel like
there's not a heck of a lot of public space
in North Cambridge. It's not like we're
dealing with Kansas. I like their plan.
What I find is their practice is something
that isn't transparent to me. So that I'm
not so sure that if given the Variance, that
they won't come all the way up to the line.
You know, go to the Planning Board again, come
up with a new plan now that they have the
Variance and then encroach on the Linear path
even more. So as far as I'm concerned, I
would say to reject this unless it was a
guarantee that what they say will actually

happen and there's no other way that it --

BRENDAN SULLIVAN: They would not get a certificate of occupancy, No. 1. And it would come back to us. Either they would have to chop off that section of the building, which they probably wouldn't do.

MICHAEL ROME: You know you say that, but I remember Midas Muffler built and some guy lost his shirt and had to leave. You know, that building is still there. Nobody made him take it down. And once these buildings go up, I notice they don't come down.

TAD HEUER: That's not necessarily true. Over on Yorkshire Road in the same area we made them take it down.

MICHAEL ROME: Good. It hasn't happened near me.

CONSTANTINE ALEXANDER: Can I ask you a question. If we were to deny relief, if, and you have to redesign the building to

meet the setback requirements, do you have to go back to the Planning Board with the revised plans or not?

PAUL OGNIBEME: No. My understanding is that the Planning Board has already reviewed the Building Permits that relative to the Special Permits and provided an administrative approval. Les Barber wrote a memo --

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: Anything else?

MICHAEL ROME: That's all I have to say.

BRENDAN SULLIVAN: Is there anybody else who would like to speak on the matter?

Richard.

RICHARD CLARY: My name is Richard Clary, 15 Brookford Street, Chairman of the North Cambridge Stabilization Committee.

There have been submitted to you by Councillor Craig Kelley a communication

which he states his opposition to the granting of this Variance and he references a community meeting in which he voted to oppose the granting of this Variance. The community meeting he referred to was a meeting of the North Cambridge Stabilization Committee that took place on January 26th which was well attended, but not attended by the developer. The developer didn't choose to discuss this matter with our committee, and so we were not -- we did not have the benefit of any arguments in favor of this proposal, nor have we ever heard any to date.

This project is massive, intrusive. It occupies almost every square foot of available space with building. Even though they will have affordable units with children in it, there's no open space for children. The boundary to the west of this point that's being discussed is practically a party wall with the next building. So there is

absolutely no justification, legal or otherwise, for the granting of this Variance which will allow, which would allow an intrusion onto one of the few areas of open space and green space that we have in that neighborhood. So, we strongly urge that you deny this Variance.

Thank you.

BRENDAN SULLIVAN: I don't have that proposal. Do you have a copy there?

RICHARD CLARY: I have a copy. My copy has a train of other comments.

BRENDAN SULLIVAN: I don't have it. If you want it entered into the record --

TAD HEUER: We can read it and hand it back.

BRENDAN SULLIVAN: I'll give it back to you.

RICHARD CLARY: The communication to Ranjit is here.

DOUGLAS MYERS: Mr. Clary, I have

one question. Where is the nearest city facility in that vicinity where children can play, park or otherwise?

RICHARD CLARY: There are -- two blocks to the west is a pocket park which used to have basketball hoops and they were taken away.

MICHAEL ROME: For three blocks along Mass. Ave. is Clarendon Street Park, and then a couple blocks down Cedar Street is another park for children.

BRENDAN SULLIVAN: Okay. Anything else?

RICHARD CLARY: No.

BRENDAN SULLIVAN: Does anybody else wish to speak on the matter?
Mr. Marquardt.

CHARLES MARQUARDT: Charlie Marquardt, Ten Rogers Street. I'll be relatively brief.

First, I just want to point out that

early this evening I was at a meeting about snow removal. Sorry, snow pushing around and some removal. And they brought up that the city is rapidly losing open space. We're left with little and little open space and we're developing to the maximum extent. So I think we need to step back and say what are we doing with our open space and not keep encroaching upon it? And while I appreciate them saying that the only people that would be harmed will be the City of Cambridge, that's everybody that uses that entire block, and I think you need to take the protection the City of Cambridge seriously.

Second, I'm little bit confused. I heard that they ordered steel without having a final Building Permit approved. They started building without having a final Building Permit approved, right? They started digging. They had a Building Permit approved.

PHILIP TERZIS: That was demolition.

CHARLES MARQUARDT: That's fine. They had demolition. They have a Building Permit issued with the new drawings which are in front of you I believe. And one of the concerns is that they may have to redesign the entire building. But wouldn't that be part of putting in the plan to get a Building Permit? Or was the Building Permit put in with the hope that they would be able to get it corrected back to what they wanted anyway?

BRENDAN SULLIVAN: The Building Permit was issued based on a compliant building with the required ten-foot setback.

CHARLES MARQUARDT: Okay.

BRENDAN SULLIVAN: What they're asking is to amend that Building Permit with a new drawing showing a five-foot setback.

PHILIP TERZIS: Correct.

CHARLES MARQUARDT: So they

wouldn't have to redesign the interior of the buildings.

TIMOTHY HUGHES: So they could go back to their original design.

BRENDAN SULLIVAN: Which is sitting on the shelf waiting to go.

PHILIP TERZIS: I would like to make a point that the existing building on the site covers the entire footprint of the site except for the four foot seven inch strip along the park. We're actually increasing the open space around the building quite a bit.

BRENDAN SULLIVAN: Yes. Anything else?

CHARLES MARQUARDT: That's it for now. Congratulations.

BRENDAN SULLIVAN: Yes, thanks.
Anybody else?

CHARLES TEAGUE: My name is Charles Teague. I live at 23 Edmunds that is sort of

diagonally down -- you go down Linear Park and it's the first exit on the right to Edmunds Street. So I walk the park every day and there's a ton of people walking the park every day. And, you know, just to be brutally honest is that infringing on the setbacks next to, you know, the most beautiful public space that we have in North Cambridge is just a bad idea. And, you know, it's just -- it's incomprehensible.

So just sort of an aside, and really I'm literally troubled by so many things, but they keep talking about how this is Cambridge property, but that's actually the subway. And so there's two things, that's MBTA land. And we have a title examiner here that looked it up. And, you know, there's restrictions on where you can dig near the tunnels even on your own property. But more importantly, and I've been in the condos that are at the corner of Cedar and Mass. Ave. and when the

Red Line goes by, it gets really loud. So under the -- to use the old saying you'll thank me later, you really shouldn't put the building closer to the Red Line. It's really noisy. There's been -- we have had a community meeting with neighbors complaining about the noise, and it turns out that the whole, the whole track structure is deteriorating because of the tunnel leakage which we all know about from the Big Dig. So -- and they have the Delasandro Report which projects the \$50 million repair. That's not going to happen. But at the end of the day you can't grant this Variance because they created their own hardship. And so you just can't do it. It's against the law.

BRENDAN SULLIVAN: Great, thank you.

CHARLES TEAGUE: Thank you.

BRENDAN SULLIVAN: Mr. Brandon, did

you want to speak?

MICHAEL BRANDON: Yes.

BRENDAN SULLIVAN: Very briefly.

MICHAEL BRANDON: Maybe that's why I wanted to wait until the end so I don't repeat.

BRENDAN SULLIVAN: Charlie started by saying he was going to speak very briefly and he reserved his three minutes to you. Identify yourself, please.

KEVIN YEARWOOD: Good evening my name is Kevin Yearwood. I live at 15 Cameron Avenue and I am opposed to this Variance. I feel that we have a very little in the way of the park. I feel that if the Variance is granted, that we're going to be back here for a Variance for something else. And what I have seen throughout this whole process is little by little, increment by increment and it's not helping the neighborhood.

Thank you.

CONSTANTINE ALEXANDER: Thank you.

MICHAEL BRANDON: Thank you. My name is Michael Brandon, B-r-a-n-d-o-n. I live at 27 Seven Pines Avenue which where I -- which faces the rear of the project down Cam Street. If I could ask a few questions? Has the Planning Board provided a comment to the Board about this Variance request?

BRENDAN SULLIVAN: Have not.

MICHAEL BRANDON: No. I would suggest that if the Board were in fact as enthusiastic about the design that they approved, they -- and if the staff would have brought it to their attention and they provided a comment to this Board explaining their feelings about the previous design versus the current design, in fact, I think the Planning Board is not aware of the litany or the various changes that the Chairman outlined have been made since they last reviewed the project. They actually

reviewed it twice because it was an amendment to the original Special Permit that they issued. After this Board agreed to subdivide the property, they went back to the Planning Board because that then allowed them more FAR on their site that they purchased. That subdivision by the way was to the previous owner of the property, not really to these folks, although they were cooperating at the time.

I just wanted to correct a few points that Phil made -- Mr. Terzis, the architect on the application. In his presentation -- I guess it's been clarified by Mr. Teague that in fact this is not city property. It's T property, and the city has an agreement about the Linear Park in terms of maintaining -- the maintenance agreement. It's supposed to be actually created as a surface easement to design was never formalized. But it's actually the city that controls it.

BRENDAN SULLIVAN: You know, those may be fine points, but it's really late. It's a setback. So all that other stuff may be very nice theatre, but I'm not interested to be honest with you.

MICHAEL BRANDON: Okay.

My main concern is that you not provide the relief that they're seeking in order to protect the park and the T tunnel as was mentioned, which is already deteriorating. There are trees, very nice mature trees now that were visible in some of the drawings that would be threatened during construction that's closer to the site in addition to the potential excavation impacts underground. I'm concerned about the precedent that would be set by granting a Variance because there are other properties along other sections of the Linear Park that are currently in the process of being planned for redevelopment including the huge Fawcett Oil site. Grants

permission for this developer to build closer to the park, it's going to be hard to deny it to future applicants.

BRENDAN SULLIVAN: And your other argument?

MICHAEL BRANDON: And my other arguments would be quickly addressing their arguments for a legal hardship which really don't hold water. The claims of financial hardship are of their own making to the extent that they're there. To some extent they're not even there because they already redone a set of plans that will -- would comply. They cite in their application form, although I don't think they discussed it tonight, the shape of the lot. And as the Board knows, the statute talks about the shape of the buildings not the shape of the lot. There were many other irregularly shaped lots in the BA-2 Zone. So there is nothing that makes this site distinctive. And it clearly

derogates from the intent of the Ordinance which is to prevent negative impacts of new buildings on abutting properties which in this case happens not to be a private property but public property. Given the hour, I will sit down.

BRENDAN SULLIVAN: Thank you. Is there anyone else who wishes to speak on the matter?

(No Response.)

BRENDAN SULLIVAN: Seeing none, there is a letter in the file from Craig Kelley City Councillor. "Dear BZA Members: I write in opposition to a Variance request 10059 for 2419 Mass. Avenue. The request to waive the side yard setback reflects the underlying issue that this project is overly big for an already dense neighborhood. While Special Permit requirements have a lower threshold and are relatively easily met, due to the Zoning Code's desire to

provide both guidance and flexibility for the developers and neighbors, Variance requirements are very narrowly constrained by law. Having reviewed this project in a variety of formats, I do not see how the current Variance request is anything besides towards the overall goals of our Zoning code. And the broad discretion given the Planning Board to issue Special Permits. Therefore, given this proposals lack of readily apparent legal justification, the neighbor's previous issues, the neighborhood group's formal opposition, I urge the Board to reject the application."

And there's correspondence from a Nancy Popper, P-o-p-p-e-r. "Dear Maria Pacheco: Please don't let the developer Rounder Records site encroach further into the Linear Path. We have so little community space and so many condominiums. It seems unfair for them to ask to take away space from the

bicycle path."

There is a letter in the file from E. Thomas Flynn, 25 Madison Avenue. "As a resident of North Cambridge and a user of Linear Park, I see no reason to waive the required ten-foot side yard setback as requested. I see no hardship on the part of the developer or any advantage to the City of Cambridge justifying a Variance."

A letter from Amy Goldsmith. "Dear Ms. Pacheco, we are very much not in favor of the Zoning appeal put forth by the Rounder Records to build five feet from the Linear Path. This is public space and they should keep the required ten feet."

And that's the sum substance of correspondence.

Final comments? Rebuttal or pleadings?

PAUL OGNIBEME: The only comment I would have is I know many of the people are

talking about encroaching further on the park, and as we noted, in fact, our project is mostly actually pulling away from the park because the previous structure was, you know, actually within -- beyond the five-foot setback at 4.7. We're for the most part at ten feet except for these three little corners, and we feel that the project will help the park and the open space if we could build according to this relief request.

BRENDAN SULLIVAN: Anything else? That's it.

The only question I have is again, as I go back and when I reviewed the file, is who did the initial Zoning analysis for you guys when you went down to the Planning Board? And obviously you say well, okay, where is the front yard? Where are the side yards? Where the rear yards? And what does the Zoning Code say in that?

PHILIP TERZIS: We did that in-house

and we met with planning staff and reviewed all of the setbacks.

BRENDAN SULLIVAN: Planning Board?

PHILIP TERZIS: No, planning staff in the City of Cambridge.

BRENDAN SULLIVAN: Community Development?

PHILIP TERZIS: Yes.

BRENDAN SULLIVAN: Or Planning? Community Development?

PHILIP TERZIS: Yes.

BRENDAN SULLIVAN: And they somehow came up with the determination that that was front yard?

PAUL OGNIBEME: I think -- the confusion I think was that most people were looking at it as if we were abutting Mass. Ave. and --

PHILIP TERZIS: And well, three streets. That was the interpretation, that we were abutting three streets. So we had

front yard setbacks on all those sides. But the park cutting through that one corner was later determined to be not a -- because it's not a street. Initially a side yard setback. So we through the whole process, construction documents, started excavating, you know, demolishing --

BRENDAN SULLIVAN: What triggered the five-foot setback? In other words, after you had communications with planning staff, it was determined that it is front yard setback; is that correct, or not --

PHILIP TERZIS: Correct.

BRENDAN SULLIVAN: Okay. And so you proceeded on that basis?

PHILIP TERZIS: Yes.

BRENDAN SULLIVAN: And to the five foot?

PHILIP TERZIS: Yes.

BRENDAN SULLIVAN: Okay.

Well, you came up short obviously. As

were all the other issues that were put into the plans. And, again, the Planning Board is -- can grant relief for a Special Permit criteria and not Variances. Okay.

Any comments?

CONSTANTINE ALEXANDER: My comment is I plan to vote against the relief being sought. I think the hardship that's being cited is purely aesthetic hardship. Even it's true you have an aesthetic hardship, but that's not the legal standard. You've got to show a financial hardship. You're not showing it. To the extent you relied on the planning staff is what I'm hearing for Zoning advice, we have a high esteem -- Mr. O'Grady is sitting right there. He is the person you should be talking to when you're talking about Zoning. So for all those reasons I'm not going to vote in favor of the relief being sought.

DOUGLAS MYERS: I feel sorry for

you, you know, you probably been the victims of a colossal misunderstanding. But, you know, you could have waited for your construction until you checked with the Inspectional Services Department. And certainly about the steel order and all that, you could have waited, too. You put us in a really difficult position where we have to create a -- you're asking us to create a Variance basically out of thin air to help you out, and I don't think we can do that.

BRENDAN SULLIVAN: Tim, do you have any thoughts?

TIMOTHY HUGHES: I think there probably is a hardship here, but I don't think it's -- I don't think I'm in favor of this because -- I really think that the -- that there are other design options here besides just cutting the corners off the building. And I think the fact that that's -- that that's what you came up with as an

alternative, knowing full well that those units wouldn't be marketable, suggests that you thought that you were going to get the Variance and that you didn't put any further thought into redesigning this in a way that the units could be reconstructed. You didn't put any thought into maybe eliminating a couple of units. And I find that was a little frivolous on your part even after everything else that went wrong. And so I can't, I can't vote in favor of this.

TAD HEUER: I think I'm more towards Mr. Hughes's reasoning than I am towards Mr. Alexander's. I think my concern is that we were shown a plan that was either what we had or a plan that was very clearly unworkable, and asked to pick between a plan that doesn't work and a plan that would be ideal. And I don't like being put in that position. That being said, looking at relief that's being requested, it is being

pulled back from the old Rounder Records building. I think there's more space. They're looking for a five-foot setback, it's not ten, it's 4.7. I believe the setback is only being addressed in those corners. There will be much more open space on the lot certainly than there is now, and in combination with the park, I think it will be a much more inviting neighborhood in that area. And I do think that the frontage of that side does look like frontage. It's where they're intending to putting the front of the building. It's the longest side certainly based on where the front is right now which is the shorter of the sides by length. I don't think it's unreasonable to look at that and treat it as a front yard setback although I can defer to the Zoning and the interpretation of ISD. But I don't think it's necessary and reasonable relief although I do think they should have checked

with ISD to begin with. I think overall it's a fairly minimal request. The fact that we are presented with a yes or no and the fact that the hardship is essentially self-imposed is pushing me over rather than the fact that it's treating into a setback per se.

BRENDAN SULLIVAN: I sort of come down the track that they're starting off with a blank piece of paper, albeit an unusually shaped blank piece of paper that the Zoning should have been checked and verified with the proper and the final people, and that would be Inspectional Services. And that would have pointed you in the proper direction. I really take the setback requirements very seriously. We're just in-filling too much land, so I would not support it. The setback requirements to me unless under the most extreme conditions, and I think you're starting off with a blank piece

of paper, that it could have been designed a little differently rather than this way or this way and not tweaked a little bit differently.

But I'll make a motion to grant the relief requested to waive the ten-foot side yard setback where the property abuts the Linear Park to allow for a five-foot setback to those parts of the building as per the plan submitted.

The Board finds that a literal enforcement of the provisions of the Ordinance would involve a substantial hardship to the Petitioner. The hardship would be that it would preclude the Petitioner from building the upper building which was approved by the Planning Board under Special Permit No. 239.

The Board finds that the hardship is owing to the unique shape and location along the Linear Park within the Mass. Ave. Overlay

District. The design approved by the Planning Board was intended to create a front entrance court taking advantage of the pedestrian street, and as such, the only certain small segments of the building do infringe upon the side yard setback.

The Board that substantial desirable relief may be granted -- would not be a substantial detriment to the public good.

And the relief may be granted without nullifying or substantially derogating from the intent and purpose of the Ordinance.

Anything else to add to that? All those in favor of granting the relief requested?

(No Response.)

BRENDAN SULLIVAN: All those opposed?

(Show of hands.)

BRENDAN SULLIVAN: Five opposed.

(Sullivan, Alexander, Hughes,

Heuer, Myers.)

CONSTANTINE ALEXANDER: I think we need to say why we oppose.

BRENDAN SULLIVAN: Give me some language.

CONSTANTINE ALEXANDER: I think one finding we can make is that we don't feel there's sufficient hardship within the legal hardship that's required under our Zoning Ordinance.

That there would be derogation for the intent or purpose of the Zoning By-Law because we would be intruding with -- one of the purposes of our Zoning By-Law is to preserve and create open space, particularly if it borders public property. And this would be intrude into that. And it's inconsistent with the extent of our Zoning By-Law. Those are two findings that we can make.

TIMOTHY HUGHES: I think we can make

the second one. I don't agree necessarily on the hardship issue. I do agree with the encroachment.

TAD HEUER: There could also be a finding that being the intent of the Ordinance to eliminate reduced and especially eliminate non-conformity that once the structure has been eliminated from the site, the intent and purpose of the Ordinance is that the conditions not -- the conditions that apply to the pre-existing non-conforming use no longer apply to that site.

BRENDAN SULLIVAN: Okay.

CONSTANTINE ALEXANDER: Take vote on this.

CONSTANTINE ALEXANDER: All in favor of those findings?

BRENDAN SULLIVAN: Further findings, all those in favor?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.
(Sullivan, Alexander, Hughes,
Heuer, Myers.)

(11:25 p.m.)

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

CONSTANTINE ALEXANDER: The newly
restored Chair will constitute this case and
take it out of recess.

TIMOTHY HUGHES: Tell me something
good.

CONSTANTINE ALEXANDER: Do you have
some good news for us, Mr. Rafferty or bad
news?

ATTORNEY JAMES RAFFERTY: The
Celtics beat the Lakers? No, I don't know.

I had tickets, but I don't think I'm going to get there.

CONSTANTINE ALEXANDER: Please, could we leave the room and chat out in the hall but not here.

ATTORNEY JAMES RAFFERTY:
Mr. Chairman, I'm pleased to report that during the interim we made some modifications to the plan along the lines of some of the concerns that have been expressed by the Board and the abutters. And they are -- essentially the portion of the application that seeks setback relief is being withdrawn. The front porch is proposed to the drawings that has a roof on it. The roof is not going to be installed. So the FAR relief associated with that, there's some 500 square feet is no longer being pursued. The design of the turret is going to be modified consistent with the comments of Board members to remove a foot and

a half in the height of the turret. With the effect being that the height of the turret would equal the height of the highest point at the ridge of the existing roof. And the application will need relief in the area of about 75 square feet for a covering over the front entry only.

TAD HEUER: Do you get the --

MAGGIE BOOZ: In addition to the 41 square feet in the tower. It's only 13 --

ATTORNEY JAMES RAFFERTY: Right. I thought the 41 in the tower I thought we were able to satisfy with the 200 you had.

CHUCK PIEPER: No. Over 0.5 is 47 plus eight and a half times eight.

ATTORNEY JAMES RAFFERTY: Okay, thank you. So it is -- we're calling it 75, and it's a combination of the additional GFA.

CONSTANTINE ALEXANDER: I'm getting lost at this point. Let's try a different way.

Tell me the relief -- frame the motion if you would, you want us to adopt.

ATTORNEY JAMES RAFFERTY: Well, I thought I understood the math, but maybe I didn't.

The motion would be to allow for height Variance to allow for a modified tower in excess of the 35 feet to --

CONSTANTINE ALEXANDER: But not as high as 44.5 as originally proposed?

ATTORNEY JAMES RAFFERTY: Foot and a half less than what's originally proposed.

CONSTANTINE ALEXANDER: 43 feet. Which is the height of the turret right now actually.

TAD HEUER: No, that's the height of the ridge.

CONSTANTINE ALEXANDER: You're right, height of the ridge.

ATTORNEY JAMES RAFFERTY: And the application also seeks FAR relief to

accommodate additional GFA in the tower to allow for it to be occupiable space, and to allow for the entry porch.

CHUCK PIEPER: Which is 47 square feet.

ATTORNEY JAMES RAFFERTY: To allow for the entry porch to be covered.

CHUCK PIEPER: Which is 72 and a half feet.

CONSTANTINE ALEXANDER: So where are the plans that reflect this?

MAGGIE BOOZ: This plan reflects the covered porch area.

TIMOTHY HUGHES: That's an addition of 112 square feet?

MAGGIE BOOZ: Excuse me. No, it's 113 and a half square feet.

TIMOTHY HUGHES: Didn't you have 220 square feet to play with anyway?

MAGGIE BOOZ: Yeah, that's the --

ATTORNEY JAMES RAFFERTY: Where is

that being used?

TAD HEUER: I don't think you need FAR relief.

TIMOTHY HUGHES: I don't think you need FAR relief it's only 113 square feet. By my calculation, you have 220 to play with.

MAGGIE BOOZ: No, we're asking for 333.

TIMOTHY HUGHES: Oh. Well, where's the rest of it?

MAGGIE BOOZ: We were allowed already because of our FAR calculations. And in excess of that, in excess of the 6551 allowable, we would like to have 113 square feet of relief.

TAD HEUER: So this part in here this is the east side --

CONSTANTINE ALEXANDER: Entry portion.

CHUCK PIEPER: That's the north. The street is to the north.

TIMOTHY HUGHES: What's the other 200 if you don't mind me asking?

TAD HEUER: Right here. That's got to be the east.

CHUCK PIEPER: This is east, right. That's north. That faces north.

TAD HEUER: Eastern side of the house. Porch. Which I'll now heretofore call the east porch. This is what you're getting your 200 feet that you're by right allowed. That's just where we're putting it for convenience, right?

MAGGIE BOOZ: I'll make this graphically clear. About this much is how much we can add by right. We need this much more and then we need the tower.

ATTORNEY JAMES RAFFERTY: So this, so this area is the excess GFA, and the area of the tower is the excess GFA, and that totals 113? And the two areas combined is 113.

ROY GORDON: It's right here.

TIMOTHY HUGHES: Maggie's got it.

113 and a half.

(Discussion.)

MYRA GORDON: This isn't going to be.

ROY GORDON: Right here, we compromised to coming out to here.

MAGGIE BOOZ: No, no. May I show you exactly what we talked about in the other room? Would you like me to explain what we talked about in the other room?

DOUGLAS MYERS: Maybe they want to step outside.

CONSTANTINE ALEXANDER: There's no reason to. There are no other cases.

MAGGIE BOOZ: This is a pedimented entry right here. We're allowed this half of it to be covered. This edge of -- this side -- this slope of the roof right here wouldn't be allowed to be built if we didn't

give way.

ROY GORDON: I can't tell from there. Is it covering this area?

MAGGIE BOOZ: I'll draw right on here, okay? This is a pediment.

ROY GORDON: Just tell me what's being covered.

MAGGIE BOOZ: And then there's a section back here.

MYRA GORDON: Where is the front door?

ROY GORDON: This is what's being covered?

ATTORNEY JAMES RAFFERTY: Is that being covered too?

MAGGIE BOOZ: No.

CHUCK PIEPER: Listen to her, please. Listen to her.

MAGGIE BOOZ: This is what we talked about right here. And I said I was going to ask for this in relief which is what I've

asked for.

MYRA GORDON: Excuse me, things keep slipping away and we didn't discuss this. We talked about this and even reducing it. And we talked about that here, I'm sorry, but --

ATTORNEY JAMES RAFFERTY: We were talking 40 feet now on the front end.

MYRA GORDON: You changed what you said.

MAGGIE BOOZ: No, I didn't.

CONSTANTINE ALEXANDER: If we can understand or at least --

ATTORNEY JAMES RAFFERTY: I think there might have been some confusion. We were treating -- this portion is as of right. This portion requires relief and the GFA and the foyer requires relief.

CONSTANTINE ALEXANDER: And seeing you want -- basically you want 113.5 feet additional GFA relief -- FAR relief.

CHUCK PIEPER: Correct.

CONSTANTINE ALEXANDER: And you want to be able to build to the ridge line on the current up to the 44 -- 43 feet. 44 and a half.

MAGGIE BOOZ: This is 43.

CONSTANTINE ALEXANDER: Okay.

ATTORNEY VINCENT PANICO:

Mr. Chairman, the architect had given us some specific reference. She said she would remove the frieze board.

ATTORNEY JAMES RAFFERTY: That's where the foot and a half is coming from the tower.

TAD HEUER: I don't care where it's coming from.

CONSTANTINE ALEXANDER: Me, too.

ATTORNEY VINCENT PANICO: On your covered -- I think there's confusion on the covered porch.

CONSTANTINE ALEXANDER: I don't mean to interrupt you. The relief they're

seeking is FAR -- to go over what's permitted FAR by 113.5 feet. I don't want to get into -- and to have to have the ridge line go no higher than 43 feet. How they want to -- you work out how you're going to parcel those 113 feet. I'm not here tonight trying to figure out where that 113 feet is going to be. I'm satisfied just me personally, the relief being sought is rather modest and particularly in relation to what we started with here, and I think it would be counter-productive to try to continue to have this debate.

Other members of the Board disagree with me?

TIMOTHY HUGHES: No. And in fact I just did the math and we're talking about 0.509 at the most. So we're a fraction over the 0.5 in terms of --

CONSTANTINE ALEXANDER: That means they need relief.

TIMOTHY HUGHES: They need the relief, yes.

CONSTANTINE ALEXANDER: And it's not a lot of relief. Therefore, I don't know why we should get into any further on this.

ATTORNEY JAMES RAFFERTY: It's half a bag of concrete in the basement now if they wanted to.

CONSTANTINE ALEXANDER: Yes.

MYRA GORDON: We really have tried to accommodate in good faith and it seems incredible that it's slippy-slidey.

CONSTANTINE ALEXANDER: I don't know, I don't think that's a fair characterization.

TIM HUGHES: Me either.

CONSTANTINE ALEXANDER: Let's see where we started from. We've gotten to the point now that where we're talking about 113 square feet of FAR. That puts them less than 1.0 over that's required. They're seeking

minor relief. You can't design the property for them.

MYRA GORDON: I'm not designing the property for them. I relied --

CONSTANTINE ALEXANDER: Well, I'm telling you the relief being sought is very modest at this point. I rely on your expertise and also you're enforcing the rules. And I feel that we've been pushed and pushed. I find this not really an agreeable process. There are better things we could be doing. And I'm hoping that you'll work it out. It's late, but I do think we had discussed it.

ATTORNEY VINCENT PANICO: The Petitioner and we pointed out what was acceptable. We all agreed to it. Now there's some confusion.

CONSTANTINE ALEXANDER: Well, I'm to the --

TIMOTHY HUGHES: What you think you

agreed to was that they needed no relief, they would build it entirely as of right except for the height of the turret.

MAGGIE BOOZ: We said we stated outside and in the other room --

ATTORNEY JAMES RAFFERTY: I'm not sure where the confusion came from. It was clear that the Gordons who live on this side requested preference that there be no covering here, that we hold the covering there. And we were clear that we were not willing to compromise on. We felt that this was necessary and we were going to ask the Board for this relief. There was some comment about how it affects the street line or something. So, the Gordon house is over here. It's a small covering. I don't, I guess that's where the confusion came out. Because I made it clear no, we're not prepared to walk away from that.

DOUGLAS MYERS: Is that only issue?

ATTORNEY JAMES RAFFERTY: Yes.

DOUGLAS MYERS: Is that the only issue?

MYRA GORDON: Yeah, I think Will had something that he was going to say.

CONSTANTINE ALEXANDER: He wants to speak to the point.

WILLIAM EDGERLY: If I can take just a moment and shorten it to express my opinion. I agree with the approach that you've taken as Chairman, and I hope we will put that into effect because I think it's quite an achievement.

ATTORNEY JAMES RAFFERTY: Perfect gentleman throughout the process and we welcome and appreciated his cooperation.

CONSTANTINE ALEXANDER:
Where -- let me give you this. We have to tie this -- if we're going to take a vote. We will take a vote -- to plans. And I've got so many sets of plans here. Let's see the

plans as modified by what you're talking about here. There's more than this. What were your elevations? What's your package?

MAGGIE BOOZ: This modified plan. This modified elevation. I submit this perspective as part of the package on conventional drawing.

CONSTANTINE ALEXANDER: Yes, but what about the rest of the plans that are not affected by the relief being sought. You submitted to us --

MAGGIE BOOZ: You have a set of plans --

CONSTANTINE ALEXANDER: That's the one I'm asking you to identify for me. Here, tell us.

MAGGIE BOOZ: Well, these are GFA floor plans.

TAD HEUER: What does it matter?

MAGGIE BOOZ: What would you like me to do?

CONSTANTINE ALEXANDER: I want a complete set of plans for Sean when it comes to Building Permits.

TAD HEUER: Well, that's true, but we just had Chilton Street come in, they wanted to lower the front covering, we didn't ask them for it.

CONSTANTINE ALEXANDER: Well, because they're obvious.

MAGGIE BOOZ: There are no other alterations to make.

CONSTANTINE ALEXANDER: There are none? Okay, then I'm fine.

DOUGLAS MYERS: I really would like to hear Mr. Panico state his side. I specifically don't want to stir things up, but I would like to hear what he has to say.

CONSTANTINE ALEXANDER: Sure.

ATTORNEY VINCENT PANICO: Well, I thought we had an agreement on the side yard here.

MAGGIE BOOZ: That we were going to cover half of this pediment with a roof and the other half not. Is that what you thought?

ROY GORDON: My understanding was A, B or C. We chose this. Nothing about that. That's all.

MAGGIE BOOZ: No, and I explained --

CHUCK PIEPER: A, B or C require no approval.

ROY GORDON: Okay. That's what I thought we were coming in to explain that we made plans that didn't require Variance.

MAGGIE BOOZ: I explained outside that if we were to cover it -- may I speak?

ATTORNEY JAMES RAFFERTY: I'll just say that the rendering that you see right there is what everyone agreed to. And that is what is depicted there. When we left -- Mr. Panico's been hanging on to it for the last hour. His clients have had it.

Everyone agreed to that. I'm not sure where this went off the rails. But that's the rendering that was agreed to. And I defy anyone to tell me that it wasn't.

ROY GORDON: If I'm misunderstanding from that perspective, Counsel, from here --

ATTORNEY JAMES RAFFERTY: So this little portion here bothers you?

ROY GORDON: That wasn't part of the --

ATTORNEY JAMES RAFFERTY: It was -- you just didn't understand it correctly. So, let's not confuse the issue.

What we're talking about the nature in dispute now, is that we would have a half a pediment over this. As if somehow the property interests of this person is affected by a full pediment here. We've been here for hours over this. It's unusual. But that's what we're down to, that issue.

CONSTANTINE ALEXANDER: As I said before, I'm ready for a vote.

TIMOTHY HUGHES: I'm ready for a vote.

CONSTANTINE ALEXANDER: I think we sort of beat this to death. I think we made significant progress in terms of a design that meets (inaudible). It may not be 100 percent, but it's much closer to 100 than it was before.

ATTORNEY JAMES RAFFERTY: They don't have jurisdiction. There's no demolition. It's not a historical district. They prefer the covered porch.

TAD HEUER: I would imagine.

ATTORNEY JAMES RAFFERTY: We did, too.

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 the Petitioner desires to return the house to a more historic, if not to its original design, to a more historic design.

That the hardship is owing to the nature of the building, the shape of the building, and the fact that much of the interior space, almost 1300 square feet of it is -- counts as FAR, but in fact is not generally usable for human habitation.

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

In that regard we have a letter -- advisory letter from the Historical Commission in support of the work that's being done. And in fact, the work that will

be done will be to restore a building a historically to restore a building, an architecturally desirable building close to its original origins.

On the basis of these findings, the Chair moves that a Variance be granted to the Petitioners on the grounds that the relief being granted is approximately 113.5 square feet of FAR beyond what is otherwise legally permissible. And that the ridge line of the terrut that is proposed to be reconstructed will be no higher than 44 feet from the ground.

And on the further condition that the work proceed in accordance with plans initialed by the Chair, two plans and one rendering, all of which have been initialed by the Chair. The plans are numbered A-7.0, and A-3.1. And of course the rendering has no designation other than my initials.

On the basis of the foregoing, all those

in favor say "Aye".

(Aye.)

TAD HEUER: If I may amend before we vote?

CONSTANTINE ALEXANDER: Yes, go ahead.

TAD HEUER: That's it's 43 feet, not 44 feet for the turret.

CONSTANTINE ALEXANDER: I'm sorry, you're right. I got it wrong.

TAD HEUER: And I would also point out that I believe some of the basement is actual habitable space and is intended to be used as such.

The issue is really that the basement, if they wish to reclaim the square footage and do this by right, could be filled at an expense that would be unreasonable for the Petitioner and would have no purpose except for the legal reason of moving FAR around the structure and that's not something we would

view as meriting.

DOUGLAS MYERS: And I would like to make a comment as well.

CONSTANTINE ALEXANDER: Go ahead.

DOUGLAS MYERS: That I very much regret that there was a misunderstanding on the final point. But this was a vote by -- I'm going to vote in favor of the Chair's motion. But this was a vote that could have gone either way at the outset before the adjournment. And I would remind the abutters and the neighbors of the many, many substantial concessions that were made, and that in fact it seemed that the vast number of the issues and objections that were raised were raised and resolved in a way that is very favorable and very accommodatory toward the objections. So whatever misgivings and feelings of anger may remain with you, I hope will very quickly pass and that you'll put the result there in the proper perspective.

CONSTANTINE ALEXANDER: Well said.
All those in favor of approving the motion that I made as amended by Mr. Heuer's comments, say "Aye".

(Aye.)

CONSTANTINE ALEXANDER: Five in favor.

ATTORNEY VINCENT PANICO: I thank the Board for being cordial and patient.

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

(Whereupon, at 11:45 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 24th day of February 2011.

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

My Commission Expires:
April 23, 2015

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